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TWAIL – “Third World Approaches to International Law” and human rights: some considerations*

TWAIL – “Abordagens do Terceiro Mundo ao Direito Internacional” e direitos humanos: algumas considerações

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Abstract

TWAIL is both a political and intellectual movement and, therefore, has multiple perspectives. While the first academic conference of TWAIL was held at Harvard Law School in March 1997, Third World perspectives of international law are part of a long tradition of critical internationalism. In this essay we will try to explain the meaning of the movement according to its most important scholars, and the TWAIL concern to the human rights discourse. It can be said that according TWAIL the historical model of human rights cannot respond to the needs of the Third World except if there is a radical rethinking and restructuring of the international order, abandoning the efforts to universalize an essentially European corpus of human rights.

Keywords: TWAIL; Third World Approaches to International Law; International Law; Third World; Human Rights.

Resumo

O “TWAIL” é tanto um movimento político, como intelectual e, assim sendo, possui múltiplas perspectivas. Enquanto a primeira conferência acadêmica sobre TWAIL foi realizada na Faculdade de Direito de Harvard em março de 1997, o tema faz parte de uma longa tradição do internacionalismo crítico. Nesse artigo tentaremos explicar o significado do movimento de acordo com seus mais importantes pensadores, bem como o TWAIL relativo ao discurso dos direitos humanos. Pode-se dizer que de acordo com o TWAIL o modelo histórico de direitos humanos é incapaz de responder às necessidades do Terceiro Mundo, exceto se houver uma reestruturação radical da ordem internacional, abandonando-se os esforços para universalizar um corpo de direitos humanos essencialmente europeu.

Palavras-chave: TWAIL; Abordagens do Terceiro Mundo ao Direito Internacional; Direito Internacional; Terceiro Mundo; direitos humanos.

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1. INTRODUCTION: WHAT IS TWAIL?

This essay seems interesting because of the rapid increase in the number of books, articles, PhDs and papers written on TWAIL, which is evidence of it gaining prominence, especially among those in the legal profession.

The “Third World Approaches to International Law” – TWAIL – can be conceptualized in many ways. It has already been defined as a scholarly community and/or a political movement; a methodology; a set of approaches; a chorus of voices; a theory; a network of scholars; a political grouping; a strategic engagement with international law; an intellectual community; a school of thought; a rubric; and in many other ways. For the purposes of this essay, it is more interesting to keep it as a movement, but both a political and intellectual movement. While the first academic conference of TWAIL was held at Harvard Law School in March 1997, Third World perspectives of international law are much older. As a political movement, TWAIL dates back to the Bandung Afro-Asian Solidarity Conference of 1955, which fostered the “Non-Aligned Movement” at the Belgrade Conference in 1961.

Therefore, the interests of Third World have been recently taken by international law, as before the decolonization and the political independence of Third World countries, they were ruled only by western powers national laws. After the Bandung Conference, Third World states try to organize a collective action and defend the starting of a New International Economic Order. In this context a group of frenchspeakers scholars tried to theorize the Third World contributions to international law seeking to change its contents. Nevertheless, such theories and even the concept of “third world” have been strongly delegitimized by mainstream scholars.¹

Though, TWAIL is not new as a phenomenon, as TWAIL scholars have challenged the existing international legal system for decades. Nevertheless, it is new as an intellectual movement which grew around the 1990s. The term TWAIL has embraced all scholarships that have advocated a postcolonial approach to international law including those associated with NAIL - New Approach to International Law, and many scholars think that TWAIL have actually emerged from NAIL. According to Vikrant Dayanand Shetty, “the ‘post’ in ‘postcolonial’ does not refer to ‘after period of colonialism’ or ‘triumphing over colonialism’, but to the ‘continuation of colonialism in the consciousness of formerly colonized peoples, and in institutions imposed in the process of colonization’”.²

¹ GALLIÉ, Martin. Les théories tiers-mondistes du droit international (TWAIL). Un renouvellement? *Revue Études internationales*, vol. 39, n. 1, p. 17-38, mars 2008.

² SHETTY, Vikrant Dayanand. Why TWAIL Must Not Fail: Origins and Applications of Third World Approaches to International Law.

The author reminds that at the heart of TWAIL is, however, unity in “opposition to the unjust global order.”³ Makau Mutua points out that immediately after World War II and after acquiring their political independence, the ex-colonies quickly realized that political independence was largely illusory without economical independence.⁴ TWAIL also attack international legal order and its evolution, as they think force prevails over law. Thus, while Bhupinder Singh Chimni mentions the emergency of an “Imperial Global State” by the transfer of third world countries sovereignty towards international institutions controlled by a transnational capitalist class, others prefer talking about a hegemonic legal order, but at the end of the day international law remains an instrument to pursue the interests of ancient colonial powers.⁵

2. TWAIL AND HUMAN RIGHTS

Since the beginning of its discussions, TWAIL have always paid attention to the human rights discourse, which has been analyzed by both generations of TWAILers, TWAIL I and TWAIL II, if one accepts its division. This is so because there is some debate about the origins of TWAIL. While some scholars locate its origins at the end of the 20th century (TWAIL II), others will locate them at post-World War II (TWAIL I). As put by Opeoluwa Adetoro Badaru, TWAIL I scholarship, in the late 1960s and 1970s, was concerned by the call for the recognition of a right to development, and its approaches to international human rights law were largely *state-centric*. TWAIL II scholars, otherwise, are largely *people-centric*, as they aim at “identify and give voice to the marginalized people within Third World states - women, peasants, workers, minorities - who they believe had been generally excluded from consideration by TWAIL I scholarship.”⁶ According to him, “this emphasis on giving a voice to the peoples and critiquing human rights seems to be a primary focus of TWAIL II with regards to international human rights law”⁷. Another of the critiques by TWAIL II around the 1990s concerns the tendency of international human rights law to promote a sort of universal culture of human rights without adequate Third World input.

Thus, TWAIL scholars contend that a TWAIL perspective of international human rights law is crucial to identify many problems concerning the mainstream discourse.

King's Student Law Review, London, vol. 3, n. 2, p. 68-82, apr. 2012. p. 71.

³ *Idem*. p. 76.

⁴ MAKAU, Mutua. What is TWAIL? **American Society of International Law Proceedings**, Washington, vol. 94, 31-38, 2000.

⁵ GALLIÉ, Martin. Les théories tiers-mondistes du droit international (TWAIL). Un renouvellement? **Revue Études internationales**, vol. 39, n. 1, p. 17-38, mars 2008. p. 27.

⁶ BADARU, Opeoluwa Adetoro. Examining the Utility of Third World Approaches to International Law for International Human Rights Law. **International Community Law Review**, London, vol. 10, n. 4, p. 379-387, 2008.

⁷ *Idem*.

Nevertheless, it is important to remind that diversity and heterogeneity is one of the characteristics of TWAIL. That is why scholars associated with TWAIL may diverge significantly regarding the method, the epistemology employed or the political approach. Concerning methodology, the “transdisciplinarity” though not a solely TWAIL initiative or methodology, as an analytical tool enables scholars to successfully employ this conceptual framework in their methodological inquiries into the current state of the TWAIL contributions⁸.

Bhupinder Singh Chimni reminds that the contradictions which mark contemporary international law is perhaps best manifested in the field of international human rights law which even as it legitimizes the internationalization of property rights and hegemonic interventions, codifies a range of civil, political, social, cultural and economic rights which can be invoked on behalf of the poor and the marginal groups.⁹

Rémi Bachand, at his turn, points out that the normative and political goals of TWAILers have guided them to question important issues regarding international law, and beside the focus on the historical evolution of their field, they have concentrated also on the critique of human rights.¹⁰ According to him, there are three types of critiques which are addressed to human rights. The first one is centered on the relationship between universality and particularity, that is, TWAILers argue that the current ‘universal’ and ‘official’ human rights corpus is based essentially in European philosophy, although the concept of human rights is not unique to European societies.¹¹ Further, they attack the universalizing imaginary based on the premise that they are neutral, objective and apolitical, and the example is the emphasis on civil and political rights.¹²

The second critique addressed to human rights by TWAIL pointed out by Rémi Bachand is that they are a way to civilize peoples mired in a savage and barbaric culture (that is, the Third World), and a way to impose European standards often used as a toll for colonialist or imperialist practices and interventions.¹³ Makau MUTUA’s works

⁸ *Idem.* p. 381.

⁹ CHIMNI, B. S. *Third World Approaches to International Law: A Manifesto*. **International Community Law Review**, London, vol. 8, n. 1, p. 3-27, 2006. p. 26.

¹⁰ BACHAND, Rémi. *Critical Approaches and the Third World. Towards a Global and Radical Critique of International Law*. Speech at University McGill, 24 mar. 2010.

¹¹ Here, Rémi Bachand quotes the work of Bonny IBHAWOH, who tries to show that human rights were far from being non-existent in Africa before colonization, as well as their significant differences with the European model, which claims its universality. See *Human Rights: Colonial Discourses of Rights and Liberties in African History*, 2007, p. 23. BACHAND, Rémi. **Critical Approaches and the Third World. Towards a Global and Radical Critique of International Law**. Speech at University McGill, 24 mar. 2010.

¹² BACHAND, Rémi. **Critical Approaches and the Third World. Towards a Global and Radical Critique of International Law**. Speech at University McGill, 24 mar. 2010.

¹³ The author states: “In a similar way that some supposedly universal values have been used to conquer and colonize parts of the Third World from the fifteenth to nineteenth centuries, human rights (or concepts like good governance or development), are now used to impose European standards favoured by Westerners.” BACHAND, Rémi. **Critical Approaches and the Third World. Towards a Global and Radical Critique of International Law**. Speech at University McGill, 24 mar. 2010.

focus on that issue, talking about what he calls the “SVS metaphore” – savages, victims, saviors.¹⁴

Another important issue concerning this critique is the TWAILers’ epistemological questioning about the politics of knowledge, that is, the origins of the knowledge within international law, or the foundations of international law. According to Andrew F. Sunter, it seems to be a naturalized epistemology, which seems to validate the knowledges *a priori* departing from *a posteriori* facts. TWAILers, instead, depart from a suspicious hermeneutics, trying to identify the very reasons of knowledge, and not its justifications.¹⁵

The third critique addressed to human rights by TWAIL pointed out by Rémi Bachand concerns the imposition of a form of political organization and a form of state as such: the liberal state adopting representative democracy, as it can easily be demonstrated by the focus on civil and political rights, which seek to strengthen, legitimize, and export political or liberal democracy. Makau Mutua states that the human rights “have become synonymous with the human rights movement”, and he argues also that liberalism does not tackle the causes of real and economic inequality, which is the main challenge of Third World.¹⁶ Further, Rémi Bachand observes that TWAILers’ analysis remain less radical than their political militancy, even if some scholars are openly Marxists. The author reminds also that the European historical origins of human rights (the protection of emerging bourgeoisie against authoritarian monarchical regimes) are enough to demonstrate that they are far from being adequate to protect Third World against violation of the same rights, that is, imperialist and neocolonialist practices. In other words, those human rights have not been made to fight against imperialism and neocolonialism. According to Rémi Bachand: “Nevertheless, the criticisms made by Twail, interpreted in the light of our own comments, reveal that a subalternist theory of international law can only take human rights as strategic tools, if not tactics from the struggle for emancipation, and that it would be a mistake to raise them to the level of the ultimate goal to be attained.”¹⁷

¹⁴ MUTUA, Makau. Savages, Victims and Saviors. The Metaphor of Human Rights. *Harvard International Law Journal*, Cambridge, vol. 42, n. 1 p. 201-245, 2001.

¹⁵ SUNTER, Andrew F. TWAIL as Naturalized Epistemological Inquiry. *Canadian Journal of Law & Jurisprudence*, Cambridge, vol. 20, n. 2, p. 494-498, 2007.

¹⁶ MUTUA, Makau. The Ideology of Human Rights. *Virginia Journal of International Law*, Charlottesville, vol. 36, p. 589-658, 1996. p. 636

¹⁷ BACHAND, Rémi. Les Third world approaches to international law: Perspectives pour une approche subalterniste du droit international. In: TOUFAYAN, Marc; TOURME-JOUANNET Emmanuelle; RUIZ FABRI, Hélène. *Droit international et nouvelles approches sur le Tiers-monde*: entre répétition et renouveau. Paris: Société de législation comparée, 2013. p. 395. In the original : “Quoi qu’il en soit, les critiques faites par les Twail, interprétées au regard de nos propres commentaires, nous laissent voir qu’une théorie subalterniste du droit international ne peut prendre les droits humains autrement que comme des outils stratégiques, sinon tactiques de la lutte pour l’émancipation, et que ce serait une erreur que de les hausser au rang d’objectif ultime à atteindre”.

Opeoluwa Adetoro Badaru observes the following points where a TWAIL perspective of international human rights law would help: (1) to “highlight the historical root causes of the current dismal state of socio-economic rights in the Third World, and thus not to approach human rights issues from a mainly formal textual and institutional angle”;¹⁸ (2) to recognize how international human rights law can be manipulated to promote and legitimise neo-liberal aspirations, “unveiling the discrepancy between the contradictory languages that international law adopts in its different subject streams, for example, supporting the promotion of human rights and at the same time disregarding when the practice of international trade and economic law consistently violates human rights”;¹⁹ (3) “to understand the internationalization of human rights violations in the sense of how the activities in one part of the world can have detrimental effects in other parts of the world (the Third World especially), and hence, could equip scholars with more justifications for demanding extraterritorial obligations from richer states”²⁰; (4) to demystify the assumption that human rights have been conceived in the West and hence should be promoted universally disregarding Third World particularities;²¹ (5) in the same vein, it helps “to deconstruct the ideology of “savage-victim-savior” that has permeated international human rights law, and to criticize the human rights initiative as a preservation of the essential structure of the “civilizing mission” of the North.”²²

Regarding the internationalization of the discourse of human rights, Opeoluwa Adetoro Badaru adds that “one has to have a critical eye especially as it is obvious that human rights seem to come hand-in-hand with neo-liberal policies. A TWAIL perspective helps one to be conscious of the oppressive potential of universality, and to scrutinise which aspects of human rights may be made universal and which aspects need to be re-examined.”²³

Makau Mutua observes that “the United Nations, formed after World War II by the dominant Western powers, aimed to create and maintain *global order* through peace, security, and cooperation among states”. And he observes that this new global order had two important legitimating features. The first one, “non-European powers were now recognized as having the right to self-determination, which was a repudiation of direct colonialism”; the second, “states were to be governed by human rights.”²⁴ Further, he asserts that since 1945, the United Nations has played a key role in preserving

¹⁸ BADARU, Opeoluwa Adetoro. Examining the Utility of Third World Approaches to International Law for International Human Rights Law. *International Community Law Review*, London, vol. 10, n. 4, p. 379-387, 2008. p. 381.

¹⁹ *Idem. Ibidem.*

²⁰ *Idem.* p. 383.

²¹ *Idem. Ibidem.*

²² *Idem. Ibidem.*

²³ *Idem. Ibidem.*

²⁴ MAKAU, Mutua. What is TWAIL? *American Society of International Law Proceedings*, Washington, vol. 94, 31-38, 2000. p. 34.

the global order dominated by the West. A critically important agenda of the United Nations has been the universalization of European principles and norms, as the spread of human rights which grow out of Western liberalism and jurisprudence. The West was able to impose its philosophy of human rights on the rest of the world because it dominated the United Nations at its inception. The fallacy of the Universal Declaration of Human Rights, which refers to itself as the “common standard of achievement for all peoples and all nations,” is now underscored by the identification of human rights norms with political democracy. The principal focus of human rights law has been on those rights that strengthen, legitimize, and export the liberal democratic state to non-Western societies.²⁵

Makau Mutua, in a very optimistic way, also notices that human rights corpus is slowly evolving from its paradigmatic Western orientation, and slowly stops been seen as a “gift of the West to the “rest” of the world”, towards the construction of a truly universal project. Thus, as initially there was great emphasis on civil and political rights, since the mid-1990s, however, more attention has been paid to “economic powerlessness and the effect of globalization on people”.²⁶ In his words, “a truly legitimate human rights movement cannot be cabined by powerful states and elites. It must be material for battle in the hands of the powerless. This, however, will not be possible unless the movement is purged of its Eurocentric, racist, free-market biases”.²⁷

Pooja Parmar, on the other hand, proposes that the starting point of research must be the everyday lives of Third World peoples and all its complexities, “in order to examine *how* the modern human rights discourse relates and responds, or as is the case more often, fails to respond to them.” Thus, he proposes the emergence of “the ‘how’ questions”, as the following ones: (1) “How has the modern theory of international human rights been produced?”; (2) “How have historical processes, especially those associated with colonialism, enabled the delegitimation of certain knowledges and the privileging of others?”; (3) “How does this process continue to facilitate the marginalisation of the suffering of some humans?”; (4) “How might the ‘exhumation of subjugated knowledges’ in all their complexity lead to alternative theories of human rights?”²⁸

In this vein, Pooja Parmar recognizes the immense potential of a TWAIL perspective to theorizing alternative conceptions of human rights, mainly for the particular attention to histories that TWAIL brings to the study of international law. This historical approach would make it possible “to identify historical exclusions inherent in modern

²⁵ MUTUA, Makau. *Savages, Victims and Saviors. The Metaphor of Human Rights*. **Harvard International Law Journal**, Cambridge, vol. 42, n. 1 p. 201-245, 2001. p. 215.

²⁶ MUTUA, Makau. *Change in the Human Rights Universe*. **Harv. Hum. Rts. J.**, Cambridge, vol. 20, p. 3-5, 2007. p. 3.

²⁷ *Idem. Ibidem.*

²⁸ PARMAR, Pooja. *TWAIL: An Epistemological Inquiry*. **International Community Law Review**, London, vol. 10, n. 4, p. 363-370, 2008. p. 366.

human rights discourse, as well as historical struggles against such exclusions.” According to him, histories of Third World peoples raise more ‘how’ questions like: (1) “how did the suffering of some humans, and certain types of suffering get pushed to the margins of human rights theory and practice?”; (2) “How have ‘people in struggle and communities of resistance’ challenged this marginalisation in the past, and how do they continue to do so in the present?”; (3) “How might these histories of (and in) the present challenge and alter our conceptions of human rights?”.²⁹ In other words, “we are called upon to pay attention to how we uncritically embrace certain terms in European thought, and thereby reproduce and reiterate their meanings.”³⁰

In a very forceful work, Makau Mutua contends that the human rights movement is marked by a ‘damning’ metaphor, which “contains a subtext that depicts an epochal contest pitting savages, on the one hand, against victims and saviors, on the other. The savages-victims-saviors (SVS) construction is a three-dimensional compound metaphor in which each dimension is a metaphor in itself.”³¹ According to him, this metaphor has been constructed by the main authors of the human rights discourse, including the United Nations, Western states, international non-governmental organizations, and senior Western academics, rendering the human rights corpus and its discourse “unidirectional and predictable, a black-and-white construction that pits good against evil.”³²

Concerning the three dimensions of the metaphor, the first one depicts a savage and evokes images of barbarism, the second one depicts the face and the fact of a victim as well as the essence and the idea of victimhood, and the third dimension is the savior or the redeemer, the good angel who protects, vindicates, civilizes, restrains, and safeguards.³³

The first dimension of the prism depicts a savage and evokes images of barbarism so cruel and unimaginable as to represent their state as a negation of humanity. According to Makau Mutua, although savagery in human rights discourse connotes much more than the state, the state is depicted as the operational instrument of savagery: “the ‘good’ state controls its savagery and internalizes human rights, as the ‘evil’ state expresses itself through an illiberal, anti-democratic, or other authoritarian culture. The only way for the state to be redeemed or saved is submitting on to human rights norms. The state is the guarantor of human rights; it is also the target and *raison d’être*

²⁹ *Idem.* p. 367.

³⁰ *Idem.* p. 367-368.

³¹ MUTUA, Makau. Savages, Victims and Saviors. The Metaphor of Human Rights. *Harvard International Law Journal*, Cambridge, vol. 42, n. 1 p. 201-245, 2001. p. 201-202.

³² “The human rights project drive from the unflinching belief that human beings and the political societies they construct can be governed by a higher morality”. *Idem. Ibidem.*

³³ *Idem.*

of human rights law.”³⁴ Notwithstanding, Makau Mutua warns that reality is far more complex, for:

*it is not the state per se that is barbaric but the cultural foundation of the state. The state only becomes a vampire when ‘bad’ culture overcomes or disallows the development of ‘good’ culture. The real savage, though, is not the state but a cultural deviation from human rights. That savagery inheres in the theory and practice of the one-party state, military junta, controlled or closed state, theocracy, or even cultural practices such as the one popularly known in the West as female genital mutilation, not in the state per se.*³⁵

The second dimension of the prism depicts the face and the fact of a victim – whose dignity has been violated by the savage – as well as the essence and the idea of victimhood. Thus, “the victim figure is a powerless, helpless innocent whose naturalist attributes have been negated by the primitive and offensive actions of the state or the cultural foundation of the state.”³⁶

The third dimension of the prism is “the savior or the redeemer, the good angel who protects, vindicates, civilizes, restrains, and safeguards”, whose promise is freedom from the tyrannies of the state, tradition, and culture, and the freedom to create a better society based on particular values. Actually, the savior is the human rights corpus itself, represented by the United Nations, Western governments, international non-governmental organizations, and Western charities and, ultimately the savior is “a set of culturally based norms and practices that inhere in liberal thought and philosophy.”³⁷

Makau Mutua highlights that the human rights corpus is fundamentally Eurocentric, and hence suffers from several flaws captured in the SVS metaphor, like:

(1) First, the corpus falls within the historical context of the Eurocentric colonial project, in which actors are in hierarchical positions, undermining the basic claim of universality;³⁸

(2) Second, “the SVS metaphor and narrative rejects the cross-contamination of cultures and instead promotes a Eurocentric ideal”, that is, “the metaphor is premised

³⁴ *Idem.* p. 202-203.

³⁵ *Idem.* p. 203.

³⁶ *Idem.* p. 204.

³⁷ *Idem. Ibidem.*

³⁸ *Idem.* p. 204-205. “Some of the most important events preceding the post-1945, United Nations-led human rights movement include the anti-slavery campaigns in both Africa and the United States, the anti-colonial struggles in Africa, Asia, and Latin America, and the struggles for women’s suffrage and equal rights throughout the world. But the pioneering work of many non-Western activists and other human rights heroes are not acknowledged by the contemporary human rights movement. These historically important struggles, together with the norms anchored in non-Western cultures and societies, have either been overlooked or rejected in the construction of the current understanding of human rights.”

on the transformation by Western cultures of non-Western cultures into a Eurocentric prototype and not the fashioning of a multicultural mosaic. The SVS metaphor results in an “othering” process that imagines the creation of inferior clones, in effect dumb copies of the original.” For example, Western political democracy is in effect an organic element of human rights, from which “savage” cultures and peoples are far, allowing the creation of victims.³⁹

(3) Third, the language and rhetoric of the human rights corpus are arrogant and biased, a grand narrative hidden in the seemingly neutral and universal, preventing the movement from gaining cross-cultural legitimacy and undermining the universalist warrant that it claims⁴⁰.

(4) Fourth, there is an urgent need for a human rights movement that is multi-cultural, inclusive, that overcomes Eurocentrism and that also “address the power relations among and within cultures, national economies, states, genders, religions, races and ethnic groups, and other societal cleavages.” In other words, Eurocentrism cannot be the starting point while other cultures are peripheral, otherwise, “the point of departure for the movement must be a basic assumption about the moral equivalency of all cultures.”⁴¹

(5) Fifth, the SVS metaphor of human rights is based on a global racial hierarchy, where savages and victims are generally non-white and non-Western, while the saviors are white. In the words of Mutua Makau, “there is also a sense in which human rights can be seen as a project for the redemption of the redeemers, in which whites who are privileged globally as a people - who have historically visited untold suffering and savage atrocities against non-whites - redeem themselves by “defending” and “civilizing” “lower”, “unfortunate”, and “inferior” peoples. The metaphor is thus laced with the pathology of self-redemption⁴².”

Though, the idea of the universality of rights is noble, but the way the human rights movement is presented today “lies in their inadequacy, incompleteness, and wrong-headedness.⁴³

3. FINAL CONSIDERATIONS

Some TWAILers understand that there is a need to write the resistance of Third World peoples into international law. Nevertheless, attention has to be paid to the

³⁹ *Idem.* p. 205.

⁴⁰ *Idem.* p. 206.

⁴¹ *Idem.* p. 207.

⁴² *Idem.* p. 207-208.

⁴³ *Idem.* p. 209.

interpretation of this resistance. In Pooja Parmar words, “a focus on strategies of resistance adopted by people involved in struggles today reveals the centrality of the rights language, but it also reveals the limitations of human rights law. The language of rights has arrived in our times burdened with “ideological and historical baggage”.⁴⁴ And, according to him, if the TWAIL focus is at ‘how does a proposed human rights theory respond to the suffering of particularly situated human beings?’ the possibilities are worth pursuing, and they “must be followed in ways that lead to conceptualisations that enable emancipatory interpretations and not replication of the past and continuing epistemic violence.”⁴⁵ On the other hand, Upendra Baxi highlights that “this constant endeavour to convert needs into rights, howsoever problematic, is the hallmark of contemporary human rights.”⁴⁶

Though, it can be said that according TWAIL the historical model of human rights cannot respond to the needs of the Third World except if there is a radical rethinking and restructuring of the international order, abandoning the efforts to universalize an essentially European corpus of human rights. According There is a need of breaking the hierarchical relationships between European and non-European populations and of the multiculturalization of the corpus in some areas like balancing between individual and group rights, giving more substance to social and economic rights, relating rights to duties, and addressing the relationship between the corpus and economic systems.⁴⁷

Since 1945, the United Nations has played a key role in universalizing principles and norms which are European in identity, whose “principal focus has been on those rights that strengthen, legitimize, and export the liberal democratic state to non-Western societies.”⁴⁸ In this vein, at the same time the human rights movement lacks in Third World legitimacy, it is aimed primarily at the Third World. Makau Mutua highlights that Europeans and North Americans share a common philosophical and legal ancestry, and so they can create a common political and cultural template to govern their societies. But they should not be allowed to insist that their particular vision of society is the only permissible civilization which must now be imposed on societies of the whole world. So, the merits of the European and American civilization of human rights and its missionary work is suspect and might seem as part of the colonial project.⁴⁹

⁴⁴ PARMAR, Pooja. TWAIL: An Epistemological Inquiry. *International Community Law Review*, London, vol. 10, n. 4, p. 363-370, 2008. p. 369.

⁴⁵ *Idem.* p. 368.

⁴⁶ BAXI, Upendra. Too many or too few, human rights?. *Human Rights Law Review*, [s.l.], vol. 1, n. 1, p. 1-9, mar. 2001. p. 3.

⁴⁷ MUTUA, Makau. *Savages, Victims and Saviors. The Metaphor of Human Rights.* *Harvard International Law Journal*, Cambridge, vol. 42, n. 1 p. 201-245, 2001. p. 243.

⁴⁸ *Idem.* p. 215.

⁴⁹ *Idem.* p. 216.

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