



## THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

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# The Future of International Legal Scholarship in Africa: The Trilogy of Agency, Interdisciplinarity and Functionality

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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. There is a convenient refusal to discuss the racial/racialized history of international law in these journals, all the while mocking and doubting the competence of non-white international administrators. And then there is the non-recognition of principles or jurisprudence of international law courts that fall outside the Euro-American geographical axis. Even the physical architecture of international law institutions, such as the International Court of Justice, has been described as a celebration of the hegemony of Eurocentric international law. What is sometime referred to as inclusion or accommodation of ideas from the global South in mainstream international law is nothing more than what Antony Anghie has referred to as 'ornamentalism'. This is a situation where, without any serious or critical engagement, one or two passages of the rich Indian and Chinese heritage of internationality is included in international law textbooks.

If exclusion speaks to systemic erasure and absence, relevance posits utility. Simply put, in its current form, is international law fit-for-purpose for advancing ideas and strategies for Africa's human and material development? The simple answer is no, as relevance essentially relies on an ideology of meaningful presence, one that is absent in international law. As such, these two issues, exclusion and relevance, are not only important for present engagements in the field of critical approaches to international law but also impact projections on what the future holds for the field.

African international law scholars have responded to this in a variety of ways. For example, Joel Ngugi noted that international law is so problematic that it cannot be reformed from the inside. He argued for a decentralised, non-hierarchical international system, with entities exercising separate and independent powers alongside each other. This is similar, but not entirely the same, to Samir Amin's concept of delinking the economies of the global South from the global capitalist system. Other critical scholars such as James Gathii, Obiora Okafor, Tendayi Achiume, Makau wa Mutua, and Matiangai Sirleaf are confident that alternative templates to Eurocentric approaches can still be formulated from within.

In assessing the future of international legal scholarship, I examine three interconnected zones: agency, interdisciplinarity and functionality. Without the gift of precognition, such analysis is necessarily mostly speculative. Even if speculation is based on existent realities and historical continuities, emergent variables and dynamics can completely alter predictions. The three prisms adopted for assessing the future of international legal scholarship in Africa are based on the reading of the current state of affairs and the quest to provide alternative framings.

### **Agency**

Agency speaks to the ownership of knowledge structures. The future of international legal scholarship in Africa will have to grapple with the extent to which ideas are created, disseminated and validated. The creation of ideas cannot be divorced from existential realities, and the way in which such realities modulate internal and external contexts of Africa's approach to international law. The Eurocentric ideology of international law regulates the parameters of what and who determines concepts and praxes, and then defines this as 'universal'.

Current efforts by African scholars in widening the space for disseminating critical scholarship is commendable as they affirm the imperative of owning the knowledge structures. The establishment of open access journals, blogs, use of social media platforms, and the theorization of African and global South approaches to international law are some of the contemporary efforts that will shape future applications and modes. Rather than a reaction to gatekeeping Euro-American journals, these activities are about situating and owning the narrative, and reinforcing pluriversality. In the same vein, they highlight the importance of decentering the validation process, one that explicitly and implicitly prioritizes Eurocentrism. A decentered validation process requires the deliberate intellectual investment in creating and sustaining multiple platforms through which African scholars can freely share ideas without the specter of Eurocentric gatekeeping tendencies (one that evaluates ideas against esoteric and exclusionary standards), and where such ideas are assessed on the basis of their relevance to Africa's diverse conditions and contexts.

Building on current interventions, the future of African international legal scholarship will have to consider a number of developments and issues. One is the need to widen the participatory process of international law in Africa. In this respect, it is pertinent to prioritize the voices of the subaltern in discourses around human rights, poverty, inequality, social justice, trade and pedagogical approaches. In other words, the aphorism of 'international law from below' has to move from rhetoric to practice. This demands the genuine consideration of the activities of social actors and social movements as legitimate alternatives to addressing pressing concerns. The true test in this case is the consideration of how various grassroots activities influence national, regional and international dynamics. It is only through such consideration that international law can benefit from the understanding of the intersectionality of social problems, and then be able to craft more meaningful and contextual solutions. This includes issues such as racial equality, reform of global institutions, poverty, gender equality, and (in)voluntary migration. This will also require the use of technology in widening the participation of stakeholders.

Secondly, there is a need to theorize regional integration and Africa's participation in the international system beyond Eurocentric framings. For example, how can intra-African trade, free movement of persons, economic relations with external partners (Euro-American and Asian), and participation in global fora such as the United Nations,

International Financial Institutions, and World Trade Organization contribute to the decolonized theorization, and praxes, of an Afrocentric worldview on international law and relations? The answer to these questions will depend on the extent to which African international legal scholarship is able to provide useful alternatives to several issues.

First is the importance of devising nuanced alternatives to the neoliberal ideology of regionalism and the international system. Africa's approach to regional integration remains Eurocentric, with very little consideration of how African knowledge systems, and other endogenous ideals, can assist in shaping ideas and strategies. Placing issues such as the design and implementation of free movement, free trade, and self-financing of regional integration programmes within the context of these pan-African ideals and contexts can go a long way in expanding the parameters of innovative interventions. It can also expand the participatory process of these programmes from a state-centric venture to one that places emphasis on the role that the wider civil society can play. Second is the need to accommodate a diversity of opinions and strategies on addressing complex national, regional and global problems. This speaks to informed pragmatism or what Achille Mbembe described as a 'horizontal strategy of openness to dialogue among different epistemic traditions'. At the core of this approach is the understanding that African knowledge systems are not static, irrefutable ideas, but curious and ready to selectively adapt to measures that suit local contexts. Last is the proactive, unbiased resistance to covert and overt elements of domination within and outside the continent. The point on resistance is crucial as western powers continue to show no sign of agreeing to meaningful reforms of global governance architecture, and there is no indication that this will change in the future.

The racist origins and practice of mainstream international law and international relations remain a key impediment to the meaningful reforms of the global system. In challenging this, there is the need to engage in sustained research projects (by scholars, social actors, research institutions, and governmental bodies) that highlight the multiple manifestations of racism in the international system. Another intervention strategy is the importance of increased alliance among global South scholars and practitioners in resisting subtle and open attempts to deny the existence of racism. The recently established AfCAR (Africa Group - Caribbean Community (CARICOM)) geopolitical grouping at the United

Nations is a step in the right direction, and if properly managed, could provide a veritable platform for addressing racial injustices and marginalization under international law.

### **Interdisciplinarity**

One way to assess the future of Africa's international legal scholarship is the extent to which it is able to resist disciplinary isolation. The approach of studying mainstream international law as a self-contained idea, one that has little or nothing to do with other disciplines, remains a key problem. As shown by the works of Third World Approaches to International Law (TWAIL) scholars, an interdisciplinary approach not only helps in exposing international law's blind spots but also provides an ontological lens for mapping alternatives. For example, in a recent work, James Gathii adopted social science methods in showing how both American Journal of International Law and AJIL Unbound have in over a century published a negligible number of articles on race or the racialized history of international law. Similarly, scholars such as Taslim Olawale Elias, Mohammed Bedjaoui, Christopher Gevers, Mosope Fagbohunge, Fareda Banda, and Sylvia Tamale have employed ideas from anthropology, history, political economy, literature and feminist theories to highlight the limitations of international law. In *African Migration, Human Rights and Literature*, Fareda Banda deploys literature as a tool for exploring the experiences of African migrants and asylum seekers, including LGBTI individuals and children. Taslim Olawale Elias adopts anthropological and historical sources in showing the extent to which actors in pre-colonial Africa contributed to the development of international law. Sylvia Tamale shows how the intersection of religion, statutory law and reinterpreted traditional customs is employed as patriarchal mechanism for controlling and regulating the sexuality of African women.

The importance of interdisciplinary engagement is what Francis Nyamnjoh referred to as 'conviviality', the recognition of incompleteness and complementarity of ideas and being. The intersectional dimensions of the critical challenges facing the African continent will continue and, therefore, require nuanced ideational interventions. For example, international legal scholarship on the continent cannot ignore the critical role of knowledge systems within Africa and intangible cultural heritage in examining aspects of internationality in the precolonial era, and the contemporary meaning of such practices. One way of doing this is the understanding of the application of cultural principles such

as *Ubuntu*, *Harambee*, *Kagisano*, and *Omoluwabi* to the articulation and implementation of political, economic and legal processes. Another example is paying detailed attention to the extent to which artifacts (and the quest for the return of stolen artifacts from the global North) can assist in exploring ideational pillars of Africa's internationality and humanity. Last is the intellectual investment in the study of African divination systems, poetry, music, and spirituality, especially what these can tell us about historical continuities and the interconnectedness of ideas.

Interdisciplinary engagement in international law encompasses disciplines such as history, anthropology, cultural studies, international relations, sociology and political science. Similarly, the addressing of issues such as poverty, gender equality, sexual rights, economic development and democratization require a genuine multifocal consideration. This also applies to the pedagogical context of international law in African universities. Interdisciplinarity allows for the reimagination of possibilities, and new knowledge zones that are not constrained by Eurocentric disciplinary boundaries. Through this engagement, African scholars are then able to explore and create ideational approaches that overhaul existent norms and praxis, and as already indicated in the foregoing, assess the suitability of such ideas.

### **Functionality**

Functionality brings together agency and interdisciplinarity in a utilitarian fashion. In other words, functionality speaks to the qualitative measurability of the impact of agency and interdisciplinarity on conscientization and development of the continent. Where agency is defective (for example, where Africans are not in charge of the knowledge structures), even when interdisciplinarity is perfect (for example, where African scholars have dispelled the myth of international law's disciplinary isolation), functionality becomes impaired. The same applies in the case of effective agency and a defective interdisciplinarity. What this implies is that both agency and interdisciplinarity have to operate efficiently in order to achieve impactful functionality. This point is a crucial one for the future of international legal scholarship in Africa. In assessing functionality of international law in Africa, scholars and practitioners will have to engage with issues such as how knowledge platforms resonate with the enhancement of social consciousness and informed praxes. For example, to what extent has critical scholarship translated to a

decolonized international law curriculum and a better informed, radical position of African states during international negotiations and implementation of regional integration ideas? Relatedly, it is also important to pay attention to the processual dimensions of widening the participatory process of stakeholders' engagement in the African international legal scholarship space. This will require jettisoning Eurocentric gatekeeping mentalities, and embracing a progressively inclusive outlook on the role of wider civil society in shaping critical interventions. As already mentioned, giving due attention to the influential works of social movements in challenging the international system is an important example. Similar to this is the consideration of blog articles, music, and artworks as important sources of enhancing the ideational and processual understanding of international law.

These three points have in one form or another shaped, and continue to shape, international legal scholarship on the continent. There is no single or standard way of presenting a prospective view of international legal scholarship; and as such, this piece is only a modest attempt to stimulate further discussion on this issue. It is also a cautiously optimistic contribution, one that recognises the immense obstacles but also acknowledges past and current efforts, especially the need to build on them.

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