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Towards an Emancipatory International Law: the Bolivarian reconstruction

MOHSEN AL ATTAR & ROSALIE MILLER

ABSTRACT In this article, we argue that a unique South American treaty known as ALBA—the Bolivarian Alliance for the Americas—puts forward a cohesive counter-vision of international law rooted in notions of complementarity and human solidarity. We further argue that Third World Approaches to International Law (TWAIL) scholars might use this initiative as a springboard to push forward a long-overdue reform of the international legal regime. While, on its own, ALBA is unlikely to pose much of a challenge to the structural imbalances that permeate global society, when juxtaposed alongside the many initiatives of the Bolivarian Revolution, it appears to possess significant democratic potential. With both scholarly and popular support, ALBA may even have the capability of sparking a renewal of a united Third World movement.

For decades Third World legal scholars have challenged the existing international legal regime, confronting the structural imbalances that permeate contemporary global society. The Third World Approaches to International Law (TWAIL) movement has consistently worked towards producing a credible critique of international law, primarily by identifying procedures and structures injurious to Third World states and peoples. The aim has been to redress the historical biases that pervade the global order and that undermine Third World well-being. Yet, despite decades of struggle, historical power imbalances persist in the international legal regime, as does material deprivation within Third World societies. In contrast to Bhupinder Chimni, we argue that this ‘failure’ lies not with TWAIL scholars for their inability to articulate a cohesive counter-vision but, rather, is a result of the forceful counter-challenges waged by First World actors, unmoved by the Third World plight and unwilling to surrender First World political power. Moreover, and more importantly, the triumph of such a grand legal (and social) reformative project necessitates a veritable rebirth of global social relations, itself dependent on political and popular will. Impetus for such a project has been largely missing; that is, until now.

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We argue that a unique South American treaty known as ALBA embodies this will and offers TWAIL scholars the opportunity to actualise their reformative aspirations. In the Bolivarian Alliance for the Americas (ALBA), we find a platform from which TWAIL might transcend its reactive nature and develop a proactive character. Building on a practical prototype that is shaping a participatory model of democratic engagement and a progressive model of social relations, we argue that ALBA’s philosophy and substantive workings present the structure needed for the reinvention of international law along similar lines: from a formal regulatory regime to a substantive emancipatory paradigm, from a purely Eurocentric endeavour to one representative of the multitude of global society.

Resistance stalls
In his TWAIL manifesto Chimni reignites debate about the impact of existing international law on Third World societies. He suggests that recolonisation, the process of subverting Third World autonomy via political, economic, ideological and legal machinations, is gaining momentum. Through treaties favourable to an already advantaged First World, Third World nations have witnessed their recently acquired sovereignty hollowed as domestic authority is displaced by the swelling power of a network of international financial institutions (IFIs) backed and funded by—and thus bound to—the wealthiest nations. Chimni condemns the role of international law in legitimising this undemocratic—or counter-democratic—power grab by First World nations and their transnational corporate allies.

We can add little to his exposé. International or, more precisely, transnational law has reached new levels of intrusiveness, proffering regulatory measures for virtually every aspect of life: access to essential services like water and healthcare, food policy, education, labour, and domestic monetary policy. Most of the relevant treaties are prepared in Bretton Woods, Geneva and New York by battalions of technocrats, beholden to their First World governmental or corporate employers. Third World challenges to this structural onslaught are muted, as the ideological scheme is backed by a military programme of even greater ferociousness, often bloodily quelling resistance. Notwithstanding our widespread accord with his manifesto, we respectfully take issue with one element. Chimni gently criticises TWAIL, the very movement he helped pioneer and which his manifesto targets. He questions the efficacy of the critiques made by the movement and bemoans our collective failure to articulate an alternative to the mainstream international legal regime. While we support this introspective thrust, we believe his criticism is misplaced.

TWAIL is an intellectual movement aimed at challenging the inequitable makeup of the international legal order and the consistent exclusion of Third World voices from the narrative. Insightful and incendiary, TWAILian critiques have deconstructed the foundations of international law, of the IFIs, of so-called humanitarian intervention, the global intellectual property
regime, the human rights movement, international law-making processes, and more, with a view to exposing the inherent structural imbalances. Both analytically and morally scathing, TWAIL scholars have compiled an impressive compendium of critical scholarship that not only undermines the liberal creation myth of *jus gentium* but also questions the legitimacy of the current international legal order. Though often marginalised by mainstream academics, who prefer to dismiss rather than to engage, we would suggest that this buttresses rather than attenuates the efficacy of the critique. TWAIL speaks truth to power. Mainstream recoil and perfunctory dismissals hinder neither the accuracy nor the efficacy of the account, saying far more about the audience than they do about the speaker (though they do, we admit, curtail its diffusion).

As to the second criticism, Chimni is correct: TWAIL has not sketched an alternative international legal regime. Though many TWAILers are staunch reconstructionists, proposals in this regard are scarce, for the dominant regime continues to monopolise the terrain. Here, however, we would suggest that Chimni is conflating two related but distinct emancipatory programmes: TWAIL and the Third World project. The delineation is critical.

As observed, TWAIL seeks to expose the harm occasioned by international law to Third World societies. Scholars expound the hidden privileges the system contains for First World nations and the contribution these make to Third World suffering. In short, they attack the machinery that legitimises global moral depravity. Depravity, not unlike law, is a product of society. To counter it, the ‘Third World project’ sought to reform the social paradigm that lay at the heart of the bipolar division. Through promises of unity, peace and justice, Third World nations endeavoured to right the wrongs suffered under European imperialism. Clear objectives buttressed this mellifluous agenda, including redistribution of land and resources, greater equity in relations between states, and global cultural equivalency. In keeping with Freirian teachings about reciprocity in emancipation, the Third World project proposed a vision for liberating all of humanity from our shared history of moral wantonness. Of course, this lofty goal required a reformed international law that reflected the plurality of cultures that pepper the world, but this was not an initial but a subsequent step. The trajectory towards true freedom—and not simple political equality—traversed the fields of human morality.

The Five Principles of Peaceful Co-Existence championed by Third World revolutionary Jawaharlal Nehru transcended the mechanics of the global order, engaging its normative foundations. These included territorial sovereignty and integrity, non-aggression, non-interference, co-operation, and, ultimately, peaceful coexistence. This radical revolution of ideas required an even more radical revolution of minds, particularly among First World nations called upon to abandon their violent, presumptuous and jingoistic ways. Justice was thereafter sought in multiple arenas, including the political (sovereignty as opposed to fealty), the economic (co-operation instead of competition), and the cultural (respect and not belittlement).
In short, the Third World project was an emancipatory programme of the highest order. Had it been successful, international law might today be animated by these ideals. Sadly the project was assassinated.14

Following standard imperial handbooks, First World nations spent the earlier part of the decolonisation era launching counter-revolutions to sabotage the project. As President Sukarno of Indonesia presciently forewarned, colonial powers would not ‘give up [their] loot easily’.15 Military expeditions were coupled with ideological and economic challenges to Third World autonomy. Indeed, growing connectivity in the international economic architecture enabled private capital to manage Third World exploitation from home, gradually reducing costly military endeavours.

Notwithstanding the simplicity and the global appeal of the emancipatory programme, competing economic interests and political allegiances among Third World nations undermined the unity needed to actualise the project. Leaders of the time were well aware of the importance of solidarity: ‘Divided we are weak; united, Africa could become one of the greatest forces for good in the world.’16 However, these calls proved insufficient when counter-balanced by the pressure tactics—a range of inducements and coercive measures pitched at fledgling nations in variable states of economic development—of the First World. Divisions were fomented externally by scorned colonial power and internally by emergent class stratification.

At the time Third World nations were struggling to transform themselves from extractive to productive economies and to achieve autonomy from their former colonial overseers. Disunity facilitated the divorcing of politics from economics and the reduction of the latter to a technical matter in need of a purportedly scientific solution (neoliberalism), leaving them vulnerable to capitalist predation. Insidiously the IFIs encouraged Third World nations to borrow immense sums of money—much of which was funnelled back to First World corporations through backroom dealings—to modernise their states along neoliberal lines. Of course, domestic earnings were now applied towards servicing the debt, essentially eliminating social spending on desperately needed programmes of social uplift and local industrial support. Pliant elites eagerly acquiesced to these conditions and twisted the dagger that had been driven into the Third World project.17

The assassination defeated the reformative thrust; popular ambition among Third World peoples withered under the strain of rising inequalities and growing insecurity. Under such circumstances it would have been foolish for TWAIL scholars to sketch an alternative legal regime. Without a mass-movement to propel the Third World project forward, TWAIL had little hope of sketching a viable alternative that would ever be more than the hopeful musings of idealists and pariahs. Rather than TWAIL failing, a more accurate assertion would be that TWAIL stalled. Want of a viable political emancipatory programme prevented TWAIL scholars from moving beyond critique: assassination spelt the death of the alternative architecture—the Five Principles—animating the global reconstructive effort. Of course, TWAIL scholars continued monitoring the centres of power, awaiting the political
revolution needed to give rise to an alternative legal regime, one that would allow the TWAIL movement to shift their efforts from reactive to proactive. We believe this time is now.

Rising from the ashes: sparking the Third World project

The neoliberal agenda was, from its inception, the subject of widespread criticism. Resistance by Third World states, however, was marred by fragmentation and paralysis. Without state-wide action (excluding Cuba), social movements seized the helm, tackling single-issues of social justice including access to medicine, land redistribution, local industrial development, labour standards and agrarian policy. These movements largely targeted local conditions and thus remained local initiatives, disregarding the national, sometimes global, nature of their struggles. Some transcended localism, reaching out to like-minded contemporaries both regionally and beyond. Even then, however, success was stunted by particularity; peasant movements, for instance, seek access to land while labour movements desire improved working conditions, a disconnect that has prevented allies from uniting into a comprehensive, forward-looking alternative such as the Third World project. Enter the Bolivarian Revolution.

Briefly, the Bolivarian Revolution was sparked by the ascendancy of Hugo Chávez in Venezuela. Elected in 1998 on a ‘third way’ platform falling loosely between capitalism and socialism, with the help of social movements Chávez’s programme evolved from moderation to anti-neoliberalism to alternative economic orientation. The Revolution has been characterised by an *ad hoc* assembly of social empowerment initiatives (eg communal councils) and social justice efforts (eg increases to public spending), galvanising people, across both Venezuela and Latin America, and inspiring a string of elections of progressive candidates—da Silva of Brazil, Kirchner of Argentina and Bachelet of Chile—and of revolutionary candidates—Morales of Bolivia, Correa of Ecuador, Lugo of Paraguay and Ortega of Nicaragua. Alongside national social movements, several of these leaders entered their nations into an emancipatory bloc, seeking to counter inequity and injustice. In short, what began as a national initiative quickly spread across the continent.

Emergent collaborative initiatives enjoy a solid base in Latin America. These countries have long been participants, occasionally in the vanguard, in Third World emancipatory struggles. As far back as the drafting of the UN Charter, Latin American nations (unsuccessfully) proposed broadly defined human rights protections—including education, health and labour rights—to secure the welfare of the masses. Shortly thereafter, following Cuba, many Latin American states joined African and Asian countries in forming the Non-Aligned Movement (NAM) seeking an end to the gunboat diplomacy of the First World, dignity for Third World peoples, and a new co-operative economic order.

Following this tradition, the Bolivarian Revolution reserves a central role for popular emancipation. For instance, many Latin American nations have
introduced a host of new ‘rights’ embracing worker safety, adequate housing, land sharing and, in the case of Venezuela at least, gender equity (eg political parties must field 50% female candidates and unwaged housewives receive a stipend for their duties). Another focus is the veritable war against the Siamese twins poverty and racism, marked by the launch of initiatives to address the living standards of the oppressed. Misión Barrio Adentro, a joint programme between Cuba and Venezuela, has brought thousands of doctors and medical services to the hitherto forgotten slums of Venezuela. Operación Milagro has restored vision for over 300,000 people in Bolivia alone. Indigenous peoples, particularly in Bolivia and Ecuador, enjoy broader political and social rights; no longer regarded as second-class citizens, they now receive equal protection under the nations’ amended laws.

On both ideological and numerical scales, the Bolivarian Revolution presents a political and social upheaval of epic proportions. The question, then, is whether the vision and policy aims of the Bolivarian Revolution can rekindle the Third World project. In posing this question we suggest that, if indeed there are parallels, we can expect a comparable response from First World nations. Awareness of the impending offensive will help prepare Third World nations to ensure that the Bolivarian Revolution does not suffer a fate similar to that of the Third World project.

From a TWAILian standpoint, such awareness would translate into the articulation of a stable alternative to the mainstream international legal regime, a shift from the reactive–critique phase to a proactive–building one. Although the division is undoubtedly exaggerated, the relentless neoliberal onslaught has kept progressive scholars occupied, waging knee-jerk challenges to every imperial initiative. Now that a strong united bloc has formed to reverse the staggering inequalities permeating contemporary global society, there is an opportunity to construct an international legal regime that more accurately reflects the histories, cultures and voices of more than a privileged few. In short, the Bolivarian Revolution provides the structural (state) and popular (people) support needed to shift discussion away from the dominant Eurocentric international legal regime towards a dynamic pluralist alternative.

Fittingly, participants have already begun shaping the contours of this alternative. In ALBA we find a social, economic and political alliance—an integration project—capable of radically transforming international legal relations. Beyond envisioning the improvement of global living standards, ALBA proposes a vision for an alternative international legal regime, including the normative and technical architecture needed to promote the gradual entrenchment of popular principles of solidarity, support and equity. We argue in the coming section that ALBA, via a collaborative effort with TWAIL scholarship, might potentially fertilise the hitherto rhetorical ambitions of progressive international legal scholars with material support, principally by linking the small and isolated with the expanding and connected.
ALBA: a people-based approach to international legal regulation

ALBA represents a unique regional trading bloc. It forms a pseudo parent or umbrella community comprising a limitless series of treaties that buttress the bloc’s particular philosophy of international relations. Its ambition transcends neoliberal trade liberalisation and military co-operation, aiming to construct a confederation united in a common pursuit of mutual advancement and the eradication of inequity. At its heart are concepts of solidarity, complementarity and autonomy, all of which constitute the distinct type of international exchange and co-operation that emerge from ALBA agreements. Breathing life into the dormant ideology of the Third World project, ALBA actualises the dreams of collaborative and state-specific development according to people-, not market-, based targets.

Both ALBA’s philosophy and form offer TWAIL a tangible framework to address its most ardent criticisms. The project establishes a prototype system of international relations anchored in Third World—in fact TWAILian—norms of justice. Potentially, through a rearticulation of international legal norms, it could help precipitate an end to the profound poverty and disenfranchisement that define the Third World.

Unity in and despite diversity

Economic complementarity and cooperation among countries involved as opposed to competition between countries and products in order that efficient and competitive product specialization is encouraged, one that is compatible with balanced economic development in each country, compatible with the strategies for the battle against poverty and with the preservation of the peoples’ cultural identity.

The international legal regime commonly serves as an agent of First World interests. It overwhelmingly reflects continental legal thought shaped during the imperial period of European expansion. Its liberal framework legitimates significant conglomerations of power, preserving and extending the legal shorthand of private proprietary rights, arrogating control over resources and labour to a moneyed elite. It simultaneously imposes First World ambitions upon the rest of the world while reproducing imperial domination and exploitation within a formalised system of hegemony. These norms have established a powerful—though not unassailable—doctrinal force, exhibiting all the liberal trappings of neutrality, fairness and universality. Over time this regional worldview has acquired meta-status and has been consistently utilised to marginalise non-conforming others.

In the face of this dominant minority the TWAIL narrative champions unified opposition. TWAIL scholars have considered at length whether the Third World can provide sufficient cohesion to formulate a coherent countermovement. Of course, it comprises countries with vastly different cultures, historical experiences and physical and economic environments, and recognition of diversity is central to the discipline. At the same time, TWAIL
rejects the claim that cultural difference negates the common experiences uniting the Third World, namely, a shared history of subjection, exploitation, marginalisation and resistance thereto. As international law sustains this legacy, the Third World is goaded into action as a global coalition, allowing those who self-identify within that banner to look beyond their differing experiences and to address common concerns stemming from the unjust global order.

ALBA neatly embodies this unity. The Declaration accompanying the founding agreement insists that the only path to development and true autonomy for Latin American peoples is a joint one. Solidarity is cardinal to the agreement, even trumping national interest. Not unlike in the early days of the Third World project, unity is derived from the shared culture of resistance, historically developing in opposition to colonial and neo-colonial projects. Latin American economic subjugation at the hands of the USA, championed most recently by attempts to establish the Free Trade Area of the Americas (and thwarted by this very culture of resistance), provided the springboard for ALBA’s entry onto the world scene.

A poignant example of this solidarity was exhibited by ALBA members in 2006 with the rescue of Bolivia’s soybean industry. Following the signing of a free trade agreement with the USA, Colombia reneged on purchasing $170 million of Bolivian soybeans. The cancellation was momentous, threatening to devastate much of the Bolivian economy. Cuba and Venezuela jointly intervened, committing to purchase all of Bolivia’s soybean crops despite their limited need for the product. Venezuela later loaned Bolivia over $100 million to assist with agrarian reform to reduce market dependence. Another instance of solidarity arose during the Fifth Summit of the Americas, where ALBA members united against the Organization of American States’ (OAS) blanket boycott of all things Cuban. Boldly ALBA governments jointly released a forceful statement opposing the proposed Declaration of the Summit and condemning the OAS for supporting the longstanding US-initiated ban on Cuba.

Notwithstanding ALBA’s local Latin American tenor, it represents a potential platform for TWAIL. As Chimni asserts, regional identities do not undercut global allegiance: geographical and ideological leagues can exist within a Third World confederation, since shared oppression and unity transcend both border and ocean. In this regard bilateral and multilateral agreements under the ALBA banner extend beyond Latin America. Close and amicable co-operation is occurring between states with seemingly incompatible political and social ideologies and vastly distinct histories. Iran assumed observer status in 2007, allowing for collaborative initiatives to be taken under its auspices (most recently, a trade congress for ALBA states’ producers was held in Tehran). Venezuela has also approached both Russia and China on behalf of ALBA, looking to broaden the bilateral ties that already link these nations by launching a formalised relationship with the ALBA bloc. Even US citizens have been the unlikely beneficiaries of a social programme under ALBA, with Venezuela supplying low-income communities with discounted heating oil.
This model of co-operative integration inheres in TWAIL’s call for a harmonised union of peoples. Collectivism has always held a special place in Third World emancipation and today’s internationalism resurrects the traditions of the NAM, creating a united defence of Third World interests. ALBA may be capable of even more than this. The willingness of the founding nations to expand beyond a regional sphere in pursuit of multipolarity in the Third World (and beyond) and an end to global oppression underscores tendencies towards intercontinental solidarity. In short, ALBA could potentially reach the outer boundaries of the Third World and, in the process, construct an ethos of complementarity that might inform a new international legal framework.

Supporting sovereign autonomy

Trade and investment must not be ends in themselves but tools to achieve fair and sustainable development, since true Latin American and Caribbean integration cannot blindly follow the market nor can it simply be a strategy to expand foreign markets or boost trade. To achieve our aims, the state must efficiently play the role of regulator and coordinator of economic activity.

During the decolonisation era scores of Third Worlders perished in independence struggles, fighting for national autonomy and self-determination. The subversion of national sovereignty by supranational authorities is thus of critical concern to the Third World. Deepening globalisation has relocated many functions that once resided in the state apparatus into international legal fora. Through compulsory meta-regulatory norms formed by powerful transnational economic actors, states essentially find decision-making duties expunged from their authority.

The usurpation of state power is favoured by cosmopolites who see this redistribution as progress towards a unified global market. Technological advances in transport and communication accelerate this process, internationalising manufacturing and integrating states into global production chains. Despite market integration, global divisions of power remain: Third World nations provide raw materials and labour which First World states process into value-added goods, engendering a dialectical constancy of principal and subordinate. Supranational schemes were originally developed to further the global operation of capital by standardising regulations across states. From a Third World perspective, however, these institutions represent a modern colonial enterprise, exacerbating wealth transfer from the South to the North. Third World sovereignty is effectively handicapped, as this ‘growing assemblage of ... institutions [and] practices coalesce to erode Third World countries’ independence in favour of transnational capital and powerful states.’

In ALBA, TWAIL finds a method of reasserting Third World sovereignty without eschewing the multilateral collaboration needed to advance collective social welfare. The treaty creates a framework for broad-based regional
integration without channelling power away from states, ensuring national societies preserve authority over social development. It does so by championing a culture of cross-border collaboration. Where supranational regimes evoke rivalry between states through a competition-based model, ALBA promotes harmony, reconstituting state-to-state relationships from competition and self-interest to complementary and mutual advantage.

To this end ALBA has initiated a number of notable measures. For instance, supranational finance has been divorced from externally dictated policy reform. Borrowing nations no longer need submit to reformative measures when seeking financial support. Banco del ALBA, a cooperative development bank, offers low-cost credit for development initiatives that strongly emphasises democratic procedures in its institutional structures. Next, a new regional currency—the SUCRE—has been launched to tackle dependence on foreign currencies. Finally, ALBA nations have adopted a trade-in-kind policy, where regional trade-in-kind privileges local needs over market desires. These measures collectively challenge the disadvantageous circuits of capital and trade that have historically shackled Third World economies.

The reconstitution of inter-state relations effectively reconceptualises the state as a whole: from a source of power—which it can relinquish (or sell)—to a vessel through which the people’s power is mediated. ALBA exists as a space through which mutual co-operation can be effected. Rights over resources rest with a region’s populace and not its regime, in contrast to the liberal approach, which regards resources as commodities to be alienated by the latest government. Bolivia experienced the injurious effects of this view of authority over natural resources when, in 1999, the state bowed to World Bank pressure, privatising Cochabamba’s water supply. Bechtel, the US-owned consortium that obtained the contract, immediately increased prices, reducing access to potable water.

In response to the corporatisation of human needs ALBA’s philosophy aligns with an important pillar of the Third World project: the principle of permanent popular sovereignty over natural resources. This principle precludes the privatisation of the commons and of property deemed nationally important—rights over land and resources vest with the people of a given area—repudiating fetishised private proprietary rights. This divergent approach again appeared in Bolivia where popular pressure initiated the reclaiming of another privatised national resource: natural gas. In 2006 President Evo Morales announced the nationalisation of all hydrocarbon resources two days after Bolivia acceded to ALBA, shifting South America’s second largest natural gas reserves from private to common ownership.

By locating sovereignty and proprietary rights over resources with the people, ALBA seeks to re-centre the human spirit in the international legal regime. The model promotes reclaiming Third World economic and political autonomy, affirming the state’s role as an ambassador for the whole of society’s needs. In short, ALBA repositions peoples as subjects, championing popular aspirations of autonomy and self-determination.
Popular participation in international lawmaking

Harmonising positions in the multilateral arena and for negotiations of all kinds with countries and blocs from other regions, including the struggle for democratization and transparency in international institutions, particularly in the United Nations and its agencies.46

While reclaiming Third World sovereignty and promoting unity opens up new spaces for self-determination, the restoration of policy making to individual nations can only produce tangible justice for Third World peoples when their voices inform international policy aims; when international lawmaking itself becomes democratic. Democracy in international law has long been a contested topic. Notwithstanding domestic institutionalisation, states remain reluctant to inject democratic principles into international governance. Efficiency arguments are used to justify the dictatorial structure of income-based voting and TNC influence in policy making. As a result, the international legal regime exhibits a patently contradictory position on democracy: identifying it as a human right in domestic instances, particularly where it provides impetus for First World intervention, yet subordinating it within its own architecture, tellingly where Third World states dominate numerically.

TWAIL proposes a principled approach to democracy. Crucial is the establishment of a framework to ensure that actions taken by states on the world stage manifest their societies’ demands, shifting from a statist paradigm and towards a people-based one. Although participatory democracy in no way guarantees just outcomes, it increases the representativeness of the regime and thus the likelihood of just outcomes (justice as by-product of democracy). Indeed, the injection of justice in international lawmaking is of pivotal concern to TWAIL.

ALBA’s design infuses public opinion into international law. The integration project facilitates principles of public involvement—via community based decision-making procedures—in the conception and implementation of state policy. For example, a central feature of its governance structure is the Council of Social Movements.47 It brings together corresponding national councils, which include delegates from local community groups of each member state. Operating alongside the top-level Council of Ministers, it possesses the two-fold duty of channelling popular opinion into ALBA initiatives and overseeing public interest in existing projects.48 In this way ALBA at once transforms popular participation from passive to active by endowing community groups with a direct route to top-level decision-making processes, sponsoring a new kind of legitimacy in international law.

As an extension of the Bolivarian Revolution ALBA aims to re-politicise all levels of governance throughout member states.49 Its mechanisms ensure ordinary people can voice their disenchantment with current policies and express new ones. This model of active citizenship constitutes both right and responsibility; citizens have a duty to become involved to realise the potential of the guaranteed rights. For example, while Misión Barrio Adentro brings
Cuban healthcare workers to the poorest neighbourhoods in Venezuela, hands-on participation by recipients enables the programme’s success. Local families often house and feed the workers, provide sites for clinics, and manage health committees. This ALBA coordinated but community-run initiative brought medical professionals to 17 million Venezuelans in its first 18 months, many of whom had never before enjoyed access to healthcare. Ultimately ALBA’s distinctiveness lies in popular participation. By esteeming grassroots democracy, a genuine embodiment of the TWAILian people-based paradigm, ALBA member-states have facilitated popular initiatives, including factory takeovers, legal land occupations and nationalisation proposals of key energy industries. ALBA democratises international law by promoting public participation in decision making. Its core democratic doctrine reflects the needs of the people, constructing an international integration model guided by popular—not by elitist or (sic) academic—articulations of justice.

A place for equity

Special and differentiated treatment which takes the level of development of the different countries and the size of their economies into account and which guarantees that all nations taking part have access to the benefits deriving from the process of integration.

The norms enshrined by international law are manifested in standards. Standards inevitably comprise generalisations that presuppose a comprehensive sameness among members of the defined order. International law proffers such homogeneity. It ignores cultural difference, concealing global economic and political inequality, oversights which exacerbate systemic inequity. As a tool of colonial powers, international law has historically overlooked cultural diversity via narratives of neutrality and order.

TWAIL rejects universalised legal archetypes that bulldoze diversity and confer a heavy burden on vulnerable cultures whose bargaining position and compliance capacity are constrained by legacies of marginalisation and impoverishment; it recognises inequality in the global order. As asserted, a representative system of international law utilises uneven development as a determinant, establishing variable criteria that better reflect capacities, rights and responsibilities. ALBA edges in this direction. The Latin American experience is familiar throughout the Third World, where policies of liberalisation, deregulation and privatisation were prescribed indiscriminately as a panacea for postcolonial underdevelopment, producing a host of social dislocations and undermining many welfare programmes hitherto underway. ALBA rebuts the singular mantra of the IFIs—that Third World states must liberalise their way out of poverty—substituting a spectrum of varied integrative measures.

ALBA recognises difference and uneven development, advocating the nurturing of economically weaker members to rectify manufactured inequality. It does so by reinserting into international law a foundational plank of the
Third World project: special and differential treatment. The concept emphasises substantive equality in ending historical asymmetries. It reflects the truism that, to treat people equally, we must sometimes treat them differently. Established in 2008, Banco del ALBA epitomises this. Aimed at eradicating economic imbalances through the financing of co-operative development initiatives, it provides a blueprint for a future financial system, housing solidarity and mutual co-operation within the banking sector. Next, it provides a notional framework for state-specific bilateral agreements, to be structured around the overriding goal of eliminating social inequalities.

Implicit in mantras of equity and diversity are non-reciprocity and trade-in-kind. ALBA accords exhibit substantive flexibility and variety, allowing states to strike arrangements that best suit individual and regional needs. Existing co-operative triumphs include the longstanding exchange of discounted Venezuelan oil for Cuban human capital (veritable oil for healthcare and oil for education programmes). This successful partnership inspired Petrocaribe, an ALBA offshoot that supplies Venezuelan oil to Caribbean nations on preferential terms in exchange for local goods and services. Bolivia’s accession agreement stipulated that it would primarily contribute natural gas exports in exchange for educational scholarships, new markets for soy exports, and technology. ALBA’s arrangements substitute competition with co-operation, propelling global society towards collective harmony.

Mohammed Bedjaoui argued in 1979 that actualising equity in the global order would require a new kind of international legislative process. ALBA lays the necessary groundwork for such a process by discarding the homogeneity of international law, a source of economic impoverishment and cultural disempowerment. These centripetal arrangements are dually cognisant of what a member nation needs, and what it can contribute. Tailored bilateral treaties recognise local difference and promote complementarity—rather than comparative advantage—by exchanging the resources and services a party is best equipped to supply with those they need the most. It also creates a participatory space that expresses diversity in a manner the dominant regime cannot achieve. Combined, these ethics embody a shift from standardisation to self-actualisation, from homogeneity to plurality, and from equality to equity.

Manifesting a neo-humanism through law

Colonialism endures as, arguably, the leading historical crime of the modern era. As Walter Rodney demonstrated in his seminal text, colonial intervention is at the source of most contemporary Third World plights, with its reverberations continuing to cripple the Third World economically, politically and socially. International law, itself, is a vestige of the colonial era. Fashioned to provide rational and moral justification for the horrors visited upon newly ‘discovered’ peoples and lands by emergent European powers, jus gentium remains a colonising tool par excellence. Sovereignty, territorial integrity and self-determination routinely reflect the changing desires of First World states, whether to legitimate military intervention or to
coerce economic restructuring. We observe then that, despite the high-minded ideals of liberalism, international law remains susceptible to power politics. With its emphasis on juridical equality and procedural fairness, liberalism possesses neither the framework, logic, nor ambition to resolve the imbalances and unjust outcomes these produce.

The Third World fought back. The human rights narrative, the Third World project, and the Five Principles of Peaceful Co-Existence sought to reset global society by launching a series of emancipatory programmes of the highest order. Entire societies were to be liberated, given both the space and means of reconstituting themselves based on a balance of collective and individual will. Third World vision was in fact a global vision of human evolution upholding mutually supportive groupings. Sadly each initiative, in turn, met a similar fate. While liberty, fraternity, and equity may have resonated globally, First World governments were not compelled to surrender pilfered wealth or to share their political power. Political autonomy was granted but economic independence subverted. Human development thus became disconnected from local societies, especially as it was further intertwined with global capitalism. The seductively simple liberal tradition trudged on despite its dismal failure to produce legal, political or social justice, either domestically or internationally.

Yet the ethical basis for renewing the international legal order and its sustaining arrangements persists. TWAIL pushes for a de-centred, multipolar system that promotes plurality and diversity alongside norms of moral cultural equivalency. Reconstructing international law to better reflect the concerns and aspirations of all peoples imbues the corpus with democratic legitimacy, supplanting privately directed supranational institutions. ALBA’s liberating and restorative philosophy offers a blueprint for such a people-based order. Indeed, it appears to re-centre international law around the world’s wealth of cultures and peoples, entrenching a long-absent ethos of equity.

In short, ALBA appears to represent the 21st century TWAILing of international law. Its central tenets and its nascent structures provide a mechanism for refocusing international relations towards critical humanist values of dignity and equity, making real what has hitherto remained ephemeral. This regeneration invariably requires a long-overdue revision of the liberal legal mindset, an evolutionary step that could precipitate a rewriting of world order beyond hierarchy. Indeed, as Freire observes, liberation lies in dialogue between oppressor and oppressed: ‘[the oppressed] cannot enter the struggle as objects in order later to become human beings.’

The old model is cold, sterile, and artificial. It has justified the worst human behaviours and privileged the basest human vices. It has been clung to out of habit and fear, reducing intellectual work to ‘realist’ apologetic musings. The new model, ALBA, inaugurates an age of cross-cultural collaboration to actualise all human potential. Power, no longer the prerogative of Western standard-setters, will be diffused across regions and strata. The inequitable favouring of First World ideals and norms will be substituted by
a new international legal paradigm of co-operation, justice and equity. These will be the manifestations of a neo-human international legal order. ‘And that is what we would hope to see from this. That would be nice.’

Notes

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1 ALBA originally stood for ‘La Alternativa Bolivariana para los pueblos de nuestra America’—in English, the Bolivarian Alternative for the people of our Americas. Its relative success has buttressed its credibility, and during the sixth Summit the name change was announced. See ‘ALBA changes its name to alliance’, Caricom News Network, 26 June 2009, at http://csmnetwork.com/2/index.php?option=com_content&view=article&id=4335:alba-changes-its-name-to-alliance=&catid=122:csmenetwork-latest&Itemid=211, accessed 3 November 2009.


6 ‘Unfortunately, TWAIL ... has never been able to effectively critique neo-liberal international law or project an alternative vision of international law.’ Chimni, ‘Third World approaches to international law’, p 48.

7 For an overview, see DP Fidler, ‘Revolt against or from within the West? TWAIL, the developing world and the future direction of international law’, Chinese Journal of International Law, 2, 2003, p 29.


10 Paolo Freire was a Brazilian education theorist who identified the radical potential of education as a practice of liberation. He explicated a critical pedagogy based on reciprocity and participation that aimed to empower, rather than integrate, its subjects. P Freire, Pedagogy of the Oppressed, New York: Continuum, 2000.

11 ‘I believe strongly and sincerely that with the deep-rooted wisdom and dignity, the innate respect for human lives, the intense humanity that is our heritage, the African race, united under one federal government, will emerge not as just another world bloc to flaunt its wealth and strength, but as a Great Power whose greatness is indestructible because it is not built on fear, envy and suspicion, nor won at the expense of others, but founded on hope, trust, friendship and directed to the good of all mankind.’ Kwame Nkrumah, I Speak of Freedom: A Statement of African Ideology, London: Mercury, 1961, p xiv.

12 J Nehru & D Norman, Nehru, the First Sixty Years: Presenting in his own Words the Development of the Political Thought of Jawaharlal Nehru and the Background against which it Evolved, Bombay: Asia Publishing House, 1965.

13 Throughout the colonial period positivist legal reasoning reified assumptions derived from Darwinian evolutionary theory, legitimising widely held notions of biological superiority.

14 Prashad, The Darker Nations, p 207.

15 Ibid, p 34.

16 Nkrumah, I Speak of Freedom, p xi.

17 ‘We have seen the Argentines reduced to the status of a British colony by means of economic penetration [by the Argentine oligarchy], the sellers of their country.’ Juan Bautista Justo, quoted in V Alba, Nationalists without Nations: The Oligarchy Versus the People in Latin America, New York, Praeger, 1968, p 59.


21 Also notable is Honduras’ Manuel Zelaya. Like Chávez, Zelaya was elected on a moderate platform but soon radicalised, raising the minimum wage, condemning US military presence and joining ALBA. On 28 June 2009 Zelaya was ousted by Supreme Court decree for attempting to hold a non-binding referendum regarding amendments to the constitutional prohibition on re-election. See D Casse, ‘Honduras: coup d’état in constitutional clothing?’, Asil Proceedings, 13(9), 2009, at www.asil.org/files/insight90729pdf.pdf, accessed 3 November 2009.


32 ‘Only integration based on co-operation, solidarity and a common willingness to advance hand in hand towards higher levels of development can satisfy the needs and desires of Latin American and Caribbean countries while preserving their independence, sovereignty and identity.’ Joint Declaration.


35 Chimni, ‘Third World approaches to international law’, p 50.

36 Joint Declaration, principle 1.

37 This staggering amassment of legislative power—and the physical repositories in which it resides—constitutes what Chimni terms the ‘emerging imperial Global State’. Chimni, ‘Third World approaches to international law’. Its legislative processes are tainted by opaque and undemocratic procedures that eschew accountability, and are driven by private capitalist and collaborative state forces.

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44 Widespread civil unrest eventually forced the government to rescind the contract.
46 Joint Declaration, principle 12.
47 Kellogg, ‘Regional integration in Latin America’, p 209.
52 Joint Declaration, principle 2.
54 Joint Declaration, principle 2.
59 Freire, Pedagogy of the Oppressed, pp 67–69, emphasis in the original.

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