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# The Criticism of Eurocentrism and International Law: Countering and Pluralizing The Research, Teaching, and Practice of Eurocentric International Law

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# THE CRITICISM OF EUROCENTRISM AND INTERNATIONAL LAW:

## COUNTERING AND PLURALIZING THE RESEARCH, TEACHING, AND PRACTICE OF EUROCENTRIC INTERNATIONAL LAW

MAKANE MOÏSE MBENGUE\* AND OLABISI D. AKINKUGBE\*\*

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### Abstract

*This Chapter draws on Third World Approaches to International Law (TWAIL) in examining the question: how does the research and teaching of international law in the Global South challenge Eurocentrism in international law. The Chapter focuses on the emergent activities within Global South that pluralize Eurocentric international law's dominance in the research production, teaching, and practice arenas. The Chapter pushes against the unfair over-representation of European countries in the scholarly production and institutions of international law. To illustrate the often-underexplored regional diversity of international law outside Europe, the Chapter reflects on the contemporary roles of critical Global South scholars and scholarship in international law, and the sub-fields of international investment law and international human rights law to pluralize the epistemological foundations of the substantive field of international law.*

### Introduction

Significant scholarly work by critical international law scholarship has illuminated Eurocentrism in international law, its narrow Western origins, colonial legacies,<sup>1</sup> and international law's fraught claims of its universality.<sup>2</sup> The pedagogy of international law is Eurocentric.<sup>3</sup> The literature that is

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<sup>1</sup> Antony Anghie's contribution to this book focuses on "Colonial Legacies" (hereafter Anghie). As such we will not explore issues associated with colonial legacies in our Chapter.

<sup>2</sup> Taslim O Elias, *Africa and the Development of International Law* (AW Sijthoff 1972); Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005) (hereafter Anghie, *Imperialism*); James Thuo Gathii, 'International Law and Eurocentricity' (1998) 9 EJIL 184 (hereafter Gathii, 'Eurocentricity'); Arnulf Becker Lorca, 'Eurocentrism in the History of International Law' in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (OUP 2012) 1034 (hereafter Lorca, 'Eurocentrism'); Martti Koskeniemi, 'Histories of International Law: Dealing with Eurocentrism' (2011) 19 *Rechtsgeschichte* 152; Fleur Johns, Thomas Skouteris and Wouter Werner, 'Editors' Introduction: Taslim Olawale Elias in the periphery Series' (2008) 21 LJIL 289 (Special Issue); Oji Umzurike, *International Law and Colonialism in Africa* (Nwamife Publishers 1979).

<sup>3</sup> Mohsen Al Attar, 'Must International Legal Pedagogy Remain Eurocentric?' (2021) 11 *AsianJIL* 176 (hereafter Al Attar, 'Pedagogy').

critical of international law's Eurocentricity have thus pin-pointed on the historical over-representation of Europeans in the institutions of international law, knowledge production, dominance in the syllabi of Global South universities, as well as the hegemonic ideas that animate Eurocentric conceptualizations of international law.<sup>4</sup> In other words, the tenacity of orthodox teaching, practice and research of international law, especially its subjugation of alternative international law histories, and exclusion of the contemporary international legal knowledge production from the Global South has been subjected to significant critical inquiry by anti-colonial international legal scholarship.<sup>5</sup> Despite the modest progress in illuminating the gap in international law by mainstreaming the other developments in international law across the Global South, the task of critically engaging with international law's Eurocentricity and demystifying its contours remain essential. Even more important is the urgency of balancing the critique of Eurocentrism with a compelling account of the growing plurality of international law in the Global South.

Our chapter does not query the different ways that Eurocentrism is interrogated in international legal scholarship nor is the goal to have another analysis of the blind spots of traditional international law. Eurocentric international law effectively occupies the different facets of the fields of international law. From general public international law, international human rights law, international environmental law, international investment law, international courts, to international arbitration, authoritative scholarly works by critically inclined scholars that reveal the duplicity of Eurocentric international law fill the pages of blogs, journals and textbooks with insights, strategies and compelling analysis of the blind spots of mainstream international law. Eurocentric international law's challenge criss-crosses both the substantive content and procedural practices of the discipline as well as the theoretical and methodological.<sup>6</sup> As modest gains are recorded by critically minded scholars in these various fields of international law, Eurocentrism is reproduced in other areas. Chapter 2 of this book by Antony Anghie focuses on colonial legacies and other scholarship have interrogated historical narrowness, universalism, imperialist origins, race and international law, among others.<sup>7</sup>

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<sup>4</sup> Makau Mutua, 'Critical Race Theory and International Law: The View of an Insider-Outsider' (2000) 45 Vill L Rev 851; Sundhya Pahuja, 'The Postcoloniality of International Law' (2005) 46 Harv Intl L J 459.

<sup>5</sup> See, Muthucumaraswamy Sornarajah, 'The Asian Perspective to International Law in the Age of Globalization' (2001) 5 Sing JICL 284; Anghie, *Imperialism* (n 2); Obiora Cheidu Okafor, 'Newness, Imperialism and International Legal Reform in Our Times: A TWAIL Perspective' (2005) 43 Osgoode Hall LJ, 171 (hereafter Okafor, 'Imperialism'); Vasuki Nesiah, 'Placing International Law: White Spaces on a Map' (2003) 16(1) LJIL 1; Liliana Obregon, 'Between Civilization and Barbarism: Creole Interventions' in Richard Falk, Balakrishnan Rajagopal and Jacqueline Stevens (eds), *International Law and the Third World: Reshaping Justice* (Routledge 2008); Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (CUP 2019); Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law', (1991) 85 AJIL 613 (illustrating international law's blindness to feminist analysis and illuminating the potential of feminist legal theory to contribute to the progressive development of international law).

<sup>6</sup> Ntina Tzouvala, 'The Specter of Eurocentrism in International Legal History' (2021) 31(2) Yale J L & Human 413, 414-15 (Problematizing through the lens of Marxism the emptiness of 'Eurocentrism' and examining the question of Eurocentrism as a result of the 'deep theoretical divisions and the increasingly sour tome of the debate' by '... retrieving the radical potential of early critiques of Eurocentrism, and bringing them to bear on international legal history...' and '...arguing that thinking about Eurocentrism as a culturalist distortion that is inextricably linked to global capitalist expansion allows us to discern the role of international law in this irreducibly contradictory process of globalizing capitalism.').

<sup>7</sup> Anghie (n 1).

This Chapter therefore critically engages with contemporary unfair over-representation of Eurocentrism in the (knowledge) production and institutions of international law.<sup>8</sup> As Andrea Bianchi rightly notes, “[p]revailing ‘discursive policies’ grounded in power structures and shaped by epistemic forces determine what is deemed to be an acceptable and competent thing to say about international law”.<sup>9</sup> The on-going under-representation of international legal knowledge produced by the Global South in mainstream international law illustrates an arena where contemporary international law is distorted. To counter the manifestation of Eurocentrism in the teaching, research and practice of international law today, we analyze some of the transformative actions that are rooted in the research and teaching of international law as conceptualized and are being implemented by scholars and scholarship on and from the Global South. As such, this Chapter does not problematize European dominance in the research, production, and institutions of ‘universal’ international law. Likewise, the Chapter is not premised on a utopian ideal that the hegemony of international law’s Eurocentricity has waned.

African countries, like their counterparts in Asia, Latin America, and the Caribbean did not play a role in the creation of international law.<sup>10</sup> In producing Eurocentrism and globalizing its universalizing claims;<sup>11</sup> international law sanctioned Europe’s plunder of the Third World - a stream of virtually all non-European societies who share in a particular voice and form of intellectual and political consciousness. These societies share similar historical experiences of European racism, slavery, and colonisation as well as the enduring legacies of these dehumanising projects.<sup>12</sup>

The ensuing analysis in the Chapter therefore focuses on what we describe as the operations or manifestations of and substantive responses to Eurocentric international law three core areas: research, teaching and practice. In doing so, we are again not concerned with the blind spots of Eurocentric international law. Significant academic work already exists on this. Our aim is much more modest – to account for the practices (gains and challenges) – in scholarly endeavors teaching, research, and publication diversity – that present useful Global South narratives that pluralizes Eurocentrism’s narrowness. Pluralizing the epistemic structures that privilege the past and present production and reproduction of Eurocentric international law is not a task that is

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<sup>8</sup> Cf, Andrea Bianchi and Moshe Hirsch (eds), *International Law’s Invisible Frames: Social Cognition and Knowledge Production in International Legal Processes* (OUP 2021). Referring to the social dissonance that constituted the history of international law and its ongoing divergences from contemporary social contexts, notes:

“...what we know as international law is produced by knowledge-production mechanism of a different nature. Social Practices and intellectual processes that are influenced by theories and theoretical discourses shape the social phenomenon we qualify as international law....”

Andrea Bianchi, ‘Knowledge production in International Law: Forces and Processes’ in Andrea Bianchi and Moshe Hirsch (eds), *International Law’s Invisible Frames: Social Cognition and Knowledge Production in International Legal Processes* (OUP 2021) 155.

<sup>9</sup> Ibid.

<sup>10</sup> The question of the “contribution” of African states to the creation and development of international law has spurred interesting debates among critical international legal scholars. See, James Thuo Gathii, ‘A Critical Appraisal of the International Legal Tradition of Taslim Olawale Elias’ (2008) 21 LJIL 317; Jeremy I Levitt, ‘The African Origins of International Law: Myth or Reality?’ (2015) 19(113) UCLA J Intl L & Foreign Aff 114.

<sup>11</sup> See for instance Arif Dirlik, ‘Is There History after Eurocentrism?: Globalism, Postcolonialism, and the Disavowal of History’ (1999) 42 Cultural Critique 1, 8-9, 42.

<sup>12</sup> Makau W Mutua, ‘What Is TWAIL?’ (2000) 94 ASIL PROC 31, 35 (hereafter Mutua, ‘TWAIL’).

limited by time.<sup>13</sup> No one research, or body of research will completely bring to realization the transformation that critical scholars of international law seek. Hence, the Chapter's analysis in the final section deliberately examines the ways in which various actions at institutional levels; and activities of Global South scholars in contemporary times contribute to the pluralizing. The Chapter thus evinces the true character of TWAIL: a project, rooted in transformative agenda and consciousness in the teaching, research and practice of the 'other international law' with a view to broadening the narrowness and universality of Eurocentric international law.<sup>14</sup> The Chapter focuses on the emergent efforts towards pluralizing the research and the dominance of Eurocentric scholarship and perspectives in the teaching of international law in, by and from the Global South. The Chapter acknowledges that the task of pluralizing international law and centering 'peripheral' perspectives in research and teaching that contrast the logic of Eurocentric international law is an on-going project.

A core aspect of our argument in this Chapter is that scholars of international law – western and non-western alike – have not focused enough on the different ways that international legal knowledge is produced and taught. As such, the Chapter compliments and to some extent balances the scholarly works that continue to criticize international law Eurocentricity in its various guises. While useful, the Chapter centers on the other ways in which international law's Eurocentricity in research and teaching are produced and disseminated in the Global South. In this regard, the Chapter does not set out "... to strengthen one particular view about what or whose knowledge is real knowledge [among the several critical traditions that question international law's Eurocentricity], but to suggest that alternative forms of knowledge, ways of knowing, or schools of thought do not necessarily fare poorly ..." <sup>15</sup> once we turn our gaze to the other ways that international law is produced across Global South countries. The analysis in this Chapter under the broad rubrics of TWAIL, we focus on African and other Global South examples to illustrate the contributions to the scholarship that pluralizes and deprovincializes the hegemony of Eurocentric international law.

## Revisiting Eurocentrism

In this section, we articulate our understanding of Eurocentrism as an important background to the ensuing analysis in the Chapter. The social phemonema of Eurocentrism is amorphous and manifests in multiple ways.<sup>16</sup> According to Samir Amin, Russell Moore, and James Membrez

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<sup>13</sup> See generally, Surya Prakash Sinha, *Legal Polycentricity and International Law* (Carolina Academic Press 1996); Siba N'Zatioula Grovogui, *Sovereigns, Quasi-Sovereigns and Africans: Race and Self-Determination in International Law* (University of Minnesota Press 1996). For a review of both books, see, Gathii, 'Eurocentricity' (n 2).

<sup>14</sup> In this regard, we agree with Karin Mickelson that "TWAIL can benefit from ways of thinking about hope that have emerged in both scholarship and activism in recent years, and these insights may themselves help calibrate our ongoing engagements with the international legal system". Karin Mickelson, 'Hope in a TWAIL Register' (2020) 1 TWAIL Review 16 (hereafter Mickelson, 'Hope').

<sup>15</sup> Obiora Chiedu Okafor, 'Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?' (2008) 10 Int C L Rev 371, 372 (hereafter Okafor, 'Critical TWAIL').

<sup>16</sup> "Eurocentrism is, like all dominant social phenomena, easy to grasp in the multiplicity of its daily manifestations but difficult to define precisely. Its manifestations, like those of other prevailing social phenomena, are expressed in the most varied of areas: day-to-day relationships between individuals, political information and opinion, general views concerning society and culture, social science. These expressions are sometimes violent, leading all the way to racism, and sometimes subtle. They express themselves in the idiom of popular opinion as well as in the erudite languages of specialists on politics, the Third World, economics, history, theology, and all the formulations of social

“Eurocentrism is now, ..., a social theory, which integrates various elements into a global and coherent vision of society and history. It is rather a prejudice that distorts social theories. It draws from its storehouse of components, retaining one or rejecting another according to the ideological needs of the moment”<sup>17</sup>

Eurocentric international law is narrow, and ethnocentric.<sup>18</sup>

In our view, unlike the early post-colonization era, contemporary manifestations of Eurocentrism and the universality of international law are multifaceted and difficult to synthesize in a few ideas and in limited spatial contexts as Eurocentric manifestations are uniquely amorphous. The unstructured way Eurocentric international law manifests is one of the defining features of its tenacity in the Global South. For our purposes, the uncritical cooptation and assimilation of Western, and distinctly European approaches to the teaching of international (economic and human rights) law, domination of Western and European scholarly works in the syllabi of African universities, and the transplantation of European styled architecture, practice and assessment of international courts define some of the ways that Eurocentrism continues to be entrenched and reproduced in African societies.<sup>19</sup> The uncritical assimilation of international law in African universities thickens the post-colonial continuities of Western ideas of universality while simultaneously repressing the innovation and knowledge generated by non-Western Global South. The historical, progressive, and on-going Europeanization of the disciplines of international law marginalizes international legal knowledge production across African and Global South epistemes.<sup>20</sup> Quite against the emerging evidence, this Eurocentric view short circuits the reverse flow of knowledge production that European and the West can learn about the theory and praxis of international law from Africa and the Global South.<sup>21</sup>

In other words, we push back against the contemporary polarization between centers and peripheries capacity to generate international legal knowledge by advancing illustrations of the substantive and procedural advancements in international law from Africa – in the fields of international investment law, international human rights law, and international courts – to

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science.” Amin Samir, Russell Moore, and James Membrez, *Eurocentrism* (NYU Press 2009) 179 (hereafter Samir, et al, *Eurocentrism*).

<sup>17</sup> Ibid, 166.

<sup>18</sup> Lorca, ‘Eurocentrism’ (n 2) (Exploring two moments in the intellectual history of international law in which some, mostly non-Western, international lawyers, have dealt with the problem of Eurocentrism by producing divergent narratives exposing a distortion in conventional histories of international law.).

<sup>19</sup> Arnulf Becker Lorca echoes a similar point: “Today, the presence of Eurocentric distortions in the history of international law will depend on the type of history in academic writing. In spite of the intellectual status enjoyed by second-generation TWAIL scholars, the historical introduction of most international law textbooks, and thus arguably the teaching of international law, has not departed from the narrative of progress common in liberal-internationalist histories.” Lorca, ‘Eurocentrism’ (n 2) 1054.

<sup>20</sup> “For the most optimistic, this Europeanization, which is simply the diffusion of a superior model, functions as a necessary law, imposed by the force of circumstances ... For others, non-European peoples have an alternative choice: either they can accept Europeanization and internalize its demands, or, if they decide against it, they will lead themselves to an impasse that inevitably leads to their decline. The progressive Westernization of the world is nothing more than the expression of the triumph of the humanist universalism invented by Europe.”, Samir, et al, *Eurocentrism* (n 16) 180.

<sup>21</sup> For example, the advancements in the field of international human rights law and the African Court on Human and Peoples Rights offers a compelling illustration. We return to this in subsequent sections of this Chapter.

substantiate our arguments.<sup>22</sup> Eurocentrism remains vibrant as a neo-colonial aperture of continuing the domination of European international law and the over representation of European (and Western) scholars in institutions of international law. As such, anti-colonial scholarly and practical endeavour in international legal knowledge production (both by scholars, publishing firms and Global South international institutions) must be centered, mainstreamed, and understood on their own terms.<sup>23</sup>

Scholarly critiques of Eurocentric international law approach the question from different take-off junctures. Eurocentric international law's deep colonial roots still inform most of the contemporary teaching and practice in the field. It would be naïve to suggest that its heyday is past or that it has been 'gravely weakened'<sup>24</sup> because of the modest pluralization of Global South practises of international law. International legal process, and the production of international legal knowledge are inherently human and social in character.<sup>25</sup> The outcome of our interactions with the research, teaching and practice of international law is borne out of a unique set of experiences with one version or the other and out of the multiple versions of the dominant Eurocentric international legal knowledge production. In this regard, the Chapter echoes James T. Gathii's call that Eurocentric international law "...should embrace the practice and scholarship of international and from the Third World as integral to our discipline and practice rather than as destabilizing, irrelevant, and different."<sup>26</sup>

### **Third World Approaches to International Law and Eurocentrism**

Eurocentric international law's fraught history, narrowness, and exclusion of the subaltern has been critically interrogated by a wide spectrum of critical approaches, including more recently, the value of social sciences approaches,<sup>27</sup> behavioral psychology<sup>28</sup> Third World Approaches to

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<sup>22</sup> See generally, James Thuo Gathii, 'The Promise of International Law: A Third World View' (2021) 36(3) *Am U Int'l L Rev* 377, 378-79 (hereafter Gathii, 'Promise of International law') (challenging the limited geography of places and ideas that dominate the beltway of [international law] and arguing that the Third World is an epistemic site of production and not merely a site of reception of international legal knowledge.).

<sup>23</sup> Our thinking here maps on to James Gathii's characterization that "[t]his strong form of international law scholarship self-identifies with group solidarity among less powerful countries. It expresses their desire for self-determination and autonomy from all forms of external or neo-colonial controls." This is opposed to a "weak form of anti-colonial scholarship [that is basically integrationist: meaning that it is largely complimentary of the liberatory claims of principles [that characterise Eurocentric international law]. Gathii, 'Eurocentricity' (n 2) 187.

<sup>24</sup> Malcolm N Shaw, *International Law* (8th edn, CUP 2018) 33.

<sup>25</sup> Michel Foucault, *The Archaeology of Knowledge* (AM Sheridan Smith tr, Routledge 2002).

<sup>26</sup> Gathii continues, "By taking this [Third world] scholarship and practice more seriously, we can bother demarginalize this Third world input into international law and learn from the ways that it provides distinctive visions of international law".

<sup>27</sup> Yifeng Chen, 'On Relating Social Sciences to International Law: Three Perspectives' (2021) 22(1) *Chicago J Int'l L*, Article 6; Daniel Abebe, Adam Chilton, and Tom Ginsburg, 'The Social Science Approach to International Law' (2021) 22(1) *Chicago J Int'l L*, Article 4 (hereafter Abebe et al, 'Social Science Approach'); James Thuo Gathii, 'Studying Race in International Law Scholarship Using a Social Science Approach' (2021) 22 *Chicago J Int'l L* 71 (hereafter Gathii, 'Studying Race'); Hilary Charlesworth, Christine Chinkin, and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85 *AJIL* 613.

<sup>28</sup> Tomer Brode, 'Behavioural International Law' (2015) 163 *U Pa L Rev* 1100; Anne van Aaken, 'Behavioral International Law and Economics' (2014) 55 *Harv Int'l LJ* 421.

International Law (TWAIl).<sup>29</sup> TWAIl is both a scholarly enterprise and political project – ‘it is not fixed and established’.<sup>30</sup> TWAIl pierces the parochialism that characterizes Eurocentric international law in favour of a plural international legal order and international legal knowledge production. TWAIl advocates the recognition of radical cultural and civilizational plurality and diversity, rather than a bias for Eurocentrism, in international law.<sup>31</sup> As Obiora Okafor’s rightly notes:

“TWAIl scholars (or "TWAIlers") are solidly united by a shared ethical commitment to the intellectual and practical struggle to expose, reform, or even retrench those features of the intellectual legal system that help create or maintain the generally unequal, unfair, or unjust global order..., a commitment to centre the rest rather than merely the west, thereby taking the lives and experiences of those who have self-identified as Third World much more seriously than has generally been the case.”<sup>32</sup>

TWAIl scholarship has unravelled the universality claims that underpin traditional international law in that they privilege underlying ideas of the hegemony that characterizes Eurocentrism.<sup>33</sup> In this regard, the term ‘Third World’ in TWAIl is not necessarily a geographical space that is fixed in time or representing the essence of the Third World.<sup>34</sup> The Third World is an anti-subordination term and an analytical concept. Notably, contemporary Eurocentric international law re-incarnates its domination of the periphery in different ways and spaces.<sup>35</sup> Hence, Antony Anghie views TWAIl as a continued theory or methodology – inviting a particular subject matter to speak on how Eurocentrism affects it and establish its own theory or methodology.<sup>36</sup> Similarly, Mohsen al Attar sees TWAIl as the potential and idealism of a youth – maturing with each new discovery of where eurocentrism is hidden in international law.<sup>37</sup> As such, while TWAIl content, strategy,

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<sup>29</sup> Mutua, ‘TWAIl’ (n 12) 31. On the question: “How does TWAIl as scholarship with a focus on peripheral issues forge its ideas within a hegemonic international legal system that continuously re-enacts old challenges and methods in new terms and forms, one of the most recent being the manner in which the war on terror is being implemented?”, see, Ibironke T Odumosu, ‘Challenges for the (Present/) Future of Third World Approaches to International Law’ (2008) 10 Int C L Rev 467, 469.

<sup>30</sup> Antony Anghie, ‘TWAIl: Past and Future’ (2008) 10 Int C L Rev 479, 480 (hereafter, Anghie, ‘TWAIl’).

<sup>31</sup> See generally, Okafor, ‘Critical TWAIl’ (n 15); James Thuo Gathii, ‘TWAIl: A brief history of its origins, its decentralized network, and a tentative bibliography’ (2011) 3(1) Trade, Law & Dev 368 (hereafter Gathii, ‘TWAIl history’).

<sup>32</sup> Okafor, ‘Imperialism’ (n 5) 176-77.

<sup>33</sup> “The Third World ... speaks from a subaltern epistemic location. This means that this Third World approach contests the idea that international law is applicable everywhere and that we should therefore regard it as a view from nowhere ... Third World states and TWAIl scholars have contested this non-situated, universal status of international law in a variety of ways for several generations now.” Gathii, ‘Promise of International law’ (n 22) 380.

<sup>34</sup> Antony Anghie, ‘Identifying Regions in the History of international Law’ in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of international Law* (OUP 2012) 1058.

<sup>35</sup> One version of this role is described by Mohammad Shahabuddin who notes,

“international law, as a core element of the ideology of the postcolonial state, contributes to the marginalisation of minorities. It does so by playing a key role in the ideological making of the postcolonial ‘national’, ‘liberal’, and ‘developmental’ states in relation to: continuation of colonial boundaries in postcolonial states, internal organisation of ethnic relations within the liberal-individualist framework of human rights, and the economic vision of the postcolonial state in the form of ‘development’ that subjugates minority interests.”

Mohammad Shahabuddin, *Minorities and the Making of Postcolonial States in International Law* (CUP 2021) 3.

<sup>36</sup> Anghie, ‘TWAIl’ (n 30) 481.

<sup>37</sup> Mohsen al Attar, ‘TWAIl a Paradox within a Paradox’ (2020) 22 Int C L Rev 163.



tactics is admittedly characterized by contradictions, incoherencies, and diversity of views, yet the approach also offers hope.<sup>38</sup>

Despite the critique by TWAIL scholarship, Eurocentric international law continue to manifest and entrench enduring features such as overrepresentation of Western scholarship, scholars and views of international law in our institutions and the syllabus of Global South universities. In Mohsen al Attar's words, "TWAIL scholars were optimistic and, perhaps, naïve in presuming that unearthing the biases [of Eurocentric international law] alone would precipitate reform. They disregarded Europe's commitment to securing the advantages its international legal construct affords."<sup>39</sup> In our view, the naivety that Attar notes, while true, should not be over-generalized. TWAIL-centric responses to international law's Eurocentricity come with transformative agenda. Addressing the hydra-headed nature of the manifestations of Eurocentrism in contemporary production of international legal knowledge, representation in institutions of international law, and practice of our discipline, is not going to be resolved by a silver bullet of any one theoretical approach or substantive proposals or institutional diversity. Eurocentric international laws indoctrination occurs simultaneously in various spheres, spaces, and arenas that are already captured in academic scholarship.<sup>40</sup> As such, we hope our focus, defined deliberately on the arenas of research, teaching and practice – though broad – offer some coherence in the manifestations of Eurocentric international law in these areas.<sup>41</sup>

## **Re-Orienting the Teaching of Eurocentric International Law for Epistemological Plurality in Global North and Global South**

In both Global North and Global South scholarship, there is a growing desire to teach international law in a more critical way that pluralizes the discipline's Eurocentric and Western origins.<sup>42</sup>

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<sup>38</sup> "TWAIL I could be said to have optimism, faith in international law, and hope; TWAIL II lost the optimism but retained a degree of faith in international law as well as a sense of hope; while contemporary TWAIL analysis seems to be skirting the edge of losing faith in international law altogether while still somehow clinging to hope. Hope plays an important role in all three, but arguably is most crucial at the present time, when we can no longer rely on the buoyancy that the other two provide." Mickelson, 'Hope' (n 14) 17.

<sup>39</sup> Al Attar, 'Pedagogy' (n 3) 183.

<sup>40</sup> The expansion of international law and artificial intelligence represents a core example of these new manifestations. See, Fleur Johns, 'Data, Detection, and the Redistribution of the Sensible in International Law' (2017) 111 *AJIL* 57. Likewise, the burning issues of international law and climate change as well as racial capitalism all point to the connections of various strands of law that traffic baked-in Eurocentric logics.

<sup>41</sup> We do this, acknowledging

"... that the post-Cold War situation is one characterized by the recognition of multiple identities and heterogeneity, and the rejection of universalist modes of reasoning. Such multiplicity and heterogeneity, in turn, can best be appreciated if seen for what these identities and, indeed, norms and doctrines of international law are: constructed and contingent. The challenge for liberal/conservative approaches to international law, therefore, is to engage this postcolonial predicament rather than to defend international norms in the abstract, ..."

James Thuo Gathii, 'Rejoinder: Twailing International Law' (2000) 98 *Mich L Rev* 2066, 2071.

<sup>42</sup> For some examples from the Global North, see, Christine Schwöbel-Patel, 'Teaching International Law from a Critical Angle' (2013) 2 *Recht En Methode* 67; Christine Schwöbel-Patel, 'Teaching International Law Critically: Critical Pedagogy and Building as Orientations for Learning and Teaching' in Bart van Klink and Ubaldus de Vries (eds), *Academic Learning in Law: Theoretical Positions, Teaching Experiments and Learning Experiences* (Edward Elgar 2016) 99. See also Christine Schwöbel-Patel, 'Teaching International Law' (*Oxford Bibliographies*, OUP 2018);

Teachers of international law-oriented subjects are committed to diversifying the perspectives on their syllabi by introducing variations in theoretical approaches and scholarly materials.<sup>43</sup> In the Global North, many of the moves to account for critical perspectives in the teaching of international law are dubbed in the language of ‘decolonizing the curriculum.’<sup>44</sup> However, the extent to which the move to ‘decolonize the curriculum’ makes substantive radical shift in the teaching of international law and the law schools in generally is yet to be seen.<sup>45</sup> Most recently, the impetus to confront the Eurocentricity of international law in Western lecture theatres have

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Anne Orford, ‘Embodying Internationalism: The Making of International Lawyers’ (1998) 19 Aust YBIL 1; Jack L Goldsmith and Eric A Posner, ‘The limits of International Law Fifteen Years Later’ (2021) 22 Chicago J Int’l L 110.

On the Global South, see, Mohammad Shahabuddin, ‘Teaching and Researching International Law: Some Personal Reflections Via Bangladesh and the UK’ (*Afronomicslaw Blog*, 25 September 2020) <<https://www.afronomicslaw.org/2020/09/25/teaching-and-researching-international-law-some-personal-reflections-via-bangladesh-and-the-uk/>> accessed 22 December 2022 (hereafter Shahabuddin, ‘Personal Reflections’).

<sup>43</sup> For example, Professor Obiora Okafor regularly taught a seminar on “International Law in the Global South Research Seminar Series” at Osgoode Law School, York University Canada. The ‘seminar series focused on international law from a TWAILian perspective, with discussions centred on a work-in-progress presented by younger academics from around the world. An assigned “discussant” led the way during the question-and-answer periods that followed each such seminar.’ <https://iligs.osgoode.yorku.ca>

More recently at the 2022 Loyola University Chicago School of Law International Law Colloquium: Black Traditions in International Law by James T. Gathii’s focuses on Black Traditions in International Law to “express and foreground the goals, histories and ideologies of black struggle. Black traditions have long offered visions of global order that challenge the color blindness embedded in accounts of international law. Black traditions counter visions of international law that conceptualize the world in accordance with predominantly European and white conceptions of hierarchy and order.”

See, James Thuo Gathii, ‘...The Colloquium will focus on Black Traditions of International Law’ (*Twitter*, 16 December 2021) <<https://twitter.com/JTGathii/status/1471565958703636482>> accessed 22 December 2022; James Thuo Gathii, ‘Black Traditions in International Law – Concept Note’ (*Afronomicslaw Blog*, 14 December 2021) <<https://www.afronomicslaw.org/category/repository/black-traditions-international-law>> accessed 22 December 2022.

Theoretically, on the continuing rise of social science approach to international law, see, Special Issue of the Chicago Journal of International Law on “The Social Science Approach to international Law”, edited by Daniel Abebe, Adam Chilton, and Tom Ginsburg, (2021) 22 Chicago J Int’l L 1.

<sup>44</sup> See generally, Foluke Adebisi, ‘Special Issue: Decolonising the Law School’ (2020) 54:4 *The Law Teacher*; see also, Ntando Sindane and Babatunde Fagbayibo, ‘Some Thoughts on the Ideational Underpinnings of a Decolonised Pedagogical Approach to international Law in South Africa’ (*Afronomicslaw Blog*, 2 October 2020) <<https://www.afronomicslaw.org/2020/10/02/some-thoughts-on-the-ideational-underpinnings-of-a-decolonised-pedagogical-approach-to-international-law-in-south-africa/>> accessed 22 December 2022.

<sup>45</sup> According to Mohammad Shahabuddin,

‘The project on ‘decolonising the curriculum’ has now become almost fashionable so far as higher education institutions in the UK are concerned. While the core philosophy behind the project is praiseworthy, the project is often reduced to a couple of new ornamental modules on decolonisation and race relations without any comprehensive revision of the curriculum as a whole. In this way, the project not only compartmentalises the issue of decolonising knowledge but also offers legitimacy to the prevailing traditional curriculum. It also remains to be seen how these institutions, many of which directly or indirectly benefited from colonialism or even the slave trade, re-engage in radical ways with their own institutional memories and prevalent institutional racism as part of the ‘decolonising’ project. In the absence of such radical re-engagements at the macro-level, the ‘decolonising the curriculum’ project will soon prove to be yet another white-washing tool.’

See, Shahabuddin, ‘Personal Reflections’ (n 42).

been motivated by the uprising in racially motivated injustices and the need to remedy them.<sup>46</sup> The teaching of Eurocentric international law is myopic and parochial in its outlook.<sup>47</sup>

With the exception of a handful of institutions, many Global South universities teach international law in an uncritical way.<sup>48</sup> In other words, public (and other) international law courses such as international human rights law, international trade law, and international investment law to mention a few are taught and learned through a lens, language, as well as conceptual and theoretical approaches that reinforces Eurocentrism.<sup>49</sup> Thus, the syllabi and curricula of many institutions in the Global South reflect the praxis of the teaching of canonical scholarship from the Global North.<sup>50</sup> Mohammad Shahabuddin locates one source of this uncritical attitude in a “... perception

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<sup>46</sup> For example, in the European context, see generally, The European University Institute’s Interdisciplinary Research Cluster titled “Decentering Eurocentrism”, which “brings together historians, lawyers, political scientists and economists to understand the origins and consequences of an epistemology that places Europe—sometimes explicitly and sometimes implicitly—at the centre of the world” Available Online, <https://www.eui.eu/research-hub?id=decentering-eurocentrism-1#:~:text=This%20research%20cluster%20brings%20together.the%20centre%20of%20the%20world.> (Last Visited Dec. 28, 2022).

<sup>47</sup> See generally, Adelle Blackett, ‘Follow the Drinking Gourd: Our Road to Teaching Critical Race Theory and Slavery and the Law, Contemplatively, at McGill’ (2017) 62 McGill LJ 1251; Mohsen Al Attar, “‘I Can’t Breathe’: Confronting the Racism of International Law’ (*Afronomicslaw Blog*, 2 October 2020) <<https://www.afronomicslaw.org/2020/10/02/i-cant-breathe-confronting-the-racism-of-international-law/>> accessed 23 December 2022; Mohsen Al Attar, ‘Symposium: Saving Critical International Legal Pedagogy from Formalists, Reactionaries, and Pandemics’ (*OpinioJuris*, 30 August 2020) <<https://opiniojuris.org/2020/08/31/symposium-saving-critical-international-legal-pedagogy-from-formalists-reactionaries-and-pandemics/>> accessed 23 December 2022.

<sup>48</sup> Luis Eslava, ‘The Teaching of (Another) International Law: Critical Realism and the Question of Agency and Structure’ (2020) 54 *The Law Teacher* 368.

<sup>49</sup> See, Christian Tomuschat, ‘The (Hegemonic?) Role of the English Language’ (2017) 86 *Nord J Int’l L* 196;

For example, in the context of the manifestation and perpetuation of Eurocentric international law’s dominance through English language and the inequality it fosters, Anthea Roberts rightly argues that “the common tongue for international education, international conferences, international publications, international meetings, and international dispute resolution”.

The distributional consequences of English language are skewed in favour of the speakers and as such deepens a form of Eurocentrism at the detriment of Asian, Latin American and African non-English native scholars. See generally, Alonso Gurmendi and Paula Baldini Miranda da Cruz, ‘Writing in International Law and Cultural Barriers’ (*OpinioJuris*, 7 August 2020) <<http://opiniojuris.org/2020/08/07/writing-in-international-law-and-cultural-barriers-part-i/>> accessed 23 December 2022; and, Justina Uruburu, ‘Between Elitist Conversations and local Clusters: How Should we Address English-centrism in International Law?’ (*OpinioJuris*, 2 November 2020) <<http://opiniojuris.org/2020/11/02/between-elitist-conversations-and-local-clusters-how-should-we-address-english-centrism-in-international-law/>> accessed 23 December 2022.

<sup>50</sup> As Michelle Burgis-Kasthala & Christine Schwobel-Patel note,

“Syllabi across the Global North and the Global South typically begin with a history section – Grotius as the “father” of international law and the Treaty of Westphalia in 1648 as the starting point of (European) international law. Teaching outlines then move to the structure of international law, with a teacher’s main question seeming to centre on the decision of whether to begin with subjects (such as states, international organisations and individuals) or sources (especially through treaty and customary international law). After such introductory topics, often there will be a few teaching sessions dedicated to the substance and institutions of international law, with international human rights law, aspects of international criminal law and the law of armed conflict all making brief appearances.”

Across the board, syllabi tend to follow the structure of the most popular text-books...”  
Michelle Burgis-Kasthala and Christine Schwobel-Patel, ‘Against coloniality in the international law curriculum: examining decoloniality’ [2022] *The Law Teacher* 1, 6.

of law as a colonial gift:...”<sup>51</sup> The poor attention to how the teaching and research of international law, especially by many Global South scholars teaching at institutions of higher learning reinforces how Eurocentric international law is reproduced and entrenched in the Global South today.<sup>52</sup>

As such, Eurocentric international law teaching, even if inadvertently, gatekeeps, regulates and preserves the agency, power and structure of the dominant Western approaches.<sup>53</sup> Put differently, Eurocentric teaching of international law affirms the beltways of traditional international legal knowledge production, and simultaneously relegates scholarship from the Global South to the periphery.<sup>54</sup> An instance of the pervasive nature of teaching critically arises from the paucity of scholars and teachers who bring critical lens to their classrooms and lecture theaters. As Tran Viet Dung notes in the context of Vietnam, the challenges of teaching public international law include: the shortage of lecturers with specialty in international law and the lack of access to good quality textbooks and materials in international law.<sup>55</sup> In the broader Asian context, a recent report of the National University of Singapore’s Centre for International Law on ‘Teaching and Researching International Law in Asia’ presents an empirical survey of the state of international law teaching and research in Asia.<sup>56</sup>

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<sup>51</sup> Shahabuddin, ‘Personal Reflections’ (n 42). Also see, Bhupinder S Chimni, ‘Teaching, Research and Promotion of International Law in India: Past, Present and Future’ (2001) 5 *Sing J Int’l Comp L* 368.

<sup>52</sup> Symposium: Teaching and Researching International Law – Global Perspectives (*Afronomicslaw*, 13 September 2020) <<https://www.afronomicslaw.org/index.php/2020/09/13/symposium-teaching-and-researching-international-law-global-perspectives>> accessed 20 April 2021.

<sup>53</sup> Luis Eslava, ‘The teaching of (another)international law: critical realism and the question of agency and structure’ (2020) 45 *The Law Teacher* 368 (making the case that adopting a critical realist approach for the teaching of international law can help teachers create a more emancipatory learning experience for their students in order to face this crucial task.).

<sup>54</sup> Julia Emtseva, ‘Practicing Reflexivity in International Law: Running a Never- Ending Race to Catch Up with the Western International Lawyers’ (Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2021-11, 30 April 2021) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3837283](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3837283)> accessed 23 December 2022; James Thuo Gathii, ‘Grotius Lecture: The Promise of International Law: A Third World View’ (ASIL 114<sup>th</sup> Annual Meeting, Virtual, 25 June 2020) <<https://www.asil.org/events/2020-grotius-lecture-promise-international-law-third-world-view>> accessed 23 December 2022.

For a model of the work of re-thinking the teaching and researching of internal law from below, see, Antony Anghie and JR Robert G Real, ‘Teaching and Researching International Law in Asia (TRILA) Project’ (National University of Singapore, 2020 Report of the Centre for International Law).

<sup>55</sup> Tran Viet Dung, ‘Teaching and Researching International Law in Vietnam: An Assessment Based on Ho Chi Minh City University of Law’s Experience’ (*Afronomicslaw Blog*, 15 September 2020) <<https://www.afronomicslaw.org/2020/09/15/teaching-and-researching-international-law-in-vietnam-an-assessment-based-on-ho-chi-minh-city-university-of-laws-experience/>> accessed 23 December 2022:

‘Lack of qualified resources for teaching international law is probably one of the biggest threats for our faculty and other law schools in Vietnam. We are trying to attract qualified lecturers by engaging more in international research and exchange projects.’

Also see, Rohini Sen, ‘Teaching International Law in Asia: The Predicated Pedagogue’ (*Afronomicslaw Blog*, 24 September 2020) <<https://www.afronomicslaw.org/2020/09/24/teaching-international-law-in-asia-the-predicated-pedagogue/>> accessed 23 December 2022.

<sup>56</sup> National University of Singapore’s Centre for International Law on ‘Teaching and Researching International Law in Asia’ <<https://cil.nus.edu.sg/trila/>> accessed 23 December 2022. The report was the basis of an online Symposium between *Afronomicslaw* and the National University of Singapore’s Centre for International Law in September 2020. The contributions to the Symposium reflect the attitude of the emerging generation of international law teachers, particularly in Asia, Africa, the Caribbean and Latin America to teach international law in a non-Eurocentric and critical manner that foregrounds the reality of the social, political, economic and cultural experiences of their regions and nations.

The complexity of the challenge of agency of authorship of mainstream international law in entrenching Eurocentric international law is not weakened by claims of the neutrality of the authors. A recent research symposium convened by Fabio Morosini and Luíza Leão Soares Pereira titled “International Law ‘in the Palm of our Hand’: Reading between the Lines of Brazilian International Law Textbooks”

“...explore[s] the tension between the structure of international law that ... textbooks describe, and the agency of their authors and recipients. [The authors] tackle structural questions about international law in Brazil (such as: are there substantive themes of "national" interest that are repeated in the textbooks? Are there privileged sources among their citations? What are the patterns of nationality and gender among the authors of secondary works cited?) and questions about the agency of the authors of these textbooks (including how do the textbooks reflect professional histories, geographic location, academic background, and positionality?). We embrace in this process the understanding that the power of textbooks and their authors is part of the complex interplay among the mentioned factors, and that their diffused power to produce and reproduce structures and patterns of arguments demands deeper analysis. Thus, we reject the idea that authors can produce a “neutral” manual or discover international law outside of the tension between structure and agency.”<sup>57</sup>

Furthermore, in the broader Latin American context, Amaya Alvez Marin, Laura Betancur Restrepo, Enrique Alberto Prieto-Rios, Daniel Rivas-Ramirez, and Fabia Veçoso “found that an uncritical Western perspective is favoured in the teaching of international law in the region.”<sup>58</sup> Amaya et al note further that

“In many cases, international law is generally presented as a single and objective law that must be applied uniformly in any part of the world and, therefore, leaving no place for regional contextualization or for questioning its premises. Likewise, it is widely preferred to teach it using a bibliography originated in the Global North, despite the substantive

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The Symposium by “Afronomicslaw and NUS Centre for International Law bring together junior and senior scholars and researchers from across the world to critically and comparatively reflect on important issues that we, as academics, face daily, such as teaching approaches and the challenges and opportunities the teaching of international law that technology presents. This rich set of essays also helpfully reflect on ways that we could consider collectively reassessing the international law canon currently centered on the experiences of the Global North. Needless to point out, the essays also take into account the drastic changes that the COVID-19 pandemic has necessitated both in our teaching of international law and in the remaking of institutional priorities.”

See, Antony Anghie, James Thuo Gathii, Olabisi D, Akinkugbe and Titilayo Adebola (Convenors), ‘Symposium Introduction: Teaching and Researching International Law – Global Perspectives’ (*Afronomicslaw Blog*, 15 September 2020) <<https://www.afronomicslaw.org/2020/09/14/symposium-introduction-teaching-and-researching-international-law-global-perspectives/>> accessed 23 December 2022.

<sup>57</sup> Fabio Costa Morosini, ‘International Law “in the Palm of our Hand”: Reading between the Lines of Brazilian International Law Textbooks’ (*Afronomicslaw Blog*, 12 May 2021) <<https://www.afronomicslaw.org/category/analysis/research-symposium-international-law-palm-our-hand-reading-between-lines>> accessed 23 December 2022.

<sup>58</sup> See, Amaya Alvez Marin, Laura Betancur Restrepo, Enrique Alberto Prieto-Rios, Daniel Rivas-Ramirez, and Fabia Veçoso, ‘Rethinking International Law Education in Latin America’ (*Afronomicslaw Blog*, 17 September 2020) <<https://www.afronomicslaw.org/2020/09/17/rethinking-international-law-education-in-latin-america/>> accessed 23 December 2022.

contributions of Latin American scholars in International Law and in the Humanities and Social Sciences.”<sup>59</sup>

In Africa, despite the growing body of international legal knowledge production by scholars and institutions of international law, similar challenges are replicated regarding the Eurocentric teaching of IL. The international law courses syllabi in African universities continues to entrench the agency and structure of Eurocentric international law.<sup>60</sup> This detriment remains because the few that have taken up the challenge of centering “other” international law remain on the periphery. In teaching Eurocentric international law, through canonical international law textbooks and authors, teachers of international law in the Global South therefore inadvertently validate the manifestation and agency of Eurocentrism.

Capturing the ongoing perpetuation of Eurocentrism in our theaters of learning in the Global South, Mohsen al Attar argues that

‘As TWAIL scholars we must revolutionize our pedagogy, dispossessing ourselves of the epistemological prejudices we maintain through our craft. Critical scholars conceived TWAIL to advance an inclusive and plural international law. Yet, when teaching international law, we show a surprising commitment to the enduring one, always disregarding the regime’s obvious antipathy toward epistemological plurality.’<sup>61</sup>

In the African context, the paucity in the teaching of critical international law is further highlighted by Babatunde Fagbayibo who argues that: “At the core of the discourse around the state of international legal scholarship in Africa are two issues: exclusion and relevance.”

‘Exclusion has both internal and external dimensions. In its internal mode, the concern is about the absence of critical reflection and contexts of non-white ideas and civilizations in the narrative of international law textbooks and practices on the continent. In its external context, exclusion manifests in how global South scholars are excluded from publishing in journals deemed the ‘holy grail’ of the science of international law.’<sup>62</sup>

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<sup>59</sup> In Colombia, one of the countries they focused on, they

‘concluded that international legal education at the undergraduate level, in Bogota’s universities, is characterized by a Anglo-Eurocentric bias. This bias creates silences of knowledge (epistemologies of ignorance), preventing students from having a situated and broader understanding of international law. The main silences are related to the absence of historical explorations of international law and a critical understanding of the dynamic relationship between international law and local scenarios.’ Ibid.

<sup>60</sup> See generally, Florence Shako, “Decolonizing the Classroom: Towards Dismantling the Legacies of Colonialism & Incorporating TWAIL into the Teaching of International Law in Kenya, (2019) 3:1 Journal of CMSD 17-26; Babatunde Fagbayibo, “A Critical Approach to International Legal Education in Africa: Some Pivotal Considerations” *TWAILR: Reflections* #12/2019; Michelle Burgis-Kasthala & Christine Schwobel-Patel, “Against Coloniality in the International Law Curriculum: Examining Decoloniality”, (2022) *The Law Teacher* 1-22;

<sup>61</sup> Al Attar, ‘Pedagogy’ (n 3) 198.

<sup>62</sup> Babatunde Fagbayibo, ‘The Future of international Legal Scholarship in Africa: The Trilogy of Agency, Interdisciplinarity and Functionality’ (*TWAILR: Reflections* #40/2021) <<https://twailr.com/wp-content/uploads/2021/11/20211101-Fagbayibo-Agency-Interdisciplinarity-Functionality.pdf>> accessed 23 December 2022; Babatunde Fagbayibo, ‘Critical Pedagogy Symposium: “Thus Saith the Euro-America Validation Cathedral” – The Task of Challenging and Changing the Narrative of Eurocentric International Law in Africa’ (*OpinioJuris*, 31 August 2020) <<http://opiniojuris.org/2020/08/31/critical-pedagogy-symposium-thus-saith-the-euro-america-validation-cathedral-the-task-of-challenging-and-changing-the-narrative-of-eurocentric-international-law-in-africa/>>

Outside the shores of traditional theatres of learning, institutional initiatives such as the African Union Commission of International Law (AUCIL) has the potential of complimenting African universities in developing an African perspective to international law. Indeed, the mandate of AUCIL is to codify and progressively develop international law on the continent, considering African Union treaties, the decisions of African international courts and policy organs as well as African state practice. AUCIL is to achieve this by encouraging the manifestation of this codification and progressive development in the teaching, study, publication, and dissemination of literature on international law on the continent.<sup>63</sup> The AUCIL has unfortunately faltered in this regard, although it is beginning new initiatives that could change the direction of its work.

The Eurocentric teaching of international law is path dependent. Teachers of international law in many parts of the Global South remain indoctrinated in the Eurocentric approaches to international law. In the African context, many of these teachers of international law are pedagogically conservative – formalistic and doctrinal – in their approaches to the subject. In many cases, this is not a deliberate choice.<sup>64</sup> It is simply a reproduction of the ways by which they were taught or happened to have studied. The teaching of international law has thus not centered the contradictions and tensions of international legal scholarship enough in the theaters of learning in Africa.<sup>65</sup>

The near non-existence of critical approaches in the core texts of international law and syllabi that African teachers and student rely on is the very definition of an epistemic wrong – a reincarnation or evanescence of Eurocentrism. Where then does the foregoing leave us? A commitment to a broadly TWAILian style and substance in our work also calls for the recognition of the growing need to reach beyond the typical sites of engagement toward the non-typical sites.

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accessed 23 December 2022. See also, Florence Shako, ‘Teaching and Researching International Law – A Kenyan Perspective’ (*Afronomicslaw Blog*, 1 October 2020) <<https://www.afronomicslaw.org/2020/10/01/teaching-and-researching-international-law-a-kenyan-perspective/>> accessed 23 December 2022; Arnold Nciko Wa Nciko, ‘The Hutians – Decolonising the teaching of Public International Law in African Law School to Address a Real Problem’ (*Afronomicslaw Blog*, 17 September 2020) <<https://www.afronomicslaw.org/2020/09/17/the-hutians-decolonising-the-teaching-of-public-international-law-in-african-law-schools-to-address-a-real-problem/>> accessed 23 December 2022; Suzzie Onyeka Oyakhire, ‘Teaching IEL as a Nigerian Teacher in the Era of Decolonisation’ (International Economic Law Collective Symposium II, *University of Bristol Law School Blog*, 27 March 2020) <<https://legalresearch.blogs.bris.ac.uk/2020/03/teaching-iel-as-a-nigerian-teacher-in-the-era-of-decolonisation/>> accessed 23 December 2022.

An important recent contribution that foregrounds African perspectives on international law and published as open access by the Pretoria University Law Press (PULP) is: Frans Viljoen, Humphery Sipalla and Foluso Adegalu, *EXPLORING AFRICAN APPROACHES TO INTERNATIONAL LAW: ESSAYS IN HONOUR OF KÉBA MBAYE*, (PULP, 2022).

<sup>63</sup> See ‘African Union Commission on International Law’ <<https://au.int/en/auCIL/about>> accessed 16 October 2021.

<sup>64</sup> Thanks to Anne van Aaken who pointed out that the same problem characterizes the teaching of international law in Eastern Europe.

<sup>65</sup> See generally, Anthea Roberts, *IS INTERNATIONAL LAW INTERNATIONAL?* (Oxford University Press, 2017). Also, in this regard, Al Attar has argued that, as much as TWAIL has done a great job in confronting eurocentrism in international law through research, it has forgotten a combined teaching mission. Al Attar, ‘Pedagogy’ (n 3) 189.

The authors acknowledge that the inspiration for use of “Theatre” derives from Prof. Obiora C. Okafor’s Guest Lecture titled “Africa as a “Theatre” of International Law and Development Knowledge, Practice and Resistance” at the Afronomicslaw.org Academic Forum, August 7, 2022. See, <https://www.afronomicslaw.org/category/academic-forum/afronomicslaworg-academic-forum-guest-lecture-series-africa-theatre>

To be sure, our argument is not that the scholarly materials on traditional or mainstream international law should be expunged completely from the syllabi of universities in the Global South. Rather, our core claim is that the scholarly space for critical traditions remains significantly shrunk, thus perpetuating the evanescence of Eurocentric international law in the higher institutions of the Global South. As such, the plurality of international legal knowledge production as foregrounded by critical theoretical and methodological approaches such as TWAIL, Feminism, Marxism, Comparative law, and Social Sciences approaches to International Law<sup>66</sup> are not centred in the teaching of international law. We see a lot of opportunities to confront and pluralize Eurocentric international law in the teaching of students in the Global South. We return to some of the initiatives that are already ongoing, and which should be incorporated in teaching international law to bring critical perspectives to the lecture theatres of Global South institutions, and at an accessible rate that intensifies the mission to pluralize the mainstream international law.

### **Mainstreaming the Production of International Legal Scholarship from and by Global South**

In this section, the Chapter carries on its analysis by examining the production of international legal knowledge by and in the Global South. The Global South is producer of international legal knowledge. Yet, knowledge about public international law (and its sub-fields such as international investment law and international human rights law among others)<sup>67</sup> that is produced by Global South scholars has not been centred in the books, journals, blogs and other associated scholarly materials not only in the Global South but also in the Global North to pluralize the dominance of Eurocentric international legal knowledge. In our view, what we call for here is in some sense a cross-fertilization of materials that co-exists.

In essence, confronting the agency and structural power in the Eurocentric teaching of international law in Global South, by pluralizing the readings in syllabi, must also take account of the practical reality that the majority of Global South countries are low resource economies. As such, it is important that the scholarship generated are available and not locked behind pay walls once they are centred in the mainstream.<sup>68</sup> Put differently, to the extent that important international legal scholarly work that are generated by Global South scholars in public international law<sup>69</sup>, and sub-fields such as international human rights<sup>70</sup> and international investment law hosted as open access,

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<sup>66</sup> Abebe et al, 'Social Science Approach' (n 27); Gathii, 'Studying Race' (n 27).

<sup>67</sup> On international human rights law and Africa as human rights norm entrepreneur, see generally, Obiora C. Okafor, *THE AFRICAN HUMAN RIGHTS SYSTEM, ACTIVIST FORCES AND INTERNATIONAL INSTITUTIONS*, (2007)

<sup>68</sup> The chapter returns to examples of the existing and growing open access publications in the Global South in its concluding section.

<sup>69</sup> Tiyanjana Maluwa, 'Reassessing Aspects of the Contribution of African States to the Development of International Law Through African Regional Multilateral Treaties' (2020) 41 *Mich J Int'l L* 327 (Arguing that in the scheme of modern international law by highlighting specific examples of African states' contributions to international legal norms through multilateral treaty-making.). Also see generally, Antony Anghie, Bhupinder S Chimni, Karin Mickelson, and Obiora Chinedu Okafor, *The Third World and International Order: Law, Politics, and Globalization* (Martinus Nijhoff 2003).

<sup>70</sup> Olabisi D Akinkugbe and Adebayo Majekolagbe, 'The African Court of Human and Peoples' Rights Decision in the Ogiek Case: An Appraisal' in Amissi M Manirabona and Yenny Vega Cardenas (eds), *Extractive Industries and Human Rights in an Era of Global Justice: New Ways of Resolving and Preventing Conflicts* (LexisNexis 2019) 163 <<https://ssrn.com/abstract=3307170>> accessed 23 December 2022.



the cross-fertilization and plurality of Eurocentric international law should not remain steeped in the dominant approaches any longer.

Yet, an enduring feature of Eurocentric scholarship is tenacious, resilient and enduring.<sup>71</sup> While we acknowledge that mainstreaming or centring the ‘other’ international legal scholarship is an ongoing battle, this Chapter argues that the importance of these research must not be measured only by their capacity to “up-end” or “undo” Eurocentric international law. This is especially so since the overarching argument in this Chapter is one of recognition of the plurality and diversity of voices, places, purpose, producers and forms of international law beyond Eurocentric tropes. Eurocentric distortions of the history and contemporary practices of international law, while still dominant, is today more challenged by the scholarly work of critical international legal scholars from the Global South and Global North alike. Similarly, scholarly work that pluralize Eurocentric dominance must display similar resilience, in rigour, scope and (if possible – open access) publication across diverse areas. In this sense, TWAIL and other critically informed scholarship illustrate the diversity of other practices and this production of international legal knowledge.<sup>72</sup> Their commitment to pluralized thinking and heterogeneity that is grounded in the unique socio-political, economic, historical and cultural context of the region they study has enhanced the utility of their work to pluralize international law.

In the Global North, TWAIL scholarship have been filling the pages of academic journals, blogs, book chapters and books to provide a criticism of international law from different interdisciplinary angles that do address the concerns of African and Third World peoples. TWAIL oriented scholarship has grown in leaps and bounds and is evident from the on-going bibliography of TWAIL works.<sup>73</sup> Having such a wide range of resources documenting the contributions that Africa and the rest of the Third World is making to international law and its sub-fields is very important to informing the further research, teaching and the practice of international law in ways that does not reproduce the Eurocentricity in the Global South.

In the context of international courts, the potential influence and cross-fertilization of knowledge based on the jurisprudence on international human rights law from African, Latin American and European courts as well as younger ones in the Caribbean offers an important illustration on decentering and pluralizing Eurocentric international law through the judicial institutions. For example, in the field of international human rights law, the African Court on Human and Peoples’ Rights has been at the forefront of cutting-edge advancement of human rights.<sup>74</sup> Our point here is that the European Court of Human Rights as an institution that embodies and generates a version of Eurocentric – universalized – understanding of international law can and should be influenced by developments in its African and Latin American counterparts. In this regard, the Joint Law

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<sup>71</sup> Anne-Charlotte Martineau, ‘Overcoming Eurocentrism? Global History and the Oxford Handbook of the History of International Law’ (2014) 25 EJIL 329;

<sup>72</sup> Gathii, ‘Promise of International law’ (n 22).

<sup>73</sup> Gathii has gone ahead to share a comprehensive bibliography of about 48 pages covering most, if not all, the TWAIL scholarship between the period 1996 and 2020. The bibliography covers dozens of journal articles, books, book chapters, book reviews, PhD dissertations, and blog posts; mostly in English and French, with a couple in Spanish. Gathii, ‘Promise of International law’ (n 22) (Including a TWAIL Bibliography 1996–2019 as an Appendix). See also, Gathii, ‘TWAIL history’ (n 31) 26.

<sup>74</sup> See generally, Henry Onoria, “The African Commission on Human and Peoples’ Rights and the exhaustion of local remedies under the African Charter”, (2003) 3 African Human Rights law Journal 1-24.

Report of the African Court on Human and Peoples' Rights, European Court of Human Rights, and Inter-American Court of Human Rights is to be commended. The inaugural edition which was published in 2019 with a goal among others "... to illustrate how the courts are increasingly having regard to each other's approach to human rights protection", is an appropriate example of how the cross-fertilization of knowledge production by institutions of international law across different regions must be pluralized for a more fulsome understanding of international law and its sub-fields.<sup>75</sup> So far, two Volumes of the Joint Law Reports have been published. While such an initiative provides an important start, building on and ensuring that the practice thickens and becomes a norm of interaction between the sister courts' jurisprudence remains cardinal to pluralizing Eurocentric international law. In other words, beyond being modelled after the European Court of Human Rights, in contemporary times, other international courts in marginalized regions offer important sites of production of international legal knowledge that must be centered to pluralize international legal knowledge.<sup>76</sup>

Beyond the courts, TWAIL scholars are now making their scholarship instrumental in the Special Procedures process of the United Nations. Significant, even if modest progress continues to be made by TWAIL scholars who have been appointed to the United Nations' Special Procedures. As at November 2021, there are four TWAIL-oriented mandate holders for the Special Procedures

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<sup>75</sup> "This inaugural edition of the publication features landmark decisions of the African Court delivered during the year 2019, and from these decisions can be discerned the centrality of the Court in human rights dispute resolutions on the continent. The judgments deal with a wide range of human rights issues shaping the socio-economic and political landscape of the continent, including issues of access to the Court, its jurisdiction and the admissibility of cases before it; fair trial rights, especially the right to be tried by an impartial tribunal; freedom of movement; right to liberty; right to life and compatibility of mandatory death penalty; legal personality and the right to nationality; the right to participate in government, and related citizenship rights; the right to reparation, including the concept of loss of future opportunities." See, Inter-American Court of Human Rights, *Joint Law Report 2019: African Court on Human and Peoples' Rights, European Court of Human Rights and Inter-American Court of Human Rights / Inter-American Court of Human Rights, African Court on Human and Peoples' Rights and European Court on Human Rights* (San José, 2020) <[https://www.echr.coe.int/Documents/Joint\\_Report\\_2019\\_AfCHPR\\_ECHR\\_IACHR\\_ENG.pdf](https://www.echr.coe.int/Documents/Joint_Report_2019_AfCHPR_ECHR_IACHR_ENG.pdf)> accessed 23 December 2022. For the 2020 Joint Law Report, see, <[https://echr.coe.int/Documents/Joint\\_Report\\_2020\\_AfCHPR\\_ECHR\\_IACHR\\_ENG.pdf](https://echr.coe.int/Documents/Joint_Report_2020_AfCHPR_ECHR_IACHR_ENG.pdf)> accessed 23 December 2022.

<sup>76</sup> See generally, Ekhatior Eghosa, "Multinational Corporations, Accountability and Environmental Justice: The Move Towards Sub-Regional Litigation in Africa", (2022) 12:02 German Journal of Comparative Law 118-130; Caserta, Salvatore, and Mikael Rask Madsen, 'The Caribbean Court of Justice: A Regional Integration and Postcolonial Court', in Karen J. Alter, and Laurence R. Helfer (eds), *International Court Authority* (Oxford, 2018; online edn, Oxford Academic, 20 Sept. 2018); See Alexandra Huneus, *Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights*, 44 CORNELL INT'L. L. J. 493, 505 (2011); Obiora Okafor, Udoka Owie, Okechukwu Effoduh, and Rahina Zarma, "On the Modest Impact of West Africa's International Human Rights Court on the Executive Branch of Government in Nigeria", (2022) 35 Harvard Human Rights Journal 169.

solidarity<sup>77</sup>, racism<sup>78</sup>, food<sup>79</sup> and housing<sup>80</sup>. In the context of international societies in the Global North, TWAIL-ers continue to serve as Executive Council members and on the board of important international societies in the World – In the USA<sup>81</sup>, Canada<sup>82</sup>, Europe<sup>83</sup>, Australia and elsewhere. Further, a decade after Antony Anghie was invited to deliver the main keynote at the ASIL Annual Meeting, the Grotius Lecture, James T. Gathii was invited to deliver the same lecture in 2020.

Further, academic societies and networks of African scholars play an important complimentary role in facilitating the space for the critical analysis of Eurocentrism in international law and its sub-fields. Examples of these societies and networks in Africa include, the African Society of International Law, the African International Economic Law Network, the African Arbitration Association, and the Afronomicslaw Academic Forum to mention a few. The cumulative implication of the works of these forums is to not only amplify the voice of Africa and African scholarship in the respective sub-fields, but have also made substantive proposals towards their development.<sup>84</sup>

Global South scholarly publication fora is also on the rise. The open access and substantive quality analysis that these platforms offer are essential to the mission of pluralizing Eurocentric international law. Open access peer-reviewed journals and blogs with an explicit focus on Global South have been established and are growing. TWAIL now has its own journal – The Third World Approaches to International Law Review (TWAILR).<sup>85</sup> It has the aim of providing critical

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<sup>77</sup> Professor Obiora C. Okafor is the Independent Expert on international Solidarity <<https://www.ohchr.org/en/issues/solidarity/pages/obiorkafor.aspx>> accessed 23 December 2022.

<sup>78</sup> Professor Tendayi Achiume is the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related tolerance <<https://www.ohchr.org/EN/Issues/Racism/SRRacism/Pages/CurrentMandateHolder.aspx>> accessed 23 December 2022.

<sup>79</sup> Professor Michael Fakhri is the Special Rapporteur on Right to Food <[https://www.ohchr.org/EN/Issues/Food/Pages/Michael\\_Fakhri.aspx](https://www.ohchr.org/EN/Issues/Food/Pages/Michael_Fakhri.aspx)> accessed 23 December 2022.

<sup>80</sup> Professor Balakrishnan Rajagopal is the Special Rapporteur on Adequate Housing <<https://www.ohchr.org/EN/Issues/Housing/Pages/BalakrishnanRajagopal.aspx>> accessed 23 December 2022.

<sup>81</sup> In connection with the American Society of International Law (ASIL), while Antony Anghie, Makau Mutua, James T. Gathii have all served on the Executive Council, James Gathii is an Executive Vice President and member of the AJIL Board while Balakrishnan Rajagopal is a Counsellor.

<sup>82</sup> Olabisi D. Akinkugbe serves on the board of the American Society of International Law, Canadian Council of International Law, the International Law Association, Canada Branch, and the Society of International Economic Law.

<sup>83</sup> Makane Mbengue serves as a Vice-President of the International Academy of Comparative Law and a Member of Council of the French Society of International Law.

<sup>84</sup> See generally, The African Society of International Law is – “a network of practitioners, scholars, technocrats and students engaging with international law as practiced, implemented, and forged in Africa. The African Society seeks in particular to [among others] amplify the voice of African states and Africans in international law [and] foster inquiry, exchange of ideas and innovation in international law as it is developed and implemented in Africa.” See, <<https://www.afsilsadi.org>> accessed 23 December 2022; The African Association of International Law whose mission is to “foster the development and dissemination of African perspectives and practices of international law, in particular through the publication of an African Yearbook of International Law.” <<https://aail-aadi.org>> accessed 23 December 2022; The African Arbitration Association declares that its “role is to support the continuing development of international arbitration in Africa and to improve and recognise the international prominence of its members and their activities in international arbitration and international dispute resolution.” See <<https://afaa.ngo>> accessed 23 December 2022.

<sup>85</sup> See generally, Third World Approaches to International Law Review (TWAILR) <<https://twailr.com>> accessed 23 December 2022.

scholars, mainly from the Global South and their allies, with a space to be active participants in the project of international law in a way that is emancipatory, egalitarian, and truly international.<sup>86</sup> In addition to the yearly journal issue, TWAILR hosts *Dialogues* and *Reflections*. *Dialogues* are often used to gather conference proceedings and interviews with authors and TWAIL scholars while *Reflections* offer the possibility of engaging with a topic via a short, pithy, and crisp analysis of no more than three thousand words. There is also Afronomicslaw.org, which among others hosts a Blog, a thriving Academic Forum, an African Sovereign Debt Justice Network, and the African Journal of International Economic Law (AfJIEL).<sup>87</sup> Afronomicslaw focuses on international economic law and public international law matters as they mostly relate to Africa and the Global South. Afronomicslaw's aim is to amplify those voices and issues that are not often featured in mainstream international scholarship. In terms of research, the pieces that feature on the blog, as one would conclude, already further the goals of deprovincializing the research and teaching of international law from a non-Eurocentric perspective.<sup>88</sup> In addition, more traditional publication platforms such as regional and national international law journals such as the Asian Journal of International Law, African Journal of International Law, Brazilian Journal of International Law among others have continued to publish essays that challenge the boundaries of Eurocentric international law in important ways.<sup>89</sup>

In terms of substantive principles of international law sub-field, international investment law represents an arena where African states practices in treaty making and the scholarship on them have introduced innovative provisions and norms that center substantive concerns of African peoples with potential ramifications for the Global South and Global North.<sup>90</sup> Although the tendency is to limit these developments to the regional level, this Chapter argues that the body of scholarly work by Makane Moïse Mbengue, Won Kidane, Emilia Oyeama, Ibronke Odumosu-Ayanu, Hamed El-Kady, and Kehinde Olaoye, among others illustrate the role Africa is playing in the development of international investment law. This body of scholarship is not monolithic, and their approaches differ. The idea here is that critically minded scholars are not only questioning the idea that Africa and the Global South are rule-takers in international investment law today, but

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<sup>86</sup> Usha Natarajan, Laura Betancur-Restrepo, Amar Bhatia, John Reynolds, Ntina Tzouvala & Sujith Xavier, 'Third World Approaches to International Law Review: A Journal for a Community' (2020) 1 TWAIL Review 9.

<sup>87</sup> See Afronomicslaw <<https://www.afonomicslaw.org/about>> accessed 16 October 2021. Afronomicslaw.org also has an Academic Forum that is led by Dr. Ohio Omiunu.

The Afronomicslaw Academic Forum is founded upon the realization that international (economic) law is usually taught and researched within the Western and/or Anglo-American categories of thought. The core business of the Academic Forum is to empower undergraduate students graduate students, and early career researchers from across the world with critical skills to help them strike a proper balance between international (economic) law and the lived experiences of Third World peoples. To do this, the students develop a list of international topics they intend to cover each year and reach out to critical scholars to be taking them through these twice every month.

<sup>88</sup> Ibid. Also see, See James Gathii and Olabisi Akinkugbe, 'Introduction to the Inaugural Issue of the African Journal of International Economic Law' (2020) 1 Afr J Int'l Econ L 5.

<sup>89</sup> See, African Yearbook of International Law <<https://brill.com/view/journals/afyo/afyo-overview.xml?language=en>> accessed 23 December 2022; African Human Rights Yearbook <<https://www.chr.up.ac.za/african-human-rights-yearbook-ahry>> accessed 23 December 2022; Asian Journal of International Law <<https://www.cambridge.org/core/journals/asian-journal-of-international-law>> accessed 23 December 2022; Latin American Journal of International Trade & Policy; Brazilian Journal of International Law.

<sup>90</sup> In terms of BITs, the Morocco-Nigeria BIT offers innovative provisions that foreground sustainable development among others.

they foreground aspects where Africa and the Global South are indeed rule-makers.<sup>91</sup> One narrative of the contribution of African states is their role in the generation of international investment law rules and norms through treaty-making. As a result of their more active approach in the formulation of international investment commitments and rule-making at the national, bilateral and regional levels, a body of contribution, that differ from and pluralize the existing types of obligations in the bilateral investment treaties is emerging.<sup>92</sup> The rise of international investment rule-making form the basis of Hamed El-Kady and Mustaqeem De Gama's argument that African states "...are becoming 'investment treaty makers' and are adopting investment policies that reflect primarily their own preferences as opposed to 'signing on' to models proposed to them by third parties."<sup>93</sup> El-Kady and De Gama note further that the reform efforts at the national and regional levels in Africa "have the strategic objective of supporting structural transformation of African economies while building investment policy frameworks that are development-oriented and establishing a balance between investor and States' rights and obligations."<sup>94</sup>

Africa is becoming a laboratory for innovative and sustainable development-oriented investment policymaking. While these reform efforts occur in parallel and sometimes overlap with one another, they all converge in their attempt to formulate a new approach to investment policies that aims at safeguarding the right and duty of African countries to regulate and to reflect emerging sustainable development imperatives. The developments, Mbengue argues, make Africa "...an interesting laboratory for the rethinking and reshaping of international investment law."<sup>95</sup>

### **In lieu of Conclusion: Entrenching the Initiatives to Counter Manifestations of International Law**

Our conclusion draws together the thread that connects the arguments in the preceding sections of this Chapter. Although African states like their counterparts in the Global South were 'rule-takers' in the historical sense of the evolution of international law, today, these erstwhile peripheries in the production of international legal knowledge, teaching and new practices of international law are rule-makers in their own rights. In our view, the on-going contributions of African institutions such as international courts and regional organizations; innovative treaty making in the areas of

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<sup>91</sup> Makane Moïse Mbengue and Stefanie Schacherer, 'Africa as an Investment Rule-Maker: Decrypting the Pan-African Investment Code' (2018) 23 Afr Yrbk Int'l L 81.

<sup>92</sup> See generally, Hamed El-Kady and Mustaqeem De Gama, 'The Reform of the International Investment Regime: An African Perspective', (2019) 34 ICSID Rev 482; Olabisi D Akinkugbe, 'Africanization and the Reform of International Investment Law' (2021) 53 Case W Res J Int'l L 7; As Fatsah Ouguergouz notes:

"For a long time confined to a passive attitude of accepting the rules laid down by the countries of origin of investments, African States have gradually become aware of the need to draw up rules reflecting a balance between, on the one hand, the protection of foreign investments and, on the other, the protection of their fundamental interests in terms of economic development, respect for the environment, protection of human rights, the fight against corruption and the settlement of disputes."

Fatsah Ouguergouz, 'African State and investment Law and Arbitration – Challenges and Opportunities: An introduction' (2018) 23 Afr Yrbk Int'l L 4; see also, Mathias G Sahinkuye, 'The Contribution of the African Institute of International Law to the Promotion of Commercial and Investment Arbitration in Africa' (2018) 23 Afr Yrbk Int'l L 207.

<sup>93</sup> El-Kady and De Gama, 2.

<sup>94</sup> El-Kady and De Gama, 4.

<sup>95</sup> Makane Moïse Mbengue, 'Special Issue: Africa and the Reform of the International Investment Regime' (2017) 18 J World Inv & Trade 371, 376.

international investment law; growing density of African centered scholarly journals and platforms; as well as casebooks in international law point to the emergence of series of international law as conceptualized by African states, scholars, policy experts and practitioners.

The Chapter illustrates the various ways that the TWAIL scholarship in the research and teaching of international law is pluralizing the narrowness and false claims of universality of international law. The task of centering the 'other' international laws in the areas of research, teaching and practice remains an urgent one with a multi-layered approach. Yet, despite Eurocentric international law's resilience, contemporary teaching, research, and practice of international law, Global South countries are simultaneously engaged in the making and remaking of international law. The path to mainstreaming Third World scholarship and pluralizing Eurocentrism is clearer today than two or three decades ago. There is every reason to hope and not surrender in despair.