Book Review: South-South Migrations and the Law from Below: Case Studies on China and Nigeria

By:

Samuel Woldemariam

March 25, 2024

Both the proponents and critics of Third World Approaches to International Law (TWAIL) have called for a closer examination of the state of affairs in Third World countries, as opposed to the sole focus of examining the impact of colonialism and Western action, to explain and understand the impact of international law on these countries. The aim for such a call, mainly of the critics, appears to be the need to highlight the role of actors within the Third World in the existing socio-economic and political conditions and the problems in these countries. While conceding the share of responsibility of Third World leadership for the ongoing cycle of problems faced by Third World people, the call of TWAIL scholars primarily focuses on the grander objective of elevating Third World voices, narratives, and discourse into a meaningful mainstream position.

Oreva Olakpe's book makes a great contribution in this respect. It methodically examines the understanding of international law and its impact on the everyday lives of people in the Global South. It does so by solely relying on sources of knowledge in the Global South. The book makes a crucial epistemological intervention that seriously questions the status quo of knowledge production in international law, which heavily relies on the laws, policies, and experiences of the Global North, and asserts the vitality of shifting to the laws, policies, and experiences of the Global South to generate knowledge. This book review focuses mainly on the methodological aspects of the study and reflects on the opportunities and challenges of TWAIL embracing the Global South as the center of its methodology.

Olakpe's book is a case study of South-South migrations focusing on China and Nigeria. The subjects of the study are 'African undocumented migrants, asylum seekers or refugees with links to Nigeria.' Migrants and asylum-seekers from other countries occasionally feature in the study. The narratives of the migrants stand at the centre of the study. Their stories, struggles and lived experiences directly inform the core analysis. Olakpe is intentional about this approach as her study 'problematises the elevation of some migrants into intenational and global dialogues and the neglect of others, in particular the South-South migrants and their encounters with law.' According to Olakpe, given 'the trends in international legal discourse that create exclusiveness in the international system and ignore the contributions and struggles of non-Western countries and peoples to international law', the centering of the voices of Third World migrants ensures 'an inclusive discussion on international law that takes a plurality of approaches into consideration.'

With that objective, Olakpe adopts TWAIL both as a theoretical and methodological framework that informs her study. As a theoretical framework, she utilizes TWAIL to demonstrate that the 'current system of international law and international relations is based on Western domination of the world over time.' Upon this foundation, she utilises TWAIL as a methodology consisting of 'trans-disciplinarity', the centring of subalternity and the use of 'anthropological methods' to understand the outworking of international law in the daily lives of Third World migrants in China and Nigeria.

It is this methodological embrace of TWAIL in the context of migration that is a significant contribution of the book. The discourse of migration, refugeehood and asylum has historically centred European States in the analysis of its benefits and "burdens". The international legal and institutional frameworks, particularly those since the 1920's, were also deployed in the service of European interests in respect of the movement of people in and among States in continental Europe. When the tide shifted and people from the Third World began to move towards Europe, the international legal and institutional frameworks were again redeployment, albeit this time with a different objective of restricting such movements. This has given rise to a proliferation of literature, an overwhelming majority of which are by established Western scholars, calling out the restrictive nature of the existing international legal framework for refuge protection and calling for reforms in this regard.

But how much of the policy reforms called for by these scholars and the knowledge generated by them is based on a close encounter with migrants, refugees and asylum seekers from the Third World? To what extent do the proposed reforms fit the needs of migrants, refugees and asylum seekers from Third World? To what extent is the knowledge generated informed by the actual experiences of migrants, refugees, and asylum seekers from the Third World as to the reasons for their flight and their desires for the future?

These are serious questions that one would pause in relation to the existing body of knowledge if we consider Olakpe's call for 'TWAIL-based ethnographies that facilitate understanding of the material realities of people in the Global South.' While the theoretical assertions of TWAIL are foundational, Olakpe calls for the embrace of 'legal ethnography' as a method to be able to engage with people at the local level and enhance understanding of the 'law from below'. This methodological approach is critical in relation to migration and forced displacement because it is an area of international law that directly applies to and considers the circumstances of individuals in its application.

A major narrative of international refugee law scholarship currently paints a picture of a growing number of Third World asylum seekers who are finding it increasingly harder to get protection in the Global North. While persecution, and therefore the need for protection, still exists, this narrative reduces the corpus of movements to a narrow category that is recognised in international

law such that people are tempted to either associate themselves with such category or potentially miss out on a legal status. This leads to, among other things, the fabrication of false asylum claims, the over-burdening of refugee status determination procedures, the over-stretching of limited resources, and most importantly, the pursuit of a narrow solution that is doomed to fail, at least with respect to the majority, because it is built on the wrong assumptions.

Olakpe's China case study for example identifies individuals whose claim for asylum protection would not necessarily meet the definition of Refugee under the 1951 Refugee Convention. Her study also finds potential abuses of the asylum process by individuals as well as the number of individuals whose protection claim has resulted in the grant of a refugee status. The case study provides a much clearer picture of the varying conditions and circumstances of migrants and asylum seekers in China and Nigeria. Such findings enable targeted and strategic interventions to provide working solutions.

I concur with Esalva and Pahuja, Haskell and Olakpe that 'legal ethnographies are the next frontier of TWAIL scholarship. This is long overdue in international refugee law scholarship. Its adoption has the potential to unpack the so-called ' mixed movements' and provide insights into the individual circumstances and stories of people on the move, who would otherwise remain as mere fractions of the gigantic global forced displacement figure.

The proposed TWAIL embrace of the Global South as the centre of its legal ethnographic methodology however comes with its opportunities and challenges. The major benefit, as alluded to above, is getting a clearer understanding of issues by engaging with people at the grassroot level. The empirical foundation that results from this serves sound policy making. Where there is the political willingness to do so, the empirical result will also point to the root causes of forced displacement or irregular migration so that States could design strategic interventions to address these root causes.

A major challenge to the proposed approach is a practical one for scholars, particularly those based in the Third World. Olakpe's study has demonstrated the extensive resource required to undertake field trips to conduct interviews and to engage and liaise with stakeholders. This practical limitation, I suppose, is the reason behind the small size of the sample in Olakpe's study. There is therefore a need to bridge the funding gap to undertake these enquires. As

Olakpe's study has shown, the result is impactful at the national and international level. More importantly, as Olakpe noted, this approach 'reflects reality'.

View online: Book Review: South-South Migrations and the Law from Below: Case Studies on China and Nigeria

Provided by Afronomicslaw