

FOREWORD

I am pleased to contribute a foreword to this Issue of the RGNUL Student Research Review (RSRR) on the theme 'From the Margins to the Centre: Exploring Third World Approaches to International Law'. I believe that notwithstanding the egregious violations of international law by powerful nations, the idea of international rule of law needs to be promoted and the study of public international law actively encouraged. Of course, it has to be admitted international law is today in deep crisis.¹ Arguably, the global order is in transition from a liberal to an illiberal, or even a fascist, order in which power alone counts. In such a global order even the principles of the Charter of United Nations are brushed aside with disdain. However, for that very reason there is an urgent need for progressive scholars to defend the foundational principles of international law. These not only offer weak nations a shield against the doings of powerful actors but are also the basis on which collective action can be rallied by them to challenge and delegitimise unlawful acts of omission and commission. Put differently, even in the face of severe violations of principles and norms of international law that we are witnessing today international lawyers should not give into cynicism.

In fact, in the present scenario international law researchers from Global South have to undertake several critical epistemic and pragmatic tasks. A significant responsibility is to advance theoretical approaches which help expose the colonial origins of modern international law and its neo-colonial incarnation. I am therefore happy to see that the current Issue of RSRR explores the Third World Approaches to International Law ('TWAIL'). TWAIL is particularly suitable to explaining and understanding the present conjuncture as it allows a critical reading of the history of modern international law to contend that international law has been the handmaiden of western imperialist nations from the time that it emerged around the sixteenth century. In the postcolonial era these nations used the power asymmetry with Global South nations to shape a liberal international order constituted of international laws and institutions that worked to their advantage. This liberal order is today being undermined by these very nations as it no longer serves their interests in a global order in which

¹ BS Chimni, 'Crisis and International Law: A Third World Approaches to International Law Perspective' in Makane Morse Mbengue and Jean D'Aspremont eds., *Crisis Narratives in International Law* (Nijhoff Law Specials, 2021) 40-53.

key Global South nations are growing and resisting imperialist policies and laws. In short, the use of TWAIL lens helps demonstrate that powerful western nations have never shied away from being dismissive of constraints of international law when it does not benefit them. At the same time, TWAIL appositely seeks to harness those aspects of international law which helps assert the independence of Global South nations and advance the welfare of their peoples. Indeed, Global South nations have, through international cooperation and joint action, been at the forefront of defending the basic principles of international law as contained in the Charter of United Nations and later elaborated at their initiative in the landmark Friendly Relations Declaration of 1970. Further, to advance their development prospects these nations called early on for the establishment of a new international economic order (1974), a demand that, in its essentials, has relevance even today.

The practical task before Global South researchers is four-fold: the first is to continue to challenge those international laws and institutions that work against the interests of weak groups, peoples and nations of the Global South; the reference to weak groups is necessary as ruling elites in Global South nations often collaborate with their counterparts in the Global North resulting in a global class divide; a transnational capitalist class has emerged which is flourishing at the expense of the transnational exploited and oppressed classes.² The second task is to evidence and expose the violation of the foundational principles of international law by powerful nations such as the principles of sovereign equality of states, the principle of non-use of force, and the principle of non-intervention into the internal and external affairs of states. A third task is to produce rigorous studies which record the contravention by powerful nations of particular rules and regimes of international law, whether these be of international humanitarian law or international human rights law or international investment and trade law. A final task is to produce work that, even in these difficult times, point to ways in which the international law doctrines and regimes can be reformed and strengthened in favor of the weak.

In sum, Global South researchers have to appreciate the complexity of the task at hand viz. on the one hand to critique those aspects of laws and practices that are not in the interest of Global South peoples and nations and on the other hand to defend the basic principles of international laws along with progressive

² BS Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2nd edn, Cambridge University Press 2017).

rules, institutions and practices that have either been adopted or sustained through the struggles of marginalised nations, peoples and groups in the period after decolonisation. In other words, there is a need to avoid a nihilistic view in the face of the brazen violation of international laws. It is the rules of international law which provide the measure by which to determine the validity and legitimacy of the acts of omission and commission of nations.

The six essays in this volume attend in different ways to these the epistemic and practical tasks. Needless to add, there is no singular interpretation or understanding of rules and practices of international law that is shared by all Global South scholars. Even TWAIL is internally diverse and encourages a plurality of views. But it is hoped that these essays will collectively contribute to igniting interest in public international law and stimulating debate on important issues confronting the international community.

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