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Between Salvation and Cynicism:

TWAIL Perspectives on International Organizations

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Between Salvation and Cynicism:
TWAIL Perspectives on International Organizations

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Abstract

This paper surveys the relationship of Third World Approaches to International Law (TWAIL), in both state practice and scholarship, to international organizations and international organizations law. International organizations exercise far-reaching powers that condition how people are governed in 'most of the world'. The paper describes the ever more intimate encounters between international organizations and the Third World: the inexorable growth of international organizations' activities in the Third World, and the rising influence of Third World states and movements in international organizations. It then briefly outlines how the contributions of Third World jurists to scholarship on international organizations and international organizations law have diversified over time, from studies of a relatively narrow doctrinal nature to a wide range of approaches connecting law with politics, history, and theory. Finally, the paper identifies some characteristic features of present-day TWAIL conversations on international organizations, as well as tensions and areas for further exploration.

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Introduction

Third World approaches to international law (TWAIL), understood as encompassing both state practice and scholarship, have profoundly influenced the growth of international organizations over the past two centuries, and through them the development of international law.¹ Particularly since the end of the Second World War, international law has been shaped by a proliferation of global and regional international organizations in disparate fields of activity, including peace and security, social and economic development, environmental protection and resource management, trade and finance, and more. Individually and together, these organizations exercise far-reaching powers—including capabilities of military, financial, economic, political, social, cultural, and legal intervention—that condition how people are governed in ‘most of the world’.² Unsurprisingly, then, much of TWAIL scholarship touches, directly or indirectly, on the operations of international organizations and aspects of international organizations law. While much early TWAIL scholarship sought to contribute to the growth of international organizations and international organizations law, more recent TWAIL scholars have tended to adopt a more critical, even oppositional, stance.

This paper begins by sketching two brief histories. The first tells the story of the ever more intimate encounters between international organizations and the Third World: the inexorable growth of international organizations’ activities in the Third World, and the rising influence of Third World states and movements in international organizations. The second history briefly outlines how the contributions of Third World jurists to scholarship on international organizations and international organizations law have diversified over time, from studies of a relatively narrow doctrinal nature to a wide range of approaches connecting law with politics, history, and theory. The third part of the paper reflects on these histories, identifying some characteristic features of present-day TWAIL

¹ In this paper, I use the term ‘Third World’ to encompass the states and peoples of the Global South, or the colonised and decolonised world. I use ‘international organizations’ interchangeably with ‘international institutions’, and treat ‘international organizations law’ as synonymous with both ‘the law of international organizations’ and ‘international institutional law’.

² Partha Chatterjee, *The Politics of the Governed: Reflections on Popular Politics in Most of the World* (Columbia UP, 2004).

conversations on international organizations, as well as tensions and areas for further exploration.

Intimate Encounters: International Organizations in the Third World and the Third World in International Organizations

From their earliest beginnings, the activities of international organizations have multiplied on colonial and postcolonial terrains. The international administrative unions that were established in the nineteenth century—such as the Universal Postal Union (UPU) and the International Telegraph Union—were distinctive in admitting members from outside the European ‘family of nations’, including colonies and so-called ‘semi-civilized states’ such as Turkey and China.³ Nevertheless, these administrative unions were understood as fulfilling ‘*une grande mission civilisatrice*’,⁴ while permitting modes of surveillance that helped to safeguard the political security of European states and their empires.⁵ International sanitary counsels at key capitals along trade and Islamic pilgrimage routes instituted quarantine measures to guard against ‘Asiatic invasions’ of epidemic diseases.⁶ River commissions, such as those established on the Danube, the Niger and Congo rivers (authorised by the 1885 Berlin Congress), the Suez Canal, and the Huangpu River in China, exercised considerable administrative powers and managed relations among European states and with other, less ‘civilized’ societies; and international commissions organized by European creditor nations to address cases of financial disorganization in peripheral and semi-peripheral states such as Egypt, Turkey, Greece, and Macedonia. Similarly, the International Union of American Republics and its

³ Douglas Howland, ‘An Alternative Mode of International Order: The International Administrative Union in the Nineteenth Century’ (2015) 41 *Review of International Studies* 161.

⁴ P. Kazansky, ‘Les premiers éléments de l’organisation universelle’, (1897) 29 *Revue de Droit International et de Législation Comparée* 238, at 246.

⁵ Andrew Barry, ‘Lines of Communication and Spaces of Rule’, in Andrew Barry, Thomas Osborne and Nikolas Rose (eds), *Foucault and Political Reason* (Routledge, 1996) 123, at 137–8.

⁶ Leonard Woolf, *International Government* (Brentano’s, 1916) 222.

successor organizations allowed the USA to advance its political and commercial interests in Central and South America.⁷

The advancing institutionalization of international law in the first half of the twentieth century entailed ever-closer entanglements between international organizations and colonized and decolonized societies. The Mandate System of the League of Nations extended the reach of that organization to territories in Asia, Africa, and the Pacific.⁸ During the same period, partly in coordination with the Permanent Mandate Commission and other League bodies, the International Labour Organization likewise expanded its activities into colonized territories and states in Asia, Africa, and Latin America.⁹ These activities were taken up by the United Nations (UN) and its specialized agencies at the end of the Second World War. Accelerating decolonization in the following decades transformed the membership of these organizations, prompted the formation of a whole suite of new organizations, both universal and regional in scope, and increasingly oriented their activities towards the demands of the new states.

International organizations thereby became a key legal and political sites through which Third World states advanced their claims for self-determination, sovereign equality, development, and eventually a New International Economic order (NIEO).¹⁰ UN programs for development funding and technical assistance expanded and—in the course of the first UN Development Decade, pursued under the leadership of the first Secretary-General from a Third World state, U Thant—consolidated in the UN Development

⁷ On these and other international institutions established in the nineteenth century, see generally Paul Reinsch, *Public International Unions* (American Political Science Association, 1911); Woolf, above note 6; Francis Bowes Sayre, *Experiments in International Administration* (Harper & Bros., 1919).

⁸ See generally Antony Anghie, 'Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations' (2002) 34 *New York University Journal of International Law and Politics* 513; Susan Pedersen, *The Guardians* (Oxford UP, 2015).

⁹ See generally Luis Rodríguez-Piñero, *Indigenous Peoples, Postcolonialism, and International Law: The ILO Regime (1919–1989)* (Oxford UP, 2005); Guy Fiti Sinclair, 'A "Civilizing Task": The International Labour Organization, Social Reform, and the Genealogy of Development' (2018) 20 *Journal of the History of International Law* 145.

¹⁰ See generally Kamal Hossain (ed), *Legal Aspects of the New International Economic Order* (Frances Pinter, 1980).

Programme (1965). The innovation of UN peacekeeping emerged as a complex technology for managing the end of European imperialism in an orderly fashion, while serving as a vehicle for the greater involvement of non-aligned states in matters of international peace and security.¹¹ Third World states created new organizations to pursue their shared goals, such as the Organization of the Petroleum Exporting Countries (OPEC, 1960), the Organization of African Unity (OAU, 1963), the UN Conference on Trade and Development (UNCTAD, 1964), the UN Commission on International Trade Law (UNCITRAL, 1966), and the UN Industrial Development Organization (UNIDO, 1966). Through UNCTAD, the Group of 77 came into being and sought to advance the aims of the NIEO. And these organizations in turn exerted pressure on Western-dominated institutions like the World Bank, the International Monetary Fund (IMF), and the General Agreement on Tariffs and Trade (GATT).¹²

The frustrations besetting the NIEO project amidst the Third World debt crisis of the early 1980s synchronized with a remarkable resurgence of international economic institutions over the next two decades. Influenced by the rise of a ‘counter-revolutionary’ ideology of New Right governments in wealthy member states, the World Bank and IMF introduced a sweeping range of programmes to implement neoliberal structural adjustment and governance reforms in borrower states, most of them in the Third World.¹³ The Uruguay Round of GATT negotiations resulted in the creation of the World Trade Organization (WTO) and the extension of liberalizing disciplines to whole new areas of trade of far-reaching significance to Third World states, including agriculture, textiles, services, intellectual property and investment.¹⁴ Another, ostensibly contradictory trend of the same period was gradual acceleration in the activities of human rights institutions.¹⁵

¹¹ Guy Fiti Sinclair, ‘A Battlefield Transformed: The United Nations and the Struggle over Postcolonial Statehood’ in Jochen von Bernstorff and Philipp Dann (eds) *The Battle for International Law: South-North Perspectives on the Decolonization Era* (Oxford UP, 2019) chapter 11.

¹² See generally Antony Anghie, ‘Legal Aspects of the New International Economic Order’ (2015) 6 *Humanity* 145.

¹³ See generally Guy Fiti Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (Oxford UP, 2017) ch 6.

¹⁴ See generally Andrew Lang, *World Trade Law after Neoliberalism: Reimagining the Global Economic Order* (Oxford UP, 2011) chs 8–9.

¹⁵ See generally Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Belknap Press, 2018); Jessica Whyte, *The Morals of the Market: : Human Rights and the Rise of Neoliberalism* (Verso, 2019).

Hailed as marking the triumph of liberal democracy over all alternative political and economic systems, the end of the Cold War also saw a revitalised UN Security Council authorising a host of new peacekeeping operations—albeit with notable failures such as in Rwanda and Somalia—and an expansion of NATO activities into the conflicts arising from the disintegration of the Federal Republic of Yugoslavia.¹⁶

Two events have deeply shaped the activities of international organizations since the turn of the millennium. First, the ‘global war on terror’, launched in the aftermath of the attacks on 9 September 2001, has absorbed the attention of organizations such as NATO and the UN Security Council as well as international economic organizations involved in the work of post-conflict peacebuilding and recovery. In this regard—though not limited to situations involving terrorism—the UN’s Peacebuilding Commission, which reports to both the General Assembly and the Security Council, has provided a framework for collaboration with the World Bank, the IMF, regional development banks, and other regional organizations such as the European Union and the African Union. The second major event shaping international organizations’ activities was the global financial crisis of 2007–8, the effects of which are still unfolding. Among other things, it created an economic environment in which existing international organizations have found new roles (IMF) or been attacked and undermined (WTO, UN, UPU), and in which significant new organizations, such as the China-led Asian Infrastructure Investment Bank (AIIB), have been created.¹⁷

Third World Jurists on International Organizations Law

Before the Second World War, there was no generally recognised discipline or field of international organizations law. International jurists had, of course, along with their

¹⁶ See generally Conor Foley, *The Thin Blue Line: How Humanitarianism Went to War* (Verso, 2010); Tariq Ali (ed), *Masters of the Universe? NATO's Balkan Crusade* (Verso, 2000).

¹⁷ See generally Natalie Lichtenstein, *A Comparative Guide to the Asian Infrastructure Investment Bank* (Oxford UP, 2018).

counterparts in political science, written extensively about particular international institutions, notably the League of Nations and to a lesser extent the ILO; and the Permanent Court of International Justice had issued a number of advisory opinions on important issues relating to the powers of particular organizations. But the full emergence of international organizations law as a systematic, comparative discipline was only made possible by an intensive process of stock-taking and reflection on international institutional arrangements, undertaken by both government agencies and international lawyers, in planning for the post-war international order. A long article by Clarence Wilfred Jenks published in 1945, entitled ‘Some Constitutional Problems of International Organizations’, set the agenda and methodology for international organizations law as it would evolve over the next two decades. By 1963, the author of the first English-language textbook dedicated solely to the subject could report that the law of international organizations had become the most rapidly expanding branch of international law.¹⁸

Third World jurists contributed enormously to establishing the new discipline. International lawyers from the global South were thus among the first to produce monographs on such central topics of international organizations law as voting procedures and practices,¹⁹ termination of membership,²⁰ the functions and duties of international civil servants,²¹ domestic jurisdiction,²² privileges and immunities,²³ the jurisdiction and competence of international courts,²⁴ capacity to conclude treaties,²⁵ the

¹⁸ D. W. Bowett, *The Law of International Institutions* (Stevens & Sons 1963) xi. For a fuller development of this argument, see Guy Fiti Sinclair, “Towards a Postcolonial Genealogy of International Organizations Law” (2018) 31 *Leiden Journal of International Law* 841.

¹⁹ Wellington Koo, *Voting Procedures in International Political Organizations* (1947); Eduardo Jiménez de Aréchaga, *Voting and the Handling of Disputes in the Security Council* (1950).

²⁰ Nagendra Singh, *Termination of Membership of International Organisations* (1958).

²¹ Mohammed Bedjaoui, *Fonction publique internationale et Influences nationales* (1958).

²² M. S. Rajan, *United Nations and Domestic Jurisdiction* (1958).

²³ Kuljit Ahluwalia, *The Legal Status, Privileges and Immunities of the Specialized Agencies of the United Nations and Certain Other International Organizations* (1964).

²⁴ R. P. Anand, *Compulsory Jurisdiction of the International Court of Justice* (1961); Ibrahim F. I. Shihata, *The Power of the International Court to Determine Its Own Jurisdiction* (1965).

²⁵ Hungdah Chiu, *The Capacity of International Organizations to Conclude Treaties and the Special Legal Aspects of Treaties so Concluded* (1966).

legal significance of particular acts and instruments,²⁶ and implied powers.²⁷ While some of these works purported to examine particular international organizations, they typically adopted a comparative approach that encouraged the cross-application of principles to other organizations. Moreover, while primarily addressing questions of legal doctrine, many of these early works unmistakably reflected the contemporary interests of Third World states, such as the equality of independent states and the struggles between great and small powers in international organizations;²⁸ the growing influence of ‘the Afro-Asian States’ in the UN General Assembly and the UN’s competence in its activities aimed at facilitating decolonization;²⁹ and the normative effects of key General Assembly declarations concerning the Granting of Independence to Colonial Countries and Peoples (1960), Permanent Sovereignty over Natural Wealth and Resources (1962), and the Elimination of All Forms of Racial Discrimination (1963).³⁰

From the early 1970s onwards, Third World jurists began to give greater attention to political aspects of the law relating to international organizations.³¹ Elias’ *Africa and the Development of International Law*, for example, described the impact of the ‘new states’ on international organizations, including the establishment of new bodies within the UN as well as the OAU.³² Abi-Saab’s 1978 study of the UN peacekeeping operation in the Congo presented a sophisticated analysis of the political uses of law in that organization, in particular the interpretive stratagems deployed by the Secretary-General, Dag Hammarskjöld.³³ Bedjaoui’s *Towards a New International Economic Order* discussed

²⁶ Obed Y. Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations* (1966); Jorge Castañeda, *The Legal Effect of United Nations Resolutions* (1969).

²⁷ Rahmatullah Khan, *Implied Powers of the United Nations* (1970). See also Manuel Rama-Montaldo, ‘International Legal Personality and Implied Powers of International Organizations’ (1970) 44 *British Year Book of International Law* 111.

²⁸ Koo, above note 19, at 3, 136. On the equality of states in international organizations, see also Boutros Boutros-Ghali, ‘Le principe d’égalité des états et les organisations internationales’, (1960/II) 100 *Recueil des Cours* 1.

²⁹ Khan, above note 27, at xii.

³⁰ See generally Asamoah, above note 26.

³¹ See, e.g., Chris Osakwe, *The Participation of the Soviet Union in Universal International Organizations* (A. W. Sijthoff, 1972).

³² T. O. Elias, *Africa and the Development of International Law* (A. W. Sijthoff, 1972), chs 3, 4, 7, 8 and 9.

³³ Georges Abi-Saab, *The United Nations Operation in the Congo 1960–1964* (Oxford UP, 1978). See generally Umut Özsü, ‘Organizing Internationally: Georges Abi-Saab on Dag Hammarskjöld and the Congo Crisis’ (2020) 31 *European Journal of International Law* 601.

the role of the UN and other international institutions in advancing the aims of the NIEO, while also addressing issues in international organizations law including the normative effects of resolutions, majority decision-making, and consensus.³⁴ Even many of the more doctrinally-oriented works focussed on issues of political import to Third World states, such as the law and practice of particular organizations in which such states might have significant interests,³⁵ the question of *ultra vires* or unconstitutional acts,³⁶ and the liability to third parties of member states of international organizations.³⁷

Since the launch of the TWAIL network in the late 1990s, an increasingly diverse range of historical, political, and theoretical investigations in the law and practice of international organizations has appeared. Some of the earliest, ground-breaking scholarship in this vein focussed on a handful of key institutions and periods: the League of Nations' Mandate system in the interwar period;³⁸ the UN leading up to and centring on the NIEO;³⁹ and the World Bank and IMF, particularly since their move to structural adjustment and good governance programs in the last two decades of the twentieth century.⁴⁰ Other important studies reflecting TWAIL concerns and sensibilities have

³⁴ Mohammed Bedjaoui, *Towards a New International Economic Order* (UNESCO, 1979), 24, 47 and 50. See generally Umut Özsu, "In the Interests of Mankind as a Whole": Mohammed Bedjaoui's New International Economic Order' (2015) 6 *Humanity* 129.

³⁵ See, e.g., C. F. Amerasinghe, 'The Common Fund for Commodities' (1982) 7 *International Trade Law Journal* 231; Ibrahim F. I. Shihata, *The Other Face of OPEC: Financial Assistance to the Third World* (Longman 1982); Ibrahim F. I. Shihata, 'Innovations in Multilateral Financial Institutions: The Case of the OPEC Fund for International Development' in Thomas Buergenthal (ed), *Contemporary Issues in International Law* (NP Engel, 1984) 427; Ebere Osieke, 'Majority Voting Systems in the International Labour Organisation and the International Monetary Fund' (1984) 33 *International & Comparative Law Quarterly* 381; Ebere Osieke, *Constitutional Law and Practice in the International Labour Organisation* (Brill, 1985).

³⁶ Ebere Osieke, 'Ultra-Vires Acts in International Organizations -The Experience of the International Labour Organization' (1976-77) 48 *British Year Book of International Law* 259; Ebere Osieke, 'Unconstitutional Acts in International Organisations: The Law and Practice of the ICAO' (1979) 28 *International & Comparative Law Quarterly* 1; Ebere Osieke, 'The Legal Validity of Ultra Vires Decisions of International Organizations' (1983) 77 *American Journal of International Law* 239.

³⁷ C. F. Amerasinghe, 'Liability to Third Parties of Member States of International Organizations: Practice, Principle and Judicial Precedent' (1991) 85 *American Journal of International Law* 259.

³⁸ See, e.g., Antony Anghie, 'Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations' (2002) 34 *New York University Journal of International Law and Politics* 513; Balakrishnan Rajagopal, *International Law from Below* (Cambridge UP, 2003) ch 3.

³⁹ See, e.g., Rajagopal, above note 38, at ch 4.

⁴⁰ See, e.g., James Thuo Gathii, 'Good Governance as a Counter Insurgency Agenda to Oppositional and Transformative Social Projects in International Law' (1999) 5 *Buffalo Human Rights Law Review* 107; Sundhya Pahuja, 'Technologies of Empire: IMF Conditionality and the Reinscription of the North/South

examined the institutions of the African human rights system;⁴¹ UN peacekeeping and the responsibility to protect;⁴² international territorial administration;⁴³ UNCTAD, the GATT/WTO, and other trade institutions;⁴⁴ the League of Nations;⁴⁵ and the judicial institutions of international criminal law.⁴⁶ Beyond specific institutions and practices, B. S. Chimni has produced an ambitious series of works that critically analyse a wide spectrum of international organizations within a TWAIL framework.⁴⁷

It should not be forgotten that a handful of Third World jurists have remained central to the doctrinal elaboration of international organizations law, both within specific organizations and more generally.⁴⁸ However, it is notable that vast majority of scholarship associated with the TWAIL movements since the 1990s is primarily concerned with the activities of international organizations, the substantive law which they produce, and their effects, and only incidentally touches upon the law of

Divide' (2000) 13 *Leiden Journal of International Law* 749; Antony Anghie, 'Civilization and Commerce: The Concept of Governance in Historical Perspective' (2000) 45 *Villanova Law Review* 887; Joel M. Ngugi, 'The World Bank and the Ideology of Reform and Development in International Economic Development Discourse' (2006) 14 *Cardozo Journal of International & Comparative Law* 313.

⁴¹ Obiora Chinedu Okafor, *The African Human Rights System, Activist Forces and International Institutions* (Cambridge UP, 2007).

⁴² Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge UP, 2011).

⁴³ Ralph Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (Oxford UP, 2008).

⁴⁴ See, e.g., James Thuo Gathii, 'Process and Substance in WTO Reform' (2004) 56 *Rutgers Law Review* 885; James Thuo Gathii, *African Regional Trade Agreements as Legal Regimes* (Cambridge UP, 2011); Michael Fakhri, *Sugar and the Making of International Trade Law* (Cambridge UP, 2011).

⁴⁵ Umut Özsu, *Formalizing Displacement: International Law and Population Transfers* (Oxford UP, 2015); Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge UP, 2019)

⁴⁶ See, e.g., Jose E. Alvarez, 'Crimes of States/Crimes of Hate: Lessons from Rwanda' (1999) 24 *Yale Journal of International Law* 365; Obiora Chinedu Okafor and Uchechukwu Ngwaba, 'The International Criminal Court as a "Transitional Justice" Mechanism in Africa: Some Critical Reflections' (2015) 9 *International Journal of Transitional Justice* 90.

⁴⁷ B. S. Chimni, 'International Institutions Today: An Imperial Global State in the Making' (2004) 15 *European Journal of International Law* 1; B. S. Chimni, 'International Financial Institutions and International Law: A Third World Perspective' in Daniel D. Bradlow and David B. Hunter (eds), *International Financial Institutions and International Law* (Kluwer Law International, 2010) ch 2; Bhupinder Chimni, 'International Organizations, 1945–Present' in Jacob Katz Cogan, Ian Hurd, and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (Oxford UP, 2016) ch 5.

⁴⁸ See, e.g., C. F. Amerasinghe, 'The World Bank Administrative Tribunal' (1982) 31 *International & Comparative Law Quarterly* 748; Ibrahim F. I. Shihata, *The European Bank for Reconstruction and Development* (Martinus Nijhoff, 1990); Ibrahim F. I. Shihata, *The World Bank in a Changing World*, vols 1, 2, and 3 (Franziska Tschofen and Antonio R Parra eds, Martinus Nijhoff, 1991; Brill, 1995; and Springer, 2000); and C. F. Amerasinghe, *Principles of the Institutional Law of International Organizations* (2nd rev edn, Cambridge UP, 2005).

international organizations *per se* or the particulars of law's operation within organizations.⁴⁹ The next part of this paper analyses the central themes and approaches, as well as some of the tensions and unexplored possibilities, in this body of scholarship.

TWAIL Conversations on International Organizations: Themes, Tensions, and Possibilities

As the previous part of this paper indicates, the body of scholarship on international organizations that might be assembled under the TWAIL rubric is vast, encompassing manifold subjects, methods, and arguments. Broadly, it is possible to distinguish between approaches centred on doctrinal analysis (albeit with some references to history and theory), which predominated in earlier decades, and more critical approaches, which have proliferated especially since the late 1990s. Within this latter category, one might differentiate between studies that are predominantly historiographical and those that involve a form of discourse analysis, ideology critique, or theoretical reflection; or between those that focus on questions of cultural difference and those that give more attention to political economic aspects.⁵⁰ To be sure, much of this oeuvre centres on a set of characteristic themes and preoccupations about race, power, resistance, and the legacy of colonial or imperial dynamics in the law and practice international organizations. However, multiple theoretical and methodological influences are often in play simultaneously, from key figures in postcolonial studies (such as Chatterjee, Chakrabarty, and Nandy) to critical development studies (Escobar, Ferguson), from political economy (Marx, Gramsci, Polanyi) to social and literary theory (Foucault, Derrida, Bourdieu), and more.

A central issue in TWAIL conversations about international organizations concerns the appropriate normative posture to be adopted. If the 'basic attitude of the newly

⁴⁹ Thanks to Ntina Tzouvala for highlighting this point in commenting on a draft of this paper.

⁵⁰ See generally Ntina Tzouvala, 'Civilisation' in Jean d'Aspremont and Sahib Singh (eds), *Concepts for International Law: Contributions to Disciplinary Thought* (Edward Elgar, 2019) ch 6.

independent states’ was ‘a revolutionary one’, nevertheless their stance towards international organizations was largely positive, being ‘very aware of the importance and the beneficial role of international organizations’—in particular the UN—while expressing ambivalence where they might be used as instruments of intervention in the domestic affairs of Third World states.⁵¹ A similarly positive attitude pervaded the writings of mid-century jurists, summed up most strikingly in Singh’s avowal that ‘the faith of humanity’ had ‘come to rest on the effective functioning of appropriate international organisations for the attainment of everlasting peace’, and that ‘international organisations have a great role to play in the salvation of mankind’.⁵² Even Bedjaoui, who was scathing towards the state of international law generally, was rather more circumspect in relation to international organizations, declaring that ‘[t]he Third World exposes the weakness of the United Nations system while still bearing a real affection for it’, and proposing a series of reforms to democratise the UN and its specialized agencies.⁵³

The more critical tone of much recent TWAIL scholarship on international organizations belies its often similarly reformist tendencies. Anghie, Rajagopal, and Pahuja all show in different ways how certain reform movements in international organizations have been subverted and co-opted to imperialist ends.⁵⁴ After demonstrating how international institutions like the Mandate System and the World Bank continually reproduce the structure of an imperialistic ‘civilizing mission’, however, Anghie still affirms the possibility that other, more emancipatory outcomes might be possible.⁵⁵ Likewise Chimni, who describes the growing network of international organizations as constituting ‘a *nascent global state* whose function is to realize the interests of transnational and global capital and powerful states... to the disadvantage of third world states and peoples’ and calls for ‘global dissent movement’, nevertheless suggests a number of reforms in the

⁵¹ Georges M. Abi-Saab, ‘The Newly Independent States and the Rules of International Law: An Outline’ (1962) 8 *Howard Law Journal* 95, 104–5; Jorge Castañeda, ‘Pan Americanism and Regionalism: A Mexican View’ (1956) 10 *International Organization* 373.

⁵² Singh, above note 20, at vii.

⁵³ Bedjaoui, above note 34, at 195, 197–220.

⁵⁴ See generally Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge UP, 2004); Rajagopal, above note 38; Sundhya Pahuja, *Decolonising International Law* (Cambridge UP, 2011).

⁵⁵ Anghie, above note 54, at 194, 320.

short and medium term.⁵⁶ For some, these reformist conclusions blunt the oppositional politics of TWAIL scholarship, are overly sanguine, and are not supported by the analyses preceding them.⁵⁷ Yet, for many others, for criticism to be effective it must be accompanied by ‘positive’ and ‘legally credible’ suggestions ‘to repair deficiencies and inequities’.⁵⁸

A related tension in recent TWAIL scholarship concerns the analysis of power exercised in, by, and through international organizations. As already noted, Chimni depicts international organizations as the instruments of a transnational capitalist class, operating in an essentially top-down manner to entrench the power of western states and elites, and erode state sovereignty in the Third World.⁵⁹ By contrast, Rajagopal expressly rejects the state-centred ‘functionalist explanations of international institutions’ and aims to show instead how international organizations are shaped by power exercised ‘from below’, through Third World resistance and social movements.⁶⁰ Pahuja is similarly interested in tracking the ‘moments of assertion by the Third World’, often made to and through international organizations, albeit with a greater insistence on demonstrating the recurring ‘capture and transformation of the asserted claim into something else through the operation of a particular... rationality of rule’ which operationalises ‘universality as a mode of power’.⁶¹

A subtly different analytical approach explores how international organizations exercise a form of constitutive power in relation to states, especially in the Third World. Something along these lines may be discerned already in Anghie’s study of the Mandate System,

⁵⁶ B. S. Chimni, ‘International Institutions Today: An Imperial Global State in the Making’ (2004) 15 *European Journal of International Law* 1, 1-2. 37, and 29-36.

⁵⁷ See, e.g., Sundhya Pahuja’s review of Anghie’s book (2006) 69 *Modern Law Review* 486, at 487–8; and John D. Haskell, ‘TRAIL-ing TWAIL: Arguments and Blind Spots in Third World Approaches to International Law’ (2014) 27 *Canadian Journal of Law and Jurisprudence* 383, 400, 404–5.

⁵⁸ Georges Abi-Saab, ‘The Third World Intellectual in Praxis: Confrontation, Participation, or Operation behind Enemy Lines?’ (2016) 37 *Third World Quarterly* 1957, at 1962.

⁵⁹ See generally Chimni, above note 56.

⁶⁰ Rajagopal, above note 38, at 41-42, 43-47

⁶¹ Pahuja, above note 54, at 2, 257.

which also pays close attention to law's relationship with ideas and practices drawn from other disciplines. For Anghie, international organizations have enabled international law to link up with a whole series of such disciplines—including public administration, sociology, and psychology, in addition to economics—to produce the technologies which could then transform mandate territories into sovereign states.⁶² Going further, it is possible to analyze international organizations as engaged in a dynamic process of reiterative, reciprocal reform among a multiplicity of actors in a way that accounts for resistance and the influence of movements 'from below', while not losing sight of the asymmetries of global power and relations of domination in the world. Such an approach does not necessarily deny that powerful states and classes tend to dominate international organizations and use them to their advantage. Rather, it seeks to analyze the continual constitution of international organizations and states, and to show how the expansion of international organizations' powers is intimately bound up with the creation of states, the construction of state powers, and the very constitution of modern statehood in the Third World.⁶³

Many possibilities remain open for TWAIL research on international organizations, even simply in terms of subject-matter. The nineteenth-century forerunners of international organizations—international public unions, river commissions, and sanitary councils, not to mention hybrid entities such as the International Association of the Congo—have barely been touched upon from a TWAIL perspective. Much more work could be done on the organizations established and led by Third World states during the 1960s and 1970s (UNCTAD, UNCITRAL, UNIDO, OPEC, etc),⁶⁴ as well as their interactions with Western-dominated organizations such as the World Bank, IMF, GATT/WTO, and the European Communities.⁶⁵ Other important subjects that remain understudied through TWAIL

⁶² Anghie, above note 8, at 515, 571, 578-9.

⁶³ For more detailed examinations of this theme, see generally Guy Fiti Sinclair, 'State Formation, Liberal Reform and the Growth of International Organizations' (2015) 26 *European Journal of International Law* 445; and Nehal Bhuta and Guy Fiti Sinclair (eds), *Technologies of Stateness: International Organizations and the Making of States* (2020) 11 *Humanity Journal*.

⁶⁴ See, e.g., Gwyneth Williams, *Third-World Political Organizations* (Allenhead, Osmun & Co., 1981).

⁶⁵ See, e.g. Patrick Sharma. 'Between North and South: The World Bank and the New International Economic Order' (2015) 6 *Humanity Journal* 189.

lenses include recently-established organizations, including some headquartered in non-Western states, such as the AIIB;⁶⁶ new mechanisms of coordination among international organizations like the UN's Peacebuilding Commission or the WTO's Enhanced Integrated Framework; or novel technologies used by international organizations to govern through participatory learning, information, and algorithms. And a whole range of cross-cutting doctrinal issues at the core of international organizations law call out for TWAIL analyses, from legal personality to privileges and immunities, methods of decision-making, financing, and employment relations, not to mention to the hot-button problems of responsibility and accountability.⁶⁷

Finally, there remains scope for yet more experimentation with theoretical and methodological frameworks that would enrich TWAIL scholarship in this area. For example, the use of ethnographic methods to explore the inner workings of international organizations remains very much in its infancy, and could fruitfully be pursued by TWAIL scholars.⁶⁸ New research agendas exploring the application of governmentality, practice, performativity, and assemblage theories in international organizations open up exciting new lines of inquiry but lack sufficient representation of voices from the global South.⁶⁹ From a different angle, a developing literature on the history and sociology of neoliberalism in international organizations indicates some promising approaches and archives for investigation, building on an already fairly extensive TWAIL scholarship on

⁶⁶ See generally Simon Chesterman, 'Asia's Ambivalence about International Law and Institutions: Past, Present and Futures' (2016) 27 *European Journal of International Law* 945; Tan Hsien-Li, 'Regional Organizations' in Simon Chesterman, Hisashi Owada, and Ben Saul (eds), *The Oxford Handbook of International Law in Asia and the Pacific* (Oxford UP, 2019) 37.

⁶⁷ See generally Amerasinghe, *Principles of the Institutional Law of International Organizations*, above note 48.

⁶⁸ See, e.g., Richard HR Harper, *Inside the IMF: An Ethnography of Documents, Technology and Organisational Action* (Academic Press, 1998); Galit A Sarfaty, *Values in Translation: Human Rights and the Culture of the World Bank* (Stanford UP, 2012); Ronald Niezen and Maria Sapignoli (eds), *Palaces of Hope: The Anthropology of Global Organizations* (Cambridge UP, 2017).

⁶⁹ See, e.g., Iver B Neumann and Ole Jacob Sending, *Governing the Global Polity: Practice, Mentality, Rationality* (University of Michigan Press, 2010); Christian Bueger, 'The Clash of Practice: Political Controversy and the United Nations Peacebuilding Commission' (2011) 7 *Evidence & Policy* 171; Swati Srivastava, 'Assembling International Organizations' (2013) *Journal of International Organization Studies* 72; Dimitri Van Den Meerssche, 'Performing the Rule of Law in International Organizations: Ibrahim Shihata and the World Bank's Turn to Governance Reform' (2019) 32 *Leiden Journal of International Law* 47.

the same topic.⁷⁰ Even rational choice and game-theoretic approaches, though abjured by many critical international law scholars, might prove fruitful for TWAIL scholars seeking to understand how powerful states have used international organizations to entrench their positions of domination.⁷¹

Conclusion

The field of international organizations law as it currently exists could not have emerged without the input of Third World jurists, just as international organizations have been indelibly shaped by Third World states and social movements. Moreover, TWAIL scholarship has been broadly influential on the study of international organizations by international lawyers, beyond those who expressly affiliate themselves with the TWAIL network. In recent years, TWAIL scholars have been among the most prominent critics of international organizations and international organizations law. Yet more subjects and approaches remain available for investigation. With no end in sight to the expansion of powers exercised by international organizations and their imbrication with states, societies, and economies in the Third World, this area of research and activism will doubtless continue to be a central TWAIL focus for a long time to come.

⁷⁰ See, e.g., Nitsan Chorev, 'The Institutional Project of Neo-liberal Globalism: The Case of the WTO' (2005) 34 *Theory and Society* 317; Nitsan Chorev and Sarah Babb, 'The Crisis of Neoliberalism and the Future of International Institutions: A Comparison of the IMF and the WTO' (2009) 38 *Theory and Society* 459; Nitsan Chorev, 'Restructuring Neoliberalism at the World Health Organization' (2013) 20 *Review of International Political Economy* 627; Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard UP, 2018).

⁷¹ See, e.g., Eyal Benvenisti and George W. Downs, 'The Empire's New Clothes: Political Economy and the Fragmentation of International Law' (2007) 60 *Stanford Law Review* 595.