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INTRODUCTION

INTERNATIONAL LEGAL THEORY: SYMPOSIUM ON GLOBAL SOUTH PERSPECTIVES ON METHODOLOGY AND CRITIQUE IN INTERNATIONAL LAW

Global south perspectives on methodology and critique in international law

Dimitri Van Den Meerssche*

Queen Mary University of London, Institute for Humanities and Social Sciences, London, United Kingdom
Email: d.vandenmeerssche@qmul.ac.uk

I am writing this introduction as Israel's violence against the Palestinian people – despite ICJ provisional measures, a landmark advisory opinion, and applications for arrest warrants by the ICC's Office of the Prosecutor – is continuing unabated. In the eclectic community of critical international lawyers, this has been a source of activism and mobilization as much as friction and hesitation – epistolary indictments of genocidal violence published alongside eulogies for a faded professional faith.[1] How to navigate concerns with international law's colonial complicities and liberal limitations at a moment when 'the language of legality has become the dominant frame of popular and political discourse' related to Palestine?[2] Which tactical trade-offs and choices are to be made when this suffering and its long historical lineages are translated in the language of international law (or should such translation altogether be avoided)?[3] Is this a moment of reckoning or reform, redemption or refusal?

In a series of essays recently published in the *London Review of International Law,* these questions were foregrounded in incisive and important ways.[4] For some within the critical community – a delineation drawn in the collection's framing – the current moment signals the reinvigoration and recovered legitimacy of international law as a practice of 'deep political and moral significance' that ties together new bonds of 'transnational solidarity' and might, 'in the

*This symposium would not have been possible without Geoff Gordon and the exceptional editorial support from Bojana Ristić and Surabhi Ranganathan.

[1] Cf. 'Public Statement: Scholars Warn of Potential Genocide in Gaza', *TWAILR*, 17 October 2023, available at twailr.com/public-statement-scholars-warn-of-potential-genocide-in-gaza/; A. R. Hindi, 'International Law is Dead', *TWAILR*, 20 November 2023, available at twailr.com/international-law-is-dead/; M. Velickovic, 'International Law and Failure in the Context of Gaza', *Critical Legal Thinking*, 2 April 2024 ('I had no expectation that international law would help, but it was nice to see it try.'); N. Jaber, 'The Biggest Lie Known to History', in T. Krever et al., 'On International Law and Gaza: Critical Reflections', (2024) *London Review of International Law* 1, at 14 ('[t]his leaves me, as a critical scholar of international law, conflicted about what to do with international law during an ongoing genocide.').

[2] See Krever et al., ibid., at 2.

[3] R. Knox, 'Strategy and Tactics', (2012) *21 Finnish Yearbook of International Law* 193. Grietje Baars, in this light, argues that such translations – and the commitment to the 'current order of things', the 'truth of the system' or the 'promise of justice' they reflect – offer only a 'canned morality, served up in the bourgeois theatres of justice': G. Baars, 'The Uses of Marxist Theory of Law During a Genocide', *Critical Legal Thinking*, 19 February 2024.

[4] See Krever et al., *supra* note 1.

longer term', serve the 'cause of world peace'.[5] Yet, for others it is precisely the enchantment with this promise that sustains a state of 'cruel optimism' – a liberal longing which actively inhibits forms of political action and resistance targeted at the material levers of colonial violence and capital accumulation.[6]

The sources of this discontent are familiar. Not only does international law fail in constraining Israel's violence, it is also providing a language of rationalization and justification – a cover of 'humanitarian camouflage' – for the unfolding 'colonial war of annihilation'.[7] Through the infinite expansion of the 'human shielding charge', Nicola Perugini and Neve Gordon argue, the law is 'operationalize[d] … as a tool legitimizing genocide'.[8] These dynamics of de-civilianization do not result from a flawed or 'unequal application' of legal norms, Robert Knox observes, but rather from the 'internalisation [in IHL] of a racialised division between civilised and uncivilised forms of violence' – a dividing line obscured by technologies of 'racial mystification'.[9] Oriented towards moments of crisis or spectacular violence,[10] international law is further indicted for its failure to capture and conceptualize patterns of 'slow violence'[11] – the 'material structures of the ongoing Nakba',[12] 'settler colonialism',[13] 'systemic economic harm',[14] and 'the social relations of capitalism and imperialism' from which Israel's actions are 'abstracted'.[15] As international law delineates what matters and what is excluded from mattering in its normative operations – 'highlight[ing] some aspects of the world while leaving other aspects in the dark'[16] – these structural patterns risk being rendered 'materially unintelligible'.[17]

Not only does international law enable and obscure systemic harm, the critical claim continues, it also displaces or derails alternative (more promising) forms of political action – the

[5]The quotes are scattered across different contributions (making different arguments). See J. Quigley, 'International Law in the Ashes of Gaza', at 13; R. G. Teitel, 'Humanity Law Redux and its Rule of Law', at 22; B. Bowring, 'A Turn to International Law and Legal Institutions?', at 24; V. Nesiah, 'Performance and Heresy Before the Law', at 30, all in Krever et al., *supra* note 1.

[6]I. Shalbak, 'Cruel Optimism', in Krever et al., ibid., at 79. Cf. L. Berlant, *Cruel Optimism* (2011). While discontent with the 'juridification of resistance' is prevalent, others claim that this concern is perhaps misguided. See N. Tzouvala, 'Not Your Father's War: Thinking About International Law in the Present Moment', in Krever et al., ibid., at 42.

[7]Anatomy of a Genocide, Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Francesca Albanese, A/HRC/55/73 (25 March 2024); N. Perugini and N. Gordon, 'A Legal Justification for Genocide', *Jewish Currents*, 17 July 2024. Cf. N. Sultany, 'A Threshold Crossed: On Genocidal Intent and the Duty to Prevent Genocide in Palestine', (2024) *Journal of Genocide Research* 1; E. Semerdjian, 'A World Without Civilians', (2024) *Journal of Genocide Research* 3.

[8]See Perugini and Gordon, ibid. ('[t]his apparently endless multiplication of the human shielding accusation has functioned to erase the possibility of Palestinian civilianness altogether').

[9]R. Knox, 'Hypocrisy, Race and International Law', in Krever et al., *supra* note 1, at 9.

[10]Cf. H. Charlesworth, 'International Law: A Discipline of Crisis', (2002) 65 *Modern Law Review* 377; Z. Miller, 'In Gaza, Catastrophic Violence of War and Slow Violence of Oppression Collide', *Just Security*, 8 November 2023.

[11]Z. Miller, 'Times of Violence, Times of Justice', in Krever et al., *supra* note 1, at 35. N. Erakat and J. Reynolds, 'We Charge Apartheid? Palestine and the International Criminal Court', *TWAILR: Reflections #33*, 20 April 2021 (referring to the concept of 'slow violence' invoked by Teju Cole).

[12]See Jaber, *supra* note 1 (signalling 'international law's entanglements with colonial and capitalist structures of oppression').

[13]C. Schwöbel-Patel, N. Samour and M. Burgis-Kasthala, 'International Law's Deafening Silence on Settler Colonialism', in Krever et al., *supra* note 1, at 19–21.

[14]S. Hammouri, 'Systemic Economic Harm in Occupied Palestine and the Social Connections Model', (2021) 22 *Palestine Yearbook of International Law* 112.

[15]See Knox, *supra* note 9, at 9.

[16]M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (2005), at 570.

[17]Cf. Knox, *supra* note 9, at 9. It is noticeable in this context, however, that South Africa qualified the 'genocidal acts and omissions' by Israel as being '"inevitably form part of a continuum", of illegal acts perpetrated against the Palestinian people since 1948'. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Verbatim Record, 11 January 2024, CR 2024/1, 17. As Vasuki Nesiah observes, this invokes a concept of genocide which 'bind[s] destruction to dispossession, tethering the horrors unfolding since 7 October to the disinheritances set in motion by the Nakba'. See Nesiah, *supra* note 5, at 30.

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'juridification of resistance' as sign and source of an 'inability to construct a world meaningfully cohered around forms of political representation'.[18] Specifically related to prospects of collective self-determination, Vasuki Nesiah has pointed to the narrow political pathways provided by international law and the inadequacy of 'statist vocabularies of resistance that we inherited from the first phase of anti-colonial struggle'.[19] This troubling translation of revolutionary struggle in the 'abstract desire for statehood' epitomizes how the legal form cabins and curtails emancipatory politics within the limits of liberal modernity.[20]

Yet, if these critical concerns are now somewhat commonplace – Umut Özsu laments how the critique of international law has become a 'mundane, sloganistic affair'[21] – lingering in many interventions is the dream of different foundations and new beginnings.[22] Can international law shed its colonial skin and 'be mobilised in the service of a larger liberatory strategy, an anti-imperialist struggle against the material structures of the ongoing Nakba'?[23] '[C]an we tactically use international law to universalise this particular moment of Palestinian liberation and solidarity – [a] tool for coalition-building towards common emancipatory goals?'[24] Could international law disrupt the 'material conditions that make the circumstances unfolding in Gaza possible: the larger supply chain that provisions, supports, and profits from armed conflict'?[25] Can practices of Third World solidarity generate 'another international law' – or, phrased in relation to its subaltern origins, an '*other* international law'?[26]

The essential element of this critical reorientation is the social, historical and epistemological location of its emergence. It is 'from the standpoint of the oppressed', Souheir Edelbi argues, that international law can be reclaimed and reimagined.[27] Prospects of 'another international law', Christopher Gevers echoes, hinge on 'the legal tactics, traditions and epistemologies [that] struggles [by] the majority of the world's people [against] colonialism and apartheid … generated'.[28] This 'emancipatory potential of a different international law', Abdelghany Sayed and Luis Eslava believe, emerges from 'a left-handed world of difference that can only exist in the struggle of becoming in a relational manner' – a vision shaped by Gloria Anzaldúa's 'mundo surdo' and Partha Chatterjee's invocation of 'most of the world'.[29] Global protests, for Vasuki

[18]D. Chandler, 'International Law in the Shadow of the Silent Majorities', in Krever et al., *supra* note 1, at 27–8 ('[t]he shift of emphasis from the political to the legal register reflects this implosion of both political and social modes through which communities of meaning were generated'). Cf. T. Krever, 'Scurrying to The Hague', in Krever et al., ibid., at 15–16; T. Krever, 'From Vietnam to Palestine: Peoples' Tribunals and the Juridification of Resistance', in B. Cuddy and V. Kattan (eds.), *Making Endless War: The Vietnam and Arab-Israeli Conflicts in the History of International Law* (2023), 233.

[19]See N. Erakat et al., 'Roundtable: Locating Palestine in Third World Approaches to International Law', (2023) 52 *Journal of Palestine Studies* 100, at 102.

[20]Cf. Knox, *supra* note 9, at 9. In this light, Michelle Staggs Kelsall argues for a 'disordering sensibility' in international law that trespasses the ontological boundaries of the discipline (and its commitment to the state a primary unit of political agency). M. S. Kelsall, 'Disordering International Law', (2022) 33 *European Journal of International* 729. Cf. M. Burgis-Kasthala, 'Palestine, Israel and the (Dis)ordering of International Law', *Völkerrechtsblog*, 31 July 2024, available at voelkerrechtsblog.org/palestine-israel-and-the-disordering-of-international-law/.

[21]U. Özsu, 'Going Nowhere', in Krever et al., *supra* note 1, at 81–3.

[22]We recall Edward Said's writing on beginnings as initiating the production of meaning and difference. E. Said, *Beginnings: Intention and Method* (1985). It is Vidya Kumar, the most inspiring of guides, that led me to this text.

[23]See Jaber, *supra* note 1, at 15.

[24]M. Fakhri, 'What's Going On?', in Krever et al., *supra* note 1, at 33.

[25]S. Kendall and C. da Silva, 'International Law in Fragments', in ibid., at 19.

[26]C. Gevers, '"Tell no Lies, Claim no Easy Victories": South Africa at the ICJ, again', in ibid., at 76; A. Sayed and L. Eslava, 'On the Question of Palestine Solidarity', inibid., at 69 (on how 'Global South or Third World solidarity … in the past have mobilised different international laws').

[27]S. Edelbi, 'Leveraging Law', inibid., at 45.

[28]See Gevers, *supra* note 26, at 76.

[29]See Sayed and Eslava, *supra* note 26, at 69 (making the powerful claim that '[t]he *we* here is not the state-centric, cartesian confined *we*: the Egyptians, the Arabs, the Muslims, the UN peoples of the world, the cosmopolitans. Rather it is the *we* of the outcasts of Giza's Nile').

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Nesiah, 'draw the audience's engagement from the court to the street, from performing fidelity to performing heresy', in a 'profane and profound act of dissensus against the distributive work of the legal priesthood and canonical claims to juridical authority in worldmaking and unmaking'.[30] For such dissensus, Shahd Hammouri concludes, 'practices, norms, histories and scholarly works of the Global South must be taken from the fringes to the centre'.[31]

It is as an expression of this disciplinary movement from the fringes to the centre that this symposium is conceived – an attempt at rethinking international law from the 'elsewhere' and the 'out of place'.[32] The articles it presents precede and – with the exception of Abdelghany Sayed's evocative argument on the visual vocabulary of human shields – do not speak to the current horrors in Gaza. Yet, in their inspiring exploration of Global South perspectives on methodology and critique in international law, they show an explicit engagement with the themes touched on above: the violence that international law enables, its institutional biases and inertias, false universalisms and archival absences, the many lineages of harm that remain legally illegible, the worlds written out of the world, the lives rendered ungrievable, the political possibilities foreclosed, stories untold, voices unheard. In this sense, many TWAIL scholars noted, Palestine is painfully paradigmatic of the problems that plague the Global South's relation with international law more broadly.[33] Diagnosing and responding to these problems, the pieces provide new perspectives that retrieve voices erased in the 'blank spaces of the historical record',[34] disrupt international law's ontological divides, foreground its skewed institutional routines, and counter its civilizational and orientalist (mis)conceptions and commitments. While many tensions inevitably remain unresolved, the contributions thereby provide an opening to modes of analysis and critique that transgress the liberal limitations of international law as a discipline.

Even though the articles guide us to unconventional spaces of international legal ordering presumed to be peripheral – from the former polities of Western Sudan to the banks of the Amazon, from the bloodlands of the Global War on Terror to the fractured social landscape of post-war Singapore – the Global South is not primarily seen as a geographical location (or as a stable set of associated identities tied to those).[35] If anything, what these articles show is how worlds are interwoven and how spatially scattered sites are tied together through processes of dis/ordering with distinct distributive outcomes – the co-constitutive interlacing of international law's civilizational hierarchies with material regimes of extraction and capital accumulation.[36] While the

[30]See Nesiah, *supra* note 5, at 31.

[31]S. Hammouri, 'When the Negation of Critique Becomes Bloody Business: To Be an International Lawyers in Times of Genocide', in Krever et al., *supra* note 1, at 11.

[32]Cf. L. Eslava, 'Trigueño International Law: On (Most of the World) Being (Always, Somehow) Out of Place', in L. J. Chua and M. F. Massoud (eds.), *Out of Place – Fieldwork and Positionality in Law and Society* (2024).

[33]Cf. Erakat et al., *supra* note 19.

[34]This phrasing is borrowed from S. Hartman, *Lose Your Mother: A Journey Along the Atlantic Slave Route* (2008), at 16. In reckoning with these erasures and absences, she develops the concept of critical fabulation in S. Hartman, 'Venus in Two Acts' (2008) 26 *Small Axe* 1, at 11. Facing the 'founding violence [of the] archive of slavery', Hartmann 'foregrounds the experience of the enslaved by tracing the itinerary of a disappearance and by narrating stories which are impossible to tell'. Vasuki Nesiah invokes Saidiya Hartmann's writing in exploring 'insurgent jurisprudential traditions that challenge the hierarchies, inequalities, and biases in received doctrine regarding the sources of CIL'. V. Nesiah, 'Decolonial CIL: TWAIL, Feminism, and an Insurgent Jurisprudence', (2018) 112 *AJIL Unbound* 313, at 315.

[35]Indeed, the postcolonial notion of 'otherness' – tied to the 'floating signifier of race', in Stuart Hall's terms – proves to be inherently unstable as it emanates from contingent regimes of perception and material relations of capital accumulation and control. It cannot be thought of in essentialist, identitarian or geographical terms. Cf. S. Hall, 'Race, the Floating Signifier: What More Is There to Say about "Race"? [1997]', in P. Gilroy and R.Wilson Gilmore (eds.), *Stuart Hall: Selected Writings on Race and Difference* (2021), 359. See also R. Knox, 'Valuing Race? Stretched Marxism and the Logic of Imperialism', (2016) 4 *London Review of International Law* 81 (on the materiality of international law's 'dynamics of difference'); V. Prashad, *The Darker Nations: A People's History of the Third World* (2007) (on why the Third World is not a 'place').

[36]Cf. N. Tzouvala, *Capitalism as Civilisation: A History of International Law* (2020); see Knox, ibid. Together with Marie Petersmann, we have traced several of these sites of global dis/ordering in the *Underworlds* series (and related podcast). See qmul.ac.uk/ihss/whats-on/underworlds–sites-and-struggles-of-global-disordering/; podcasters.spotify.com/pod/show/underworlds.

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Global South thereby proves an unstable signifier across the interventions in this symposium – an epistemological condition, material relation, subject position or archival location – the perspectives that are foregrounded share an ambition to diagnose, disrupt and disorder these legally embedded hierarchies, regimes and narratives and, in doing so, to extend international law's methodological and critical repertoire.

The symposium brings together pieces that were presented at the *T.M.C. Asser Workshop on Method, Methodology and Critique in International Law* (in December 2021).[37] The purpose of this workshop (and the *Lecture Series* from which it emerged) was to collectively unsettle ways of seeing, thinking and writing international law.[38] In this sense, the methodological focus was not limited to or primarily oriented at empirical questions (on which data to collect, which methods to use or which standards of evaluation to apply in international law) but aimed to perceive, pervert or play with the professional commitments, ideological structures, material forms and fraught histories that frame and limit which questions can be asked, which styles can be employed and which worlds can come to matter in legal writing. The workshop sought to spark experimental, exploratory, and emancipatory approaches that could contribute to and reflect differently upon questions of international legal theory and critique.

This symposium foregrounds new methodological perspectives on international law emerging in and from the Global South. While all the articles work to avoid, trouble or invert the gaze of international law in its modernist, Western appearance – to provincialize, in Chakrabarty's terms, its presumptions of disenchanted space, secular time, and sovereignty – they do not follow a coherent critical program or theoretical script. Thinking from various traditions and positionalities, they open methodological and critical pathways inspired by personal phenomenological perspectives, embodied micro-histories, Amazonian onto-epistemologies and an attentiveness to international law's others. They thereby both reveal and destabilize the visual imaginaries, grand historiographies, subtle semiotics and shadow hauntologies that shape the performative effects of international legal ordering in its hegemonic form. International law's constitutive connection with the colonial encounter – and contemporary colonial continuities – is a consistent theme across the contributions. In tracing and critically countering these legacies and relations, they thereby engage and extend key substantive threads of TWAIL literature.

A first substantive theme relates to international law's colonial continuities in relation to the use of force and how it structurally 'enabl[es] and justif[ies] violence against the South'.[39] In 'What We Talk about when We Talk about "Human Shields": Reading International Law through Images', Abdelghany Sayed – in a prescient anticipation of the atrocities unfolding in Gaza – focuses on how the reference to 'human shields' 'profoundly shapes how international law operates in scenes of intense organised violence'.[40] Emphasizing the 'lived history of the peoples of the Global South', Abdelghany thereby shows how the invocation of this trope erodes the civilian status of those placed at the wrong side of international law's lines of civilizational division.[41] To capture and counteract these operations of the 'human shield', the article 'advocates a turn to the visual in legal scholarship' – a conceptualization of culturally embedded images that structure

[37]This workshop was carried by the incredible labour of its participants, organizers, commentators, and speakers. It would not have been possible without the commitment of Geoff Gordon, Rebecca Mignot-Mahdavi, Delphine Dogot, Ntina Tzouvala, Robert Knox, Christopher Gevers, Sahib Singh, Wouter Werner, Ben Golder, Gerry Simpson, Janne Nijman, and the staff at the T.M.C. Asser Institute. I am also grateful to the Royal Netherlands Academy of Arts and Sciences.

[38]See T.M.C. Asser Institute, 'Lecture and Workshop series: Method, Methodology and Critique in International Law', available at www.asser.nl/education-events/lecture-series/lecture-and-workshop-series-method-methodology-and-critique-in-international-law/.

[39]A. Anghie, 'Rethinking International Law: A TWAIL Retrospective' (2023) 34 *European Journal of International Law* 7, at 69 (referring specifically to the gradual crystallization of the 'unable and unwilling' doctrine).

[40]A. Sayed, 'What We Talk About When We Talk About "Human Shields": Reading International Law Through Images', (2024) *Leiden Journal of International Law*.

[41]Ibid. Cf. Knox, *supra* note 9, at 9.

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scenes of war 'where anything may be (re)interpreted, legally, as liable to indirect, and sometimes direct, harm'.[42] If the language of 'human shields' is now deployed in unprecedented ways to justify violence against a civilian population, Abdelghany shows, this hinges on a latent visual imaginary through which subaltern lives are rendered ungrievable.[43] In this important methodological reorientation, the article invites us to reflect on how international law's production of 'otherness' and its 'dynamics of difference' are culturally enacted and sustained.[44] The 'images, imaginations, fantasies, and (mis)conceptions about the non-European' that are inscribed in 'international law's civilisational distinctions', he argues, 'enable[] the construction of Global South people … as international law's threshold subjects – not combatants but not human-civilians either'. Focused on these visual vocabularies, the article asserts that we cannot disconnect the concept of the 'human shield' from 'Orientalist constructions of the spaces and populations of the Global South'.[45] In its attempt to trace and disrupt the 'visual culture' that references to 'human shields' rely upon and reproduce, Abdelghany strives for a restoration of the civilian category that 'foreground[s] the rights of colonial and postcolonial subjects and realise[s] the emancipatory potential of international law'.[46]

A second substantive thread that is woven through several articles relates to the archival absences, fraught histories and false universalisms of international law.[47] Facing the 'founding violence' of the 'archive of slavery' – a source 'inseparable from the play of power' – Saidiya Hartmann asks: is it 'possible to exceed or negotiate the constitutive limits of the archive?'[48] Can we 'displace the received or authorized account?'[49] How to 'topple the hierarchy of discourse, and to engulf authorized speech in the clash of voices?'[50] The stakes of these questions are significant in the field of international law: inclusions and erasures in the historical record create an existential cut between which voices matter and which voices are excluded from mattering.[51] This is particularly prescient, for instance, in relation to international law's positivist doctrine of sources and the narrow categories of international legal subjectivity it engenders and invokes.[52] If B. S. Chimni pleads for an extension of this jurisgenerative ensemble – invoking Antônio Augusto Cançado Trindade's *opinio juris communis* – this can be read as a renegotiation of international law's constitutive archive: to engulf international law's authorized sources in the clash of subaltern voices, and topple the hierarchies of its canonical discourse.[53]

[42]Ibid. This methodological approach is inspired by P. Goodrich, *Imago Decidendi: On the Common Law of Images* (2017). Abdelghany argues, in dialogue with Goodrich, that in a world shaped by and saturated with images, international lawyers walks 'with blindfolds', reserving attention to 'written reason and the protestant motif of the text alone'.

[43]Ibid. Cf. J. Butler, 'Human Shields', (2015) 3 *London Review of International Law* 223; J. Butler, *Frames of War: When Is Life Grievable?* (2016). See also N. Gordon and N. Perugini, *Human Shields: A History of People in the Line of Fire* (2020).

[44]Ibid. Cf. A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005).

[45]Ibid. There is an evident relationship here with Edward Said's work on the production of 'otherness' – sustained by international legal mechanisms and justifications – that sustained the transformations of non-European lands 'from alien into colonial space'. Cf. E. Said, *Orientalism* (2003), at 122, 210–11.

[46]Ibid.

[47]See Anghie, *supra* note 39, at 51–2 (noting that TWAIL scholars 'turned to history not because they sought to be historians but, rather, to understand the ways in which history shaped a particular approach to international law and how this approach precluded any inquiry into imperialism and its impact on the making of international law').

[48]See Hartmann, 'Venus in Two Acts', *supra* note 34, at 10ff; Hartmann, *Lose Your Mother*, *supra* note 34, at 16 (on the aim 'to fill in the blank spaces of the historical record and to represent the lives of those deemed unworthy of remembering').

[49]Ibid., at 11.

[50]Ibid., at 12.

[51]This relates to the recurrent critical concern with how postcolonial states were born into international law – a normative order that simultaneously excluded the perspectives of their polities and delimited the range of their political possibilities.

[52]Not only is the substantive formation of international law limited to perspectives of sovereign states but – within that context – 'the archive of postcolonial state practice is thin'. See Nesiah, *supra* note 34, at 315–16.

[53]B. S. Chimni, 'Customary International Law: A Third World Perspective', (2018) 112 *American Journal of International Law* 1. This pluralization of CIL's sources is radicalized in Nesiah, ibid., at 316–18 (who perceives Chimni's plea for CIL's

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Efforts to exceed, renegotiate or displace international law's established archives, sites and sources are at the heart of the inspiring contributions to the symposium by W. L. Cheah and Idriss Fofana. In 'Reconsidering "Sook Ching" Victimhood: A Microhistory of Singapore's Nishimura Trial', Cheah explores the 'the cross-disciplinary methodological potential of TWAIL and microhistory'.[54] TWAIL scholarship, she cautions, tends to be directed towards 'macro-history' which might eclipse precisely the contextual impact of international law on the 'under-represented and disempowered' that micro-histories can capture.[55] The article applies this approach to a specific historical instance of post-war justice – the Singapore 'Sook Ching' trial or Nishimura trial – by focusing on the trial experiences of three specific individuals: a prosecutor appointed by the Chinese community, a former Japanese spy/prosecution witness, and a survivor/prosecution witness. While the trial is traditionally perceived as responding to the demands for justice by an abstract category of Chinese victimhood – in light of the arbitrary massacre of Chinese residents by the Japanese military during the Second World War – this revealing micro-historical investigation complicates this category of victimhood, simultaneously resisting the lure of idealized victimization,[56] and restoring the agency of subaltern voices confronted with post-war conditions of colonial rule with which international law was intertwined.[57] The insights of this revealing article emerge from a methodological approach that does not foreground authorized archives and accounts but follows 'slender records', 'banal details' and 'documentary fragments' – an attempt at reading trial transcripts against the grain.[58] What emerges from this original account is not only an enriched and nuanced perspective on victim agency and contested identity formation in this particular post-war context but also an important methodological intervention on how to work around 'the blank spaces of [international law's] historical record' and retrieve the voices and lives of those 'deemed unworthy of remembering' without invoking shortcuts, clichés or sentimental tropes.[59]

In 'The Two Faces of Franco-Sudanian Treaties: The Peripheral Practice of Ratification as Evidence of Transregional International Law in the Nineteenth Century',[60] Idriss Fofana equally aims to 'exceed or negotiate the constitutive limits of the archive' in relation to international law's late nineteenth century development.[61] It is a common theme in TWAIL scholarship that this archive of international law – as reflected, for example, in the sources of custom formation – is skewed towards the West.[62] Idriss's groundbreaking empirical research shows that this is not only related to the origin and availability of legal sources but also to how these sources have subsequently been translated, transposed, interpreted, formalized and handed over. The imperial tenor of late nineteenth century Euro-African treaties, he argues, results at least in part

pluralization and democratization as an 'agenda for looking for spaces that escaped or formed in resistance' and an invitation to 'unsettl[e] … the building blocks of historical knowledge to imagine an insurgent jurisprudence').

[54]Cheah W.L., 'Reconsidering "Sook Ching" Victimhood: A Microhistory of Singapore's Nishimura Trial', (2024) *Leiden Journal of International Law*.

[55]Ibid. It is thereby a particularly promising methodology, Cheah notes, to see international law 'through the lens of lived experience of Third World peoples'. Cf. A. Anghie and B. S. Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflict', (2004) 36 *Studies in Transnational Legal Policy* 186.

[56]Cf. C. Schwöbel-Patel, 'The "Ideal" Victim of International Criminal Law', (2018) 29 *European Journal of International Law* 703.

[57]This colonial rule, Cheah notes, entailed the organization of war crime trials in line with Allied policy. These origins, of course, determined the composition of the courts as well as the law that was applied.

[58]See Cheah W.L, *supra* note 54.

[59]Cf. Hartmann, *supra* note 34, at 16; Nesiah, *supra* note 34.

[60]I. Fofana, 'The Two Faces of Franco-Sudanian Treaties: The Peripheral Practice of Ratification as Evidence of Transregional International Law in the Nineteenth Century', (2024) *Leiden Journal of International Law*.

[61]Ibid. Cf. Hartmann, 'Venus in Two Acts', *supra* note 34.

[62]See Chimni, *supra* note 53.

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from the removal of these treaties from their 'original interpretive context and their subjection to a distinct and increasingly hegemonic mode of interpretation that rendered African legal arguments inaudible'.[63] In response to these erasures, Idriss revisits the archive to 'excavate African perspectives … [b]y focusing on markers of translation, transcription, and negotiation left on different copies of treaties'.[64] This methodological approach – described as translingual, intertextual and contextual – works with multiple copies of treaties as 'differentiated records of the "social life" of treaties, records bearing the marks of a diplomatic agreement's evolution and transmission between textual and oral forms and across languages'.[65] In doing so, it provides an original account of African agency – cabined, of course, by colonial conditions of violence and coercion yet not reducible to the passive participation in imperial legal imaginations that prior historical work tends to highlight. This inquiry foregrounds a specific set of actors – African polyglots and diplomatic agents – as central to the mediation of international treaties and the formation of Western Sudanian legal concepts. It is by focusing on this 'peripheral practice' of international lawmaking 'among a culturally and politically diverse group of polities spanning a vast region', Idriss argues, that we see the divergent emergence, application and interpretation of legal norms across autonomous 'inter-polity normative orders' – a series of constitutive contradictions as a 'design feature' of international law.[66] While this argument shows the central role of international law in the colonial consolidation of territorial sovereignty and histories of imperial rivalry, it also traces the different perspectives that lingered in its inter-polity mediation and how these were erased by re-interpretating treaties in a 'Western and imperial frame'.[67]

A third substantive thread links with postcolonial critiques on international law's modernist ontology and its modalities of subject-making and recognition.[68] Grafted on nature-culture and subject-object separations characteristic of modern Western thought,[69] international law is hereby seen as complicit in the agential separation of the human subject from its many material entanglements.[70] This entails both an erasure of 'aspects of the world that have been denied agency, subjectivity and vitality',[71] and an interpellation of subjects as abstract liberal rights holders that dismisses material hierarchies and more-than-human relationships.[72] In 'Re-thinking International Law Along with Amazonian Ontologies: Problematising Human-Non-Human Divisions',[73] Cristina Blanco suspends this ontological framework in international law by foregrounding the perspectives of the Amazonian

[63]See Fofana, *supra* note 60.

[64]Ibid.

[65]Ibid.

[66]Ibid. International lawmaking in this peripheral context is identified as an epistolary and highly personalized practice.

[67]Ibid. ('[i]mperial constraint may manifest … in the content of treaties as much as in their transposition to new contexts').

[68]On international law's modes of subject-making see M. Petersmann and D. Van Den Meerssche, 'On Phantom Publics, Clusters, and Collectives: Be(com)ing Subject in Algorithmic Times', (2024) 39 *AI & Society* 107.

[69]Cf. B. Latour, *We Have Never Been Modern* (1993); D. Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* (2016).

[70]Cf. D. Van Den Meerssche, 'The Multiple Materialisms of International Law', (2023) 11 *London Review of International Law* 197.

[71]J. Hohmann, 'Diffuse Subjects and Dispersed Power: New Materialist Insights and Cautionary Lessons for International Law' (2021) 34 *Leiden Journal of International Law* 585.

[72]This links with postcolonial critiques on international law's modes of subject-making. S. Pahuja, *Decolonising International Law: Development, Economic Growth, and the Politics of Universality* (2011); R. Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (2020); U. Natarajan, 'Who Do We Think We Are? Human Rights in a Time of Ecological Change', in U. Natarajan and J. Dehm (eds.), *Locating Nature: Making and Unmaking International Law* (2022), 200. On the suspension of the register of rights see M. Petersmann, 'In the Break (of Rights and Representation): Sociality beyond the Non/Human Subject', (2023) *International Journal of Human Rights*. https://www.tandfonline.com/doi/full/10.1080/13642987.2023.2227124.

[73]C. Blanco, 'Re-thinking International Law along with Amazonian Ontologies: Problematising Human-Non-Human Divisions', (2024) *Leiden Journal of International Law*.

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Kukama-Kukamiria people. Developing a methodological approach inspired by the 'ontological turn' in anthropology,[74] Cristina traces the 'Kukama-Kukamiria cosmovision of the river' to question and critique international law's 'underlying assumptions ... about the natural world'.[75] The article portrays this clash in cosmovisions specifically related to the Amazon Waterway (*Hidrovía Amazónica*) infrastructure project promoted by the Peruvian state and vehemently opposed by the Kukama people. Drawing on original interview material, Cristina shows that the conflict does not merely instantiate indigenous resistance against the developmental drive of international law,[76] but flows from a deeper disjunction in how nature-culture relationships are perceived and enacted. The article thereby invites us to '(re)think[] international law along with the Amazonia', which 'implies not only being situated in a geographically different place' but also on an 'ontologically different' plane – to think '*with* the periphery of the periphery'.[77] In the cosmovision of the Kukama people that 'the river encompasses spirits that inhabit "objects" like *quirumas*' (which the Amazon Waterway sought to erase), we find an 'interference' with international law's portrayal of 'nature'.[78] The article invites us to rethink international law by opening up to these 'indigenous worldviews' without romanticized idealization – to engage with expressions of *multinaturalism* rather than *multiculturalism* or *multinationalism*.[79] Inspired by TWAIL scholarship, it thereby aims to capture and contest international law's colonial continuities on an ontological level.

A fourth substantive thread that is woven through this symposium is the focus on international law's institutional and professional biases in relation to the Global South.[80] In 'Under the Shadow of Legality: A Shadow Hauntology on the Legal Construction of the Women, Peace and Security Agenda',[81] Juliana Santos de Carvalho focuses on the Security Council *Women, Peace and Security* (WPS) agenda and lingers with the intriguing irresolvability of its legal status. Rather than lamenting these ambiguities, she foregrounds the 'different, deviant, and contrasting projects and imageries of legality' present in feminist politics and their 'disrupting capabilities'.[82] The article thereby builds on Avery Gordon's insights on 'what it means to take seriously the shadows (or ghosts) that haunt our social and material realities as well as our production of knowledge'.[83] What unfolds is an original 'shadow hauntology' of legal mobilization that traces 'how gender power and coloniality ... arranged the room whereby legality was a secondary, if not inexistent, concern for feminist activists'.[84] Aligned with the inspiring argument by Renske Vos about the agency of absence,[85] this perspective traces the WPS agenda as a 'productive shadow in international law-making: one that makes its [legal] mark by being there and not there at the same time'.[86] Yet, these feminist activist encounters with international law, Juliana shows, confronted

[74]Cf. P. Descola, *Beyond Nature and Culture* (2013); E. Kohn, *How Forests Think: Toward an Anthropology Beyond the Human* (2013); E. Viveiros de Castro, *La Mirada del Jaguar: Introducción al Perspectivismo Amerindio* (2013); E. Viveiros de Castro, *Cannibal Metaphysics: For a Post-Structural Anthropology* (2014).

[75]See Blanco, *supra* note 73.

[76]Cf. Pahuja, *supra* note 72.

[77]See Blanco, *supra* note 73.

[78]Ibid. Cf. Viveiros de Castro, *Cannibal Metaphysics*, *supra* note 74; Natarajan and Dehm, *supra* note 72.

[79]On the risk of essentialization of indigeneity see M. Petersmann, 'Contested Indigeneity and Traditionality in Environmental Litigation: The Politics of Expertise in Regional Human Rights Courts', (2021) 21 *Human Rights Law Review* 132; D. Chandler and J. Reid, *Becoming Indigenous: Governing Imaginaries in the Anthropocene* (2019).

[80]See Anghie, *supra* note 39, at 111 (on TWAIL claims to 'democratize international law' institutionally and professionally).

[81]J. Santos de Carvalho, 'Under the Shadow of Legality: A Shadow Hauntology on the Legal Construction of the Women, Peace and Security Agenda', (2024) *Leiden Journal of International Law* [DoI to be inserted at proof stage].

[82]Ibid. (the 'tendency to see legality as begging for a resolution eclipses a more granular view of the different perceptions, struggles and, ultimately, politics of constructing an international norm as legal among heterogeneous audiences').

[83]Ibid. Cf. Avery Gordon, *Ghostly Matters: Haunting and the Sociological Imagination* (2008).

[84]Ibid.

[85]R. Vos, 'The Land in Sight: Waiting for a Libyan Government', (2023) 11 *London Review of International Law* 207.

[86]See Santos de Carvalho, *supra* note 81.

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existing power structures as the WPS agenda became entangled with the racial and imperial tensions of the post 9/11 security paradigm. With a crucial methodological gesture, Juliana writes herself into this powerful story of international law's shadows – a personal phenomenology of race and class-based exclusions and disciplinary limitations. Yet, as all pieces in this symposium, it also provides us promising pathways for transgressing those: a mode of theorizing 'from the break'.[87]

[87]Ibid. Cf. la paperson, *A Third University Is Possible* (2017), drawing on F. Moten, *In the Break* (2003).

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