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# 1. Introduction

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Third World Approaches to International Law (TWAIL) is essentially a scholarly enterprise. And yet, it is a scholarly enterprise informed by the challenges encountered in practice in advancing transformative change, from the structural limits of international institutions to the biases and hierarchies that are baked into international laws and norms. TWAIL was born of a critique of international law as it was practiced, written about, and read, but also born of the inspiration that scholars found in re-interpreting the archive, listening to marginalized voices, and re-connecting with the ground-breaking work done by earlier generations of Third World lawyers, anti-colonial activists, and scholars in literature, economics, and other disciplines. All these themes and influences and histories are evident in this Handbook, as many of these essays trace the work of TWAIL scholars and practitioners over the generations, suggesting ways in which their works and concerns, and their intellectual, political, and practical contributions, illuminate the present, and provide valuable resources for dealing with contemporary problems.

In many ways the last 25 plus years of TWAIL is a history of thinking together from and across different geographies, political affiliations, and intellectual traditions. These differences have enriched and challenged TWAIL scholarship and praxis in ways that have fundamentally exceeded its origin story. That history is apparent in these pages, but it is also expressive of our hope that, in that same spirit, this book too will contribute to more opportunities for thinking together in ways that exceed our political imagination and intellectual compass today.

## 1. TWAIL—A PROJECT AND AN OVERVIEW

From the outset, the TWAIL tradition, including scholars and lawyers of the 19th century from the non-European world, has involved the struggle to assert the sovereign rights of colonized peoples and create an anti-imperial world. This broad task has been shaped and thought, reshaped and rethought, through the travails and tensions of official decolonization; thus the paths travelled in grappling with international law alongside the promises and pitfalls of post-colonial nationhood animate the essays in this book.

There are TWAIL scholars working on virtually every subject in the international law curriculum and from a range of theoretical perspectives. In assembling this collection, we were privileged to have a window into the depth and breadth of TWAIL work being undertaken in 50 different halls of international law. We have not sought to summarize the chapters in this handbook; instead, we have let our authors speak for themselves and convey the multi-vocal character of this volume. Some chapter authors sought to cover the range of TWAIL interventions that were taking place in their sub-discipline, with the footnotes telling a story about the

richly reciprocal conversations that contribute to a collective project. Other chapters mapped the opportunities for TWAIL interventions in building a sub-field. Yet others analyzed a topic in ways that exemplified how a pioneering TWAIL intervention might turn a sub-field on its head. Some chapters outlined the tradition of TWAIL work in a sub-field that has sometimes been neglected, and underscored their continuing relevance to our understanding of a topic. Other chapters explore some of the most pressing issues of our time—environment, war, famine, health crises—pointing both to how they have affected the peoples of the Third World, and also how alternative approaches could lead to fairer outcomes and more just legal systems.

Cumulatively all these interventions pose a question about the stakes of scholarship—do ideas matter? What is the work of critique? As Eve Tuck and Wayne Yang argue, “decolonization is not a metaphor”—there are material stakes to these interventions. International law institutions, and the theories and visions that support them, empower certain communities while marginalizing and silencing others. This, after all, has been a feature of imperialism, leading to various forms of enduring injustice, economic, social, and epistemic. The relationships between ideas and their consequences are not linear, and different interventions may operate along different temporalities; contributions are advanced through accretion and dialogue. However, it is worth pausing to at least understand the thrust of TWAIL critique.

TWAIL scholarship can employ a Third World vision of a non-imperial world and advance critique in different ways. In many respects, simply articulating how international law can be used to benefit the peoples of the Third World can interrupt the discipline’s naturalized conceits, from how international law tells the story of its own birth and purpose, to how it defines its conceptual and normative grammar through principles such as sovereignty, territorial borders, or human rights. Often this begins with assessing the maldistributive consequences of existing legal regimes or probing the likely distributive impacts of legal proposals. Relatedly, TWAIL critical energies are often focused on analyzing how those impacts and consequences are effected, namely, how legal interventions function in the world system to entrench and reproduce the afterlives of colonialism in international laws and norms. In other words, much TWAIL work is oriented towards the diagnostic—understanding the machinery of how legal rules, institutions, and normative tilts play out in different domains of law. TWAIL scholarship can help develop strategies for resistance, forge solidarities, and open up international law to alternative futures. Proposals for a different world order, rendered through the language of international law and in the structure of international institutions, have been constant, and indeed, driving features, of TWAIL scholarship.

TWAIL has a life in the world of ideas, but the world of ideas is not confined to the academy. TWAIL I was invested in various institutional projects from developing and advocating for proposals such as the NIEO to judicial roles in institutions such as the ICJ. As Georges Abi-Saab noted in his keynote address at a TWAIL conference in Cairo, working in international law is akin to working “behind enemy lines.” As he explained, this does not mean that international lawyers are by definition collaborationist but it means that one is operating “within the territory controlled by the enemy.”<sup>1</sup> Thus figures such as Abi-Saab were brilliant legal thinkers but they were also tacticians who channeled their “Third Worldist” commitments to negotiate the opportunities and limits of international legal terrains. As Chantal

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<sup>1</sup> Georges Abi-Saab, ‘The Third World intellectual in praxis: confrontation, participation, or operation behind enemy lines?’ (2016) 37 *TWQ* 1957.

Thomas has noted, “a generation of lawyers from the Global South became statesmen for the international order of the time, and sought to reimagine international law with both creativity and fidelity to international law’s core principles.”<sup>2</sup> In addition to a role in international institutions, many TWAIL I lawyers also played a pivotal role in the freedom struggles of their countries. Contributors to this book speak to that history in their discussion of figures such as Mohammed Bedjaoui and Oliver Tambo, towering figures in the Algerian and South African liberation struggles. This tradition continues with the active engagement of contemporary TWAIL scholars in social movements, from national liberation struggles to struggles over international labor rights. As Balakrishnan Rajagopal has noted, “During most of its existence, international law has remained too Western, elitist, male centered, and imperial, and an encounter with social movements offers an opportunity for it to fundamentally transform.” Many of our chapter writers have theorized this encounter and spoken to the complexities of navigating the world of international legal practice. In recent years, many contemporary TWAIL scholars have navigated this terrain in the United Nations by engaging in the special procedural mechanisms of the Human Rights Council. Their work and the TWAIL sensibility that they have brought to their mandates has been important on a number of fronts, but it has proven absolutely pivotal in the context of Palestine solidarity. As Mark Mazower has noted, the United Nations is “no enchanted palace” but in the context of a devastating war, TWAILers operating in UN roles have worked hard as vocal witnesses to the horrors that have unfolded, while drawing on the resources of international law to protest atrocity and advocate for the people of Gaza. In short, as Asli Bali has argued, they have operated as the “conscience of the world.”<sup>3</sup> In doing this work, TWAIL scholars have done no more than sought to assert and uphold some of the basic, fundamental principles of international law: above all, perhaps, what is supposed to be our lodestar, that all human beings are entitled to lives of dignity and respect.

## 2. THE THIRD WORLD?

Is being the “conscience of the world” what it means to abide by the ‘Third World’? This is an inheritance that is both lament and protest and one reflection of both of those dimensions is the fact that many continue to be confounded by even the term ‘Third World’ as one that is symptomatic of the hierarchies of the international system. Like references to the ‘underdeveloped

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<sup>2</sup> Chantal Thomas, ‘The Struggle Against Empire Continues: Reflections on Migration as Decolonization’ (2020) 72 *Stan L Rev* <[www.stanfordlawreview.org/online/the-struggle-against-empire-continues/](http://www.stanfordlawreview.org/online/the-struggle-against-empire-continues/)> accessed 10 January 2025.

<sup>3</sup> Michael Fakhri, UN Special Rapporteur on the Right to Food, in conversation with Asli Bali, Adil Haque, and Zeina Jallad, ‘Starvation and the Right to Food: The Palestinian’s People’s Food Sovereignty’, Gallatin Human Rights Initiative, The Kevorkian Center for Near Eastern Studies, and the Middle East and Islamic Studies Department, New York University (New York, 15 October 2024) <<https://as.nyu.edu/research-centers/neareaststudies/events/FALL2024/starvationandright-tofood.html>> accessed 15 October 2024; The Institut de Droit Internationale was established as the ‘legal conscience of mankind.’ See Julia Emtseva, ‘Unveiling the “Legal Conscience of the Civilized World:” a Critical Look at the Institut de Droit International’ (2023) 117 *AJIL Unbound* 221.

world,' 'Third World' may suggest subscription to a modernist teleology aiming at a horizon defined by the 'First World.' To others, leaning into the terminology of 'Third World' was a recuperation of the language of subordination that challenged the hierarchies normalized in the ideologies and structures of the dominant world order.

The 'Third World' broadly refers to the states that emerged from colonialism. Several of these states met in Bandung in 1955 to articulate, very deliberately, what might be termed a 'Third World' vision of international relations and international law, one that reflected the needs and interests of the newly independent states who were determined to remain independent of the West and Communist/Socialist worlds, the First and Second Worlds. In the Bandung era, countries of the Global South pursued 'Third Worldism' as an alternative path of economic, political, and cultural renewal that forged solidarities with each other in refusing futures confined to cold war polarities. In some ways, these inheritances have their echo in TWAİL defining itself against two poles—not capitalism and socialism but, in B.S. Chimni's articulation, a space and a sense of possibility that is neither liberal utopianism nor leftist pessimism.<sup>4</sup> The Bandung initiative led in time to the Non-Aligned Movement, the establishment of self-determination as a binding international norm and the campaign for a New International Economic Order. It is these visions and struggles that are encompassed by the term 'Third World,' and it is important for TWAİL scholars to invoke, further renew, and rethink these struggles in the midst of all the challenges of the contemporary international system.

Within the American academy, 'Third World' has a long history as an anchor term for coalitions of people of color challenging both Eurocentric canons of knowledge and structural racism against marginalized communities. For instance, Kimberlé Crenshaw describes the central role of the Third World Coalition (TWC), the 1980s Harvard Law School student organization, that was a prequel to Critical Race Theory.<sup>5</sup> Twenty years before that, the Third World Liberation Front at the University of California, Berkeley led a famous series of strikes and other actions that led to the creating of 'Ethnic Studies' as a department in Berkeley, but also a field of study of the experiences and perspectives of immigrant and subaltern communities. However, not surprisingly, the most powerful invocation of the 'Third World' has emerged from the places and spaces that are identified with that term. The third path was defined not only by what it was against, but also what it was for. Over the course of the last century, there were many different articulations of the 'third way' such as the vision of the 'tri-continental'<sup>6</sup> that sought to keep alive, extend, and radicalize the Bandung spirit. Vik Kanwar has argued that these political visions have lineages and analogies that translate into

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<sup>4</sup> BS Chimni, 'Third World Approaches to International Law: A Manifesto' (2006) 8 Intl CL Rev 3; Vik Kanwar, 'Not a Place, but a Project: Bandung, TWAİL, and the Aesthetics of Thirdness' in Luis Eslava, Michael Fakhri, and Vasuki Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (CUP 2017) fn 70.

<sup>5</sup> Kimberlé Crenshaw, 'Twenty Years of Critical Race Theory: Looking Back to Move Forward' (2011) 43 Conn L Rev 1253. She says, "Included in the Third World Coalition (TWC) were the Harvard Black Law Students Association (BLSA), La Alianza, the American Indian Law Students Association, the Asian Law Students Association, and the Arab Law Students" (see, *ibid* 1266).

<sup>6</sup> Liliana Obregón, 'Latin America during the Bandung Era: Anti-Imperialist Movements vs. Anti-Communist States' in Luis Eslava, Michael Fakhri, and Vasuki Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (CUP 2017).

an “aesthetic of thirdness” that travels through our political imagination.<sup>7</sup> All of these different resonances inhabit the ‘Third World’ of the TWAIL tradition in ways that are not entirely captured by more ‘politically correct’ and recent terms such as ‘the Global South.’ Most significantly, however, the relationality and multiple worldings that are connoted so directly by the term ‘Third World’ go to the heart of TWAIL scholarship and its insistence on the centrality of history to the politics of geography.

### 3. THE POLITICS AND GEOGRAPHIES OF TWAIL SCHOLARSHIP

This Handbook is located in a complex world of scholarship and representation. Simply, despite the outstanding work produced by scholars in the Third World, and efforts of distinguished journals such as the *Indian Journal of International Law* which have a long and venerable history in publishing the work of Third World scholars (the honorary editor in chief of the inaugural volume published in 1960 was Radhabinod Pal), TWAIL scholars over the years have had difficulties in winning the global recognition their work deserved. Historically, it has been mainly through publication in the renowned journals and publishing houses of the West—and all the complications that process entailed—that Third World scholars won recognition, and this sometimes even in their own countries. The geographies of academia, the political economy of knowledge production, and, concomitantly, the politics of publication and citation, were key preoccupations and catalysts in the founding of TWAIL as a self-identified movement. Indeed, as Victor Kattan has noted, the relative prominence of lawyers based in the Global North or trained in the Global North has long been a problem not only for academia but international institutions more generally, including international courts.

It is in this context that we may turn to history to understand the shifting and fluid ‘place’ of the Third World; it is a project that connects the dots between the globalizations authorized by papal decrees in the 15th century and the multiple displacements that have produced first worlds in the third, and third worlds in the first. Commenting on the intersecting axes of place and history, the late Stuart Hall took mischievous pleasure in flipping the script: “in the very moment when finally Britain convinced itself it had to decolonize, it had to get rid of them, we all came back home. As they hauled down the flag [in the colonies], we got on the banana boat and sailed right into London.”<sup>8</sup> Many of the chapters in this volume trace those mobilities of peoples, markets, ideas, and social movements. These transnational and transitional coordinates are also a characteristic of the identities and locations of TWAIL scholars; as suggested by Hall, colonizers and the colonized have been on the move; indeed, people and ideas continue to crisscross the world.

However, the fact that all places are defined by displacement does not mean it is a flat earth with TWAIL scholarship overcoming the hierarchies and structures of knowledge production. As with the dynamic that Hall describes, the paradoxes and contradictions of the politics of roots and routes are a dimension of TWAIL scholarship as well. For instance, with a

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<sup>7</sup> Kanwar (n 4).

<sup>8</sup> Stuart Hall, ‘The Local and the Global: Globalization and Ethnicity’ in Anthony D King (ed), *Globalization, and the World-System: Contemporary Conditions for the Representation of Identity* (SUNY Press 1989) 24.

few notable exceptions, much of the most prominent and circulated TWAIL scholarship has emerged from scholars trained in or based in the Global North even though there continues to be vital and pathbreaking TWAIL scholarship taking place across the Global South. This is a problem, but it is not a new problem.<sup>9</sup> It is a pattern evident in the relative prominence of TWAIL lawyers and scholars based in the Global North, and the concomitant inaudibility of many interventions by TWAIL lawyers and scholars based in the Global South.

TWAIL scholars have grappled with these challenges in different ways. One dimension of the TWAIL project over the last three decades has been greater attention to intellectual inheritances from, and renewed engagement with, the contributions of previous generations of Third World scholars, lawyers, and activists. This has transformed syllabi and citation practices, but attention to these alternative genealogies has also impacted how international legal problems have been understood and engaged with in areas such as the law of the sea or foreign investment law.<sup>10</sup> Another dimension of the TWAIL project has been creating institutional spaces for TWAIL conversations in the Global South that have foregrounded topics such as ‘Third World feminism’ or the racial politics of transitional justice;<sup>11</sup> for instance, TWAIL conferences and workshops have taken place in universities in Cairo, Kathmandu, Colombo, Bogota, and many other parts of the post-colonial world.<sup>12</sup> Academics located in Third World universities have advanced the frontiers of TWAIL scholarship by deconstructing hegemonic biases, the maldistributive consequences of different regimes of international law, and the structural tilt built into the international legal order. A third dimension of the TWAIL project has been a concerted focus on publications that foreground the interests and priorities of the Global South. This has taken place through journals based in the Global South (such as the *National Law School of India Review* and the *Indonesian Journal of International Law*), notable edited collections, and special issues of journals focused on TWAIL approaches to a range of issues from international criminal law to climate change. There have also been new networks for knowledge sharing on Global South priorities—the work on debt by the Afronomics network being one such example,<sup>13</sup> and the role of the online journal TWAILR as a forum for political and legal analysis of Israel’s war on the people of Gaza being another. The vitality of these fora underscores the enormous need for continued and expanded focus on opportunities for law schools and academic communities based in the Global South. Thus, TWAIL scholarship and the institutional experiments of TWAIL scholars need to foreground the politics of knowledge production and the institutional structures reproducing epistemic violence. It is also worth underscoring that while the interests of the ‘Third World’ may be the driving preoccupation of many TWAIL scholars wherever they are situated, and analysis of the historical conjuncture that gave rise to the ‘Third World’ may anchor TWAIL approaches in all

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<sup>9</sup> Victor Kattan, ‘Palestinian Scholarship and the International Criminal Court’s Blind Spot’ (*TWAILR: Reflections* 14, 20 February 2020) <<https://twailr.com/palestinian-scholarship-and-the-international-criminal-courts-blind-spot/>> accessed 10 January 2025.

<sup>10</sup> M Sornarajah, *The International Law on Foreign Investment* (CUP 2021).

<sup>11</sup> Rohini Sen, Shaimaa Abdelkarim, and Farnush Ghadery, ‘#FeministTWAIL: Symposium Introduction’ (*TWAILR: Reflections* 57, 18 March 2024) <<https://twailr.com/feministtwail-symposium-introduction/>> accessed 10 January 2025.

<sup>12</sup> TWAILR Academy 2023 Bogotá (Universidad de los Andes, Bogotá, Colombia, 17–21 July 2023) <<https://twailr.com/twailr-academy-2023-bogota/>> accessed 10 January 2025.

<sup>13</sup> Afronomicslaw (July 2019) <[www.afronomicslaw.org/](http://www.afronomicslaw.org/)> accessed 10 January 2025.

their diverse manifestations, both of these dimensions of TWAIL are distinct from a claim to ‘represent’ the Third World. Both ‘western’ and ‘Third World’ scholars concerned about the inequalities in the world, inequalities that are especially evident in the Third World, have contributed to the broad TWAIL project. Indeed, much TWAIL scholarship has been directed precisely at complicating claims to such representation and the eschewing of essentialist conceptions of Third World positionalities in recognition of what Surabhi Ranganathan describes as the “the contingencies, currents, and counter-currents of the decolonization moment.”<sup>14</sup> This is to reinforce the idea that the Third World is not a place—it is a project, one in which people from all locations have and must contribute to, bringing to bear the insights that may be gleaned from their own experiences in the larger world.

#### 4. FRAMING THIS VOLUME

This volume has been a long time in the writing. The idea of producing a ‘TWAIL Reader’ was discussed at the very first conference that inaugurated TWAIL in its current manifestation, at Harvard in 1997. The idea then was to produce a volume of essays dealing with all of the central themes and topics of international law from a TWAIL perspective, carrying forward all the internal diversity and complexity that entails. TWAIL scholars have argued that perspectives and analytic tools oriented at viewing these topics from a perspective that foregrounds the structural injustice of the world system, and the ways in which international law had been shaped to suppress Third World peoples, illuminate the history and the ongoing operations of international law.<sup>15</sup>

A great deal has changed, of course, in the intervening 27 years. An extraordinary volume of TWAIL-oriented work, dealing with virtually all aspects of international law, has now been produced. Topics that were not engaged with extensively by TWAIL scholars 27 years ago (for instance, work on queer theory or close engagement with Indigenous peoples’ struggles) are now vital areas of TWAIL research and analysis. TWAIL, as a tradition, is now firmly established in the world of international law scholarship. The basic motives for the Handbook, however, remain. As editors we hope that the essays in this volume will enable teachers and readers to provide a ‘TWAIL perspective’ on the topics they teach in class. As such, this volume might be used for teaching purposes with any textbook or materials adopted for a class. The broad argument of TWAIL is that every aspect of international law may be reconceptualized from a TWAIL perspective. This is one of the animating features of this volume which in some sense demonstrates this position.

Our second broad purpose was to introduce TWAIL to scholars, teachers, and students, who may have an interest in TWAIL and its contributions to international law, but who are not very familiar with TWAIL literature. To that end, we have requested our contributors to write accessible introductions to different themes and topics in international law.

As the table of contents indicates, many of the chapters deal with classic topics of international law that are to be found in any textbook on the subject; this includes topics such as

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<sup>14</sup> Gayatri Spivak, ‘Can the Subaltern Speak?’ in Cary Nelson and Lawrence Grossberg (eds), *Marxism and the Interpretation of Culture* (Illinois UP 1988).

<sup>15</sup> BS Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2nd edn, CUP 2017).

treaties, self-determination, human rights, and international criminal law. We have also have a section on themes and concepts that have been central to TWAIL with chapters such as race and history. We also have a section on intellectual and political traditions that have been important to TWAIL scholars, such as feminism and marxism. Our final section includes chapters that provide a sense of TWAIL perspectives on pressing global debates such as climate change and sovereign debt. These are the broad ambitions of the volume. Individual authors have gone about the task we set them in their own, unique ways. Some essays choose to provide an overview of TWAIL writing on a specific topic; others focus on presenting an argument about that topic that is informed by TWAIL perspectives. The variety of styles and methods and perspectives evident in these essays is, we would like to think, a reflection of the rich diversity that is a feature of TWAIL. Given that this volume is comprised of 50 chapters, however, we have been strict in imposing words limits on our authors, many of whom, as is understandable of scholars, passionate about their work, wrote at great depth and detail about the subject they were covering, and were also anxious to do justice to the other TWAIL scholars who had written on that area over the years. We have been ruthless in making cuts to the length of footnotes in order to meet word limits. We should also add that not all the scholars who have been included in this volume would necessarily identify themselves as ‘TWAIL scholars.’ But they have done us the great favor of outlining what a TWAIL perspective on their topic might look like. Perhaps inevitably, furthermore, there are several topics that we would have liked to have covered, but circumstances took their toll and prevented this.

## 5. CONCLUSION

As we were drawing this collection to a close, Britain announced that it would cede sovereignty over the Chagos Archipelago to Mauritius. The term of this process, including the continued operation of Diego Garcia as an imperial military site, are themselves controversial and contested. Moreover, as always, colonization has made it impossible to return to a pre-colonial status quo, so we also have difficult longstanding questions about the interests and perspectives of the Chagosian people themselves. In short, the task of decolonization, in all its multifarious forms, is complex and ongoing—this is true of the Chagos Islands but also of the ‘post-colonial’ world order as such.

The past three decades have increasingly demonstrated that TWAIL cannot be viewed as being ‘only’ about the Third World. More broadly, perhaps more profoundly, it is about ensuring global justice in a world made and unmade by colonialism. It is notable that TWAIL analytic tools have been proven to be important, indeed prophetic, because in illuminating how power works in relation to the Third World, it sheds light on how power works in creating inequality and immiseration not only in the Third World, but throughout the globe. From this perspective the TWAIL vision outlined here is the foundation of international legal efforts to create a just world.