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# Decolonising the International Law Curriculum: A Critical Literature Review

*CLS Working Paper Series 2023/5*

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# Decolonising the International Law Curriculum: A Critical Literature Review

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## Abstract

This critical literature review analyses academic scholarship addressing decolonisation of pedagogy in the field of international law. In recent years, there has been more focus on the broader goal of decolonising the curriculum in higher education, including greater reflection on the way historical processes of colonialism connect to modern racialised disadvantages. The discipline of international law is addressing related concerns, particularly the role of international law in creating and perpetuating inequality and hierarchy. The review analyses the scholarship that has addressed these concerns in the teaching of international law, which is often criticised for presenting a Eurocentric narrative. It uses a semi-systematic literature review to synthesise and provide a meta-level overview of findings, review patterns, identify gaps, and lay the groundwork for further studies. It is based on a keyword search of relevant databases to identify literature on teaching and learning related to international law. Literature was included or excluded using pre-defined selection criteria to include books, articles and blog posts that related to decolonisation and teaching international law. The review highlights some common themes and challenges in the teaching of international law. It addresses issues related to decentring the mainstream approaches, acknowledging geography of knowledge, and integrating a range of voices (history, theory, methodologies) into the international law classroom. The review finds that much of this literature has been influenced by critical scholarship in international law, particularly from Third World Approaches to International Law (TWAIL) scholars. It argues that this scholarship, while uncovering the biases in international law teaching, should link to broader research and scholarship on decolonising pedagogy.

**Keywords:** Decolonising, international law, pedagogy, TWAIL, legal theory

## 1 Introduction

### 1.1 Rationale for Critical Literature Review

In recent years, the 'decolonising the curriculum' movement has brought to light criticisms of higher education and ignited debate, examination, and reflection about how colonialism and eurocentrism have shaped, and continue to shape, academia and university teaching. Teachers in higher education are reflecting on how their courses have been impacted by colonial legacies and are discussing strategies to address them. While the focus on decolonisation in higher education is relatively recent, it relates to longstanding concerns and criticisms about the role of colonialism and eurocentrism in the production of knowledge.<sup>1</sup>

Many academic disciplines are also reflecting on the role of colonialism and eurocentrism in their research fields. These debates have been particularly evident in studies of international law. International law is generally understood to include the set of rules, norms, and legal principles that regulate the behaviour of states and international organizations. It is often taught as an elective in undergraduate law courses, in which students are introduced to the main principles and theories of international law, as well as an introduction to substantive legal fields, such as the law related to war, trade and human rights. According to the traditional narrative, international law is presented as a field of law that was developed in relations between states in Europe and later 'exported' to the rest of the world, often through the process of colonisation. Many critical scholars have addressed the role international law has played in creating and reproducing global inequality and discrimination.<sup>2</sup> Even after colonisation formally ended, the rules of international law continued to preference Western states and uphold existing power structures. In this context, both researchers and teachers of international law have also been confronted with the legacies of colonialism. Contemporary international law scholarship now seeks to integrate numerous critical approaches, including Third World Approaches to International Law ('TWAAIL'), as well as feminist, queer,<sup>3</sup> postcolonial, Marxist, critical race theory,<sup>4</sup> and other critical perspectives. This raises questions about how teachers of international law can integrate such critical approaches in their teaching.

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<sup>1</sup> See L. Moosavi, 'The Decolonial Bandwagon and the Dangers of Intellectual Decolonisation' (2020) 30 *International Review of Sociology* 332. P. Gopal, 'On Decolonisation and the University' (2021) *Textual Practice*, 35(6), 876: "In Anglophone postcolonial contexts, the question of 'decolonising' universities, education, and indeed, 'the mind', was first raised in post-independence Africa."

<sup>2</sup> S. Pahuja, 'The Postcoloniality of International Law' (2005) 46 *Harvard International Law Journal* 459.

<sup>3</sup> D. Otto (ed) *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, 2019).

<sup>4</sup> R. Gordon, 'Critical Race Theory and International Law: Convergence and Divergence' (2000) 45 *Villanova Law Review* 827.

This critical literature review examines the academic scholarship on teaching international law, with a focus on literature discussing decolonising the international law curriculum. The ‘curriculum’ is understood in a broad sense, taking into account not only the list of topics and readings included in a course, but also the broad array of learning experiences and outcomes associated with it.<sup>5</sup> The review illustrates how literature on teaching international law has focused on the need to update reading lists and curriculum to include authors and case studies from outside the West, and to integrate critical theories and history into the teaching of international law. Much of this scholarship has been driven by the need to expose students to views that challenge and interrogate the mainstream. However, much of this scholarship has not engaged sufficiently with the broader debates about decolonising pedagogy. While it is important to include a greater variety of voices and perspectives that challenge traditional narratives, international law teaching must also address ways to ensure teaching international law is also inclusive and representative.

Part 2 sets out the **methodology** used in the literature review. It describes and discusses the process of conducting a critical literature review, including the design of the search strategy, the selection and exclusion criteria adopted, and the analytical framework used to analyse the literature. Part 3 provides an overview and **categorisation** of the literature that was examined and analysed. It shows how decolonisation has been discussed in various debates about decolonising the university, decolonising the law school, and in various discussions related to decolonising international law. Part 4 focuses on the **challenges** associated with teaching international law. It addresses the challenge of ‘integrating’ various perspectives, theories, voices, and histories while also providing students with a sufficient grasp of the legal doctrine. Part 5 examines some of the **strategies** that have been proposed for addressing these challenges. Part 6 concludes with a summary of the literature, a discussion of the limitations of the review, and a discussion of its recommendations and implications.

## 1.2 Significance: Why decolonise international law teaching?

The topic for the critical exposition of literature was identified as it is relevant to my role as a teacher of international law. I currently teach the module ‘Foundations of Public International Law’, a second-year elective in a Bachelor of Law. In teaching this module, I have been drawn to questions about how to ensure that the curriculum is inclusive and addresses issues of interest to a diverse student community in London. As discussed in this literature review, both international law scholarship and scholarship on teaching and learning have identified the importance of decolonising the curriculum to address student needs and learning outcomes.

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<sup>5</sup> See S.P. Fraser, A.M. Bosanquet, ‘The Curriculum? That’s Just a Unit Outline, Isn’t It?’, (2006) *Studies in Higher Education*, 31(3), 269–284, noting the different understandings of what ‘curriculum’ means in higher education.

Jones and O'Donoghue argue, for instance, that teaching international law properly requires teachers to answer student demands for a decolonised curriculum, including greater attention to theory, history, politics, and context.<sup>6</sup> The literature review also seeks to address a perceived gap in the literature, that is, the lack of practical guidance to teachers of international law on how to teach in an inclusive way. International law teaching has been criticised for being Eurocentric, and survey of international law textbooks showed that sources used for historical information consisted mostly of white, European men.<sup>7</sup> Beyond discussions of the problems associated with teaching international law, the review also seeks to explore how the literature has discussed practical guidance for teaching international law. While the literature review primarily focuses on a critical evaluation of the existing literature, it is also aimed at providing guidance to teachers and to address student concerns about the Western-centric teaching of international law.

## 2 Methodology: Critical Literature Review

### 2.1 Aims and Objectives

This literature review seeks to understand how international law can be taught in a way that best integrates critical, non-Western and decolonial perspectives. It addresses this question by adopting the method of a critical literature review. A literature review is defined as “a more or less systematic way of collecting and synthesizing previous research”.<sup>8</sup> It uses a semi-systematic literature review. This form of literature review “seeks to identify and understand all potentially relevant research traditions that have implications for the studied topic and to synthesize these using meta-narratives instead of by measuring effect size”.<sup>9</sup> A meta-narrative helps to show the complementary and conflicting ways that a topic has been addressed in the scientific literature.<sup>10</sup> Snyder argues that a semi-systematic literature review is an appropriate strategy when an issue has been approached and analysed in different disciplines as it can help map theoretical approaches and identify gaps.<sup>11</sup> A systematic literature review, on the other hand, uses pre-specified inclusion criteria to answer a particular research question.<sup>12</sup> As the issue of decolonising international law teaching is discussed in multiple disciplines and from different perspectives, the semi-systematic review was selected as an appropriate way

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<sup>6</sup> H. Jones, A. O'Donoghue (2022) 'History and self-reflection in the teaching of international law', *London Review of International Law*, 10(1), 81.

<sup>7</sup> Jones and O'Donoghue (n 6) 71–103.

<sup>8</sup> H. Snyder, 'Literature Review as a Research Methodology: An Overview and Guidelines' (2019) *Journal of Business Research* 104, 333.

<sup>9</sup> Snyder (n8) 335.

<sup>10</sup> G. Wong, T. Greenhalgh, G. Westhorp, J. Buckingham, R. Pawson, 'RAMESES publication standards: meta-narrative reviews' (2013) *BMC Medicine* 11, 20.

<sup>11</sup> Snyder (n8) 334.

<sup>12</sup> Snyder (n8) 336: “if the review aims to summarize or evaluate a large field of research or even several research areas, a strict systematic review approach may not be suitable or even possible.”

to locate and categorise the relevant literature. The semi-systematic literature review, combined with critical analysis, can provide a meta-level overview of findings, review patterns, identify gaps, and lay the groundwork for further theoretical studies.<sup>13</sup> As discussed in Section 6.1 below, there are some limitations of adopting a semi-systematic approach. However, it was selected as the most appropriate method to analyse the existing research and scholarship on teaching international law.

## 2.2 Design

The materials identified in this literature review were first located using online searches (Google/Google Scholar, JSTOR, City University library database). The literature was located by combining the search terms 'decolonising university'; 'decolonising teaching' and 'decolonising pedagogy' with 'international law'. This initial search retrieved a list of books, articles, reports, and blog posts that were related to decolonisation. The titles, abstracts, and texts (where necessary) were viewed to decide whether they met the inclusion criteria. The first criterion looks at whether the publication addresses the topic of *international law*. Thus, literature that examined decolonising pedagogy generally or in other fields (e.g. International Relations, history) were excluded. The second criterion was whether the publication addressed issues related to *teaching and pedagogy*. This meant that articles that dealt with the decolonisation of international law and other disciplines, without any discussion of teaching, were also excluded.

Publications were also found by examining the references cited in those articles and reports. In addition to the initial keyword search, the literature review was supplemented by Schwöbel-Patel's *Oxford Bibliography on Teaching International Law*.<sup>14</sup> Using this iterative search process, the review identified 22 research articles/book chapters and 21 blog posts that met the criteria.

It became evident during the search that much of the discussion on decolonisation and teaching of international law is now taking place in the form of blog symposia and reports and not only in books and peer-reviewed articles. These blog posts and reports were often written by academics outside the West, and often by younger scholars. The blog posts often included personal reflections on teaching, rather than being based on research on teaching and learning. Excluding these sources on the grounds they were not published in peer-reviewed

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<sup>13</sup> Snyder (n8) 334: "Typically, this type of literature review is conducted to evaluate the state of knowledge on a particular topic. It can be used, for example, to create research agendas, identify gaps in research, or simply discuss a particular matter."

<sup>14</sup> C. Schwöbel-Patel, 'Teaching International Law' (Oxford Bibliographies, OUP2018). Available at <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0166.xml>.

journals could have the effect of giving priority to certain ‘valid’ voices, mainly in the West, and excluding voices that may not have been otherwise represented. Thus, the literature review also includes blog posts and reports related to decolonising international law pedagogy to maximise the range of voices discussing this issue.

After the literature was identified it was read, noted, and analysed. The aim of this project is to provide a critical literature review rather than a summary of the existing scholarship. First, the project is aimed at improving pedagogical practice. The objective guiding the analysis focused on identifying the main challenges associated with teaching international law in a way that integrates decolonial and non-Western perspectives. It thus focused on identifying in the literature the practical challenges faced by international law teachers. Second, the sources were analysed to focus on methods and practices that would address issues related to inclusion and diversity. In doing so, the analysis was guided by existing research on decolonising pedagogy, including *Decolonisation and Legal Knowledge: Reflections on Power and Possibility*<sup>15</sup> and Kennedy’s ‘Legal Education and the Reproduction of Hierarchy’.<sup>16</sup> The literature was analysed with a view to locating any practical advice and suggestions for teaching international law. The analysis identified areas of common themes, theoretical perspectives, methodologies, recommendations, and conclusions. It sought to identify, where possible, how these views were shaped by the target audience of the paper, the object of analysis, the discipline in which the author was working (e.g. in pedagogy or law). Based on this analysis, the review categorised the scholarship (section 3). It then collated the findings related to challenges (part 4). Based on this analysis, the dissertation then reflects on some of the strategies that can be adopted to address these challenges.

### **Overview of Search Strategy and Analysis**

#### **1. Search**

- Search of online databases using keywords
- Keywords “decolonising university”; “decolonising teaching” and “decolonising pedagogy” with “international law”
- Inclusion of publications in footnotes and bibliographies

#### **2. Exclusion/inclusion criteria**

- Did the publication address decolonisation and pedagogy?
- Did the publication address teaching of international law?

#### **3. Method of analysis**

- Collate information on common challenges identified

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<sup>15</sup> F. Adébí sí, *Decolonisation and Legal Knowledge: Reflections on Power and Possibility* (Bristol University Press, 2023).

<sup>16</sup> D. Kennedy, ‘Legal Education and the Reproduction of Hierarchy’ (1982) 32 *Journal of Legal Education* 591.

- Collate information on common teaching strategies
- Identify common themes addressed in corpus (theoretical perspectives, methodologies, recommendations, and conclusions)
- Identify any research gaps

### 3 Categories of Scholarship

As a first step, the literature identified some of the key areas of research and scholarship that address issues of international law teaching. There are many definitions of decolonisation and there is no agreed definition used in pedagogical literature. The Decolonising SOAS Working Group states the term “connects contemporary racialised disadvantages with wider historical processes of colonialism, seeks to expose and transform them through forms of collective reflection and action.”<sup>17</sup> The purpose is not to delete histories, but “to situate the histories and knowledges that do not originate from the West in the context of imperialism, colonialism and power and to consider why these have been marginalised and decentred.”<sup>18</sup> Writers on decolonising the curriculum tend to avoid definitions, however, viewing it as an approach or perspective rather than an outcome.<sup>19</sup> Rather than provide a definition, this review analysed literature to see how authors themselves understood decolonisation. While many scholars in the field of teaching and learning tend to focus on issues of racism and Eurocentrism, pedagogical literature on the teaching of international law had a broader focus. While it addresses issues of racism, it also focuses on including more diversity in terms of histories, voices, case-studies, theories, and methodologies in teaching.

#### 3.1 Decolonisation literature

The first field of literature deals with the issue of the university and university teaching. It addresses calls to decolonise the curriculum from student movements such as the “Why is my

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<sup>17</sup> Decolonising SOAS Working Group, ‘Decolonising SOAS: Learning and Teaching Toolkit for Programme and Module Conveners’ (SOAS University of London). Available at <https://blogs.soas.ac.uk/decolonisingsoas/learning-teaching/toolkit-for-programme-and-module-conveners/>

<sup>18</sup> R. Arshad, ‘Decolonising the curriculum – how do I get started?’ *Times Higher Education*, 14 Sep 2021. Available at <https://www.timeshighereducation.com/campus/decolonising-curriculum-how-do-i-get-started>

<sup>19</sup> Adébí sí (n15) 15: “The approach adopted does not attempt to exhaustively define decolonisation – this is neither possible nor desirable. Rather I recognise decolonisation as a set of strategies whose instant expression and articulation respond to the relevant space– time manifestation of the evolving and mutating superstructure it refuses.”

curriculum white”<sup>20</sup> and “Liberate the Curriculum”<sup>21</sup> campaigns. The discussions on how to decolonise the university and the curriculum have been dealt in depth in books and articles. In *Decolonising the University*, the movement has been summarised as a way of thinking about the world that understands the role of colonialism, empire and racism as phenomena that have shaped the contemporary world.<sup>22</sup> The decolonise the university movement was originally inspired by themes of emancipation and liberation. Yet in recent years it has been criticised as becoming a mere ‘tick box’ exercise promoted by university management, motivated more by marketing and public relations than by a true desire to liberate.<sup>23</sup> University administrations have sought to address concerns of students and as part of the widening participation strategy in UK higher education.<sup>24</sup> A diverse curriculum is also related to attempts to deal with the gap between BAME and white students.<sup>25</sup> Much of the focus in this regard has been on diversifying reading lists.<sup>26</sup> Yet, as the literature in this field points out, decolonising university education involves a holistic approach to rethinking approaches to education, far beyond adding new articles to a list of readings.

The second field of literature zooms in on the law school as a site of decolonisation.<sup>27</sup> This scholarship reveals how the law school itself has a role in recreating unequal power structures. Kennedy has uncovered how law schools, while presenting themselves as concerned with practical and technical education, are “intensely political spaces” that reproduce hierarchy.<sup>28</sup> Adébí sí has more recently focused on the law school as an important site for decolonisation. Adébí sí calls for legal scholarship to go further than merely acknowledging the historical role that colonisation has had on the law, but to continue to disrupt and dismantle the colonial

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<sup>20</sup> See M.A. Peters, ‘Why Is My Curriculum White? A Brief Genealogy of Resistance.’ in J. Arday, H. Mirza (eds) *Dismantling Race in Higher Education: Racism, Whiteness and Decolonising the Academy* (2018, Palgrave Macmillan). See UCL, *Why is My Curriculum White?* Available at <http://www.dtmh.ucl.ac.uk/videos/curriculum-white/>.

<sup>21</sup> NUS Campaign, ‘Liberate the Curriculum’. Available at: <https://www.nusconnect.org.uk/campaigns/liber8-education/liberate-the-curriculum>

<sup>22</sup> G.K. Bhambra, D. Gebrial, K. Nişancioğlu, ‘Introduction’ in G.K. Bhambra, D. Gebrial, K. Nişancioğlu (eds) *Decolonising the University* (Pluto Press, 2018) 2.

<sup>23</sup> M. al Attar, S. Abdelkarim ‘Decolonising the Curriculum in International Law: Entrapments in Praxis and Critical Thought’, (2023) *Law and Critique* 34(1), 55-6: “Having entered the managerial lexicon, the university reduces decolonisation to a tick box and promotional campaign, with possible implications for career progression. Such co-option is inevitable when symbolism supplants systemic renewal.”

<sup>24</sup> K. Schucan Bird, L. Pitman, ‘How diverse is your reading list? Exploring issues of representation and decolonisation in the UK’, (2020) *Higher Education*, 79(5), 903–920.

<sup>25</sup> Schucan Bird & Pitman (n24) 904: “A diverse curriculum has also been aligned with attempts to address the attainment gap between Black, Asian and Minority Ethnic (BAME) students and their white peers.”

<sup>26</sup> Schucan Bird & Pitman (n24) 903–920.

<sup>27</sup> See Adébí sí (n15); F. Adebisi, ‘Decolonising the law school: presences, absences, silences... and hope’, (2020) *The Law Teacher*, 54(4), pp. 471–474, part of the Special Issue on *Decolonising the Law School*.

<sup>28</sup> Kennedy (n16).

nature of the world.<sup>29</sup> Beyond the decolonising the university movement, there has been research that has focused on the law school itself as a “white space”<sup>30</sup> and a “straight space”.<sup>31</sup> One particular issue addressed in this scholarship is how legal education prepares students for professional practice in law firms and government, and how it perpetuates hierarchy and division based on class, race and gender identity.

A third body of scholarship focuses more specifically on teaching of international law.<sup>32</sup> Adébí sí draws particular attention to the need to decolonise international law, as it was instrumentalised to create and reproduce an unequal global order.<sup>33</sup> This research has addressed some of the same issues highlighted in the scholarship on decolonising the university and decolonising the law school, such as the Eurocentric nature of sources and approaches and the reproduction of hierarchy. There are also specific challenges associated with the teaching of international law, which will be discussed in more depth below. While the decolonising the curriculum movement has surely received more attention in recent years, international law’s reflections on its own Western bias, and the ways this should be addressed, have been discussed over the last few decades. The literature review identified that much of this has been addressed from the perspective of critical international law scholarship, particularly TWAIL (‘Third World Approaches to International Law’).<sup>34</sup>

### 3.2 Critical International Law and TWAIL Literature

TWAIL is an academic and political movement that seeks to challenge many of the Western-centric notions on which international law is based. Explaining the key concepts of the TWAIL movement, Mutua argues that “[t]he regime of international law is illegitimate. It is a predatory system that legitimizes, reproduces and sustains the plunder and subordination of the Third World by the West.”<sup>35</sup> It is unsurprising that TWAIL scholars have turned their attention to the ways that international law is taught. Al Attar and Abdelkarim show how TWAIL scholars have engaged with alternative ways to teach international law that not only highlight the historic reality of colonialism but also draw attention to international law’s function in preserving colonial relations and Eurocentricity.<sup>36</sup> For TWAIL scholars, international law needs to be

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<sup>29</sup> Adébí sí (n15) 21-22.

<sup>30</sup> B. Capers, ‘The Law School as a White Space’ (2021) *Minnesota Law Review* 3294.

<sup>31</sup> S. S. Ballakrishnen, ‘Law School as Straight Space’ (2023) 91 *Fordham Law Review* 1113 (2023).

<sup>32</sup> Jones and O’Donoghue (n 6) 84: “Decolonising the curriculum is of clear import to international law, though naturally it is a question for all areas of law.”

<sup>33</sup> Adébí sí (n15) 47: International law “has more often been implicated in the colonial encounter and therefore the emergence and reproduction of an unequal global order.”

<sup>34</sup> M. Burgis-Kasthala, C. Schwobel-Patel ‘Against coloniality in the international law curriculum: examining decoloniality’, (2022) *The Law Teacher* 56(4), 486: “TWAIL scholars agree that pedagogy is a crucial part of transforming the discipline, and, more ambitiously, its social context.”

<sup>35</sup> M. Mutua, ‘What is TWAIL?’ (2000) *Proceedings of the ASIL Annual Meeting*, 94, 31.

<sup>36</sup> al Attar & Abdelkarim (n23)18.

taught in a way that highlights its historical and political context. It should also exhibit the experiences and perspectives of communities outside the West. This scholarship has argued that the international law curriculum must move away from prioritising voices of Western academics. Moreover, it shows how international law teaching should be designed in a way that exposes students to arguments about how international law was historically dominated by the West and often resulted in the marginalisation and exploitation of people and communities in the Global South.<sup>37</sup> According to TWAIL scholarship, decolonising international law teaching involves more than simply including TWAIL literature in the curriculum. It also includes inviting students to reflect on how international law as a discipline has been shaped by the West, and how thinking about international law has been shaped by Western-centric concepts.

TWAIL scholarship has not focused on pedagogy until relatively recently.<sup>38</sup> Scholars such as al Attar, Eslava and Schwöbel-Patel seek to bring together insights from TWAIL scholarship and scholarship on teaching and learning. The TWAIL scholarship on teaching and learning is not a monolith, however, and there are different views about how decolonisation of teaching should be done in practice. Modirzadeh points to the limits of TWAIL as a political movement.<sup>39</sup> Modirzadeh argues that, while TWAIL scholarship has decentred dominant narratives of international law and addressed its colonial and Eurocentric origins, it “has become stuck for a quarter century in seeking to prove again and again the core thesis that international law is “co-constituted” with colonialism and empire.”<sup>40</sup> She reflects on the response to TWAIL from students from the Global South, who wish to go further than merely pointing out the structural bias of international law, but to also develop political strategies for empowerment and change through international law.<sup>41</sup> Modirzadeh is equally critical of TWAIL’s focus on decolonising the international law syllabus, arguing that teachers could focus on approaches to leadership, empowerment and organization.<sup>42</sup> While TWAIL research has highlighted issues of inequality, racism and empire in the field of international law, there remain debates about how this should be translated to the classroom.

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<sup>37</sup> Adébí sí (n15) 47: “This international legal order has produced and continues to produce differentiated global realities and outcomes for the peoples of the world so ordered. For some it protects, for some it makes wretched.”

<sup>38</sup> M. al Attar, ‘Must International Legal Pedagogy Remain Eurocentric?’, (2021) *Asian Journal of International Law* 11(1) 178: “TWAIL’s corpus of critique and of counter-narratives has altered academic debate about international law. Yet, many TWAIL scholars regard legal pedagogy as *terra nullius*.”

<sup>39</sup> N.K. Modirzadeh “[L]et Us All Agree to Die a Little’: TWAIL’s Unfulfilled Promise’ *Harvard International Law Journal* (Forthcoming).

<sup>40</sup> Modirzadeh (n39).

<sup>41</sup> Modirzadeh (n39).

<sup>42</sup> Modirzadeh (n39).

### 3.3 Pedagogical Perspectives

While there is a wealth of literature on teaching international law,<sup>43</sup> relatively little has focused specifically on the issue of decolonising international law teaching. While the issue of decolonising international law teaching is an object of study in TWAIL literature, it is rarely written from the perspective of pedagogical practice. Only a few articles were published in journals focused on teaching and learning. One evident downside of this is that the literature on decolonising international law scholarship is often not grounded in wider debates about teaching and learning and tends to be based on personal reflections and experiences. Few adopt interviews, case studies, experiments, or other empirical methods to consider how international law can be taught in a more inclusive way. Unlike the TWAIL literature discussed above, there is little discussion of decolonisation in broader debates about teaching international law. For example, Hilpold's recent 'Teaching International Law in the 21st Century', which discusses some of the dilemmas of teaching international law, does not address the issue of decolonisation.<sup>44</sup>

Some critical scholars have examined teaching of international law from a more pedagogical perspective. Eslava, for instance, brings together insights from critical international law scholarship to argue that international law teachers must address the relationship between agency and structure.<sup>45</sup> While he identifies some scholars who have brought together reflections on how international law teaching can take account of this relationship, he argues that international law pedagogy as a whole tends to overlook this issue. Eslava argues that it is necessary "to introduce curricula that can generate transversal analysis and skills, thereby empowering students to read structure and agency as part of a single unit – a unit they can understand and, hopefully, challenge."<sup>46</sup> Burgis-Kasthala and Schwöbel-Patel have also contributed to scholarship of teaching of international law from a more pedagogical perspective.

### 3.4 Summary

The issue of decolonising education has been dealt with in different disciplines – those focused on decolonising the university, decolonising the law school, and literature focused on

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<sup>43</sup> F. Hoffmann 'Teaching General Public International Law', in J. Kammerhofer and J. D'Aspremont (eds) *International Legal Positivism in a Post-Modern World* (2014, Cambridge University Press) 349–377.

<sup>44</sup> P. Hilpold, 'Teaching International Law in the 21st Century – Opening up the hidden room in the palace of International Law' in P. Hilpold, G. Nesi (eds.) *Teaching International Law* (Brill/Martinus Nijhoff: Leiden/Boston 2022).

<sup>45</sup> L. Eslava 'The Teaching of (another) International Law: Critical Realism and the Question of Agency and Structure', (2020) *The Law Teacher*, 54(3), 368–384.

<sup>46</sup> Eslava (n45).

decolonising teaching of international law. The literature on decolonising the university and pedagogy is aimed at addressing issues of racial inequality and marginalisation in education in particular. While there is literature on teaching international law, little has addressed the issue of decolonising the curriculum in particular. Much of the literature focused specially on decolonising teaching of international law has come from critical scholars, often those who identify with the TWAIL movement. While this is understandable, it has meant that much of this debate has focused on theoretical discussions about what is taught, with less reflection on how. One of the challenges, then, will be to bring together insights from research on teaching and pedagogical practice with the discussions in the critical and TWAIL literature.

#### 4 Challenges of Teaching International Law

This section provides an overview of the challenges identified in the literature associated with decolonising international law teaching. It shows that much of the scholarship on decolonising international law teaching is focused on the issue of broadening perspectives and including a greater variety of voices, case-studies, and theoretical perspectives.

##### 4.1 De-centring the Mainstream

A common concern is that international law tends to be taught by centring and prioritising a 'mainstream' view.<sup>47</sup> Decolonial and critical approaches to international law are concerned with trying to 'de-centre' this mainstream. Moïse Mbengue and Akinkugbe highlight how, while much knowledge of public international law is produced by Global South scholars, it has not been *centred* in scholarly materials and teaching in both the Global South and in the Global North.<sup>48</sup> Burgis-Kasthala and Schwobel-Patel describe how international law teaching often follows a similar pattern.<sup>49</sup> It typically involves a cursory discussion of the history and theory of international law, after which the course turns to subjects of international law or sources of international law. The course then turns to some 'substantive' topics such as international criminal law or human rights law.<sup>50</sup> This approach reflects the structure of the main international law textbooks.<sup>51</sup> Xavier and Tzouvala describe how international law is taught using the

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<sup>47</sup> See M. Donaldson, 'Peace, War, Law: Teaching International Law in Contexts', (2022) *International Journal of Law in Context* 18(4), 397: "In international law, it is common to teach by presenting the 'orthodox', 'traditional', 'canonical' account of something (sources, customary international law, statehood) and then pointing out what this account misses."

<sup>48</sup> M. Moïse Mbengue, O.D. Akinkugbe, 'The Criticism of Eurocentrism and International Law: Countering and Pluralizing the Research, Teaching, and Practice of Eurocentric International Law' in A. Van Aaken, P. D'Argent, L. Mälksoo, J. Justus Vassel (eds), *The Oxford Handbook of International Law in Europe* (forthcoming, 2023, OUP).

<sup>49</sup> Burgis-Kasthala & Schwobel-Patel (n34) 490.

<sup>50</sup> Burgis-Kasthala & Schwobel-Patel (n34) 490.

<sup>51</sup> G. Simpson, 'On the Magic Mountain: Teaching Public International Law', (1999) 10 *European Journal of International Law* 70, 79: "Yet, many courses and case-books treat theory as a discrete topic, detached from doctrinal arguments about sources or treaties or responsibility."

'canons' or established texts of international law, which set out to students which knowledge is viewed as accepted and unaccepted.<sup>52</sup> This is based, they argue, on the assumption that students must first be grounded in doctrinal international law, before then moving to critical perspectives. The effect of centring the mainstream is to present certain perspectives as 'foundational' and other theories and approaches as peripheral and marginal.<sup>53</sup> Such an approach to canonical texts has the effect of embedding hierarchical practices and ways of thinking. Otto describes how normative hierarchies in international law are exclusionary and "shaped by colonialist, nationalist, racist, sexist and hetero-normative ideologies".<sup>54</sup> Adding critical and non-Western literature as a supplement to the canon can have the effect of reinforcing the notion that these arguments remain outside the mainstream.

A similar concern relates to 'adding on' or 'slipping in' critical theory and history into the teaching of international law. Schwöbel-Patel observed that international law teachers feel the need to add in theory to a practice-oriented curriculum.<sup>55</sup> This can mean that critical theories and non-law disciplines (anthropology, sociology, philosophy) are presented, but in a cursory and shallow manner, without doing justice to the complexity of those approaches. Anghie similarly cautions against simply adding on critical theory without integrating it fully into the curriculum.<sup>56</sup> Hoffmann argues that the introduction of theory is often to complement the canon, rather than used to uncover its structural biases.<sup>57</sup> Shahabuddin argues that in decolonising the international law curriculum, "the project is often reduced to a couple of new ornamental modules on decolonisation and race relations without any comprehensive revision of the curriculum as a whole."<sup>58</sup>

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<sup>52</sup> X. Sujith Xavier, N. Tzouvala, 'Series Introduction – Teaching International Law: Between Critique and the Canon', TWAILR: Reflections #26/2020. Available at: <https://twailr.com/series-introduction-teaching-international-law-between-critique-and-the-canon/>

<sup>53</sup> S. Burra, 'Teaching Critical International Law: Reflections from the Periphery' TWAILR: Reflections #29/2021. Available at: <https://twailr.com/teaching-critical-international-law-reflections-from-the-periphery/>

<sup>54</sup> D. Otto, 'Handmaidens, Hierarchies and Crossing the Public-Private Divide in the Teaching of International Law' (2000) 1 *Melbourne Journal of International Law* 1, 36.

<sup>55</sup> C. Schwöbel-Patel, 'Teaching International Law Critically: Critical Pedagogy and Bildung as Orientations for Learning and Teaching', in Bart van Klink and Ubaldus de Vries (eds), *Academic Learning in Law: Theoretical Positions, Teaching Experiments and Learning Experiences* (Edward Elgar 2016) 99.

<sup>56</sup> A. Anghie, 'Critical Pedagogy Symposium: Critical Thinking and Teaching as Common Sense—Random Reflections' *Opinio Juris*, 31 August 2020. Available at: <http://opiniojuris.org/2020/08/31/critical-pedagogy-symposium-critical-thinking-and-teaching-as-common-sense-random-reflections/>

<sup>57</sup> Hoffmann (n43) 354: "[they] do not purport to substitute international law as a positivised system of rules with anything else, but they merely aim to either complement the current canon – such as by proposing a more pluralist sources doctrine – or to critique it by uncovering its structural bias and its inherent indeterminacy."

<sup>58</sup> M. Shahabuddin, 'Teaching and Researching International Law: Some Personal Reflections Via Bangladesh and the UK', *Afronomicslaw Blog*, 25 September 2020. Available at

This 'adding on' approach is also reflected in international law textbooks and some reading lists. It is presented as being an optional supplement to the main doctrinal approach. This can have the impact of further centring the mainstream, by presenting the positivist legal approaches as the main theoretical approach, to which various critical approaches are applied. Shaw's *International Law* textbook, for instance, reduces the field of feminism in international law to one sentence.<sup>59</sup> Such an approach presents feminist approaches to international law as just another theory used to criticise and evaluate the canon, rather than a discrete field of knowledge. While the literature review shows a common concern related to decentring mainstream views, there is also a common concern that critical perspectives and theories should not be simply 'added on'.

## 4.2 Geography of Knowledge

Teaching takes place in a space. Scholarship on teaching international law has addressed the importance of confronting the relationship between teaching and space, considering the spaces in which the teacher and student are located as well as the geographical origins of the authors and the cases studied. Much of the scholarship on teaching international law reflects on teaching international law in a specific location. Anghie and Real produced a report on "Teaching and Researching International Law in Asia".<sup>60</sup> The Online Symposium on "Teaching and Researching International Law – Global Perspectives"<sup>61</sup> includes reflections on teaching international law in various places, including Myanmar,<sup>62</sup> Post-Soviet Central Asia,<sup>63</sup> Brazil,<sup>64</sup>

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<https://www.afronomicslaw.org/2020/09/25/teaching-and-researching-international-law-some-personal-reflections-via-bangladesh-and-the-uk/>

<sup>59</sup> M. Shaw, *International Law*, 9<sup>th</sup> edn, (CUP, 2021) 54: "One particular area of study in recent years has been that concerned with the position of women within international law, both in terms of the structure of the system and the, for example, relative absence of females from the institutions and processes of international law and in terms of substantive law, which has until recently paid little attention to the needs and concerns of women."

<sup>60</sup> A. Anghie, J.R. Robert G. Real, 'Teaching and Researching International Law in Asia: 2020 Report'. Centre for International Law, National University of Singapore. Available at: <https://cil.nus.edu.sg/publication/teaching-and-researching-international-law-in-asia-trila-project-2020-report/>. Available at: <https://cil.nus.edu.sg/publication/teaching-and-researching-international-law-in-asia-trila-project-2020-report/>

<sup>61</sup> Symposium Introduction: Teaching and Researching International Law – Global Perspectives, Afronomicslaw, September 2020. Available at: <https://www.afronomicslaw.org/2020/09/14/symposium-introduction-teaching-and-researching-international-law-global-perspectives>

<sup>62</sup> Yin Yin Win, 'Teaching and Researching International Law in Myanmar', *Afronomicslaw*, 16 September 2020. Available at: <https://www.afronomicslaw.org/2020/09/16/teaching-and-researching-international-law-in-myanmar/>

<sup>63</sup> S. Sayapin, 'The Post-Soviet Central Asia and International Law: Practice, Research and Teaching' *Afronomicslaw*, 15 September 2020. Available at: <https://www.afronomicslaw.org/2020/09/15/the-post-soviet-central-asia-and-international-law-practice-research-and-teaching/>

<sup>64</sup> G.R. Bandeira Galindo, 'Some (Short) Reflections on (My) International Law Teaching Experience in Brazil' *Afronomicslaw*, 19 September 2020. Available at: <https://www.afronomicslaw.org/2020/09/19/some-short-reflections-on-my-international-law-teaching-experience-in-brazil/>

Kenya,<sup>65</sup> Vietnam<sup>66</sup> and many others. Other studies have reflected on teaching in India<sup>67</sup> and Africa,<sup>68</sup> and Indonesia.<sup>69</sup> Roberts has uncovered how, despite being presented as universal in nature, international law teaching and scholarship is profoundly shaped by regional approaches and influences.<sup>70</sup>

Why does geography matter? Scholars writing about their experiences outside the West have argued that teaching materials and curriculum remain entrenched in Eurocentric narratives that often exclude perspectives or contributions from other regions.<sup>71</sup> For example, Fagbayibo describes how Africa has remained unresponsive to decolonisation, and that teaching international law remains anchored in Eurocentric assumptions and ways of thinking.<sup>72</sup> Reflecting on his experience in Brazil, Bandeira Galindo notes how the teaching of public international is based on textbooks written in Portuguese, which helps to reproduce international law's Eurocentrism.<sup>73</sup> The literature reveals a pattern whereby scholars pay particular attention to the issue of where teaching takes place. This may at first seem surprising since, as discussed above, international law is often presented as a universal system and is taught using mainstream textbooks.

Amaya-Castro explores this paradox, explaining how the international law classroom becomes a site "where the paradox of emplacement is enacted".<sup>74</sup> This emplacement paradox refers to the notion that international law simultaneously is not situated in any geographical space (is *nowhere*) but is always practiced and enforced in a given space (is *somewhere*). While international law can be presented as universal in nature, it is always produced in and applied

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<sup>65</sup> F. Shako, 'Teaching and Researching International Law – A Kenyan Perspective' *Afronomicslaw*, 1 October 2020. Available at: <https://www.afronomicslaw.org/2020/10/01/teaching-and-researching-international-law-a-kenyan-perspective>

<sup>66</sup> T. Viet Dung, 'Teaching and Researching International Law in Vietnam: An Assessment Based on Ho Chi Minh City University of Law's Experience', *Afronomicslaw*, 15 September 2020. Available at <https://www.afronomicslaw.org/2020/09/15/teaching-and-researching-international-law-in-vietnam-an-assessment-based-on-ho-chi-minh-city-university-of-laws-experience>

<sup>67</sup> S. Chimni, 'Teaching, Research and Promotion of International Law in India: Past, Present and Future' (2001) 5 *Singapore Journal of International and Comparative Law* 368.

<sup>68</sup> B. Fagbayibo, 'Some Thoughts on Centring Pan-African Epistemic in the Teaching of Public International Law in African Universities' (2019) *International Community Law Review*, 21(2) 170–189.

<sup>69</sup> H. Juwana, 'Teaching International Law in Indonesia' (2001) 5 *Singapore Journal of International and Comparative Law* 412.

<sup>70</sup> See A. Roberts, *Is International Law International?* (OUP, 2017); A. Roberts, P.B. Stephan, P-H Verdier, M. Versteeg (eds), *Comparative International Law* (OUP, 2018).

<sup>71</sup> Fagbayibo (n68).

<sup>72</sup> Fagbayibo (n68).

<sup>73</sup> G.R. Bandeira Galindo, 'Some (Short) Reflections on (My) International Law Teaching Experience in Brazil' *Afronomicslaw*, 19 September 2020. Available at: <https://www.afronomicslaw.org/2020/09/19/some-short-reflections-on-my-international-law-teaching-experience-in-brazil/>

<sup>74</sup> J. Amaya-Castro, 'Teaching International Law: Both Everywhere and Somewhere' in J. Saínz-Borgo et al. (eds), *Liber Amicorum in Honour of a Modern Renaissance Man Gudmundur Eiríksson* (OP Jindal Global University and University of Peace 2017).

within specific geographical locations. Amaya-Castro argues in favour of acknowledging that ‘place matters’ in international law teaching.<sup>75</sup> Hoffmann also discusses how international law is highly concerned with geographical dimensions, with various approaches to international law being associated with particular places.<sup>76</sup> Burra describes how international law is shaped by the ‘geography of knowledge’.<sup>77</sup> Rather than present the universality and neutrality of international law that exists in textbooks, teachers could expose the role of geographical locations – of authors, teachers, students, and of the individuals who are affected by international law – and how they affect attitudes and experiences. As an example of this, Chimni prefaces the second edition of *International Law and World Order* with a reflection on how studying, research, living and teaching in India has shaped his ways of thinking about international law.<sup>78</sup> Confronting this geography of knowledge has been an important theme in TWAIL literature on teaching and learning.

### 4.3 Whose History?

International law is a discipline filled with stories and narratives.<sup>79</sup> Literature on decolonising international law teaching uncovers the importance of reflecting not only on which stories to tell, but also on whose stories. This might involve discussions from the perspectives of those involved in creating international law, as well as those affected by it. An important question in these discussions relates to when to begin the story of international law.<sup>80</sup> An introductory course on international law might start with a discussion of the 1648 Peace of Westphalia as the beginning of the international legal system. Using this starting point presents international law as primarily European in origin, and can sideline narratives of international law such as

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<sup>75</sup> Amaya-Castro (n74) 536: “Acknowledging that place matters can be as simple as discussing what students, and others, expect from international law; acknowledging it as a site of ambition, desire, fear and passion. In the international law classroom, teachers and students can travel together through all the various ‘places’ of international law...”

<sup>76</sup> Hoffmann (n43) 369: “These theoretical divides and thematic concerns are cross-cut by geographical dimensions, with certain approaches to international law being associated, often stereotypically, with scholarship from particular places.”

<sup>77</sup> Burra (n53).

<sup>78</sup> B.S. Chimni, *International law and World Order: a Critique of Contemporary Approaches*, 2<sup>nd</sup> edn (CUP, 2017) xi: “geographical location of an author has an important influence on how different theories of international law and world order are received and evaluated.”

<sup>79</sup> J. Otten, ‘Narratives in International Law’ (2016) *Critical Quarterly for Legislation and Law* 99 (3), 187-216

<sup>80</sup> I. de la Rasilla, ‘The Shifting Origins of International Law’, (2015) 28 *Leiden Journal of International Law* 3; al Attar & Abdelkarim (n23) 42: “When lecturing about international law, deciding *where to begin* is as difficult as deciding *where to end* and *which path to take*.”

those of China,<sup>81</sup> the Islamic world,<sup>82</sup> or indigenous communities.<sup>83</sup> Moreover, the Eurocentric teaching of international law, which often showcases the European ‘fathers’ of international law (Grotius, Vattel, de Vitoria) can also contribute to a sense of remoteness for students outside the West.<sup>84</sup> Reflecting as a student, Jing Min Tan describes how his course glossed over stories about how international law came to be, and the place of colonisation in that story: “According to my worn copy of Shaw’s *International Law*, decolonisation was a political fact – achieved through UN Resolution 1514 (XV).”<sup>85</sup> Here, colonisation is relegated to the past, without examination of its legacies and its relations to forms of economic and political domination that play out today.

International law as a discipline has experienced a ‘turn to history’ in recent decades.<sup>86</sup> With this, there have been discussions about the Eurocentrism of the traditional stories about international law, which have a state-centric and European approach. One way to address this would be to diversify the range of stories and histories presented. Yet here we encounter a similar challenge as when seeking to integrate critical perspectives, that is, the problem of simply ‘adding on’ new stories without sufficient reflection and context. Anghie and Shahabuddin describe the tendency to include passing references to India or China’s contribution to international law, without seriously challenging the traditional narrative.<sup>87</sup> It also avoids addressing more challenging questions about the relationship between Europe and other regions, and the way these relationships continue to shape international law. It risks what Simpson describes as the ‘romantic mode’ of teaching – the tendency of teaching international law as if it were a holiday brochure, moving from one location to another. This means that “we have a couple of paragraphs of description in the relevant textbook on the ‘Situation in the

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<sup>81</sup> X. Hanqin, ‘Chinese Perspectives on International Law: History, Culture and International Law’, *Collected Courses of the Hague Academy of International Law* (2012); H. Xue, *Chinese Contemporary Perspectives on International Law: History, Culture, and International Law* (Brill/Nijhoff 2012).

<sup>82</sup> See K. Ramadan Bashir, *Islamic International Law: Historical Foundations and Al-Shaybani’s Siyar* (Edward Elgar, 2018); ‘International law (al-siyar)’ in M.A. Baderin, *Islamic Law: A Very Short Introduction* (OUP, 2021).

<sup>83</sup> A. Bhatia, ‘International Law Can Be Something Different: An Interview with Beverly Jacobs, Jeffery Hewitt, and Sylvia McAdam’ TWAILR: Dialogues #11/2023, Available at: <https://twailr.com/international-law-can-be-something-different-an-interview-with-beverly-jacobs-jeffery-hewitt-and-sylvia-mcadam/>

<sup>84</sup> Anghie (n56) “This sense of remoteness is furthered by the classic Western textbooks used in these countries that inevitably present a Eurocentric vision of the discipline and its history, the familiar great men and events: Grotius, Vattel, the Peace of Westphalia, the League of Nations.”

<sup>85</sup> Jing Min Tan, ‘The Many Layers of Invisible Labour Decolonising the Academy’, TWAILR: Reflections #31/2021. Available at: <https://twailr.com/the-many-layers-of-invisible-labour-decolonising-the-academy/>

<sup>86</sup> M. Arvidsson, M. Bak McKenna, ‘The Turn to History in International Law and the Sources Doctrine: Critical Approaches and Methodological Imaginaries’ (2020) *Leiden Journal of International Law*, 33(1), 37–56; A. Orford, *International Law and the Politics of History* (CUP, 2021).

<sup>87</sup> Anghie (n56).

Congo' or the 'Korean War'"<sup>88</sup> without the fuller historical, political and cultural contexts needed to fully understand their significance. TWAIL and critical literature has stressed the need to broaden and diversify the range of stories that are told and the voices who tell them.

#### 4.4 Uncovering 'Hidden' Theory

Literature on decolonising international law also emphasises the importance of introducing students to theory. As with the history of international law, 'theory' is often presented in a few introductory chapters before moving towards 'substantive' fields. TWAIL and critical scholarship emphasise how this discussion of theory should also introduce students to a range of perspectives on decolonisation, gender, feminism, or racial inequality. One could make the argument, however, that students should be first introduced to the key concepts and grammar of international law – sources, subjects, responsibility, the law of treaties, jurisdiction – before turning to critical readings of international law. Yet another important theme that emerged from the review of the literature is that the choice to not include any critical theories or historical context is itself a choice to mainstream certain theories. Seeking to teach international law in a 'neutral' way would mean teaching it in a way that emphasises a doctrinal and Eurocentric ways of thinking. Teaching international law in a positivist style, presenting it as a coherent system of law, thus foregrounds particular theoretical assumptions about international law. Simpson shows how theory is pervasive in international law, even when it remains unarticulated.<sup>89</sup> Teaching international law as 'value-neutral' is still political. This is because the rules that are presented as 'neutral' were developed and shaped in a particular economic and political context.<sup>90</sup> The literature shows that removing discussions of hegemony and colonialism from international law would still be political.

#### 4.5 Summary

While the literature addresses myriad issues, some common themes emerged from the review. The first relates to 'decentring' the mainstream, Eurocentric vision of international law that is

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<sup>88</sup> Simpson (n51) 75. Simpson refers to Falk's description of this mode as 'impressionism', in R.A. Falk 'New Approaches to the Study of International Law' (1967) *American Journal of International Law* 61(2), 487.

<sup>89</sup> Simpson (n51) 79: "Often, our theory is a mixture of unarticulated formalism (here are the rules, learn these texts), legal realism (texts do not matter, state practice matters), political realism (states are nasty and break the rules), and various forms of cosmopolitanism (states are irrelevant, globalization or human rights or civil society is what counts)."

<sup>90</sup> "An understanding of law that focuses solely on the 'knowledge' of legal rules as well as on the ways of applying those in solving problems—without paying attention to power-political dimensions of the law making process or to the political-economy of the law itself—is bound to fall short of a comprehensive understanding of law." M. Shahabuddin, 'Teaching and Researching International Law: Some Personal Reflections Via Bangladesh and the UK', *Afronomics Law*, 25 September, 2020. Available at: <https://www.afronomicslaw.org/2020/09/25/teaching-and-researching-international-law-some-personal-reflections-via-bangladesh-and-the-uk/>

often presented in textbooks and courses. The literature emphasises the need to go beyond teaching the canon of international law. This includes paying more attention to the geography of knowledge and emphasising the role of place in teaching. The literature also highlights the importance of teaching international law in a way that discusses history and context. It also emphasises the importance of explicitly addressing theory in the teaching of international law. The common theme, then, was of broadening the range of perspectives – in terms of geography, case-studies, authors, voices, theories and perspectives. Yet this literature review also pointed to the need to do so in a way that does justice to these various approaches and does not address them in a cursory or superficial manner. It warns against simply ‘adding on’ or ‘bringing in’ histories, theories and texts as a way to decolonise a curriculum.

## 5 Strategies of Teaching International Law Inclusively

The discussion above showed how literature on teaching international law has dealt with the questions of decentring the mainstream and including a broader range of perspectives, theories voices and histories. Yet how can a teacher of international law simultaneously teach all the relevant rules and concepts of international law, while also integrating theoretical and critical approaches and addressing histories and voices from around the world? Teachers face a practical challenge of including these in a curriculum while avoiding the problem of merely ‘adding on’ different theories and perspectives. Teaching international law will necessarily require choices about who to include and exclude, and choices about readings, case-studies, histories and regions.<sup>91</sup> This section addresses some of the strategies that have been identified in the literature, with an emphasis on addressing this overarching practical question.

### 5.1 Deep dive

One strategy might be called the ‘deep dive’ approach. Acknowledging that no course can go into sufficient detail on the broad range of theoretical approaches and case-studies, this approach requires teachers to select a narrow range of issues, but to address them in depth. Simpson advocates “a severe, probably traumatic, narrowing of focus followed by a broadening of perspective.”<sup>92</sup> Donaldson discusses how to teach international law in context, and suggests that one possibility is to narrow the array of topics discussed, but to broaden the different perspectives used to discuss these.<sup>93</sup> Donaldson shows how a course could be designed by having a single case or a few cases as the ‘spine’ running through an entire

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<sup>91</sup> Donaldson (n47).

<sup>92</sup> Simpson (n51) 89.

<sup>93</sup> Donaldson (n47) 397: “One ‘contextual’ possibility might be to narrow the array of topics (to the extent this is possible), but systematically inject multiple different perspectives into the discussion (whether of states, normative orientations, critical interlocutors or actors who use international law, from claimants before human rights tribunals to corporate counsel and foreign ministry legal advisers).”

course, such as the ‘Nicaragua case’ before the International Court of Justice. Such a case could allow a broad range of perspectives to be introduced and integrated, allowing students to address issues such as Cold War politics, north-south power relations, while also addressing traditional doctrinal issues such as the law of responsibility or the law of treaties. Another approach would be to connect cases related to the place of teaching, such as London. This approach would connect with the issue of “geography of knowledge” discussed above. Rather than seeking to discuss every part of the globe, a narrow geographical focus would allow students to engage with the relationships between London and the rest of the world, analysing issues related to decolonisation and North-South power relations. Such an approach would also invite students to reflect on the situatedness of knowledge, as well as their own encounters with international law.

## 5.2 Integrating Theories

While most international law textbooks include history and theory at the start, critical and TWAIL scholars have argued that theory and history must be integrated into the entire curriculum – it should not be ‘added on’. Anghie argues that “Critical theory [...] is at its most effective when it is studied precisely through the positivist approach.”<sup>94</sup> Rather than presenting various theories as peripheral to the mainstream view, integrating theory throughout the course helps to uncover how colonialism has shaped and continues to shape international law. For example, rather than having a single unit focused on TWAIL in a section on ‘history and theory’, the course could invite students to reflect on issues from a TWAIL perspective when analysing issues such as customary international law, the law of treaties, responsibility, and so on. Fathi Massoud discusses the importance of integrating theory into international law teaching. He discusses how he introduces the formalist approach, realist approach, and critical approaches, including critical race, feminist, postcolonial and queer studies, NAIL and TWAIL.<sup>95</sup> The aim is to expose students to multiple theoretical approaches to shed light on how different groups use international law. Fathi Massoud reflects on how teaching multiple approaches “leaves some students feeling a sense of unease”, but that he allows students to come to their own judgment about which approach they wish to adopt. He integrates theoretical teaching with practical elements, such as having students write a draft memorandum for an international organization on an international law question, but explaining how the question would involve TWAIL or feminist approaches, for example. Hoffmann sees problems in teaching international law only through ‘practice/doctrine’ or ‘theory’, and argues in favour of critical knowledge construction. This requires students to have the ability to

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<sup>94</sup> Anghie (n56).

<sup>95</sup> M. Fathi Massoud, ‘Teaching Three Canons of International Law’, TWAILR: Reflections #28/2021. Available at: <https://twailr.com/teaching-three-canons-of-international-law/>

understand the rules and language of the game, while also having the tools to critically evaluate and reflect on the game.<sup>96</sup> A common theme arising from these discussions is that it is not sufficient to include critical readings and case studies into a curriculum that remains based on a mainstream doctrinal approach.

### 5.3 Decolonial Pedagogy

Some scholars push for more fundamental changes to teaching international law, drawing on theories related to decolonising pedagogy more generally. For example, al Attar and Tava argue in favour of using ‘co-intentional education’ in the international law classroom.<sup>97</sup> Rather than seeing students as empty vessels to be filled with new information, the classroom is based on dialogue and partnership between students and teachers. This approach also aligns with TWAIL and critical scholarship which seeks to disrupt hierarchies in education, empower individuals and use education as a platform for liberation and transformation. It draws on work such as Freire’s 1968 *Pedagogy of the Oppressed*<sup>98</sup> which criticised traditional approaches to education, such as the banking model. Otto argues that teaching of international law can have the effect of normalising hierarchies and thereby hampering “independent, critical, social justice thinking”.<sup>99</sup> Otto argues that one way to counter this hierarchy is through dialogical teaching in order to show how international law is developed through a constant negotiation between a diversity of views.<sup>100</sup> Building on theories from decolonising pedagogy, these strategies go beyond integrating multiple theoretical perspectives, but advocate strategies based on dialogue and co-constructive learning. While some of the scholarship on

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<sup>96</sup> Hoffmann (n43) 376: “A first positive step in the construction of such a strategy would probably have to be a refocusing of the teaching experience, away from logical game-playing (doctrine) or training (practice) and towards critical knowledge construction. This would imply that students were equipped with the tools to simultaneously learn the vocabulary, grammar and syntax of the language game of international law and to reflect on their doing so from a meta-perspective. The aim would be for students to be able to speak the language at the same time as they understand its linguistic deep structure, and to become sensitive to the tension between these two perspectives as well as to make that tension productive.”

<sup>97</sup> M. al Attar, V. Tava ‘TWAIL Pedagogy - Legal Education for Emancipation’, (2009) *Palestine Yearbook of International Law*, XV, 7–40.

<sup>98</sup> P. Freire, *Pedagogy of the Oppressed* (Herder and Herder, New York, 1970).

<sup>99</sup> Otto (n54) 39.

<sup>100</sup> Otto (n54) 43. “Through dialogic teaching students can come to understand that international law is the result of continuous negotiation between a diversity of views and is not the outcome of a predictable, linear, rational process of rule application. In a successfully dialogic classroom a counter-hegemonic effect can be achieved, and students from less powerful groups and communities will be empowered to challenge their erasure by the dominant discourse of international law.”

decolonising international law pedagogy refers to the broader literature on decolonising education it is surprising how little effect it has had on strategies for teaching and learning.

## 6 Conclusion

### 6.1 Limitations

There are key limitations associated with the literature review. As discussed in the Methodology section, the literature review must be selective and thus did not include a wealth of literature on the theory of international law, critical approaches to international law, or more general literature on decolonisation and pedagogy. Another limitation is that, by only reviewing published materials, any review will necessarily emphasise the voices of those who have been able to publish their reflections in books, journals and online symposia. This means that it is not representative of the experiences of the many students and teachers of international law who are not involved in teaching and scholarship of education. A study on teaching international law inclusively could have included, for example, workshops and interviews with teachers and students of international law. The critical literature review was chosen, however, to give a meta-analysis of the existing studies, to draw out commonalities and differences in the literature and to identify common themes.<sup>101</sup> Decolonising education is a process, one which engages in continual self-reflection, debate and renewal. A critical literature review cannot, and is not intended to, capture the nuances and intricacies of these ongoing debates and discussions. A limitation of this literature review is that by summarising the various arguments of the authors, much of this nuance is lost.

Another issue relates to the situatedness and positionality of the author. I am a white, male academic who was educated in the West and who teaches at a university in the United Kingdom. My approach to international law is also shaped by these personal experiences. One could question whether I am in the best position to discuss issues related to decolonisation and teaching international law. Yet it was because of this experience that I decided to undertake a literature review. All international law teachers are faced with questions about how to teach international law inclusively. The work of addressing issues of decolonisation belongs to us all and should not fall on the shoulders exclusively of those outside the West. By undertaking a critical literature review, the study incorporates various voices and perspectives on international law pedagogy from a range of authors.<sup>102</sup> The purpose of the review, then, was to highlight the important work of scholars, often those from the Global South, and to reflect on and learn from those experiences and research.

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<sup>101</sup> J. Davis, K. Mengersen, S. Bennett, L. Mazerolle, 'Viewing Systematic Reviews and Meta-analysis in Social Research Through Different Lenses' (2014) *SpringerPlus* 3, 511.

<sup>102</sup> Snyder (n8).

## 6.2 Recommendations and Implications

This critical literature review analysed recent scholarship that focused on decolonising the teaching of international law. It identified two concurrent trends that are transforming the teaching of international law. The first relates to the broader movement of decolonising the university and pedagogical practices. These are often inspired by social movements and the widening participation agenda in higher education. The second relates to the trend in international law scholarship to include critical approaches, including Third World Approaches to International Law (TWAIL), as well as more attention to the history and theory of international law. Scholarship on decolonising international law teaching mainly addresses the latter. It focuses on decentring the mainstream and challenging the Eurocentric narratives of international law. This includes bringing in a broader range of voices, theories, case-studies and approaches. While there is wealth of literature on decolonising pedagogy, this is only beginning to enter debates about teaching international law.

Much of the debate, then, is not about decolonising teaching, but rather on teaching decolonisation. The former involves engaging pedagogical practices that are focused on addressing inequality, engaging students in dialogues, and challenging hierarchies. The latter is focused more on introducing critical theories, such as TWAIL, into the teaching of international law, which has been criticised as being Eurocentric and doctrinal. While there are some scholars who have brought together the two strands – decolonising pedagogy and decolonising international law – debates about teaching international law and decolonising the international law curriculum remain overly focused on ‘bringing in’ a greater range of voices, theories, histories, case-studies, and methodologies. Yet research on decolonising pedagogy has stressed that it is not enough to expose students to a diverse range of voices and theories. Teaching international law in an inclusive way also requires teachers of international law to explore practices that engage students in self-reflection and critical thinking. It involves promoting dialogue and inclusive learning. It involves addressing all aspects of teaching and learning, including learning goals, assessment, feedback and participation. While critical and non-Western perspectives should be integrated into teaching of international law, this is only a starting point. Discussions about teaching international law should also address practices that involve students questioning and challenging dominant narratives and power structures.

Future research could examine how to better bring together the scholarship on teaching and learning that emphasises inclusiveness and diversity with the critical scholarship on decolonising international law. The literature addresses important issues – providing context, practicing self-reflection, discussing intersectionality – yet the strategies to allow teachers of international law to bring these to the classroom can be more developed. Given that

international law teaching remains Eurocentric and taught through the mainstream approach of teaching the accepted canon, the inclusion of more diverse history, theory and geography is to be welcomed. A next step for teaching and learning in international law would be to illustrate how these concepts can be introduced, discussed, questioned and contextualised in the international law classroom. The literature review also sought to focus on practical guidance for teachers of international law, which remains somewhat missing. This could include, for instance, strategies on how to integrate theory into the canon, or how to provoke and inspire greater self-reflection when examining core international law texts. Exposing students to a broader range of voices and histories is a start, but the next step will involve building strategies to integrate these into teaching a topic that has traditionally been taught in a mainstream, doctrinal way. To address this, international law teachers can draw upon strategies developed in other disciplines.

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