



## THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

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### **A Critical Approach to International Legal Education in Africa: Some Pivotal Considerations**

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The study of international law in Africa, particularly as it translates to pedagogy, remains stubbornly anchored to a Eurocentric worldview. Many universities across the continent still use textbooks and materials that place Eurocentric canons and notions at the heart of the theory and praxis of international law.<sup>1</sup> Textbooks written by African scholars do not necessarily displace this paradigm. The result is an uncritical syllabus that distances learners from the stark realities of an international law speaking neither to their context nor proffering any meaningful solutions to their existential concerns. Such syllabi present international law as a neutral mechanism for addressing global issues, with little or no reference to how it continues to be manipulated by the West in achieving its narrow, hegemonic objectives.

Since the 1960s, African scholars have been involved in moves to disrupt the ‘single story’ of international law as exclusively the sociological and normative product of European civilisation. Although these scholars belong to different schools of thought and ideology,<sup>2</sup> a common theme is emphasis on a pluriversal and contextual

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<sup>1</sup> See e.g. Babatunde Fagbayibo, ‘Some Thoughts on Centring Pan-African Epistemic in the Teaching of Public International Law in African Universities’ (2019) 21:2 *International Community Law Review* 170, at 179-182.

<sup>2</sup> James Gathii usefully classifies African scholars into contributionists who provided a historical perspective of pre-colonial Africa’s contributions to internationality, and critical traditionalists who expose unequal structural relations in global realpolitik and call for an overhaul of the international system. Notable scholars include Taslim Olawale

disciplinary perspective. This has been done through robust presentations of the history of pre-colonial diplomatic interactions, structural imbalances in global political economy, and express and/or implicit ways in which hegemonic forces from the global North continue to skew the rules of international law for their own benefit. However, these efforts largely take place outside the pedagogical environment of international law in Africa. Thus, the methodological question at the heart of this reflective piece is: How should the scholarship of critical scholars within and outside the discipline of international law influence the teaching of international law in Africa?

### **The Imperative of Critique**

A syllabus that presents Eurocentric canons and ideas as *the* singular vision of the discipline, ignoring the socio-cultural, political and economic realities of African students, is false, unrelatable, and unsustainable. Disciplinary detachment of this sort also has some more specific and interrelated negative implications.

One is that it deprives African students of knowing the contributions of their forebearers to the practice of internationality; understanding the knowledge systems underlying such conduct; seeing the manifestations of such knowledge in various modes of contemporary socio-cultural, political and economic interactions; and relating such knowledge to current realities. Lack of exposure to critical scholarship such as *Third World Approaches to International Law (TWAIL)* prevents African students from gaining a thorough understanding of how explicit and implicit structural imbalances continue to shape Africa's marginal disciplinary position. For example, the veto power exercised by the 'big five' in the United Nations, leadership of the World Bank and International Monetary Fund by the United States and Europe respectively, manipulative use of aid and loans, illicit financial flows from Africa, and intervention in the affairs of developing nations, are matters that require studied and critical consideration in a pedagogical environment. Systemically omitting to address these

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Elias, James Gathii, Makau wa Mutua, Ibronke Odumusu-Ayanu, Obiora Okafor, and Oji Umozurike. See James Thuo Gathii, 'Africa' in Bardo Fassbender and Anne Peters (eds.), *The Oxford Handbook of the History of International Law* (OUP, 2012) 407, at 407.

matters deprives learners and their teachers of much-needed critical consciousness. According to Paulo Freire, critical consciousness is 'characterized by depth in the interpretation of problems; by the substitution of casual principles for magical explanations; by the testing of one's "findings" and by openness to revision; by the attempt to avoid distortion when perceiving problems and to avoid preconceived notions when analyzing them; by refusing to transfer responsibility; by rejecting passive positions; by soundness of argumentation; by the practice of dialogue rather than polemics; by receptivity to the new for reasons beyond mere novelty and by the good sense not to reject the old just because it is old – by accepting what is valid in both old and new'.<sup>3</sup> In essence, it presents a holistic prism for evaluating issues as a means of identifying appropriate and context-related solutions.

Secondly, continuation of the Eurocentric approach reinforces the perception of the supremacy of European standards and inferiority of non-European ideas. Students are indoctrinated with an inferiority complex where they regurgitate European superiority and unconsciously accept that their civilisation and critique is incapable of contributing to international law or disrupting Eurocentric claims of equivalency with universal norms.

Lastly, it renders students impractical as actors and ineffective as change agents. An uncritical Eurocentric syllabus cannot equip African students with the skills of frontally addressing developmental and ideational challenges facing the African continent. It is a miseducative exercise, not fit for purpose. To counteract this problematic situation, there is a need to repurpose the direction and vision of international legal education in Africa. Such a repurposing is two-fold. First, international legal education should be appreciated as a broad process of imparting students with the requisite knowledge to interrogate, challenge, and think beyond the narrow confines of theory in order to better understand its application. Second, students should appreciate the connection of actions and effects that continue to place the global South at the periphery of the global system, and thus gain the ability to

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<sup>3</sup> Paulo Freire, *Education for Critical Consciousness* (Continuum, 1998) 18.

become meaningful actors in redressing these issues. A critical approach that situates learners and teachers within a non-hierarchical and pluriversal understanding of international law helps students effectively and efficiently utilise their knowledge for the benefit of their society.

### **Obstacles to Rescuing International Law Pedagogy**

One of the major obstacles to a critical pedagogical approach is the conservative environment of international legal education in Africa, which is the heritage of colonialism.<sup>4</sup> Generations of scholars received their legal training steeped in the Eurocentric paradigm and have themselves become the conduit through which such knowledge is transmitted and preserved. Conservative Eurocentric training ensures that law is learned in disciplinary isolation, with minimal exposure to multidisciplinary perspectives, creating a faux apolitical disciplinary stance.<sup>5</sup> This position has become the entrenched culture in many law schools across the continent for decades, with little or no effort to either accommodate radical voices and/or provide a genuine decolonial framework for changing the status quo.

The recognition of a Eurocentric epistemic standard of assessment and valuation of academic research continues to sustain what Ramose refers to as the 'northbound gaze'.<sup>6</sup> African scholars are compelled by institutional requirements to publish in 'leading international journals', which are more often than not based in the global North, with an implicit expectation to conform to Eurocentric canons if they want their articles published. Even in cases where grants and funding are needed for research from institutions in the global North, it is often the unwritten 'wisdom' to tame any critical view that veers from the ostensibly universal Eurocentric standard of knowledge.

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<sup>4</sup> See e.g. Fagbayibo (2019) 182.

<sup>5</sup> See e.g. Muna Ndulo, 'Legal Education in an Era of Globalisation and the Challenge of Development' (2014) 1:1 *Journal of Comparative Law in Africa* 1, at 17.

<sup>6</sup> Mogobe Ramose, "'African Renaissance': A Northbound Gaze" (2000) 19:3 *Politeia* 47, at 47-61.

Lastly, there is the issue of chronic lack of funding for research and development in many universities in Africa.<sup>7</sup> Lecturers are underpaid, overworked, and thus have little time for quality research. For teachers to engage in a meaningful critical approach to international legal education, there must be a sustained and deliberate policy approach that provides training and requisite funding for critical research and development initiatives. Insufficient funding also affects access to knowledge and equal opportunity to participate in the production of knowledge. Scholarship, including that which can enhance critical approaches, is often published in expensive journals and books that are published in the global North. A way around this restriction is to encourage open access publication of critical works in blogs, online journals, online research repositories, and citation to works published on such platforms. This should also include genuine and robust collaborative research efforts between and among experienced and emerging scholars within the African continent and across the global South. In addition to research essays, such collaboration should also encourage the production of [bibliographic essays](#) on the existing critical works and mapping the way ahead. Platforms such as Academia, ResearchGate, [Council for the Development of Social Science Research in Africa \(CODESRIA\)](#), and the [Pretoria University Law Press \(PULP\)](#) provide open access publication options for books, articles, and think-pieces, expanding visibility and access to research in the global South.

### **In Lieu of a Conclusion, Some Pivotal Considerations**

In mapping the way forward for the adoption of a critical approach to international legal education in Africa, this piece recommends three pivotal points. It must be emphasised from the outset that these suggestions are by no means cast in stone. Rather, they aim to stimulate further discursive engagements in the global South in general, and Africa in particular.

First is the imperative of continued meaningful dialogue between and among critical stakeholders on the way forward. This should include:

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<sup>7</sup> Fagbayibo (2019) 183.

- a) dialogue within the international legal academy;
- b) inter/transdisciplinary dialogue; and
- c) dialogue between teachers and learners.

The first type of dialogue is one that brings together international law teachers and practitioners at national and regional levels in setting an agenda on how to ensure that critical concerns are identified and proactively engaged. This could include multiple initiatives at national, regional, and continental levels by law schools, professional bodies, civil society organisations, and academic associations of law teachers. One way to achieve this is by refocusing the agenda of the [International Law Seminar for African Universities](#), organised by the African Union Commission for International Law (AUCIL). This requires a shift from its current attention to mainstream Eurocentric approaches to international law to one that places emphasis on a decolonised pathway. TWAIL scholarship and other critical materials should become major components of these seminars. The AUCIL should also encourage the setting up of national and regional chapters of international law teachers across the continent as a means of identifying issues and perspectives that can shape its training and pedagogic agenda. Furthermore, law faculties, teachers and students across the African continent can respectively set up coalitions and associations for the continuous sharing of knowledge and information around this crucial subject. The [Biennial Conference of Law and Society in Africa](#), which has had two conferences thus far, is an important interactive platform for debating and framing the discourse on critical approaches to international law.

The second type of dialogue speaks to engaging with scholars from the fields of literature, sociology, history, anthropology, philosophy, ethics, international relations, and politics, among others. The idea here is to engage with scholarship in these fields on issues such as the history of internationality in pre-colonial Africa, societal factors underlining such history, ideological issues that shape global imbalances, feminist approaches, and research methodologies for critique. This dialogue could be extended to an extensive interaction and network between scholars across the global South. The third type of dialogue is crucial as it centres learners at the core of the design of their pedagogy and enhances the legitimacy and ownership of the intended product. This

needs to be a continuous process, with both teachers and learners testing, evaluating, and improving pedagogical approaches.

The second pivotal point is engaging multifaceted materials in the research and teaching of international law in Africa. This includes materials such as literature, poems, music, cinema, documentaries, artefacts, and especially Indigenous knowledge, in exploring historical and material perspectives on internationality.<sup>8</sup> Literary works such as Chinua Achebe, Ngugi wa Thiong'o, Wole Soyinka, Binyavanga Wainaina, Chimamanda Adichie and others provide valuable nuances into problematic global issues. The [music of Fela Anikulapo-Kuti](#), Bob Marley, and other socially-conscious musicians, are valuable critical avenues through which to perceive global imbalances and could also serve as important gateway to the works of TWAIL scholars. The use of these tools will require open-mindedness and innovation on the part of teachers. For example, when teaching aspects of international law such as human rights, promotion and protection of democracy, and United Nations reforms, students [could first listen to relevant songs, read critical materials on the subject, then discuss and/or write a paper on their interpretation of this assessment, particularly on how it relates to their existential concerns](#). This approach enhances the relatability and the easy understanding of concepts that may initially appear technical and detached from the realities of African students studying international law.

Lastly, it is important to ensure that the displacement of Eurocentric epistemic framing in international law is one that is ethically progressive. In this sense, the project should have at its heart a genuine effort to address concerns of the marginalised and voiceless in the global power matrix. This includes issues such as gender equality and empowerment, LGBTIQ (lesbian, gay, bisexual, transgender/transsexual, intersex and queer/questioning) equality, refugees and internally displaced persons, mainstreaming of Indigenous and ethnic knowledge systems and practices into the practise of international law, and meaningful poverty alleviation strategies. Ignoring the suffering of the most vulnerable essentially leads to replacing an oppressive system with another seemingly deodorised but equally oppressive one. A critical approach is one that

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<sup>8</sup> Bhupinder Chimni, 'Third World Approaches to International Law: A Manifesto' (2006) 8:1 *International Community Law Review* 3, at 22.

obligates us to shed our blind spots and deal with others in a humane and considerate manner in the world we all share.