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## **TWAIL and the Environment: The State of Nature, the Nature of the State, and the Arab Spring**

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### **INTRODUCTION**

The series of uprisings against long-standing autocratic regimes taking place across the Arab region since December 2010 are often collectively referred to as the Arab Spring. This phenomenon raises interesting questions for scholars affiliated with the Third World Approaches to International Law (TWAIL) movement. In many ways, the youth in the Arab world have a sense of being part of their own independence struggle, recalling the independence movements of postcolonial states. Where will the Arab Spring look for inspiration in rethinking the nature of governance and the state so as to fruitfully rebuild their societies? How will they envision participating in the international system, given the complicity of international law and international institutions in causing many of their troubles, and the concomitant, heavily negative perception of international law in the Arab world?

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To shed light on these concerns, this Article takes a Third World approach to understanding the Arab Spring. TWAIL readings of the Arab Spring could potentially focus on a variety of issues, such as the region's geostrategic importance for world powers, continual Western military and economic intervention into the region, the prevalence of longstanding autocratic regimes, the region's symbolic importance for many world religions, and so on. Instead, this Article places the Arab Spring in the context of a long history of struggle to control natural resources. A significant part of this struggle has taken place in the legal arena, with enduring consequences both for international law and the Third World. Such contextualization will help bring attention to the neglected, but crucial, environmental aspects of the Arab Spring. It also allows an opportunity for self-reflection on how TWAIL has engaged with environmental issues—issues that are the subject of increasing attention in the Third World today. This Article argues that the natural environment plays a seminal role in constructing the sovereign state, and the ability to control nature is an assumed attribute of both sovereignty and development. When examined in the context of Arab state formation, it is possible to link longstanding assumptions about the relationship between the state and nature with the contemporary demands of the Arab Spring. Such assumptions need to be re-thought in order to meaningfully address these demands.

Part One introduces the TWAIL movement and describes what it means to take a Third World approach. Part Two considers TWAIL scholarship on the environment, which in its early years focused on natural resources, then went through a period of disengagement, with a current resurgence of interest. Part Three analyzes the implications of international law and TWAIL understandings of natural resources for the Arab Spring. Based on this analysis, the Conclusion considers useful legal responses to the Arab Spring and contemplates the TWAIL movement's future engagement with environmental issues.

## I WHAT IS TWAIL?

The acronym TWAIL first emerged from the New Approaches to International Law (NAIL) movement in the mid 1990s. NAIL was the intellectual project of an association of academics in the United States interested in investigating the international law discipline as a “legal

intelligentsia with its own cultural politics and will to power.”<sup>1</sup> The term TWAIL was initially coined by a group of NAIL scholars committed to furthering Third World interests. However, the acronym soon expanded to encompass the significant amount of such scholarship that already existed before the 1990s, which served as a foundation and inspiration for the 1990s movement. Since then, the movement has grown to include scholars that have self-identified with TWAIL and share its political commitment to addressing Third World issues and prioritizing Third World interests.

The term “Third World<sup>2</sup>” has been used interchangeably with the terms “less-developed,” “developing,” “underdeveloped,” or the “global South,” to refer to states and peoples that are marginalized in international society—lagging behind in terms of economic growth and prosperity as well as political power and influence.<sup>3</sup> Third World states have sometimes formed political coalitions, such as the Group of 77 (G-77) and the Non-Aligned Movement,<sup>4</sup> and Third World peoples have also been loosely linked at various times by social movements of protest by the poor against the rich.<sup>5</sup> Mwalimu Julius Nyerère described the Third World as the majority of the world’s population, possessing the largest part of certain important raw materials, and yet having no control and hardly any influence over the manner in which nations of the world arrange their economic affairs.<sup>6</sup>

In the late twentieth century, when many Third World states such as South Korea, Taiwan, Brazil, Hong Kong, and Singapore

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<sup>1</sup> David Kennedy, *When Renewal Repeats: Thinking Against the Box*, 32 N.Y.U. J. INT’L L. & POL. 335, 489 (2000).

<sup>2</sup> The term “Third World” is credited to the French demographer Albert Sauvy, who drew an analogy with the *Tiers État* within French society in order to address the marginalized and oppressed among the population. ALFRED SAUVY, *LA TERRE ET LES HOMMES: LE MONDE OÙ IL VA, LE MONDE D’OÙ IL VIENT* 41 (1990).

<sup>3</sup> Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 WIS. INT’L L.J. 353, 356 (1998).

<sup>4</sup> The Group of 77 or G-77 was formed on June 15, 1964, through the *Joint Declaration of the 77 Countries* issued at the United Nations Conference on Trade and Development (UNCTAD). See *About the Group of 77*, THE GROUP 77 AT THE UNITED NATIONS, <http://www.g77.org/doc/> (last visited Sept. 30, 2012). The Non-Aligned Movement was founded in Belgrade in 1961 to advocate a middle course for states of the developing world between the Western and Eastern blocs during the Cold War. It is a group of states that considered themselves not aligned formally with or against any major power bloc. See FIFTEENTH SUMMIT OF THE NON-ALIGNED MOVEMENT and INTERNATIONAL INSTITUTE FOR NON-ALIGNED STUDIES, <http://www.iins.org/> (last visited Sept 30, 2012).

<sup>5</sup> Mickelson, *supra* note 3, at 357.

<sup>6</sup> J. Nyerère, *South-South Opinion*, in THE THIRD WORLD STRATEGY: ECONOMIC AND POLITICAL COHESION IN THE SOUTH 9–10 (Altaf Gauhar ed., 1983).

successfully developed an export-oriented process of industrialization, analysts began to declare that the Third World no longer existed.<sup>7</sup> Rapid economic growth in China and India raises the same issue today. The term “Third World” is also criticized because of the growing diversity amongst Third World states and the fracturing and reshaping of alliances between them. Scholars have long argued that the concept of the Third World camouflages the differences between and within these nations. Michael Hardt and Antonio Negri famously declared that globalization had made the Third World obsolete, as there is a First World in every Third World, and a Third in the First, and the Second almost nowhere at all.<sup>8</sup>

TWAIL scholars have negotiated these issues continually from the very early years of the movement. R.P. Anand observed of the Third World that:

[t]hey cover a whole range of economic, political and cultural diversities, even antagonisms. The family of underdeveloped countries include both producers and consumers of energy, importers and exporters of raw materials, nations which can feed their populations as well as those which almost always face the spectre of famine. They differ among themselves so greatly in economic promise that they are sometimes divided into ‘third’, ‘fourth’ and ‘fifth’ worlds . . . In fact, for many purposes it is more misleading than illuminating to lump together countries of Asia, Africa, and Latin America. And yet, for a variety of purposes these countries perceive themselves as a group, a perception made more impressive because it overcomes an underlying, undeniable diversity.<sup>9</sup>

Many decades after Anand helped pioneer TWAIL scholarship, his observations on the self-identified and self-constituted nature of TWAIL remain insightful. The movement continues to grow because of its enduring relevance for scholars from across geographical, social, and cultural divides. International lawyers from Africa, North and South America, Asia and the Pacific, and Europe are still drawn together by shared concerns for the poorest and most vulnerable peoples in their societies, finding common patterns of domination and subordination and usefulness in working together.

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<sup>7</sup> See, e.g., NIGEL HARRIS, *THE END OF THE THIRD WORLD* (1987); Mark T. Berger, *The End of the “Third World”?*, 15 *THIRD WORLD Q.* 257 (1994); Mark T. Berger, *After the Third World? History, Destiny and the Fate of Third Worldism*, 25 *THIRD WORLD Q.* 9 (2004).

<sup>8</sup> MICHAEL HARDT & ANTONIO NEGRI, *EMPIRE* 263–64 (2000).

<sup>9</sup> R.P. ANAND, *INTERNATIONAL LAW AND THE DEVELOPING COUNTRIES: CONFRONTATION OR COOPERATION?* 120 (1987).

The endurance of TWAIL is partly attributable to the way the term “Third World” has been employed by TWAIL scholars, with an awareness of its flexible, porous meanings. Indeed, TWAIL scholarship has helped highlight that there are no rigid boundaries between the colonized and the colonizers, or between the Third World and the West. The identities of victor and victim were rarely pure in colonial times, and the postcolonial world has seen a continuation of mutual cultural transference and hybridity of cultures and identities.<sup>10</sup> Rather than claiming that inflexible boundaries exist between the West and the Third World, much of TWAIL scholarship endeavors to break down these boundaries and contest any claims to the stability of meaning and identity.<sup>11</sup> Most TWAIL scholars have understood colonialism as a cultural project of control. Colonized societies were classified and labeled. New distinctions and oppositions came into being between colonizers and colonized, Europe and Asia, modern and primitive, and West and East.<sup>12</sup> One of the purposes of TWAIL is to complicate contemporary understandings of the Third World, rejecting simplistic characterizations of Third World states and peoples. As Baxi has observed, long before Hardt and Negri identified globalization as scrambling the composition of the Three Worlds, scrambling had already occurred by means of centuries of colonialism.<sup>13</sup>

Within the TWAIL movement, “Third World” has evolved to mean more than just the traditional coalition of states, encompassing Third World peoples, social movements, non-government organizations, and non-state and transnational actors.<sup>14</sup> As Philip Darby has pointed out, while the term “Third World” may be problematic, the alternatives are too, and it is hard to do without the category as it

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<sup>10</sup> LEEA GANDHI, *POSTCOLONIAL THEORY: A CRITICAL INTRODUCTION* 126, 131, 137 (1998).

<sup>11</sup> See, e.g., Annelise Riles, *Aspiration and Control: International Legal Rhetoric and the Essentialisation of Culture*, 106 *HARV. L. REV.* 723 (1993); Dianne Otto, *Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference*, 5 *SOC. & LEGAL STUD.* 337 (1996).

<sup>12</sup> NICHOLAS B. DIRKS, *CASTES OF MIND: COLONIALISM AND THE MAKING OF MODERN INDIA* 9 (2001).

<sup>13</sup> HARDT & NEGRI, *supra* note 8; Upendra Baxi, *What May the “Third World” Expect from International Law?*, 27 *THIRD WORLD Q.* 713, 717 (2006) (giving the examples of enforced diasporas of laboring classes, slavery, slave-like labor, forced relocations, and so on).

<sup>14</sup> Balakrishnan Rajagopal, *Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy*, 27 *THIRD WORLD Q.* 767, 767 (2006).

provides the “conceptual tripwire against colonising tendencies of much dominant discourse.”<sup>15</sup> It is a concept and terminology that aids counter-hegemonic discourse.

## II TWAIL AND THE ENVIRONMENT

Environmental issues have not been a focus of TWAIL scholarship since the acronym was first espoused in the mid 1990s. This was not always the case amongst international lawyers advocating for Third World issues, and it is unlikely to remain the case in the future. In the 1960s and 1970s, Third World international lawyers prioritized environmental issues, such as control over natural resources and the fair sharing of resources outside sovereign territories. Environmental principles, including the doctrine of permanent sovereignty over natural resources and the common heritage of humankind, were at the heart of post-independence Third World law reform movements.<sup>16</sup>

Early TWAIL scholarship in the post-independence era proceeded on the basis that newly-independent states would embrace only those parts of international law that were consistent with their sovereignty.<sup>17</sup> This assumption was based on the norms of sovereign equality and non-intervention.<sup>18</sup> Newly-independent Third World states were hopeful that the formation of the United Nations, and the liberal precepts of equality, freedom, and neutrality that it embodied, would help them participate in international law. TWAIL scholars in the decolonization era wanted to emphasise that the Third World was elongated with international law; that it had contributed, and was capable of continuing to contribute, to a system of global order.<sup>19</sup>

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<sup>15</sup> Phillip Darby, *Pursuing the Political: A Postcolonial Rethinking of Relations International*, 33 MILLENNIUM: J. INT’L STUD. 1, 2–3 (2004).

<sup>16</sup> See *infra* note 38.

<sup>17</sup> See Antony Anghie & B.S. Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflicts*, 2 CHINESE J. INT’L L. 77 (2003) (Anghie and Chimni include in this early group Georges Abi-Saab, F. Garcia-Amador, R.P. Anand, Mohammed Bedjaoui, Taslim O Elias, C.H. Alexandrowicz, Richard Falk, Nico Schrijver, and P.J.I.M. de Waart).

<sup>18</sup> U.N. Charter art. 2, para. 1; art. 2, para. 7.

<sup>19</sup> See, e.g., C.H. ALEXANDROWICZ, AN INTRODUCTION TO THE HISTORY OF THE LAW OF NATIONS IN THE EAST INDIES (16TH, 17TH AND 18TH CENTURIES) (1967); ASIAN STATES AND THE DEVELOPMENT OF UNIVERSAL INTERNATIONAL LAW (R.P. ANAND ed., 1972); C.G. WEERAMANTRY, ISLAMIC JURISPRUDENCE: AN INTERNATIONAL PERSPECTIVE (1988); SURYA PRAKASH SINHA, LEGAL POLYCENTRICITY AND INTERNATIONAL LAW (1996); Onuma Yasuaki, *When was the Law of International Society Born? An Inquiry of the History of International Law from an Intercivilizational Perspective*, 2 J. HIST. INT’L L. 1 (2000).

These scholars hoped Third World legal traditions could be gradually integrated into the existing system through participation in the evolution of the traditional sources of law.<sup>20</sup>

Despite the endeavours of TWAIL scholars over the last sixty years for Third World participation in the international legal system, international courts and tribunals have not significantly drawn on non-Western legal traditions in the administration of international justice.<sup>21</sup> However, Third World states have participated in the law-making process in some important ways. Perhaps the most notable of these has been the establishment of the right to self-determination.<sup>22</sup> Third World states also contributed to outlawing apartheid and racism in modern international law, turning away from the law's colonial past. Other legal concepts that Third World states played a significant part in formulating include the principle of common heritage of humankind; the doctrine of permanent sovereignty over natural resources; the concept of peaceful and friendly relations among states; social, economic, and cultural rights; the right to development for all states and peoples; the principle of common but differentiated responsibilities for the global environment; and the concept of sustainable development.<sup>23</sup>

Third World international lawyers' focus on environmental and natural resource issues occurred in the context of their movement to inaugurate a New International Economic Order (NIEO) in the 1960s and 1970s to improve Third World participation in the global economy.<sup>24</sup> In 1945, when the Charter of the United Nations was drafted in San Francisco, the Charter clearly located responsibility for economic matters within the U.N. in order to regulate the increased number of nation-states in the newly decolonized world.<sup>25</sup> Nevertheless, Western powers were committed to a separate system, formulated at Bretton Woods, to regulate economic matters. Third World international lawyers argued this was contrary to explicit

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<sup>20</sup> Statute of the International Court of Justice art. 38, para. 1.

<sup>21</sup> Christopher Weeramantry & Nathaniel Berman, *The Grotius Lecture Series*, 14 AM. U. INT'L L. REV. 1515, 1562–68 (1999).

<sup>22</sup> Baxi, *supra* note 13, at 719.

<sup>23</sup> *Id.*

<sup>24</sup> See G.A. Res. 1803 (XVIII), U.N. Doc. A/5217 (Dec. 14, 1962); G.A. Res. 3281 (XXIX), U.N. Doc. A/RES/29/3281 (Dec. 12, 1974); G.A. Res. 3201 (S-VI), U.N. Doc. A/RES/S-6/3201 (May 1, 1974); MOHAMMED BEDJAOUI, *TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER* (1979).

<sup>25</sup> U.N. Charter, *supra* note 18, at art. 1, para. 3; art. 55; art. 56.

Charter provisions, alleging the West was pursuing a conscious policy to keep economic matters out of the U.N. General Assembly where Third World states could participate as equals.<sup>26</sup>

Third World states, in a political coalition called the G-77, attempted to reform the economic system by passing resolutions in the U.N. General Assembly where they had superior numbers.<sup>27</sup> These resolutions asserted Third World states' control over their natural wealth, propounding a doctrine of permanent sovereignty over natural resources. Mohammed Bedjaoui provided much of the legal basis for the NIEO in his seminal work, *Towards a New International Economic Order*, criticizing the imperial nature of international law.<sup>28</sup> However, at the same time, the NIEO called for economic cooperation to be removed "from the field of good faith and . . . [moved] to the legal sphere."<sup>29</sup> While rejecting the system, Bedjaoui simultaneously called for economic matters to be regulated by international law. Despite critiquing dominant operations of law, Bedjaoui nonetheless retained faith in the international legal system's determinacy and potential for fairness and justice.

The attempt to reform the international economic system and international law ultimately failed. While experts disagreed on reasons for failure, the G-77's unity around NIEO was ultimately offset by coordinated economic policy responses in wealthy states and the move towards the Washington Consensus.<sup>30</sup> Thus, in some sense, the NIEO did indeed provoke a new order, albeit not the one intended. Some scholars also attributed the failure of NIEO to internal inconsistencies, where the G-77 took up a seemingly oppositional stance, but at the same time uncritically embraced the underlying precepts of the existing system.<sup>31</sup> All the same, it was the G-77's reliance on accepted legal argument and discourse that gave this challenge a voice in the international arena and made it possible to argue, albeit unsuccessfully, for so radical a proposal.

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<sup>26</sup> Clarence Clyde Ferguson, Jr., *Redressing Global Injustices: The Role of Law*, in *THIRD WORLD ATTITUDES TOWARD INTERNATIONAL LAW: AN INTRODUCTION* 365 (Frederick E. Snyder & Surakiart Sathirathai eds., 1987).

<sup>27</sup> The success of this strategy was limited since U.N. General Assembly resolutions were relegated to the category of "soft law" by Western states because they did not satisfy positivist legal requirements. See Anghie, *infra* note 30.

<sup>28</sup> BEDJAOUI, *supra* note 24, at 41, 50.

<sup>29</sup> Emilio O. Rabasa, *The Charter of Economic Rights and Duties of States*, 68 AM. SOC'Y INT'L L. 302, 302 (1974) (quoting Mexican President Luis Echeverría).

<sup>30</sup> See generally Otto, *supra* note 11; ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 196–235 (2004).

<sup>31</sup> Otto, *supra* note 11, at 348, 353.

Early TWAIL scholars embraced the transformative potential of the law. Yet reforms such as the NIEO were not adopted despite their basis on the values of equality and the rule of law which international law claims to promote.<sup>32</sup> Failed reform attempts by earlier scholars inspired the search for a stronger mode of critique by those TWAIL scholars emerging out of the NAIL movement in the 1990s. This scholarship attempted to understand why so many apparently liberal and neutral international law projects did not deliver on their promise.<sup>33</sup> Some scholars pointed to the futility of attempting reform within the existing international law framework, claiming that lack of success in the past was evidence that the system itself is complicit in the subjugation of formerly colonized peoples.<sup>34</sup> They argued that concepts that seem ostensibly open and neutral actually help to further inequalities in contemporary international relations, albeit in an unstated way.<sup>35</sup> Therefore, these scholars attempted to identify how bias is embedded into the discipline, perpetuating ongoing structural violence towards the Third World.

More recent TWAIL scholarship also proclaimed a shift in focus to the actualized experience of Third World peoples rather than Third World states. Early TWAIL scholarship frequently relied on principles of non-intervention and sovereignty in its attempts to empower Third World states. However, this tactic became increasingly unpopular with Third World peoples and scholarship, not only because of its lack of success in instituting more equal relationships between states, but also because such legal arguments were co-opted and manipulated by powerful elites in the Third World who used anti-Western sentiment to “cover up contemporary faults, corruptions, tyrannies.”<sup>36</sup> Some Third World governments, including

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<sup>32</sup> Makau Mutua & Antony Anghie, *What is TWAIL?*, 94 AM. SOC'Y INT'L L. PROC. 31, 40 (2000).

<sup>33</sup> *Id.* at 39.

<sup>34</sup> Otto, *supra* note 11, at 344–48.

<sup>35</sup> See, e.g., James Thuo Gathii, *Neoliberalism, Colonialism and International Governance: Decentering the International Law of Governmental Legitimacy*, 98 MICH. L. REV. 1996 (2000); Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT'L L.J. 1 (1999); SIBA N. GROVOGUI, SOVEREIGNS, QUASI SOVEREIGNS, AND AFRICANS: RACE AND SELF-DETERMINATION IN INTERNATIONAL LAW (1996); B.S. CHIMNI, INTERNATIONAL LAW AND WORLD ORDER: A CRITIQUE OF CONTEMPORARY APPROACHES (1993); Riles, *supra* note 11.

<sup>36</sup> EDWARD W. SAID, CULTURE AND IMPERIALISM 17 (1993). See also Dipesh Chakrabarty, *Modernity and Ethnicity in India*, in MULTICULTURAL STATES: RETHINKING DIFFERENCE AND IDENTITY 91 (David Bennett ed., 1996) (describing the fears of some

many Arab regimes, used principles of sovereignty and non-intervention as shields from international scrutiny while they perpetuated injustices on their own peoples and unjustly enriched domestic and international elites. Therefore, more recent TWAIL scholarship has maintained that “it is sometimes through supporting the Third World state and at others, by critiquing it, that the interests of Third World peoples may be advanced.”<sup>37</sup>

While TWAIL pioneers focused on natural resource sovereignty and fair sharing of resources from common areas such as the deep seabed,<sup>38</sup> the more critical strain of TWAIL scholarship that emerged in the 1990s did not deeply engage with environmental or natural resource issues.<sup>39</sup> Lack of TWAIL scholarship on environmental matters in recent decades may be attributable to an intellectual ambivalence about the embryonic field of international environmental law and its usefulness for Third World interests. Third World states, peoples, and scholars have long been wary of the international environmental law project, perceiving it as an attempt to ameliorate Western development mistakes at the expense of Third World development.<sup>40</sup> As Anand observes;

[T]here are sharp and bitter differences between the developed and the under-developed, the rich and the poor, the satiated and the hungry . . . . As the ways of life and consumer habits of the rich countries, and prosperity of their people are transmitted to the remotest corners of the Third World . . . ambitions to imitate them naturally arise . . . . The poor countries have also come to realize that the only way to alleviate themselves from the long and humiliating servitude is to achieve an industrial base . . . like those in North America and Europe, irrespective of the environmental

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Indian intellectuals that postcolonial and subaltern critique will play into the hands of Hindu fundamentalists by promoting a new indigenism in the populace). *See also* Dipesh Chakrabarty, *HABITATIONS OF MODERNITY: ESSAYS IN THE WAKE OF SUBALTERN STUDIES* xxi (2002).

<sup>37</sup> Anghie & Chimni, *supra* note 17, at 83.

<sup>38</sup> *See, e.g.*, R.P. ANAND, *LEGAL REGIME OF THE SEA-BED AND THE DEVELOPING COUNTRIES* (1975); K. Krishna Rao, *The Legal Regime of the Sea-Bed and Ocean Floor*, 9 *INDIAN J. INT'L L.* 1 (1969); A.O. Adede, *The Group of 77 and the Establishment of the International Sea-Bed Authority*, 7 *OCEAN DEV. & INT'L L.* 31 (1979); *PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES IN INTERNATIONAL LAW: PRINCIPLE AND PRACTICE* (Kamal Hossain & Subrata Roy Chowdhury eds., 1984); NICO SCHRIJVER, *SOVEREIGNTY OVER NATURAL RESOURCES: BALANCING RIGHTS AND DUTIES* (1997).

<sup>39</sup> Karin Mickelson is a notable exception. *See, e.g.*, Karin Mickelson, *South, North, International Environmental Law, and International Environmental Lawyers*, 11 *Y.B. INT'L ENVTL. L.* 52 (2000).

<sup>40</sup> Anil Agarwal & Sunita Narain, *Global Warming in an Unequal World: A Case of Environmental Colonialism*, *EARTH ISLAND J.* 39 (1991).

effects . . . . The ecologists are horrified to imagine the risk on the human horizon if more than two thirds of the “wretched of the earth” were also to try and live like Europeans or Japanese or sought American standards. Between the chains of poverty in the Third World, and the shackles of affluence in the developed countries, future seems a prison to many intellectuals.<sup>41</sup>

The birth and evolution of international environmental law is conventionally narrated as progressing from the 1972 Stockholm Conference through the 1992 Rio Earth Summit and the 2002 Johannesburg Conference to more recent summits in Copenhagen and Durban.<sup>42</sup> The same decades have witnessed a deepening divide between the Third World and the West on environmental issues. Legal concepts such as sustainable development and common but differentiated responsibilities for the global environment adeptly articulated what was needed to bridge the divide. However, the concepts were unsuccessful in actually bridging it, as they fell short of assigning a hierarchy of norms and actions for states to observe.<sup>43</sup>

Despite international environmental law’s unpropitious aspects and the continuing conundrum of the intellectual prison Anand identified, contemporary TWAIL scholarship is reengaging with environmental issues in a trend that is likely to increase sharply in coming years. Dominant development patterns coupled with population growth will lead to increased resource consumption and pollution and waste, causing both resource scarcity and ecological crises. As the last remaining pockets of many natural resources exist in the Third World, and as poorer regions are more vulnerable to ecological crises, international environmental law will become an ever more strategic site from which Third World peoples, movements, scholars, and states can contest, negotiate, and resist international economic and development paradigms. Today, Third World social movements are increasingly harnessing environmental issues as an opportune means

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<sup>41</sup> R.P. Anand, *Valedictory Address*, in *LAW, SCIENCE AND ENVIRONMENT* 266–7 (R.P. Anand, Rahmatullah Khan & S. Bhatt eds., 1987).

<sup>42</sup> For a critique of this narrative, see Mickelson, *supra* note 39, at 55–60. She points out that most international environmental law texts equate the specialized field with the rise of a “global environmental consciousness,” distancing itself from the history of international laws that enabled colonialism and the exploitation of Third World natural resources.

<sup>43</sup> See, e.g., GILBERT RIST, *THE HISTORY OF DEVELOPMENT: FROM WESTERN ORIGINS TO GLOBAL FAITH* (Patrick Camiller trans., 2d ed., 2002); Jaye Ellis, *Sustainable Development as a Legal Principle: A Rhetorical Analysis*, in 2 *SELECT PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW* 642 (Hélène Ruiz Fabri, Rüdiger Wolfrum & Jana Gogolin eds., 2010).

of challenging fundamental assumptions that underpin capitalism and development. The same shift is evident amongst TWAIL scholars, with environmental issues garnering a significant increase in attention in recent TWAIL forums.<sup>44</sup>

The increasing engagement of TWAIL scholars with environmental issues occurs at an opportune time when alternative voices and modes of discourse may help counteract propensities towards unprofitable debate and intractable argument in international environmental law. In the wake of the 2009 Copenhagen Climate Change Summit's frustrating negotiation deadlock and renowned failure to reach international agreement, mass media and scholarly discourse have contributed to entrenching a number of misleading dogmas about the Third World and international environmental law.<sup>45</sup>

The reluctance of "emerging polluters," such as China and India, to commit to strict carbon dioxide emission controls at Copenhagen was framed by the United States, and most media commentators, as the primary barrier to long-term polluters, such as the United States, joining an international regime.<sup>46</sup> Since then, experts have increasingly argued that, while they are sympathetic to equity and justice demands of China, India, and Third World states, urgency demands that international agreements be reached soon—even if they are unfair agreements—so as to mitigate against potentially irreversible environmental damage with regard to changing climates and biodiversity loss.<sup>47</sup> While such experts do not overstate the

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<sup>44</sup> For example, while the 2007 TWAIL Conference, held at Albany Law School from April 20–21, saw very few papers addressing environmental issues, the 2011 TWAIL Conference, held at the University of Oregon School of Law from October 20–22, saw environmental papers presented across various general and specialized panels and themes, addressing, among other things, the politics of environmental coalitions, capitalism working for environmental protection, international law's role in natural resource allocation, and climate investment and adaptation funds, to name but a few.

<sup>45</sup> See, e.g., Lavanya Rajamani, *The Making and Unmaking of the Copenhagen Accord*, 59 INT'L & COMP. L.Q. 824 (2010); David Hunter, *Implications of the Copenhagen Accord for Global Climate Governance*, 10 SUSTAINABLE DEV. L. & POL'Y 4 (2010).

<sup>46</sup> See, e.g., *Obama's Copenhagen Speech*, FOREIGN POL'Y (Dec. 18, 2009), available at [http://www.foreignpolicy.com/articles/2009/12/18/obamas\\_copenhagen\\_speech\\_0](http://www.foreignpolicy.com/articles/2009/12/18/obamas_copenhagen_speech_0); John Vidal et. al., *Low Targets, Goals Dropped: Copenhagen Ends in Failure*, GUARDIAN (Dec. 18, 2009), available at <http://www.guardian.co.uk/environment/2009/dec/18/copenhagen-deal>; Richard Black, *Why Did Copenhagen Fail to Deliver a Climate Deal?*, BBC NEWS (Dec. 22, 2009), <http://news.bbc.co.uk/2/hi/science/nature/8426835.stm>.

<sup>47</sup> See generally ERIC A. POSNER & DAVID WEISBACH, *CLIMATE CHANGE JUSTICE* (2010); Alexander Gillespie, *An Introduction to Ethical Considerations in International Environmental Law*, in RESEARCH HANDBOOK ON INTERNATIONAL ENVIRONMENTAL LAW 117 (Malgosia Fitzmaurice, David M. Ong & Panos Merkouris eds., 2011); Eric A.

urgency of the issue, they contribute to shaping conversations in ways that selectively represent the international community's choices and direct attention away from other important conversations. The reason wealthy states have not made significant progress in stabilizing emissions has little to do with emerging economies and much more to do with their own development choices and dilemmas. The exigencies of the situation require such issues be urgently addressed and overcome because wealthy states remain the largest per capita polluters.<sup>48</sup> Without such progress and legal commitments on the part of wealthy economies, the international environmental law commitments of emerging economies will be of little avail in mitigating irreversible ecological damage.

Increasing TWAIL engagement may also help counteract the dominant international environmental law narrative of the Third World as seeking only poverty alleviation and uninterested in environmental protection. Albeit simplistic, this is the picture depicted in most disciplinary texts.<sup>49</sup> Indeed, as Mario Prost and Alejandra Torres Camprubí point out, in recent years it has not been unusual to find references to the global South "not merely as a reluctant and hesitant participant in multilateral negotiations, but one that is *perverting* environmental diplomacy."<sup>50</sup> The narrative obfuscates the lack of environmental consciousness in wealthy societies and ignores the progress that many Third World communities have made on sustainability issues, increasingly necessitated by being on the front lines of climate change, deforestation, desertification, drought, and other environmental crises.

As international environmental law inherited international law's focus on the state as the primary actor on the global stage, its discourse does not easily allow appreciation of the potential that local sustainable practices have for tackling global problems. TWAIL

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Posner & Cass R. Sunstein, *Should Greenhouse Gas Permits Be Allocated on a Per Capita Basis?*, 97 CALIF. L. REV. 51 (2009).

<sup>48</sup> This is without prejudice to addressing the issue of paying off ecological debt for past pollution. See also Karin Mickelson, *Leading Towards a Level Playing Field, Repaying Ecological Debt, or Making Environmental Space: Three Stories about International Environmental Cooperation*, 43 OSGOODE HALL L.J. 137 (2005).

<sup>49</sup> DAVID HUNTER, JAMES SALZMAN & DURWOOD ZAELE, *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY* 27 (2002); ELLI LOUKA, *INTERNATIONAL ENVIRONMENTAL LAW: FAIRNESS, EFFECTIVENESS, AND WORLD ORDER* 29 (2006).

<sup>50</sup> Mario Prost & Alejandra Torres Camprubí, *Against Fairness? International Environmental Law, Disciplinary Bias and Pareto Justice*, 25 LEIDEN J. INT'L L. 379 (2012).

scholars such as Rajagopal have made valuable contributions in this regard by examining how international law affects, and is affected by, the Third World, not only on the state and interstate level, but with regard to grassroots peoples' movements and social movements that at times transcend state boundaries.<sup>51</sup> Alongside the reemergence of the economic and political power of China, India, Brazil, Russia, Indonesia, South Africa, and others—states that have an increasing role in shaping the global environment—there is also increased potential for alternative cultures, understandings, and voices to emerge to help creatively articulate what sustainable development is, and provide choices other than harmful development trajectories of the past.<sup>52</sup>

The Arab Spring challenges TWAIL scholars to reacquaint themselves with and reassess the history of Third World international lawyers' engagement with natural resource and sustainability issues. The legacy of early postcolonial efforts to assert sovereignty and independence have, to some extent, contributed to the problems facing Arab peoples today. The exercise of sovereignty over Arab natural resources remains contentious and unresolved and has to be rethought so as to meaningfully respond to the demands of the Arab Spring. Sustainable solutions also require addressing the impact of rapid population growth and climate change in the Arab world, in a region that hosts the world's largest known source of hydrocarbons. Part III argues that addressing these complex issues necessitates an examination and rethinking of the problematic assumptions about the natural environment that underlie international law.

### III THE ARAB SPRING

The United Nations Development Programme's *2010 Human Development Report* recorded that Arab states led the world in terms of improvements in human development over the past forty years.<sup>53</sup>

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<sup>51</sup> See generally BALAKRISHNAN RAJAGOPAL, *INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS, AND THIRD WORLD RESISTANCE* (2003). He urges a focus on the localized Third World experience of peasants and grassroots movements and maintains that "ignoring the role of the local as an agent of institutional transformation is . . . inseparable from the hegemonic nature of international law as an elitist discipline." B. Rajagopal, *International Law and the Development Encounter: Violence and Resistance at the Margins*, 93 AM. SOC'Y OF INT'L LAW PROC. 16, 16–17 (1999).

<sup>52</sup> K. Khoday & U. Natarajan, *Fairness and International Environmental Law from Below: Social Movements and Legal Transformation in India*, 25 LEIDEN J. INT'L L. 415 (2012).

<sup>53</sup> U.N. DEVELOPMENT PROGRAMME, *HUMAN DEVELOPMENT REPORT*, at 29 (2010).

Development in leading states such as Oman, Saudi Arabia, Tunisia, Algeria, Morocco, and Libya was not solely in terms of increased gross domestic product, but primarily in terms of improving access to health and education.<sup>54</sup> Despite such achievements, the region has witnessed a wave of popular uprisings challenging state systems. The natural environment plays a seminal role in shaping systems of governance and law. Understanding this link not only illuminates why development gains have been unable to assuage popular dissatisfaction, but also how the development process can itself breed widespread discontent.

Political analysts have sought for common threads across the numerous uprisings in the Arab region, to formulate effective responses to the dissatisfaction expressed en masse in streets and squares from north Africa (Algeria, Egypt, Libya, Morocco, Tunisia, and Western Sahara) to the Levant (Israel, Jordan, Lebanon, Occupied Palestinian Territories, and Syria) to the Arabian peninsula (Bahrain, Kuwait, Oman, Saudi Arabia, and Yemen), as well as Iraq and parts of Iran. As all these movements challenge state legitimacy, many scholars and commentators have pointed to the region's lack of civil and political rights, giving the populace neither protection from the state nor means of holding the state accountable. While this is undeniably the case across many parts of the Arab world, why is it so and how did it come about? What is the role of international law in this story? Part of the answer lies in the role of the natural environment in shaping governance. Nature has played an important role in shaping the modern sovereign state, and the relationship between the state of nature and the nature of the state has been particularly telling in the Arab world.

From the region's vast oil and gas fields, to its increasingly scarce water and arable land, the natural environment has profoundly shaped political and development trajectories. Indeed, the genesis of many Arab states stems from colonial powers drawing state boundaries on the basis of known oil reserves.<sup>55</sup> The Western idea of the modern

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<sup>54</sup> *Id.*

<sup>55</sup> In December 1917, the newly established Bolshevik regime in Russia published the overthrown Czarist government's secret treaties. Amongst these were the *Sykes-Picot Accords*—agreements between Britain, France, and Russia to partition the Middle East among them. These agreements eventually became the basis for the post-war division of the region between Britain and France. See HULL UNIVERSITY ARCHIVES, THE PAPERS OF MARK SYKES, 1879–1919, DDSY(2), available at <http://www.britishonlinearchives.co.uk/9781851171507.php>.

state brought to the region not only boundaries, but also the assertion of state control over nature as the basis for modernity and progress. As E.B. Tylor, a Victorian anthropologist, observed in his 1847 work, *Primitive Culture*, “[a]cquaintance with the physical laws of the world, and the accompanying power of adapting nature to man’s own ends are, on the whole, lowest among savages, mean among barbarians, and highest among modern educated nations.”<sup>56</sup>

Scholars and philosophers of the European Enlightenment often understood Third World societies as being trapped in a state of nature, in contrast with the European state of modernity. The consequence was not simply a negative portrayal of non-European cultures, but rather an understanding that was to seminally shape imperial projects of transformation. During the European Enlightenment, the conquest of nature and the growth of industry became accepted as the destiny of all societies because it was seen as the best way to meet the greatest variety of human needs.<sup>57</sup> Thus, Jean-Baptiste Say observed in 1828, “[e]ither they will become civilized or they will be destroyed. Nothing can hold out against civilization and the powers of industry. The only species to survive will be those that industry multiplies.”<sup>58</sup> Non-European societies were placed within an evolutionary spectrum and made to undertake the linear march from the state of nature to the modern nation state—the origins of the modern concept of development.

The modern and sovereign nation-state was the conceptual and legal vehicle through which the West could reshape Third World societies and ostensibly help them escape their primitive natural state. The nation-state was tied to a particular understanding of development, and postcolonial states were imbued with a civilizing mission where developmental progress was equated with the degree of state control over nature. Human development was assumed to progress from nomadic to pastoral ways of life, followed by the advent of agricultural systems, and finally industrial and post-industrial production modes as societies perfected over time their ability to efficiently exploit natural resources.<sup>59</sup>

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<sup>56</sup> EDWARD B. TYLOR, 1 *PRIMITIVE CULTURE: RESEARCHES INTO THE DEVELOPMENT OF MYTHOLOGY, PHILOSOPHY, RELIGION, LANGUAGE, ART & CUSTOM* 27 (1874).

<sup>57</sup> See generally Rist, *supra* note 43; VASSOS ARGYROU, *THE LOGIC OF ENVIRONMENTALISM: ANTHROPOLOGY, ECOLOGY AND POSTCOLONIALITY* 1–36 (2005).

<sup>58</sup> JEAN-BAPTISTE SAY, *COURS COMPLET D’ECONOMIE POLITIQUE* 74 (1843).

<sup>59</sup> PETER STEIN, *LEGAL EVOLUTION: THE STORY OF AN IDEA* 19 (1980).

Consequently, the legal system of the modern nation-state was based on the environment being a domain of utility, to be mastered and brought under humanity's control, compelled to satisfy its needs and administer to its happiness. Nature was devoid of a spirit, and was a standing reserve of resources for humanity to serve its development. Law, particularly property and land law, was a central mechanism through which the non-European world could be civilized, as it was an essential element for allowing industry to thrive. Postcolonial legal systems had to evolve to enable the increasingly efficient exploitation of nature through appropriate systems of land tenure, private property, contracts, torts, and so on. In the nineteenth century, the concept of land as private property became embedded in constitutions across Europe as a sacred and fundamental element of society.<sup>60</sup> As legal systems were supposed to enable civilized societies to triumph over external nature, they also guaranteed the right of the state to expropriate land and resources for the public good—a right now recognized as part of customary international law and articulated in many postcolonial constitutions. International law and its central concept of state sovereignty was a celebration of mastery over nature and the escape from primitivism. Whether through international laws, such as the *terra nullius* doctrine and the laws of title to territory,<sup>61</sup> or domestic laws such as the principle of eminent domain,<sup>62</sup> the modern nation-state remains founded on the ability to assert not only physical but also utilitarian authority over territory.

Alternative understandings of nature were depicted as either primitive or degenerate. Only through the discrediting of non-European cultures could Enlightenment philosophers propound their own insights as objective, rational, and universal truths, and the

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<sup>60</sup> PROPERTY AND THE LAW IN ENERGY AND NATURAL RESOURCES 63 (Aileen McHarg, Barry Barton, Adrian Bradbrook & Lee Godden eds., 2010).

<sup>61</sup> The doctrine of *terra nullius* derives from Roman Law and is used in international law to describe territory that has never been under the control of a sovereign. It is used by sovereigns to establish title over new lands by claiming that the land is either empty or occupied by societies perceived to be too legally primitive to establish prior effective sovereignty of their own. Other international laws on title to territory include the laws of conquest, occupation, settlement, cessation, and the doctrine of *uti posseditis juris*, declaring the inalterability of colonial frontiers. See also MALCOM N. SHAW, TITLE TO TERRITORY (2005); JOSHUA CASTELLINO, STEVE ALLEN & JEREMIE GILBERT, TITLE TO TERRITORY IN INTERNATIONAL LAW: A TEMPORAL ANALYSIS (2003).

<sup>62</sup> The concept of eminent domain was famously described by Hugo Grotius in *De Jure Belli et Pacis* (1625). It refers to the power of the sovereign to appropriate its subjects' real and personal property. The sovereign may appropriate on the basis that the absolute title of the sovereign is superior to the title held by its subjects.

civilizing mission as a noble pursuit. Fitzpatrick describes how modern law obfuscates its own mythological foundations through defining itself as scientific in opposition to the mythic realm of primitive law:

Modernity . . . is not supposed to be about myth . . . . The very idea of myth typifies ‘them’—the savages and ancestors ‘we’ have left behind . . . . In the infinite arrogance of modernity, myth is made to correspond with the static and closed in meaning . . . whilst modernity is equated with progress and a fecund openness. Yet the origins and identity of modern society are still described in seemingly mythic terms, in terms of the division between us and them, culture and nature, and so on.<sup>63</sup>

Thus modern law emerges and thrives “in a negative exaltation, as universal in opposition to the particular, as unified in opposition to the diverse, as omniscient in contrast to the incompetent, and as controlling of what has to be controlled.”<sup>64</sup>

During the Enlightenment, control over one’s external environment also became equated with inner freedom and the ability to be in the fullest sense a liberated human being. Henry Thomas Buckle observes in his *History of Civilization in England*, in 1878, that “the primary cause of its [Britain’s] superiority over other parts of the world [is] the encroachment of the *mind* of man upon the organic and inorganic forces of nature.”<sup>65</sup> Civilization and legal order were a triumph over both external nature and human nature; a conquest of both the primitive environment and the primitive human. Thus, conquest of nature became one of the foundational myths of modernity, tied to humanity’s spiritual freedom. Leading thinkers such as John Locke identified the absence of transformation of the natural environment as evidencing a lack of reason itself.<sup>66</sup> Similarly, Karl Marx argued that “[m]an made himself and was himself only so far as he re-made the world around him.”<sup>67</sup>

Imperial assumptions about what it means to be modern were not overturned upon postcolonial states gaining their independence, but in many ways consolidated. Postcolonial societies could only enjoy

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<sup>63</sup> PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW* ix (1992).

<sup>64</sup> *Id.* at 10.

<sup>65</sup> HENRY THOMAS BUCKLE, 1 *HISTORY OF CIVILIZATION IN ENGLAND* 110 (1895) (emphasis added).

<sup>66</sup> Peter Hulme, *The Spontaneous Hand of Nature: Savagery, Colonialism and the Enlightenment*, in *THE ENLIGHTENMENT AND ITS SHADOWS* 16, 30 (Peter Hulme & Ludmilla Jordanova eds., 1990).

<sup>67</sup> *Id.*

independence through adopting the political form of the sovereign state, and sovereign statehood brought with it fundamental assumptions about nature that shaped governance and law. Postcolonial leaders frequently pursued economic paths of industrialization mapped out by Western ideas of development. As being modern, developed, and cultured was tied to efficient exploitation of the natural environment, most of the legal concepts and systems that allowed for this were either maintained from colonial times or new laws were instituted.

It was in this context that, at the height of the Cold War, the G-77 (or Non-Aligned Movement) asserted the doctrine of permanent sovereignty over natural resources as part of its effort to break away from colonial patterns of resource exploitation. While Western knowledge and expertise were purchased to enable efficient exploitation of natural resources, postcolonial states remained wary of overdependence on the West.<sup>68</sup> Although permanent sovereignty over natural resources was a revolutionary doctrine, and an integral part of the New International Economic Order, the idea was also used by Arab governing elites to consolidate their own power. Political authority and statecraft were intimately intertwined with keeping both natural resources, and the science and technology used to harness them, firmly under state control.<sup>69</sup> The conquest of nature went hand in hand with the establishment of unitary and autocratic states.<sup>70</sup> The Arab region's natural wealth, especially with regard to the hydrocarbons that fuel much of world industry and trade, helped achieve many of the region's development gains in recent decades.<sup>71</sup> However, it simultaneously built up and cemented power of unrepresentative governing elites. Sovereign and independent Arab governments were complicit in creating the inequity and ecological

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<sup>68</sup> See generally BEDJAOUI, *supra* note 28; SCHRIJVER, *supra* note 38.

<sup>69</sup> See TIMOTHY MITCHELL, *CARBON DEMOCRACY: POLITICAL POWER IN THE AGE OF OIL* (2011); TOBY CRAIG JONES, *DESERT KINGDOM: HOW OIL AND WATER FORGED MODERN SAUDI ARABIA* (2010); ROBERT VITALIS, *AMERICA'S KINGDOM: MYTHMAKING ON THE SAUDI OIL FRONTIER* (2007); RASHID KHALIDI, *SOWING CRISIS: THE COLD WAR AND AMERICAN DOMINANCE IN THE MIDDLE EAST* (2009); RASHID KHALIDI, *RESURRECTING EMPIRE: WESTERN FOOTPRINTS AND AMERICA'S PERILOUS PATH IN THE MIDDLE EAST* (2004).

<sup>70</sup> The region's ruling elites were keenly aware of this strategy and exploited it. For an early example, during the House of Saud's conquests of Arabian Peninsula, victory in battle was immediately followed by establishing alliances (forcible or voluntary) with local water guilds, as the quickest way of cementing control over both people and territory. See JONES, *supra* note 69.

<sup>71</sup> HUMAN DEVELOPMENT REPORT, *supra* note 53.

decay that Arab communities find themselves in today, through the continuance of development and industrialization policies and laws that have been, at best, unimaginative, and, at worst, neocolonial. Thus, the Arab Spring oftentimes articulates its resistance in ways that echo anti-colonial independence struggles.

The struggle for sovereignty over natural resources shaped the nature of Arab states and remains at the root of contemporary societal tensions. In Iraq, benefit-sharing from energy is the backdrop for unresolved disputes over constitutionalism, federalism, and regional autonomy.<sup>72</sup> In Egypt, forty percent of the population lives under the national poverty line, largely because the rural and urban poor lack access to decision-making regarding natural resources on which their livelihoods depend, whether in fishing, farming, cotton, or the oil and gas industries.<sup>73</sup> In Sudan, in the separation of North and South, the most contentious issues remain disputes over oil, water, and rangelands.<sup>74</sup> Perhaps the most pressing issue facing the region is water shortage. In Yemen, the Arab region's poorest state, water scarcity has reached emergency proportions and is the main bottleneck to equitable and sustainable development.<sup>75</sup> In Syria, severe drought has pushed parts of the population to migrate.<sup>76</sup> In Syria and Jordan, there are protests over equitable access to drinking water and irrigation.<sup>77</sup> In Saudi Arabia, there are protests over

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<sup>72</sup> Nathan J. Brown, *The Final Draft of the Iraqi Constitution: Analysis and Commentary*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Sept. 16, 2005), <http://www.carnegieendowment.org/files/FinalDraftSept16.pdf>; Christopher M. Blanchard, *Iraq: Oil and Gas Legislation, Revenue Sharing, and U.S. Policy*, CONGRESSIONAL RESEARCH SERVICE (Nov. 3, 2009).

<sup>73</sup> *A Vision for Agriculture 2017*, EGYPT NATIONAL HUMAN DEVELOPMENT REPORT, 6 (2005), <http://www.undp.org.eg/LinkClick.aspx?fileticket=hX%2BQrUZc%2B9g%3D&tabid=187&mid=675>.

<sup>74</sup> See UNITED NATIONS ENVIRONMENT PROGRAMME, SUDAN: POST-CONFLICT ENVIRONMENTAL ASSESSMENT (2007); *Environment and Energy for Sustainable Development*, UNITED NATIONS DEVELOPMENT PROGRAMME SUDAN, [http://www.sd.undp.org/focus\\_environment.htm](http://www.sd.undp.org/focus_environment.htm) (last visited Sept. 30, 2012).

<sup>75</sup> REPUBLIC OF YEMEN: COUNTRY PROFILE, U.N. Development Programme, <http://www.undp.org.ye/y-profile.php> (last updated Mar. 17, 2012).

<sup>76</sup> *Emergency Response to the Drought in the North-East of Syria*, WORLD FOOD PROGRAMME, <http://www.wfp.org/content/emergency-response-drought-north-east-syria> (last visited Sept. 30, 2012) (describing the consequences of the third consecutive year of drought in Syria).

<sup>77</sup> See generally WATER IN THE MIDDLE EAST: COOPERATION AND TECHNOLOGICAL SOLUTIONS IN THE JORDAN VALLEY (K. David Hambright, F. Jamil Ragep & Joseph GINAT eds., 2005); Nicolas Pelham, *Jordan's Balancing Act*, MIDDLE EAST REPORT ONLINE (Feb. 22, 2011), <http://www.merip.org/mero/mero022211>.

flooding and environmental infrastructure.<sup>78</sup> In the Occupied Palestinian Territories, scarcity of clean water, lack of access to energy, increasing pollution, and the inability to control natural resource use were recently reflected in a draft declaration at the U.N. General Assembly on permanent sovereignty of the Palestinian people over their natural resources.<sup>79</sup>

In addition, there are the well-known cases of the oil economies of Saudi Arabia, Kuwait, Iraq, Libya, and Algeria. Ever since the discovery of its vast oil fields, access to this strategic resource has influenced states' policies in the Arab region with regard to colonization, decolonization, military intervention, military and financial aid, foreign direct investment, sanctions, embargoes, and a myriad of other foreign policy issues. State responses to the Arab Spring are no different. The oil-driven dynamic is evidenced by selective international interventions in support of one or the other side, such as that by NATO to aid Libyan revolutionaries, by the Gulf Cooperation Council in support of the Bahrain monarchy, as well as increasing U.S. militarization of its allies and bases in the Persian Gulf including in Saudi Arabia and Bahrain. As a result, experts as well as the general public have clearly different expectations from the Arab Spring in oil-importing states as opposed to oil-exporting states. Most confidently predict that attempts at revolution and democratization in Saudi Arabia, Kuwait, Bahrain, or other oil rich Gulf states, will fail.<sup>80</sup> Since the onset of the Arab Spring,

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<sup>78</sup> Asma Alsharif, *Saudi Plans Jeddah Projects after Floods, Protests*, REUTERS (Feb. 2, 2011), <http://af.reuters.com/article/egyptNews/idAFLDE71108S20110202>.

<sup>79</sup> Draft resolution on Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources, G.A. Res. 66/2/61, U.N. Doc. A/RES/66/225 (Oct. 27, 2011).

<sup>80</sup> Ariana Keyman, *The Resilience of Arab Spring Monarchies*, E-INTERNATIONAL RELATIONS (Apr. 2, 2012), <http://www.e-ir.info/2012/04/02/the-resilience-of-arab-monarchies-in-the-arab-spring/>; Khalifah Rashid al-Shaali, *The Gulf Exception*, AL Monitor (Kamal Fayad trans., Jan. 23, 2012), <http://www.al-monitor.com/pulse/politics/2012/01/the-arab-stage-and-gulf-scene.html>; Shadi Hamid, *In the Middle East: Two Models for Democratic Change*, BROOKINGS (Feb. 2, 2011), <http://www.brookings.edu/research/opinions/2011/02/02-egypt-democracy-hamid.com>; Alan Greenblatt, *In Arab States, it's Good to be the King*, NATIONAL PUBLIC RADIO (Nov. 12, 2011), <http://www.npr.org/2011/11/10/142218146/in-arab-states-its-good-to-be-the-king>; Ahmed Souaiaia, *The Gulf Cooperative Council and the Arab Spring*, FOREIGN POLICY IN FOCUS (Dec. 26, 2011), [http://www.fpif.org/articles/the\\_gulf\\_cooperative\\_council\\_and\\_the\\_arab\\_spring](http://www.fpif.org/articles/the_gulf_cooperative_council_and_the_arab_spring); James M. Dorsey, *Thinking the Unthinkable: Is the Gulf Next?*, WORLD POLITICS REVIEW (Feb. 2, 2011), <http://www.worldpoliticsreview.com/articles/7751/thinking-the-unthinkable-is-the-gulf-next>.

longstanding autocratic rulers in these states have alternated between fierce repression, and pacifying their populace with larger-than-usual cash payments, subsidies, and token reform efforts.

For many of these nations, oil exports are the foundation of their social welfare and development gains. Their reserves are declining at a time of rapid population growth. Arab states are facing a youth population bulge and large levels of youth unemployment. As countries seek to boost employment through industrial growth, their energy intensity rises dramatically. In Saudi Arabia, currently about three out of ten million barrels per day are used in the local economy and the rest is exported. By 2030, this could rise to eight million barrels per day for local use.<sup>81</sup> Thus, oil economies are seeking to reduce the energy intensity of their growth, as well as investing in renewable energy, so as to save scarce resources for security of future generations.

Energy access and use in the Arab world is characterized by extreme inequality. Most countries in the region are net energy importers. With oil prices at record highs, and likely to increase, such states are continually increasing budget allocation for energy at the expense of other aspects of social welfare. While the per capita energy consumption in places such as the Qatar, the United Arab Emirates, Kuwait, and Bahrain is among the highest in the world,<sup>82</sup> more than forty percent of Arab populations in rural and urban poor areas do not have adequate access to energy services.<sup>83</sup> Electrification rates in Arab countries in 2008 varied from as high as 100 percent in countries such as Kuwait, Lebanon, and Bahrain, to as low as twenty-five to thirty percent in the Sudan.<sup>84</sup>

Unemployment, combined with spiking food prices, were also important factors in spurring the 2011 Arab protests. The rise in food prices was partially attributable to climate impacts on global food production, with record droughts in Russia and flooding in Australia

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<sup>81</sup> Hashem Yamani, as quoted in Acil Tabbara, *Oil Giant Saudi Arabia Looks To Alternative Energy*, AGENCE FRANCE PRESSE (Jan. 25, 2011), <http://phys.org/news/2011-01-oil-giant-saudi-arabia-alternative.html>.

<sup>82</sup> KEVIN A BAUMERT, TIMOTHY HERZOG & JONATHAN PERSHING, NAVIGATING THE NUMBERS: GREENHOUSE GAS DATA AND INTERNATIONAL CLIMATE POLICY 21–22 (2005).

<sup>83</sup> Ibrahim Abdel Gelil, *Climate Change: Economic Challenges and Opportunities in the Arab Regions* 8 (2010), [http://www.arabclimateinitiative.org/Countries/bahrain/Abdel\\_gelil\\_report\\_bahrain\\_mtg\\_with\\_cover\\_FINAL.pdf](http://www.arabclimateinitiative.org/Countries/bahrain/Abdel_gelil_report_bahrain_mtg_with_cover_FINAL.pdf).

<sup>84</sup> *Id.* at 8.

in 2010.<sup>85</sup> In the coming decades, North Africa is expected to see some of world's worst impacts of climate change.<sup>86</sup> In many Arab states, an unusually high proportion of household incomes is allocated to the purchase of food; for example more than thirty-five percent of household incomes in Tunisia and Egypt are allocated to food purchases.<sup>87</sup> As U.N. Secretary-General Ban Ki-moon observed in 2007, "when resources are scarce—whether energy, water or arable land—our fragile ecosystems become strained, as do the coping mechanisms of groups and individuals. This can lead to breakdown of codes of conduct."<sup>88</sup>

### CONCLUSION

The Arab world's looming challenge is one of environmental and political sustainability. Its natural resources are dwindling at a time when its population is rapidly expanding. Environmental and natural resources issues must be prioritized in order to meet the Arab Spring's demands for equity and justice. The region's most poor and vulnerable depend on having a resilient natural asset base for their livelihoods. Given the onset of environmental crises, the capacity to adapt and cope with ecological change is also becoming increasingly important. While the rich receive a disproportionate benefit from the exploitation of natural resources, the poor bear a disproportionate burden of scarcity, pollution, and environmental crises.

As the Arab region calls for a new era of more inclusive governance, communities look to the law, both international and domestic, as the means of remedying historical disempowerment. Protestors have called for an end to the thievery of public wealth by ruling elites, demanding punishment, transparency, accountability, and remedy. There is also a renewed spirit of constitutionalism—a review of fundamental principles in order to inaugurate new power

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<sup>85</sup> FOOD AND AGRICULTURAL ORGANIZATION, FOOD OUTLOOK: GLOBAL MARKET ANALYSIS 11–12 (June 2011); Dina Fine Maron & Climatewire, *Extreme Weather Helps Drive Food Prices to New Highs*, SCIENTIFIC AMERICAN (Jan. 6, 2011), <http://www.scientificamerican.com/article.cfm?id=extreme-weather-helps-drive-food>.

<sup>86</sup> Balgis Osman Elasha, *Mapping of Climate Change Threats and Human Development Impacts in the Arab Region*, in ARAB HUMAN DEVELOPMENT REPORT RESEARCH PAPER SERIES 14–15 (2010).

<sup>87</sup> NOMURA GLOBAL ECONOMICS AND STRATEGY, THE COMING SURGE IN FOOD PRICES 26 (2010).

<sup>88</sup> U.N. Secretary-General Ban Ki-moon, *Secretary-General's Statement at Open Security Council Debate on Energy, Security and Climate* (Apr. 17, 2007), available at <http://www.un.org/sg/statements/?nid=2524>.

dynamics and place limits on state power. However, the law has in many ways been complicit in creating the inequity and ecological decay in the region. Indeed, the dominant international development paradigm and its indicators of progress declared many Arab states to be human development success stories, masking the dark underbelly of development processes now surfacing in mass movements across the region. To meet the rising demands for justice, the concept of sovereignty over natural resources must transcend nation-state paradigms and reside with Arab peoples in a meaningful way.

Postcolonial states spared no effort in “leapfrogging across the centuries” to become industrial states.<sup>89</sup> Today, ecological change presents an existential threat. Environmental crises such as climate change and biodiversity loss evidence the limits of Western understandings of the global economy and the unsustainability of economic models that do not take into consideration natural limits to growth. States and peoples in First and Third Worlds look over their shoulders at progress made and question evolutionary certainties and one-way determinism. As Amartya Sen observed, the solutions to problems of global public goods such as the natural environment “will almost certainly call for institutions that take us beyond the capitalist market economy.”<sup>90</sup>

Young international lawyers in the Arab world are increasingly drawn to Third World and postcolonial approaches to international law not only because mainstream international law discourse fails to explain their lived experience, but also because they are searching for more strategic and productive ways of engaging with the international sphere. Past efforts in the 1960s and 1970s to strengthen the sovereignty of Third World states led only to a profound lack of sovereignty for most Arab peoples. Doctrines such as permanent sovereignty over natural resources are yet to be realized in a meaningful way in a region where most have little say in what is done with either wealth-creating resources such as oil and mineral wealth, or dwindling essentials such as water and arable land. Lasting solutions to the demands of the Arab Spring will need to address not only civil and political rights, but also rethink fundamental assumptions about what it means to be a state. Central to this process is addressing the role of the natural environment in postcolonial state formation, and how the ability to control nature became an assumed attribute of both sovereignty and development. We need to address

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<sup>89</sup> ARGYROU, *supra* note 57, at 26.

<sup>90</sup> AMARTYA SEN, DEVELOPMENT AS FREEDOM 267 (1999).

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the underlying features of our political economy by rethinking our Enlightenment inheritance, and whether the assertion of control is any longer a meaningful, helpful, or indeed accurate understanding of humanity's relationship with nature.

