Dismantling Epistemic Violence and Eurocentrism in the Teaching and Research of International Law in the Global South: A Reflection

By:

Florence Shako

November 27, 2023

Introduction

One of the sites where the legacies of colonialism continue to be perpetuated in the Global South is the law classroom. In the teaching and research of international law, 'mainstream' narratives of international law are privileged as the Subject, and critical international law scholarship is treated as the Other.

The notion of epistemic violence refers to the different ways in which violence is exercised in relation to the production, circulation and recognition of knowledge: the denial of epistemic agency for certain subjects, the unacknowledged exploitation of their epistemic resources, their objectification, among many others. In this context, the centering of mainstream narratives of

international law as the Subject leads to epistemic violence which disqualifies, marginalizes and appropriates critical international law perspectives as the Other. This epistemic violence redefines the understanding of international law as categorized into the 'mainstream' historical narratives and the subjugated knowledge of critical narratives, to be consumed but not prioritized. Spivak defines subjugated knowledge as a whole set of knowledge that have been disqualified as inadequate to their task or insufficiently elaborated: naive knowledge, located low down on the hierarchy, beneath the required level of cognition or scientificity.

Law students in the Global South learn early on to perceive critical international law scholarship as subjugated narratives of international law, which are somewhat inadequate or insufficiently elaborated. There is real epistemic harm to the law students who are taught international law mainly from a Eurocentric point of view. In the Global South, international law is mainly taught from a Western perspective with the bulk of the textbooks utilized in these law programs written by Western scholars. The literature used and the pedagogy adopted in the teaching of international law remains rife with exclusions and distortions of indigenous knowledge, voices, critiques and scholars, which I have discussed in earlier writings as well as the need for decolonization of the classroom and here.

Overview of TWAIL

Third World Approaches to International Law (TWAIL) is a critical perspective of international law that ought to be taught in law classrooms in the Global South as the Subject and not as the Other. TWAIL is an alternative narrative of international law that has developed in opposition to the realities of domination and subordination prevalent in the international legal apparatus (BS Chimni, The World of TWAIL: Introduction to Special Issue (2011)). TWAIL comprises both theoretical and methodological dimensions and is useful for analysing international law and institutions from the perspective of the Third World. (Obiora Okafor, Critical Third World Approaches to International Law (TWAIL: Theory, Methodology or Both? International Community Law Review Volume 10 (2008)). The works of scholars, written from a TWAIL perspective, from both the Global North and the Global South is extensive.

James Gathii argues that TWAIL scholars have contested the non−situated, universal status of international law in a variety of ways for several generations now. He espouses that TWAIL challenges a view of international law that fails to engage in its complicity in histories of colonization, plunder and enslavement, whose legacies continue to date. He further posits that TWAIL recognizes the Third World as an epistemic site of production and disrupts the assumptions that international legal knowledge is exclusively produced in the West for consumption and governance of the Third World. (James Thuo Gathii, The Promise of International Law: A Third World View (June 25, 2020). Grotius Lecture Presented at the 2020 Virtual Annual Meeting of the American Society of International Law).

Caroline Lichuma advocates for a 'revolution of the mind' catalyzed by making critical legal approaches such as TWAIL an integral part of the international law classroom in order to begin to transform the next generation of international lawyers. She argues that there exists a lacuna calling for the linking of TWAIL as an analytical approach and TWAIL as legal pedagogy in order to create a place for "the Other" in international law which she claims would represent an important step toward encouraging greater understanding of diverse perspectives and facilitating enhanced communication and cooperation among those coming from different, and sometimes unlike-minded, states.

Experiential challenges to teaching TWAIL in the Global South

In my own teaching and researching of international law in Kenya at renowned law schools for over a decade, it was clear that mainstream narratives of international law articulated in Western texts were not only privileged but also understood as the only narrative of international law. This leads to epistemic harm especially for the students who never engage with any critical literature. Where critical perspectives are taught, they are articulated as the Other and as subjugated knowledge, to be consumed but not prioritized. There is a need to incorporate the teaching of TWAIL into the curricula of law programs in the Global South as a core component of international law, as the Subject and not the Other.

However, the push to teach and research critical perspectives of international law such as TWAIL is not without its challenges from a practical perspective.

From my own experience, it is difficult to gain institutional acceptability for a number of reasons. First, universities have a specific approved law curriculum that must be followed and in many occasions, these critical perspectives are not included in the approved curriculum. There will therefore be pushback whenever academics attempt to incorporate such critical perspectives into the curriculum. Secondly, in some occasions, there is fear by universities that TWAIL as a critical perspective is too 'radical' and too big a shift from the traditional mainstream narratives. It is difficult to surmount the subjugation of critical perspectives as the Other, given the many years that the mainstream narratives have been the Subject. Lastly, there is the possibility of backlash from both University administration and students who would wonder whether an academic teaching TWAIL is teaching the 'correct' syllabus.

Apart from institutional acceptability, there are other challenges such as time constraints. This is the view that there might not be enough time in a time-constrained syllabus to teach both the mainstream narratives of international law as well as incorporate TWAIL into the teaching of international law.

Issues of access to the writings of TWAIL scholars also persist. Many institutions in the Global South have limited resources yet a lot of the scholarship is behind paywalls. This created an accessibility problem for both students and faculty even where academics are willing or able to teach critical perspectives such as TWAIL.

Way Forward

Mbengue and Akinkugbe argue for pluralizing the reading materials in syllabi in confronting the agency and structural power in the Eurocentric teaching of international law in the Global South. They argue that the scholarship generated should be made widely available and not locked behind paywalls once they are published in the mainstream. (Makane Moïse Mbengue and Olabisi D Akinkugbe, The Criticism of Eurocentrism and International Law: Countering and Pluralizing The Research, Teaching, and Practice of Eurocentric International Law (December 27, 2022).

One of the approaches to dismantling the epistemic violence and dominant Eurocentric approaches in teaching international law is the incorporation of TWAIL into the teaching of international law as the Subject and not the Other.

The centering of Global South voices, writings and experiences and the increased open access of important TWAIL literature cannot be overemphasized. There should also be accessible repositories for academics in the Global South who wish to teach or research from a TWAIL perspective but do not have a starting point. Scholars in the Global South should also increasingly publish from their own perspectives to counter the dominant Western narratives of international law.

I conclude my reflection with Anthony Anghie's sentiments that one way of assessing TWAIL's trajectory is to return to the vision statement of 1997 and the ambitions stated there.

'There is a need to 'democratize international law' and to the importance of contesting 'international law's privileging of European and North American voices by providing institutional and imaginative opportunities for participation from the Third World' and that 'we need to formulate a substantive critique of the politics and scholarship of mainstream international law to the extent that it has helped reproduce structures that marginalize and dominate Third World peoples.

Florence Shako is an academic and advocate; the Senior Partner of Mitullah Shako & Associates Advocates and the Executive Director of the Centre for Education Policy & Climate Justice, LLM (LSE), LLB (UoN), MCIArb, CPM, CS, CPA

View online: Dismantling Epistemic Violence and Eurocentrism in the Teaching and Research of International Law in the Global South: A Reflection

Provided by Afronomicslaw