

# TWAIL and Human Rights

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## Definition(s) of International Law

“Law of Nations or International Law is the name for the body of customary and conventional rules which are considered legally binding by civilized States in their intercourse with each other”

-Lassa Oppenheim, *International Law: A Treatise* (1<sup>st</sup> edn, 1905).

“International Law is the body of rules which are legally binding on states in their intercourse with each other.....”

- (9<sup>th</sup> edn, 1992)

# TWAIL?

## THIRD WORLD APPROACHES TO INTERNATIONAL LAW

1. A response to:
  - a. decolonization at the end of direct European colonial rule over non-Europeans
  - b. international law as an imperial project
  
2. Seeks the internal transformation of conditions in the Third World

Makau Mutua and Antony Anghie, *What Is TWAIL?*, Proceedings of the Annual Meeting (American Society of International Law), APRIL 5-8, 2000, Vol. 94 (APRIL 5-8, 2000), pp. 31-40

*When Europeans came to Asia “they found themselves in the middle of a network of states and inter-State relations based on traditions which were more ancient than their own and in no way inferior to notions of European civilization”.*

-C.H. Alexandrowicz,

*International Law in the East Indies: 16th, 17th and 18th Centuries*

But the West-centric international law was superimposed on people of the third world through institutional mechanisms, particularly those of the Bretton Woods Institutions.

Hence TWAAIL

# Few of the Many TWAAIL Scholars

*(notice people of colour...a kind  
of reaction to the Eurocentrism  
in the international law  
scholarship)*

*Professor R.P. Anand (late) and  
Professor B S Chimni led the  
TWAAIL I and TWAAIL II movement  
in their times through  
exceptionally rich scholarship on  
international law.*



*Although there is arguably no single theoretical approach which unites TWAIL scholars, they share both a sensibility, and a political orientation. TWAIL is therefore....defined by a commonality of concerns. Those concerns centre around attempting to attune the operation of International law to those sites and subjects that have traditionally been positioned as the 'others of international law'.*

Luis Eslava and Sundhya Pahuja, *Between Resistance and Reform: TWAIL and the Universality of International Law*, TRADE L. & DEV. (2011)

# **Intellectual Property Rights**

A case study from the TWAIL lens

# Internationalisation of Property Rights

*“internationalisation of property rights has been accompanied by the internationalisation of the discourse of human rights. Human rights talk has come to have a pervasive presence in international relations and law. This development has been variously expressed: ‘a new ideal has triumphed on the world stage: human rights’;... ‘human rights could be seen as one of the most globalized political values of our time’. The fact that the omnipresence of the discourse of human rights in international law has coincided with increasing pressure on third world States to implement neo-liberal policies is no accident; the right to private property, and all that goes along with it, is central to the discourse of human rights. While the language of human rights can be effectively deployed to denounce and struggle against the predator and the national security state, its promise of emancipation is constrained by the very factor that facilitates its pervasive presence viz., the internationalisation of property rights.”*

B.S. Chimni, *TWAIL: A Manifesto*, ICLR, 2006

# TRIPS

Trade **Related** **Intellectual** **Property** **Rights**

one of the very few international treaties that are binding and backed by a dispute settlement body.

# Major Bearing on:

- Health

- i. Novartis (2013)

- ii. Bayer (2014)

- Food (Plant varieties)



COMMENT

## Standing up to patent bullying

 Srividhya Ragavan

MARCH 21, 2016 00:56 IST  
UPDATED: MARCH 21, 2016 03:42 IST

SHARE ARTICLE |  |  |  |  |  |  12 |  PRINT | A | A | A

**The Modi government must stop engaging U.S. bureaucrats as patent consultants and instead showcase the Indian patent statute as an exemplar for a balanced regime**

Earlier this month, the media reported that India “privately” assured the United States that it will not issue any more compulsory licenses. This report was reminiscent of a theory propounded by psychologist Lenore E. Walker in 1979



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## Why is it not changing?

- i. Nature of TRIPS structure
- ii. Patent Bullying

## Other Aspects of TWAAIL and Human Rights

Education

International Commercial Arbitration

WTO

IMF

binding

- WTO
- IMF

not-enforceable

- UDHR
- ICCPR
- ICESCR

# Wonder why?

## India jumps to 63rd position in World Bank's Ease of Doing Business 2020 report

The country was 77th among 190 countries in the previous ranking, an improvement by 23 places compared to its position a year before.

By Yogima Seth Sharma, ET Bureau | Updated: Oct 24, 2019, 12:53 PM IST



Save



Agencies



In the 2019 report, India had improved its rank on six

India has moved 14 places to be 63rd among 190 nations in the World Bank's ease of doing business ranking released on Thursday on the back of multiple economic reforms by the Narendra Modi government. However, it failed to achieve government's target of being at 50th place.

The country was 77th among 190 countries in the previous ranking last year, an improvement by 23 places. The report

## India slips to 102nd rank in Global Hunger Report 2019

PTI New Delhi | Updated on October 16, 2019 | Published on October 16, 2019



India has slipped to 102 position in the Global Hunger Index 2019 of 117 countries, slipping from its 2018 position of 95 and behind its neighbours Nepal, Pakistan and Bangladesh.

Thank You

