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**TWAILReview**

**05**

**Issue 5 / 2024**



## THIRD WORLD APPROACHES to INTERNATIONAL LAW Review

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*TWAIL Review* ~ Issue 5 (2024) 51-72

### TWAIL As A Scholarly Approach To Teaching International Economic Law In Selected African Universities: Pedagogy And Challenges

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#### Abstract

*In rethinking legal education in Africa in ways that reject the patterns of intellectual colonization that have characterized its past, Third World Approaches to International Law (TWAIL) serves as both a deconstructive and reconstructive tool in teaching international economic law (IEL). Commendably, such engagements have begun even at the undergraduate level, helping to address perpetuated narratives embedded in global inequalities from an early stage. Although the goal of TWAIL is to unpack the colonial legacies of international law and engage in decolonizing efforts, the methodology of how this is achieved is largely left to scholars. This article adopts a socio-legal method to examine the pedagogy that guides the teaching of IEL in selected African universities. It aims to present a report on how IEL is taught using TWAIL. Employing structured interview questions, it interviewed instructors from countries in sub-Saharan Africa to determine if there is a unique emerging approach by African scholars in teaching IEL using TWAIL. It further highlights peculiar challenges and opportunities from these experiences. The article adds to the body of knowledge that presents not just what is being done but how it is being done to develop robust and cumulative scholarly traditions.*

**Keywords:** TWAIL, Teaching IEL, African TWAIL Methodology, Legal Education, TWAIL Pedagogy

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## Introduction

A fundamental part of learning is not just what we teach but how we teach it. The pedagogy adopted in the 'how' of the learning process can significantly influence the way learners think, perceive issues, or explore ideas. Pedagogy entails what instructors do, what instructors ask the students to do, and the tasks that measure students' learning.<sup>1</sup> Pedagogy is partially shaped by the beliefs of the instructor. After all, no educational process is neutral,<sup>2</sup> and the classroom is the most radical space of possibility.<sup>3</sup>

There are concerns about the quality and genre of education in Africa, which continues to produce the educated unemployed.<sup>4</sup> There are also concerns that African universities ignore the development of teaching methods and skills of faculty for the effective transfer of knowledge to students.<sup>5</sup> Consequently, there is a need to ascertain whether the approaches adopted in higher education learning in Africa reinforce hegemonic structures that keep the African graduates educated but unemployed or whether it offers them an empowerment platform that helps them engage better in Africa and globally.

The neoliberal model of education is the pervasive and dominant means by which 'inequality - epistemological, representational, economic - is being accelerated and intensified'.<sup>6</sup> Its curriculum is structured to treat students as consumers and promotes Western industrialization, conceals its colonial roots and marginalizes Third World perspectives.<sup>7</sup> It is similar to the banking system of education where students only receive and store the deposits of education.<sup>8</sup> It expects students to consume information given to them by the instructor and memorize and store it for assessment's

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<sup>1</sup> Pedagogy - Diversifying Your Teaching Methods, Learning Activities, and Assignments, <https://cei.umn.edu/teaching-resources/inclusive-teaching-predominantly-white-institution/pedagogy-diversifying-your-teaching-methods-learning-activities-and-assignments>

<sup>2</sup> Paulo Freire, *PEDAGOGY of the OPPRESSED* 30th ANNIVERSARY EDITION, (Continuum, 2005) 34.

<sup>3</sup> Bell Hooks, *Teaching to Transgress: Education as the Practice of Freedom* (Routledge, 1994) 12.

<sup>4</sup> UNESCO, 'Teaching and Learning in Higher Education in Africa' (June 2007) Newsletter 9:1, <https://unesdoc.unesco.org/ark:/48223/pf0000231314> (accessed 14 May 2023).

<sup>5</sup> Harris Andoh, 'Teaching Mission and Pedagogy at African Universities' (Autumn 2020) 104:28 *International Higher Education* at 28, <https://www.internationalhighereducation.net/api-v1/article/1/action/getPdfOfArticle/articleID/3025/productID/29/filename/article-id-3025.pdf>. (accessed 17 May 2023).

<sup>6</sup> Antony Anghie, 'Critical Pedagogy Symposium: Critical Thinking and Teaching as Common Sense' (31 August 2020) *Random Reflections*, <http://opiniojuris.org/2020/08/31/critical-pedagogy-symposium-critical-thinking-and-teaching-as-common-sense-random-reflections/> (accessed 14 May 2023).

<sup>7</sup> Susan Santone, 'Neoliberalism in Education: What you need to know' (21 May 2019) <https://www.susansantone.com/master-blog/2019/5/21/neoliberalism-in-education-what-you-need-to-know> (accessed 24 May 2023).

<sup>8</sup> Paulo Freire (2005) 72.

sake.<sup>9</sup> These approaches are adopted by Mainstream International Legal Scholarship (MILS).<sup>10</sup>

Since legal education can serve as a platform of learning for 'patterns of hierarchy and domination that are replicated in the legal professional world,'<sup>11</sup> the teaching of law cannot be in a historical and political vacuum.<sup>12</sup> This is particularly important as the current form of international law is not fit-for-purpose for advancing ideas and strategies for Africa's human and material development.<sup>13</sup> The fact that a country can only have the capacity to effectively engage with international law with graduates of law who have deep knowledge and insights of the subject demands that law instructors must appraise the pedagogy adopted in the teaching of law.<sup>14</sup> Legal pedagogies should expose students to diverse theories in the field, encourage them to persuade, and create spaces for them to engage.<sup>15</sup>

Consequently, law faculties will need to reject the patterns of intellectual colonization that have characterized its past.<sup>16</sup> Since legal education has the capacity to both reinforce and oppose inequality, the law classroom serves as an ideal place to shift ideological viewpoints on international law and incorporate the resistance to oppressive regimes by third-world people.<sup>17</sup> Unfortunately, mainstream international law has an illusion of universality and sameness, which has dominated legal education, with little room for engagement in the social imbalances that permeate the modern world.<sup>18</sup> The end product of this type of legal education is law graduates who are unfortunately 'unfamiliar with and inadvertently insensitive to the biases that mar the

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<sup>9</sup> Bell Hooks (1994) 14.

<sup>10</sup> Mohsen al Attar and Vernon Ivan Tava, 'TWAIL Pedagogy - Legal Education for Emancipation' (2010) 15:7 *Palestine Yearbook of International Law*, at 21-23.

<sup>11</sup> Jing Min Tan, 'The Many Layers of Invisible Labour Decolonising the Academy' (12 March 2021) *TWAILR: Reflections* #31/2021, <https://twailr.com/the-many-layers-of-invisible-labour-decolonising-the-academy/> (accessed 9 May 2023).

<sup>12</sup> Ibid.

<sup>13</sup> Babatunde Fagbayibo, 'The Future of International Legal Scholarship in Africa: The Trilogy of Agency, Interdisciplinarity and Functionality' (3 November 2021) *TWAILR: Reflections* #40/2021, <https://twailr.com/the-future-of-international-legal-scholarship-in-africa-the-trilogy-of-agency-interdisciplinarity-and-functionality/> (accessed 9 May 2023).

<sup>14</sup> Antony Anghie (2020).

<sup>15</sup> Mark Fathi Massoud, 'Teaching Three Canons of International Law' (12 March, 2021) *TWAILR: Reflections* #28/202, <https://twailr.com/teaching-three-canons-of-international-law/> (accessed 9 May 2023).

<sup>16</sup> Roderick A. Macdonald and Thomas B. McMorrow, 'Decolonizing Law School' (2014) 51:4 Special Issue: *The Future of Law School*, 717-737, at 721.

<sup>17</sup> Caroline Omari Lichuma, 'TWAILing the International Economic Law Classroom: (Dis)locating the 'International' in International Law' (13 May 2019) <https://www.afronomicslaw.org/2019/05/12/twailing-the-international-economic-law-classroom-dislocating-the-international-in-international-law> (accessed 19 May 2023).

<sup>18</sup> Ibid.

reality of the international legal regime and remain woefully lacking in both the desire and the skills to reform it.<sup>19</sup>

Beyond decolonizing knowledge, teaching law by incorporating marginal alternatives to mitigate the risk of epistemic injustice is also important.<sup>20</sup> An example of this is Fricker's concept of epistemic injustice, which refers to situations where individuals are wronged specifically in their capacity as knowers, thus undermining their inherent human value.<sup>21</sup> This injustice is often perpetuated by unjust practices and structures in the creation and dissemination of meaning and knowledge. Hermeneutical injustice, a subtype of epistemic injustice, can arise from 'hermeneutical marginalization,' where certain individuals are excluded from the collective processes through which society constructs the concepts necessary to interpret significant areas of social experience.<sup>22</sup> Such exclusion can result in false and incomplete knowledge and narratives of historical events, as perspectives from marginalized groups are not recognized as valuable contributions to knowledge production.

Third World Approaches to International Law (TWAIL) offers legal instructors an alternative to mainstream international discourse. TWAIL has lately been used in the production of knowledge in international law. TWAIL considers international economic law (IEL) to be the foundation on which international law was constructed because of the symbiotic relationship between capitalism and modern international law.<sup>23</sup> It aligns the origins of IEL to colonial projects of exploitation and oppression.<sup>24</sup> Although the goals and objectives of TWAIL are to unpack the colonial legacies of international law and engage in decolonizing efforts, the methodology of achieving this is largely left to scholars and instructors.

The flexibility in TWAIL means that the pedagogy adopted by each instructor is substantially at the discretion of the individual. This is both a strength and a weakness. Its strength is in the potential to adapt issues and ideas to context. It also has an empowering ability that enables its users to creatively express themselves in a wide spectrum of engagement. Its weakness is that there may be no guidance in developing a robust and cumulative scholarly tradition on teaching with TWAIL.

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<sup>19</sup> Ibid.

<sup>20</sup> Fricker, Miranda, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford, 2007; online ed, Oxford Academic, 1 Sept. 2007) 1, <https://doi.org/10.1093/acprof:oso/9780198237907.001.0001> (accessed 8 Nov. 2023).

<sup>21</sup> Ibid, 1.

<sup>22</sup> Ibid, 153.

<sup>23</sup> B.S. Chimni, 'Critical theory and international economic law: a third world approach to international law (TWAIL) perspective' in John Linarelli (ed.), *Research Handbook on Global Justice and International Economic Law* (Edward Elgar, 2013) 251-273, at 254.

<sup>24</sup> Ibid.

TWAIL has now been increasingly used in teaching IEL in Africa. Commendably, such engagements have begun even at the undergraduate level, helping to address perpetuated narratives embedded in global inequalities from an early stage.

This article adopts a socio-legal method to examine the pedagogy that guides the teaching of IEL with TWAIL in selected African universities. It aims to present a detailed report on how IEL is taught using TWAIL so that others can learn and apply it. It adds to the body of knowledge that presents not just what is being done but how it is being done to develop robust and cumulative scholarly traditions. The article contributes to different strands of research. Broadly, it contributes to the literature on TWAIL as a scholarly approach to the engagement of international law. More narrowly, it contributes to developing a teaching approach for law in African universities and provides lessons for other jurisdictions to learn from. While previous examinations of the teaching of IEL in Africa have occurred, this article distinguishes itself through its methodological rigor, utilizing an empirical approach to discuss and present these findings.

After the introduction, Section II presents the methodology adopted in conducting this research, including the limitations and ethical considerations. Section III examines TWAIL broadly as an academic approach to situate it in a scholarly context as a theory, a methodology, both, or an approach. Section IV seeks to determine if there is a unique emerging approach by African scholars in teaching IEL using TWAIL. It reports the findings from the empirical work, which details the approaches adopted by some African instructors in teaching IEL using TWAIL. Section V further provides insights into the experiences of these African instructors to highlight the peculiar challenges they encounter in using TWAIL. Section VI makes recommendations on how to support the use of TWAIL by African instructors while making the concluding remarks.

## Methodology

This study employed socio-legal methods to make its findings. Socio-legal methods is a multi-disciplinary approach concerned with understanding not only how the law impacts society but also seeks to understand how social aspects influence the law.<sup>25</sup> It generally requires a contextual analysis of the law and adopts an interdisciplinary approach, which should be substantiated with reasons for the methods chosen.<sup>26</sup> Socio-legal research usually has two components – doctrinal research and

<sup>25</sup> 'Legal research at postgraduate level essay' <https://www.lawteacher.net/free-law-essays/general-law/legal-research-essay.php> (accessed 17 July 2022).

<sup>26</sup> Michael Salter & Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson Education, 2007) 133-134.

empirical legal research. Doctrinal research is the study and analysis of the law, the legal principles, and legal institutions, as well as of how the law applies and the possible implications of this analysis.<sup>27</sup> Empirical legal research is the study of law, legal processes, legal institutions, and legal phenomena using social research methods. By combining both doctrinal and empirical legal research methods,<sup>28</sup> a more nuanced understanding of the legal system, legal processes and legal institutions embedded in any social context can be achieved.<sup>29</sup> This approach is especially important in deconstructing a legal problem that has associated socio-cultural dimensions.

As stated earlier, this study seeks to present a detailed report on how IEL is taught in selected African universities using TWAIL. It aims to present not just what is being done but how it is being done. Thus, a socio-legal method is most appropriate for teasing out how the teaching is conducted. The qualitative method, using interviews as the data collection tool, is also most suitable for investigating the personal experiences of the respondents regarding how they teach with TWAIL. A report on qualitative research findings requires sufficient information on the research design, methods, and processes used to reach the findings.<sup>30</sup> Thus, a set of structured questions was developed<sup>31</sup> on the pedagogy and methodology adopted by respondents while teaching IEL. A structured interview guide was used due to the nature of the research question - which sought to determine whether there was an evolving African approach to teaching using TWAIL. Interviews were conducted over virtual platforms, although some respondents chose to answer the interview questions via email. Respondents were purposively sampled using the snowball method. All respondents were Africans teaching an IEL course at an African university,<sup>32</sup> except one respondent, although a non-African, had taught IEL at an African university for several years. His perspective was considered necessary in interrogating the challenges of using TWAIL in African universities.

<sup>27</sup> I. Dobinsons and F Johns 'Qualitative legal research' in M McConville & W Hong Chui (eds.) *Research Methods for Law*, 2nd ed (Edinburgh University Press, 2017) 18, at 19.

<sup>28</sup> M. Burton 'Doing empirical research: Exploring the decision-making of magistrates and juries' in D Watkins & M Burton (eds) *Research Methods in Law*, 2nd ed (Routledge, 2018) 66, at 66.

<sup>29</sup> L. Beth Nielsen 'The need for multi-method approaches in empirical legal research' in P Cane & H M Kritzer (eds.) *The Oxford Handbook of Empirical Legal Research* (OUP, 2010) 951, at 955.

<sup>30</sup> Claire Anderson 'Presenting and evaluating qualitative research' (2010) 74:8 *American Journal of Pharmaceutical Education*, at 141. H M Levitt 'Reporting standards for qualitative research in psychology: What are they, and why do we need them?' in H M Levitt (ed.) *APA Style Products, Reporting Qualitative Research in psychology: How to Meet APA Style Journal Article Reporting Standards* (2019) 3–18, at 10.

<sup>31</sup> See annex 1.

<sup>32</sup> One respondent is currently on sabbatical leave, and another is currently enrolled for a PhD at a European university. Both have been teaching IEL until recently and will continue to teach it after their current programmes. Another respondent previously taught IEL but currently teaches international criminal justice using TWAIL for both subjects.

The interviews were conducted between April and May 2023. A total of 9 respondents were part of the study. Respondents were drawn from the three regions of sub-Saharan Africa. Two respondents were from West African Universities - both were from Nigeria; three respondents were from Southern African universities - two from South Africa and one from Lesotho; four respondents were from East African universities - all four were from Kenyan universities. There were four females and five males. Seven respondents taught IEL at the undergraduate level only, while two taught it at both undergraduate and postgraduate levels. Some of the IEL courses taught by the respondents include the law of international institutions, international economic law, international trade law, international investment law, regional integration, East Africa regional integration law, law, and regional integration in Africa.

Thematic analysis was adopted to analyze the data. Thematic analysis is a qualitative data analysis method that entails identifying and interpreting patterns of meaning amidst a qualitative data set.<sup>33</sup> Thematic analysis was chosen as the data analysis method because it is the most appropriate method to use whilst seeking to 'understand a set of experiences, thoughts, or behaviours across a data set'.<sup>34</sup> A priori themes were developed earlier from the literature review, from characteristics of the phenomena under study, and the author's theoretical orientation.<sup>35</sup> In addition to the 'a priori themes' being confirmed, 'emerging themes' were added.<sup>36</sup> The themes were linked to the broader research questions to make relevant interpretations and arguments.

Three themes emerged from the dataset: what TWAIL means to the respondents, the pedagogy adopted in using TWAIL,<sup>37</sup> and the challenges encountered in using TWAIL.<sup>38</sup> The final analysis of the data is reported below, using narrative descriptions and representative data extracts.<sup>39</sup> This is supported by quotations from respondents' voices in the data set.<sup>40</sup> Verbatim quotations were used as evidence to give respondents a voice and to deepen understanding. Although information

<sup>33</sup> V. Clarke & V. Braun 'Thematic analysis' in A. C. Michalos (ed.) *Encyclopaedia of Quality of Life and Well-being Research* (Springer, 2014) 6626–6628.

<sup>34</sup> Michelle E Kiger & Lara Varpio 'Thematic analysis of qualitative data: AMEE Guide No. 131' (2020) 42: 8 *Medical Teacher*, at 846-854.

<sup>35</sup> See G.W. Ryan & H.R. Bernard, 'Finding themes' (2003), at 55, [https://www.sagepub.com/sites/default/files/upm-binaries/30485\\_Chapter3.pdf](https://www.sagepub.com/sites/default/files/upm-binaries/30485_Chapter3.pdf) (accessed 18 July 2022).

<sup>36</sup> Emerging themes are new themes that emerge from the data.

<sup>37</sup> Discussed in section IV below.

<sup>38</sup> Discussed in section V below.

<sup>39</sup> Michelle E Kiger & Lara Varpio (2020).

<sup>40</sup> Wen Xu & Katina Zammit 'Applying thematic analysis to education: A hybrid approach to interpreting data in practitioner research' (2020) 19 *International Journal of Qualitative Methods* 1–9, at 7.

identifying respondents is obscured, demographic information is left to reflect reality. Minimal editing of quotations was done to remove excessive use of 'ums', 'ers', short pauses, and such other words and phrases, to enhance readability, to reduce word length, and for ethical reasons – to avoid disservice to respondents in the form of negative reaction from others who may see the drafts as inarticulate.<sup>41</sup>

Although there were no power imbalances between the researcher and the respondents, ethical considerations were observed throughout the study. The respondents were guaranteed privacy by allowing them to choose their most convenient medium for the interview. The interview was also voluntary. All respondents gave their consent to be part of the study. The questions were framed in ways that caused no harm to the respondents, their students, and the public. Collected data was anonymized, and confidentiality was ensured. Data was safely stored and analyzed with responsible and ethical considerations.

The study acknowledges that the qualitative research tool used will only produce data from a small sample, which may not be sufficient to generalize the whole continent. However, IEL is not taught in all law faculties and is usually offered as an optional course.<sup>42</sup> Thus, there are a few IEL teachers on the continent from which to sample. Notwithstanding this, the use of a limited sample size in qualitative research is not fundamental since qualitative research principally seeks to understand in-depth lived experiences.<sup>43</sup> Yet, purposive sampling was adopted to recruit respondents from the three regions to make the lived experiences most representative of the experiences across sub-Saharan Africa. Similarly, although the study fully acknowledges flaws inherent in interviews, like selective recall and memory loss, caution was exercised to mitigate these flaws by presenting interview questions that consisted of examples.

Another limitation of the study is that while it sought to study Africa as a continent, efforts to get respondents from North Africa proved abortive. Thus, the study concentrated on sub-Saharan Africa, comprising West, East, and Southern Africa. This does not diminish the experiences of African scholars as a group, as most studies in Africa and described as 'African' concentrate on these three regions because of their socio-cultural, economic, and political contexts. Sub-Saharan Africa is characterized by unique socio-cultural, economic, and political realities that set it apart from North Africa. These include factors such as colonial legacies, post-colonial

<sup>41</sup> Anne Corden & Roy Sainsbury *Using Verbatim Quotations in Reporting Qualitative Social Research: Researchers' Views* (University of York, 2006) at 18.

<sup>42</sup> Suzzie Onyeka Oyakhire, 'Teaching IEL as a Nigerian Teacher in the Era of Decolonisation (IEL Collective Symposium II)' (27 March 2020) <https://legalresearch.blogs.bris.ac.uk/2020/03/teaching-iel-as-a-nigerian-teacher-in-the-era-of-decolonisation/> (accessed 10 July 2024).

<sup>43</sup> Ochieng Pamela Atieno 'An analysis of the strengths and limitation of qualitative and quantitative research paradigms' (2009) 13 *Problems of Education in the 21<sup>st</sup> Century* 13–18, at 17.

governance structures, patterns of economic development, and social dynamics. As a result, research conducted within sub-Saharan Africa often addresses issues and challenges that are specific to this region, contributing to a deeper understanding of African scholarship and intellectual discourse. Moreover, sub-Saharan Africa is home to most African countries and populations, encompassing diverse cultures, languages, and histories. Therefore, studies that focus on this region provide valuable insights into the broader African experience.

### **TWAIL as an Academic Approach**

A good place to begin with the discourse on TWAIL as an academic approach is to briefly discuss its emergence in the international academic community. Two generations of TWAIL-ers are widely recognized. The first comprises post-colonial scholars who focused on interrogating the principles of sovereign (in)equality of states and non-interference in the process of decolonization.<sup>44</sup> Their contributions undoubtedly added to the consciousness that permeates all trends of TWAIL. TWAIL II focused on the consciousness to highlight and deconstruct the 'colonial legacies of international law' to recognize and 'decolonize the lived realities of the peoples of the Global South' through a critical perspective.<sup>45</sup> Discussions here will focus on the tenets of TWAIL II.

### **What does TWAIL mean in Legal Scholarship?**

Even within the generation of TWAIL-ers II, there are several understandings of what TWAIL embodies in the academic community. Is it a scholarly/intellectual community, a political, intellectual movement, a methodology, a set of approaches, an intellectual consciousness, a school of thought, or a theoretical framework? What does it entail, and how should we engage with it?

This interrogation becomes important with critiques that allege that TWAIL's locus in legal theory continues to be ambiguous.<sup>46</sup> Although TWAIL proposes to be an approach, as per in its name, it also claims to be a theory, a method, a sensibility, and a movement.<sup>47</sup> A cursory look at the literature reveals an interesting fact that TWAIL could mean different things to the same persons at different times. This is not

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<sup>44</sup> Amoroso, Daniele, et al. 'Third World Approaches to International Law (TWAIL) and Inequality in International Criminal Justice: A Critical Assessment, *More Equal Than Others?*' (2022) *T.M.C. Asser Press*, at 59, [https://doi.org/10.1007/978-94-6265-539-3\\_4](https://doi.org/10.1007/978-94-6265-539-3_4). (accessed 2 May 2023).

<sup>45</sup> Ibid, 61.

<sup>46</sup> For instance, see M. al Attar (2020) 163.

<sup>47</sup> Ibid, 165.

surprising, considering the flexibility in the use of TWAIL. The flexibility in TWAIL acknowledges the rich diversity it pools, which presents an opportunity for its ‘users to learn from one another’.<sup>48</sup> It appreciates pluralism and discourages the ‘tendencies towards homogenization of discourses on international law’.<sup>49</sup>

Most scholars consider TWAIL to serve as a methodology and a theoretical framework. This is because it challenges the methodological decisions taken in international legal research and scholarship by highlighting the shortcomings of positivist doctrinal research.<sup>50</sup> Obiora Okafor asserts that TWAIL embodies both methodological and theoretical dimensions.<sup>51</sup> It serves as an intellectual and practical tool that can be used ‘to expose, reform, or even retrench those features of the international legal system that maintain the generally unequal global order’.<sup>52</sup> James Gathii describes TWAIL as ‘a historically aware methodology’ that proceeds from the assumption that modern forms of domination, such as governmentality, should not be separated from the perpetuating older modes of domination (colonial and pre-colonial).<sup>53</sup>

Although TWAIL serves as a methodological tool, it is difficult to identify a shared methodology used by TWAIL scholars.<sup>54</sup> What has largely emerged in its methodological approach is the ‘global historicization of international law, quasi-sociological as well as anthropological approaches that seek to understand structures of global governance as well as everyday experiences of international law for peoples of the Global South’.<sup>55</sup>

Similarly, the TWAIL framework is based on acknowledging the hegemonic tendencies of the West and how this has affected the understanding of the development of international law. It focuses on ‘who and what was included and excluded from the narratives of the development of international law’.<sup>56</sup> This historical

<sup>48</sup> Obiora Chinedu Okafor, ‘Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?’ (2008) 10:4 *International Community Law Review* 371–78, at 375–376.

<sup>49</sup> Justine Bendel, ‘Third World Approaches to International Law: Between theory and method’ in Deplano, Rossana, and Nicholas Tsagourias (eds), *Research Methods in International Law* (Edward Elgar, 2021), at 403.

<sup>50</sup> Ibid, 402.

<sup>51</sup> Okafor (2008) 375.

<sup>52</sup> Obiora Chinedu Okafor, ‘Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective’ (2005) 43 *Osgoode Hall Law Journal* 171, at 177.

<sup>53</sup> James Thuro Gathii, TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography, (2011) 3:26 *Trade L. & Dev.*, at 34.

<sup>54</sup> Michelle Burgis-Kasthala, ‘Scholarship as Dialogue? TWAIL and the Politics of Methodology’ (2016) 14 *Journal of International Criminal Justice* 922–934.

<sup>55</sup> Ibid.

<sup>56</sup> Bendel (2021) 404.

approach to international law is a core pillar in TWAIL's theoretical framework, used to highlight the biases towards Western approaches to the history of international law.<sup>57</sup> Thus, an important underlying feature in TWAIL's framework is in historicizing international law from the perspective of third-world states.<sup>58</sup> This serves the dual purpose of the hegemonic and emancipatory projects in international law.<sup>59</sup> For the hegemonic project, it helps to 'generate a common understanding of the past, of what is now called global history, which promotes and projects the ongoing capitalist globalization process far into the future'.<sup>60</sup> For the emancipatory project, it helps to contemplate how to prevent and curtail global capitalism's worst effects and shape a humane future'.<sup>61</sup>

To a few TWAIL scholars, TWAIL is both a political and an intellectual movement.<sup>62</sup> Even for this group, the most fundamental characteristic of TWAIL scholarship and political action is to be *'fundamentally oppositional'* to an important question in international law, which 'must be related to an issue that is of significance to, or affects in an important way, the Third World'.<sup>63</sup> Others view TWAIL as 'an oppositional and transformative set of commitments and ideas for rethinking the international legal order'.<sup>64</sup> These embody the deconstructive and constructive approaches. Other TWAIL scholars have re-echoed such reconstructive approaches of TWAIL.<sup>65</sup> It seeks to expose, attack, or unpack a particular phenomenon that is inimical to the Third World while also trying to alleviate the harm that the Third World would likely have suffered because of the unjust international legal, political, and economic order.<sup>66</sup>

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<sup>57</sup> Ibid at 407.

<sup>58</sup> B.S Chimni, 'The past, present and future of international law: a critical third world approach.' (2007) 8:2 *Melbourne Journal of International Law* 499 -515, at 499.

<sup>59</sup> Ibid, 511.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> For instance, see Mutua, Makau, and Antony Anghie. 'What Is TWAIL?' (2000) 94 *Proceedings of the Annual Meeting (American Society of International Law)* 31–40, at 36.

<sup>63</sup> Ibid.

<sup>64</sup> Jame Gathii, 'The Agenda of Third World Approaches to International Law (TWAIL)' in J. Dunoff & M. Pollack (Eds.), *International Legal Theory: Foundations and Frontiers* (CUP, 2022) 153-173.

<sup>65</sup> For instance, see Antony Anghie, 'What Is Twail: Comment.' (2000) 94 *Proceedings of the Annual Meeting (American Society of International Law)*, at 39–40.

<sup>66</sup> Mutua and Anghie (2000) 36.

TWAIL has also been described as operating 'as a loose network',<sup>67</sup> a 'decentralized network of scholars, with common themes and concerns',<sup>68</sup> 'a cosmopolitan project',<sup>69</sup> 'a discipline in transition, expansion, definition and internal contestation about the varied agendas of its scholars, all at the same time'.<sup>70</sup> Even to the same author, TWAIL has been described as a scholarly movement, an intellectual movement, a 'peoples-focused' approach, an analytical tool, a theory, and a method.<sup>71</sup> Its scholars have been described as having a heterogeneous nature and self-identifying in contingent and historically situated ways.<sup>72</sup>

By and large, TWAIL can be described as having a Janus-faced character.<sup>73</sup> It serves both as a reactive and a proactive tool to engage with the inequality that exists under international law. It reacts to international law, serving as an imperialist instrument that continues to drive inequality between European and non-European states.<sup>74</sup> It also serves as a proactive tool used to reconstruct an alternative governance regime that considers the economic and social development of the Global South.<sup>75</sup> An emerging perspective is a two-fold analysis in any TWAIL-based interrogation - from the 'perspective of Third World states and from that of Third World peoples'.<sup>76</sup> This is given the fact that the elites in the third world have been accused of conniving with hegemonic structures to reinforce inequality.<sup>77</sup>

### An 'African' TWAIL Approach?

Part of the objective of this study was to ascertain whether a pedagogy is being adopted by or observed among African scholars who use TWAIL in teaching IEL in African Universities. Thus, the interview questions were designed with these in mind. Below are the findings from the broad themes.

<sup>67</sup> Gathii (2011) 32.

<sup>68</sup> Ibid, 34.

<sup>69</sup> Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective' (2023) 34:1 *European Journal of International Law*, at 7-112.

<sup>70</sup> Gathii (2011) 34.

<sup>71</sup> Endalew Lijalem Enyew, 'Sailing with TWAIL: A Historical Inquiry into Third World Perspectives on the Law of the Sea (2022) 21:3 *Chinese Journal of International Law* 439–497, at 441.

<sup>72</sup> Yilin Wang, 'The Dissociation of Chinese International Law Scholars from TWAIL' (2022) 3 *TWAIL Review* 1–24, at 6.

<sup>73</sup> M. al Attar (2020) 166.

<sup>74</sup> Amoroso, Daniele, et al. (2022) 63.

<sup>75</sup> Ibid.

<sup>76</sup> M. al Attar (2020) 173.

<sup>77</sup> K. Appiagyei-Atua, 'Ethical Dimensions of Third-World Approaches to International Law (TWAIL): A Critical Review' (2015) 8:3-4 *African Journal of Legal Studies*, at 209-235.

## Meaning of TWAIL

To all the respondents, TWAIL means a lot of things and wears its Janus-faced character. It means a combination of things to each respondent, including a strategic engagement with international law, an intellectual consciousness, a school of thought, a methodology for engaging with international law, a scholarly and intellectual movement, a lens, an approach, a consciousness, an eye-opener, an intellectual community, a theory, a historical approach, an epistemological approach, a scholarly/intellectual community, a political intellectual movement, and an intellectual consciousness. This is in line with the meaning of TWAIL by other TWAIL scholars outside the continent and African TWAIL scholars in the diaspora.<sup>78</sup>

However, while the scholars outside Africa mostly identified TWAIL as a theory, a methodology, or both, respondents preferred to adopt TWAIL as an approach, a methodology, or a school of thought, as these were the most popular amongst the responses. The implication is that African scholars who use TWAIL to teach IEL adopt it as an approach that 'offers the benefit of deploying a combination of ways to understand the phenomenon being studied without the constraints imposed by mainstream methodological prescripts.'<sup>79</sup> Respondents also use TWAIL as 'a methodology that helps to analyze aspects of international law from the perspective of the so-called Global South or Third World countries.'<sup>80</sup> African TWAIL scholars perceive themselves as belonging to a school of thought that 'challenges the Eurocentric formulation of international law which does not reflect the idiosyncrasies of the third world because the third world was not involved when the rules were formulated.'<sup>81</sup>

For the non-African instructor, there was skepticism in owning up that he was a TWAIL-er, not because he does not identify with its tenets, but because he is not sure if he would be truly accepted as one. In his words:

I don't declare what I use, or employ is TWAIL. I don't know if I can count myself as a TWAIL scholar, but I adopt the *approach* in criticizing international law's injustices, bias, and flaws in (he names the course)<sup>82</sup>. TWAIL scholarship was an eye-opener because of my background and education. It really changed my way of

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<sup>78</sup> See section II above.

<sup>79</sup> Respondent II from South Africa.

<sup>80</sup> Respondent I from Kenya.

<sup>81</sup> Respondent II from Nigeria.

<sup>82</sup> Not stated for anonymity

thinking. But I have a problem adopting to be part of the community without the common...(pause) I try to participate in the events...<sup>83</sup>

It was also interesting to find that most respondents did not perceive it as a political movement or consciousness, as perceived by TWAIL-er I scholars. Only one respondent described TWAIL, among other things, as a political intellectual movement. He says, 'TWAIL is a movement to which individual scholar/practitioner unilaterally pledges intellectual allegiance. In TWAIL, I find an intellectual/political home.'<sup>84</sup>

Another interesting point is that TWAIL is a recent and emerging concept among the respondents. Thus, it is still evolving, and its meaning changes as respondents engage with it. As one respondent confessed, '...at the beginning, I thought it was a theory; after reading several early writers, it looked like it was a historical approach, critical, but not critical theory. But now, I have discovered it to be a methodology...methodological and epistemological.'<sup>85</sup>

This author, as an instructor who adopts TWAIL in teaching IEL, perceives TWAIL as an approach that strategically engages with international law in ways that uncover the embedded inequalities and an intellectual consciousness on how knowledge should be imparted and disseminated. This author appreciates the flexibility in TWAIL that allows scholars to engage with it as they deem fit once the overarching aim is to reveal the power imbalances that exist on the international stage where global rules and international laws are formulated. This would almost always require historical perspectives that help contextualize exclusion and the considerations of powerful forces in governments, global institutions, the business world, media, civil society groups, and academia, who perpetuate mainstream narratives. This author also believes that scholars from Global North who have adopted the tenets of TWAIL belong to the TWAIL community or can be addressed as TWAIL-ers and have every right to advocate for equality and inclusion, using TWAIL as an approach.

### **Methodology for incorporating TWAIL in IEL**

Since the flexibility in the use of TWAIL allows that the pedagogy adopted in teaching be left mainly to instructors, it was important to ascertain the pedagogy adopted by African instructors who teach IEL using TWAIL and whether it can be said that there is an African TWAIL approach to teaching IEL. As mentioned earlier, most

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<sup>83</sup> Respondent III from Kenya.

<sup>84</sup> Respondent II from South Africa.

<sup>85</sup> Respondent IV from Kenya.

respondents adopt TWAIL as an approach. This is reflected in the way they used TWAIL in teaching. Most respondents incorporate TWAIL by being deliberate in finding and recommending texts by TWAIL-ers or African scholars. As recounted by one respondent, they introduce:

TWAIL authors and readings into the core readings and recommended texts of the course outline. By introducing debates touching on both traditional understanding of international law as well as TWAIL perspectives into the teaching and group discussions. By contextualizing third-world approaches into the historical accounts of international law and of our country.<sup>86</sup>

Some other respondents incorporate and lead discussions on historical accounts that portray different accounts and how colonialism shapes how we define international concepts.<sup>87</sup> Others use African cases and names in exams and invite African scholars as guest lecturers.<sup>88</sup>

The most popular way that respondents incorporated TWAIL in their teaching was by, apart from the main and conventional mainstream texts on the subject, recommending texts by TWAIL and African scholars who portray accounts of the inequalities and historical accounts of oppression. Some of these recommended texts are written by authors like Upendra Baxi, BS Chimni, Obiora Okafor, James Gathii, and Antony Anghie, and publications by platforms such as Afronomics Law blog. This approach of incorporating alternative perspectives into mainstream readings is also being adopted in some other Third World jurisdictions. For instance, a study conducted by 'Teaching and Researching International Law in Asia (TRILA)' found that several Asian international law teachers used textbooks and casebooks written in native languages by Asian authors to teach in their classes.<sup>89</sup> On the contrary, a study by 'Rethinking International Legal Education in Latin America (REDIAL – Repensando la Educación en Derecho Internacional en América Latina) found that in Latin America, 'uncritical Western perspective' was preferred in the teaching of international law and instructors largely used texts originating from the Global North,

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<sup>86</sup> Respondent I from Kenya.

<sup>87</sup> Respondent I from Nigeria.

<sup>88</sup> Respondent I from Lesotho.

<sup>89</sup> Antony Anghie, JR Robert G Real, *Teaching and Researching International Law in Asia (TRILA) Project* (2020) Report, 68-69.

notwithstanding the existence of varied contributions of Latin American scholars in International Law and Social Sciences.<sup>90</sup>

This author finds that deliberately leading discussions on alternative and marginal views on IEL can be an effective way of decolonizing the minds of students, as many students may not eventually get to read the recommended texts or may not fully grasp the insights in them. This author also finds that inviting guest lecturers who share TWAIL perspectives is also effective in engaging the students.

### **Challenges in the Use of TWAIL by African Scholars**

The literature has not discussed the challenges encountered by TWAIL scholars in adopting or incorporating the approach into their teachings. The respondents highlighted several challenges. Some challenges may be peculiar to or more common in sub-Saharan Africa due to poor infrastructure, but others are more general.

#### *Limited exposure to TWAIL*

Most respondents were accidental TWAIL-ers or late TWAIL-ers, having only imbibed the approach as instructors, not as students. Even as new TWAIL-ers, there has been limited exposure to TWAIL, except with conscious engagement with TWAIL texts. Literature observes that the majority of TWAIL scholars are domiciled in developed states.<sup>91</sup> Even some African scholars who would later adopt TWAIL were trained in the West under mainstream narratives and texts of international law.<sup>92</sup> The result is that we have a group of African instructors who have limited knowledge and understanding as they were either trained under mainstream legal discourse in the West or in Africa with little to no exposure to alternative views or perspectives to mainstream international law.

This requires some deliberate unlearning on the part of the new TWAIL-ers. This process is usually not immediate, as the first approach may be to criticize the African systems under the influence of mainstream narratives of international law. As one respondent confessed:

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<sup>90</sup> Amaya Alvez Marín, Laura Betancur Restrepo, Enrique Alberto Prieto-Ríos, Daniel Rivas-Ramírez, Fabia Veçoso, 'Rethinking International Law Education in Latin America' (17 September 2020) [afronomicslaw.org/2020/09/17/rethinking-international-law-education-in-latin-america](http://afronomicslaw.org/2020/09/17/rethinking-international-law-education-in-latin-america) (accessed 23 July 2023).

<sup>91</sup> Giovanna Maria Frisso, 'Third World Approaches to International Law: feminists' engagement with international law and decolonial theory' in S. Harris Rimmer & K. Ogg (eds.) *Research Handbook on Feminist Engagement with International Law* (Edward Elgar, 2019) 492.

<sup>92</sup> See Opeoluwa Adetoro Badaru, 'Examining the Utility of Third World Approaches to International Law for International Human Rights Law' (2008) 10 *International Community Law Review* 379, at 386.

I learnt European Union Law which was highly technical and complex. When I came back and started teaching East African Community Law (EACL), I saw gaps in EACL and criticized it a lot. But after I was exposed to TWAIL, I started to understand that context and history are very important...now I look at EACL on its own terms.<sup>93</sup>

This author is also an accidental TWAIL-er, having only been exposed to it several years after teaching law subjects. This author was introduced to TWAIL while developing the curriculum on international trade law and international investment law for undergraduate students in a Nigerian university. While not consciously looking for alternative narratives, this author sought African authors to include in the recommended textbooks and limited options were found. This author then sought suggestions from colleagues who were teaching IEL in other law faculties in Nigeria and was then introduced to TWAIL. This author had to get familiarized with the concepts and ideologies and struggled to operationalize them in the classroom. It was only after attending some events on the decolonization of legal education that this author became comfortable with the approach. It is important to note that some of the respondents/instructors only learned about TWAIL after attending events on decolonizing education. This underscores the importance of such events.

#### *Skepticism from colleagues and students*

Another major challenge was skepticism and poor reception from both colleagues and students of the respondents. Most respondents lamented that either their students or colleagues perceived propositions under TWAIL as unattainable and unrealistic because of the dominance of mainstream international law. As one respondent recounts:

the mainstream approaches (positivism) are so in vogue in African universities that sometimes anything critical even non-TWAIL critical teaching, sounds like heresy. So, while some students are inspired and find the classes illuminating, some get confused, while others argue that they 'don't buy it' as if I was trying to convince them to purchase my ideas. This challenge is linked with the paucity of a coalition of believers especially among African faculties on TWAIL. This is expected anyway since many of these faculty members are themselves trained in institutions that are 'hard concrete' centers of mainstream, positivistic, and formalistic legal education. TWAIL-inspired teaching is a very lonely endeavour...<sup>94</sup>

Another respondent observed:

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<sup>93</sup> Respondent IV from Kenya.

<sup>94</sup> Respondent II from Kenya.

Because of the power relations and trust, the students are receptive...it is however harder to engage with adults on TWAIL. For example, in a conference in Kigali last week, some African professors were strongly against TWAIL, saying that the mainstream is working and TWAIL is just being radical, and it was time to move on from our past.<sup>95</sup>

These are in line with some observations in the literature,<sup>96</sup> with efforts at creating a de-colonial space within some law faculties being received with ‘skepticism and sometimes disdain by other law students, who saw the project as purely theoretical and with little practical relevance to their professional training. Indeed, our most aggressive critics were from international students who saw the project as an attempt to destabilize the legal order of our common law motherland....’<sup>97</sup>

Similar reluctance and resistance by both the students and institutions were also observed in Asia. As TRILA observed, one of the challenges in advancing a more robust teaching of international law was ‘academic cultures and institutional structures that constrain the adoption of progressive ideas to teach the subject’.<sup>98</sup> It also noted that students’ skepticism in engaging in class discussions also forecloses critical discussions.<sup>99</sup>

The implication of these is that, while the law classroom serves as an appropriate platform to influence ideas, beliefs, and ways of thinking, there may be resistance from both the students and the faculty that hinders effective engagement and deliberations. This would stem from the overwhelming influence of neoliberal education, a legacy of colonialism which mainstream international law supports. Most of these students and colleagues would have been exposed to mainstream narratives and neoliberal methods of teaching from their prior educational backgrounds. It would require innovative, deliberate, and strategic engagements to shift their ideologies.

### *Paucity of materials*

Another related challenge was the paucity of relevant materials on TWAIL as well as in knowing which materials to recommend or not. In some areas of IEL, for instance,

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<sup>95</sup> Respondent IV from Kenya.

<sup>96</sup> For instance see Babatunde Fagbayibo, ‘The Future of International Legal Scholarship in Africa: The Trilogy of Agency, Interdisciplinarity and Functionality’ (3 November 2021) *TWAILR: Reflections* #40/2021, <https://twailr.com/the-future-of-international-legal-scholarship-in-africa-the-trilogy-of-agency-interdisciplinarity-and-functionality/> (accessed 9 May 2023); Suzie Onyeka Oyakhire, Teaching IEL as a Nigerian Teacher in the Era of Decolonisation (IEL Collective Symposium II), 27 March 2020, <https://legalresearch.blogs.bris.ac.uk/2020/03/teaching-iwl-as-a-nigerian-teacher-in-the-era-of-decolonisation/>.

<sup>97</sup> Jing Min Tan (2021).

<sup>98</sup> Antony Anghie, JR Robert G Real (2020) 16-17.

<sup>99</sup> Ibid, 20.

international trade law, it has been a challenge 'teaching with a syllabus that doesn't take into consideration counter perspectives to existing hegemonic principles and having to informally incorporate TWAIL principles.'<sup>100</sup>

As one respondent observed, '...only a few TWAIL scholars teach and practice in Africa. The vast majority are in the West, and their publications appear in journals in the Global North to which many African scholars and students have no access to.'<sup>101</sup> This is in line with other findings that report the limited availability of teachers who bring a critical lens and the lack of access to good-quality textbooks and materials.<sup>102</sup>

Similar findings were also recorded by TRILA which highlighted the lack of technological, linguistic, and material as well as prohibitive prices of English textbooks and casebooks as some of the challenges encountered by Asian instructors in teaching international law.<sup>103</sup> These findings underscore the hegemonic structures of knowledge publication and dissemination. The inaccessibility of texts from the Global North comes from both the limited access to the internet in the Global South, which hinders access to even free resources, the lack of affordability of texts produced at exorbitant prices, and bias in knowledge production where publication outlets focus on outputs that advance mainstream narratives.

One participant also observes that TWAIL scholars' output is relatively limited in comparison to the extensive body of writing already existing on conventional perspectives of international law.<sup>104</sup> While it is true that TWAIL has only been in existence for a relatively short period compared to Western/Eurocentric perspectives and prescriptions, the implication is that there is a necessity to improve access to TWAIL materials, and some need to develop more. Publications from platforms such as Afronomics Law blog and Third World Approaches to International Law Review (TWAILR) are some examples of concrete efforts to make materials on alternative ideas, including TWAIL, more accessible. Yet, there is a need for more homegrown resources that focus on different areas of IEL, to serve as textbooks for teaching purposes. For instance, the availability of different articles on the African Continental Free Trade Area (AfCFTA) Agreement cannot make up for a standard textbook on

<sup>100</sup> Respondent I from Nigeria.

<sup>101</sup> Respondent II from South Africa.

<sup>102</sup> Makane M Mbengue & Olabisi D Akinkugbe, 'The Criticism of Eurocentrism and International Law: Countering and Pluralizing the Research, Teaching, and Practice of Eurocentric International Law', in Anne Van Aaken et al, eds, *The Oxford Handbook of International Law in Europe* (2023).

<sup>103</sup> Anghie, JR Robert G Real (2020) 20-21.

<sup>104</sup> Respondent I from Kenya. See also 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*, at 24.

international trade law that incorporates the new concepts, principles, and rules under the AfCFTA.

#### *Limitations with TWAIL*

Another challenge highlighted by some respondents was the limitations of TWAIL as a methodology. While TWAIL offers the tool and perspective to question and explain injustices and flaws in international law, it does not provide any practical recommendations on how to remedy the situation. For example, practical recommendations do not exist on 'how can we use the law to decolonize or how can we decolonize the law?'<sup>105</sup> TWAIL was also described as a 'simplistic explanation of human history,'<sup>106</sup> identifying exclusionary outcomes. It was alleged to serve best as a deconstructive tool, not as a reconstructive tool.

While TWAIL serves as an effective tool or approach in deconstructing international law, it also certainly serves as a constructive tool in teaching international law by enabling students to become aware and develop skills that would translate into 'a deeper social consciousness and a meaningful desire to struggle for a just international legal order.'<sup>107</sup> The limitation in using TWAIL as a reconstructive tool is more likely when TWAIL is adopted as a methodology than as an approach in teaching.

#### *Structure of Curriculum Development and Assessment in Africa*

Finally, the structure of curriculum development and learning assessment was also identified as a challenge when incorporating TWAIL into teaching. There must be institutional approval of the contents of any course in some universities. This limits the flexibility in designing courses as topics are restricted.<sup>108</sup> Similarly, the system of assessment is designed in ways that encourage cramming of texts. Unfortunately, students have more access to 'basic mainstream work reduced to undigestible pieces that promote an illusion that having the knowledge from the texts makes you an expert in international law.'

With the cramming system and access to intellectually biased materials, students tend to reproduce what they have crammed during exams without any critical thinking or analysis. This situation can be linked to the banking model of education adopted by MILS, which most students have been exposed to, and the same system

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<sup>105</sup> Respondent IV from Kenya.

<sup>106</sup> Respondent III from Kenya.

<sup>107</sup> Mohsen al Attar and Vernon Ivan Tava (2009) 10.

<sup>108</sup> Respondent II from Nigeria.

that the instructors emanated from, adopting from their teachers and mentors.<sup>109</sup> It is an approach where students are treated as objects and consumers, where memorization - rather than cognition - is the outcome of learning.<sup>110</sup> Thus, because the current legal education is geared towards preparing law students to be competitive for professional and academic positions, which are significantly determined by grades, students are more interested in reproducing for grades than learning skills, including critical thinking and alternative views to mainstream texts.

In the final analysis, while some of these challenges have been identified by African and other third-world TWAIL scholars as challenges in employing TWAIL in teaching international law generally, this study specifically highlights the unique difficulties faced by African scholars when teaching IEL using TWAIL. Among the most notable challenges are the scarcity of relevant TWAIL materials, particularly in the realm of international trade law, and the skepticism and limited acceptance of TWAIL from both colleagues and students. Personally, this author acknowledges the difficulty posed by delayed and restricted exposure to TWAIL, as they only encountered TWAIL after commencing their teaching career. Understanding its essence and integrating it into their teaching required conscious effort and deliberate attempts. Additionally, this author concurs with the shortage of materials and texts in international trade law, necessitating the informal incorporation of TWAIL principles into intentional discussions.

### **Concluding Remarks and Recommendations**

The need for law faculties to reject the patterns of intellectual colonization that have characterized its past cannot be overemphasized. Since legal education can reinforce and oppose inequality, the law classroom serves as an ideal place to shift ideological viewpoints on international law and incorporate the resistance to oppressive regimes by third-world people. Considering that pedagogy is partially shaped by the beliefs of the instructor, TWAIL serves as a tool for this ideological shift. However, the flexibility in TWAIL means that the pedagogy adopted by each instructor is substantially at the discretion of the individual.

This article presented the pedagogy that guides the teaching of IEL with TWAIL in some African universities. It was found that African instructors teaching IEL with TWAIL adopted it as an approach that helps them to unpack and unmask the inequities embedded in international law and global institutions by historicizing the narratives from the perspectives of third-world people. African instructors incorporate

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<sup>109</sup> Mohsen al Attar and Vernon Ivan Tava (2009) 9.

<sup>110</sup> Mohsen al Attar and Vernon Ivan Tava (2009) 33.

TWAIL in teaching IEL mainly by recommending texts by TWAIL and African scholars as well as leading deliberate discussions that provide accounts and perspectives of the oppression and hegemony embedded in international law and global structures.

Unfortunately, this approach is curtailed by the limited exposure of the instructors to TWAIL and the paucity of materials due to either limited access to relevant materials or limited availability of materials that incorporate TWAIL in certain areas, for example, in international trade law. Although these setbacks have been mitigated by informally leading discussions on the topics, this does not diminish students' skepticism on these perspectives as being the personal views of the instructor requiring validation. The author, therefore, recommends that given the availability of mainly loose articles on, for instance, international trade law, there is a need for TWAIL African scholars and instructors to come together and develop textbooks on different areas of IEL, especially international trade law and international investment law, using a TWAIL approach.<sup>111</sup>

While the need for institutional approval for content development has been identified as a challenge, the pedagogy adopted in the delivery of the approved content is always largely left to the discretion of the instructor. Thus, African scholars must not limit themselves in using TWAIL by waiting on relevant authorities to approve the use of TWAIL as an approach or an ideology. Rather, instructors must get innovative by leading discourse and using examples that have the tenets of TWAIL. This innovation can also be carried into the assessment process where the instructor demands a mainstream perspective and immediately demands an alternative or TWAIL perspective or approach to interrogating the same problems.

Although this article has contributed to the body of knowledge that presents the pedagogy that guides the teaching of IEL with TWAIL in some African universities, further research is needed on the experiences of how using TWAIL enhances the discussion and the analysis of specific topics of regional interest, for instance on tax justice and digital trade. This will help to shape a more nuanced understanding of how TWAIL can be effectively applied in addressing region-specific challenges within the realm of IEL. By interrogating these specific contexts, educators and policymakers can gain valuable insights that will inform and refine the integration of TWAIL into the teaching of IEL, ensuring its relevance and effectiveness in addressing contemporary issues of regional significance.

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<sup>111</sup> The author has been in contact with some of the respondents on this need, long before this study, and if time permits, this gap may be closed.



# THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

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*TWAIL Review* Issue 5

Published October 2024  
Windsor, Canada ~ Bogotá, Colombia

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