

UNDERSTANDING THE EVOLUTION OF INTERNATIONAL LAW THROUGH LENSES OF A THIRD-WORLD APPROACH

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ABSTRACT

The history of the evolution of international law can be traced back to the end of the 18th Century, when the first academic research for international law was laid by Robert Ward, in 1795, in 'An Enquiry into the foundation and the history of the law of Nations in Europe', from the book- Time of the Greeks and Romans at the ages of Grotius. However, In the contemporary world, the history of international law, remained one of the most debated questions, regarding the differences in Ideas between the West and the Asian scholars of International Law. The paper attempts to focus on the contention of the evolution of international law through the lenses of the first world and third worlds perspective. The Paper initially attempts to draw the historical roots of international law, and further attempts to elucidate the approaches made by the first generation of Third world approach to international law [TWAIL].

INTRODUCTION

The period of mid- 20th century marked the evolution of a newly decolonized world, with the collapse of the British Empire and the rejuvenation of independent modern sovereign states, a voice for peace and stability in humanity was raised at a global level and the formation of international organizations was led to maintain peace, stability, and harmony among the sovereign states. The formation of international organizations like the United Nations laid the stone for a joint delegation, which included the voice of 193 nations across the globe to nurture stability and productivity with a set of rules and regulations from different sources like Treaties and conventions, general principles of law, Judicial decisions [at nation-State level, at the regional level, and international level], and scholarly writings. The term coined for such rules and regulations set up at the international level is 'International law'.

However, the research for the origination of international law did not begin at mid of 20th century, but at the end of the 18th century, when the first academic research for international

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law was written by Robert Ward, in 1795, on 'An inquiry into the foundation and history of the law of nations in Europe', from the book Time of the Greeks and Romans to the ages of Grotius- attempted to elucidate on the law of nations and established a linkage of the meaning and the historical evolution through Europe¹. Although, the origination of international law remains a rooted question of doubt among Western and Asian scholars as many scholars believe that colonized nations were unaware of the evolution of international law. This paper attempts to answer the question of the evolution of international law through a third-world approach.

HISTORICAL ROOTS OF INTERNATIONAL LAW

The term 'international law' was coined by a British philosopher, Jeremy Bentham. According to Bentham, 'International law is a collection of rules governing relations between the states.'². Although the official study of the evolution of international law began in the seventeenth century, the elements or the notions of international law could be traced to ancient Greece, where the Amphyctyonic council involved the representation of few states and which further included the elements of international law within the council, but in the council, the other rest of the world was considered as barbaric and enemies. The seventeenth century marked a period of major phase for the evolution of international relations and international law, when two events- first, a publication work of Grotius, *De Jure Belli ac Pacis*, in 1625, and the second, Congress and the treaty of Westphalia, in 1628, took place, highlighting the evolution of elements of international law³. The roots for the development of the notion of international law began in the seventeenth century and continued to expand over the centuries since then, the elements of international law expanded from Vienna Congress [1815], Paris declaration [1856], Geneva convention [1864], Hague convention [1899 and 1907], league of nations [1919] and continued to expand till today with a nodal point of international law, i.e., The United Nations organization.

¹ Wolfgang Preiser, 'History of International law, basic questions and principles' [2007] MPEPIL <https://opil-oup.com/opj/remotlog.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e717?print=pdf> accessed 26th September 2021

² Malcolm Shaw, 'International law', Encyclopedia Britannica <https://academic-eb.com/opj/remotlog.com/levels/collegiate/article/international-law/106320> Accessed 25th September 2021

³ John w. Foster, 'The evolution of international law', 1909, the Yale law Journal Company, Inc, https://www.jstor.org/stable/784774?seq=1#metadata_info_tab_contents accessed 27 September 2021

THIRD-WORLD APPROACH TO INTERNATIONAL LAW

However, the evolution of international law is seen as a sense of imposed rules and regulations, set up under the purview of the colonial empires over the third world nation-states. Historically, the rules of international law, adopted since the 16th century, in major areas like law relating to the acquisition of territory, state responsibility, and state succession were shaped by the necessities of colonialism⁴. The alienation of international law from the third-world people was observed by the first generation of third-world scholars when the decolonization process was at a peak across the globe. The third-world people have seen international law as a regime established by the western world with a discourse of domination and subordination, rather than resistance and liberation. Such broad contention of opposition to the law of nations is essentially noted as ‘Third world approaches to international law’ [TWAIL].

Although, the birthplace of TWAIL was the Bandung conference, which highlighted a deeper sense of confrontation between Global North and Global South. The TWAIL is taken into account as a response to decolonization and therefore the end of direct European colonial rule over non-European states. Such a response is seen as reactive and proactive to international law. It is reactive as it defines international law as an imperial project; and it is proactive, as it seeks the internal transformation of conditions in the third-world⁵. The TWAIL can be seen as a topic of the ideological gap between western scholars and third-world scholars and continues to widen with the interference of third-world scholars by considering international law as illegitimate.

FUTURE OF TWAIL?

The evolution of TWAIL according to third-world people, has remained a major area of contention with western scholars and third-world scholars, but how does western and third-world scholar see the future of TWAIL? The future of TWAIL can be decided on the factors of evolving global world order- when colonialism came to an end in mid of the twentieth century, a shift of global power occurred from European states to a “Neutral, universal, and fair guardian” of the world order, the United Nations, but the organization also continues to have a high, political, economic and social impact of P5 states- US, Britain, France, Russia,

⁴ B.S Chimni, ‘The past, Present, and the future of international law: A critical Third world Approach’, A text of Prof. Chimni’s speech delivered in Melbourne law school, 2007

⁵ Makau Mutua and Antony Anghie, ‘what is TWAIL?’, 2000, Cambridge university press on the behalf of American society of international law, <: <https://www.jstor.org/stable/2565934>> accessed 26th September 2021

and China- in the strongest UN organ, the security council. TWAIL will be seen as a counterhegemonic theory in the future world, as it will continue to advocate full representation of all voices, particularly those, non-state, non-governmental, rural, and urban poor, who constitutes major of the third world⁶. In the current times, third-world Scholars, consider TWAIL because of the failure of Globalization, which was introduced to the world to benefit equally and TWAIL attempts to correct the mistakes caused by unequal benefits⁷.

However, the nature of TWAIL continues to evolve from the first generation of third-world scholars to a contemporary- second generation of third-world TWAIL scholars, as the first third-world scholars see TWAIL as the scholars like Mohammed Bedjaoui and RP Anand, in their work highlighted the desire to turn international law from Eurocentrism towards more universality and more legitimacy, whereas the second generation of third-world scholars aim at democratizing the international legal system and making it work in a just manner⁸. The future of TWAIL remains a question for western and Third world scholars, due to the evolving agendas embedded within TWAIL scholars.

CONCLUSION

The evolution of international law through the lenses of third world approaches involves a set of different agendas established by the third world generational scholars and it attempts to deviate from the original agenda of the question of the evolution of international law but continues to serve a similar objective of establishing an international legal system equal for all by opposing the influence of the western world. However, in a view of current diplomatic and political tensions in the third world, can TWAIL continue to bring a change in the international legal system against a unified western world? Although, the current agenda of TWAIL in the international legal system continues to emerge as a major agenda in the major global forums.

⁶ Makau Mutua and Antony Anghie, 'what is TWAIL?', 2000, Cambridge university press on the behalf of American society of international law, <: <https://www.jstor.org/stable/2565934>> accessed 26th September 2021

⁷ Balakrishnan Rajagopal, 'International law and its discontent: rethinking the global south', [2012], Cambridge university press on the behalf of American society of international law, <https://www.jstor.org/stable/10.5305/procanmeetasil.106.0176> accessed 28th September 2021

⁸ Balakrishnan Rajagopal, 'International law and its discontent: rethinking the global south', [2012], Cambridge university press on the behalf of American society of international law, <https://www.jstor.org/stable/10.5305/procanmeetasil.106.0176> accessed 28th September 2021