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INTERNATIONAL LEGAL THEORY

African International Legal Histories – International Law in Africa: Perspectives and Possibilities

JAKOB ZOLLMANN*

Abstract
Hitherto, the 'African part' of the history of international law has often been limited to the (critical engagement with) 'the acquisition of Africa' since the 1880s and questions of 'state succession' and international borders following independence starting in the 1950s. In this historical narrative, the dominance of colonialism is evident. It seems that 'Africa' as a narrative concept in international legal history remains tied to abstract contrasts such as 'foreign domination' versus 'independence', or 'exploitation' versus 'development'. However, if twenty-first century writings about 'international law in Africa' and its histories remain shaped by this perspective, historians may lose sight of issues, questions, or ideas formed in historical Africa that do not fit into this preconceived dichotomous matrix. After discussing methodological challenges, this article asks for other 'contacts', other arenas of 'internationality' and international law in Africa's pre-colonial past. These contacts reach back very far in history. Three arenas are mentioned: the Red Sea area and Ethiopian-Arab relations; the Indian Ocean rim; and finally, the case of nineteenth-century Ethiopia.

Keywords
Africa; Ethiopia; history; international law; presentism

1. INTRODUCTION

The field of academic historiography of Africa as it has evolved over the last 50-odd years has its own history by now. The sub-field of African legal history, however, has barely reached the sophistication of topics as have, for instance, African social or economic history. This article undertakes to lay out perspectives and possibilities of African international legal histories as they can be analyzed based on current research.

Looking at the existing literature, the first part of this article considers the methodological challenges encountered by scholars interested in African international legal histories. Among those are the risks of projecting 'presentist' European international law categories onto African states when analyzing the continent's past. Also, the dominance of the subject of colonialism in the historiographic analysis is most evident. However, with such an exclusive focus on 'international law in Africa' as a heritage of colonialism, this article argues, historians lose sight of issues,

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questions, or ideas formed in historical Africa that do not fit into the dichotomous matrix of the adversarial European-African encounter of the nineteenth and twentieth centuries. By looking beyond colonialism, which was, after all, 'merely an episode in African history', other and new regions and periods in African history can be traced that hitherto barely played a role in international legal historiography. By way of example, the second part of this article discusses the existence of several arenas of 'internationality' in Africa's past. Here, three such contacts between African and non-African peoples can be used as guides towards potential avenues for further research: first, the Red Sea area and the Ethiopian-Arab relations starting in the pre-Christian period; second, the Swahili Coast; third, the case of nineteenth-century Ethiopia and the question of its admittance to the 'family of nations' opens a perspective that connects African history with the development of European international law. Thereby, it is argued, aspects of inter-state law in Africa come to light which existed prior to European colonialism and which, thus, illuminate alternative institutions in the history of international law.

2. African international legal histories as a subject: Methods, sources, limitations

2.1. On the conditions of possibility of African international legal histories

No one doubts that there is (or has been) a *jus gentium europaeum* whose past is worthy of analysis and debate. The development of a 'Latin American international law' has been equally discussed.[1] Even though neither librarians nor 'Google' can find a single entry for a *jus gentium africanum*, is it fair to pose the question whether there *is* a specific, recognizable 'African international public law'?[2] Recent scholarship has argued, for example, that 'by accepting to respect the pre-existing [colonial] frontiers [on their achievement of independence] without being obliged by any law principle to do so African states created new customary rules'. The former Sudanese negotiator with South Sudan, advocate Dirdeiry Ahmed, describes this as the creation of 'a special customary territorial regime that changes in many respects the way international law applies to Africa'.[3] Is this a recent development?

And is it possible at all to answer this question? For evident reasons – namely, the sources or the lack thereof – the legal past is more difficult to analyze. Furthermore, why should the existence of a specifically 'African' international law be assumed? Among Africans, or more precisely, African rulers, politicians, or others engaged in foreign affairs, there was in the past centuries no consciousness of 'Africa'. This is at least what historians of Africa can ascertain from the sources. Treatises

[1] A. Becker Lorca, 'Eurocentrism in the History of International Law', in B. Fassbender and A. Peters (eds.), *Oxford Handbook of International Law* (2012), 1034; A. Becker Lorca, 'International Law in Latin America or Latin American International Law? Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination', (2006) 47 *Harvard Journal of International Law* 283.

[2] C. Young, 'Self-Determination, Territorial Integrity, and the African State System', in F.M. Deng and I. William Zartman (eds.), *Conflict Resolution in Africa* (1991), 320, at 343 (using this expression and referring to the Organisation of African Unity).

[3] D.M. Ahmed, *Boundaries and Secession in Africa and International Law. Challenging Uti Possidetis* (2015), 3.

of African history usually begin or end by laying out how 'Africa' had been 'invented' or 'imagined', most of all by European scholars. Over centuries, they not only imagined the togetherness or shared identity of the continent and the peoples living in it but they also turned it argumentatively into what Valentin Mudimbe called a 'paradigm of difference' and claimed its a-historicity.[4] Academic historical research about Africa, in turn, is thus a rather recent phenomenon and it still has to surmount challenges when it comes to the description and analysis of 'development' and structural changes, in particular with regard to the historicity of pre-colonial Africa.[5] International lawyers interested in Africa's past aimed at reserving for Africa its rightful place in the development of international law.[6] However, scholars like the Nigerian law professor and judge, Taslim Olawale Elias, were, as will be shown hereunder, rather interested in the contemporary period and dealt with pre-colonial Africa only on the margins. On the other hand, Elias was eager to overcome an overly simplistic juxtaposition of 'African' versus 'European' law, even though he did extensive research on the nature of African customary law. Yet, as Mark Toufayan underlines, Elias' 'overall project' was to emphasize that 'both [Africa and Europe] shared similar legal ideas'. This, in turn, was 'testimony to "the unity of all human knowledge and experience", and [both Africa and Europe] were accordingly brought together under law's yoke'.[7]

This commitment in favour of a 'normalization' of Africa's past and against any forms of exoticizing the continent opens new possibilities for the analysis of African international legal histories. Hitherto, the 'African part' of the history of international law was often limited to the (critical engagement with) 'the acquisition of Africa' since the 1880s, and questions of 'state succession' and international borders following independence starting in the 1950s.[8] In this historical narrative the dominance of colonialism is evident. It seems that 'Africa' as a narrative concept in international legal history remains tied to abstract contrasts such as 'foreign domination' versus 'independence' or 'exploitation' versus 'development'. However, if twenty-first century writings about 'international law in Africa' and its histories remains shaped by this perspective, historians may lose sight of issues, questions, or ideas formed in historical Africa that do not fit into this preconceived dichotomous matrix. This is not to argue that the historical roots of current affairs and the indisputable challenges in contemporary Africa in relation to colonialism shall not *also* guide our historical interests.

However, by trying to seek for and understand *other* African international legal histories we gain a more complete insight into the continent's past and its

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[4] For an overview, see A. Sonderegger, *Kurze Geschichte des Alten Afrika* (2017), 10; J. Parker and R. Rathbone, *African History. A Very Short Introduction* (2007), 2, referring to V. Mudimbe, *The Invention of Africa* (1988); F. Dübgen and S. Skupien, 'Das Politische in der Afrikanischen Philosophie', in F. Dübgen and S. Skupien (eds.), *Afrikanische politische Philosophie* (2015), 9, at 10.

[5] A. Jones, *Afrika bis 1850* (2016), 18.

[6] T.O. Elias, *Africa and the Development of International Law* (1972).

[7] M. Toufayan, 'When British Justice (in African Colonies) Points Two Ways. On Dualism, Hybridity, and the Genealogy of Juridical Negritude in Taslim Olawale Elias', in O. Onazi (ed.), *African Legal Theory and Contemporary Problems* (2014), 31, at 45 (quoting T.O. Elias, *The Nature of African Customary Law* (1956), 6).

[8] G. Oduntan, *International Law and Boundary Disputes in Africa* (2015).

autonomous historical developments. Colonialism was, as the Nigerian historian, Jacob Ade Ajayi, famously put it, *an episode in African history*.[9] A few years later the legal scholar, Charles H. Alexandrowicz, also confirmed: '[T]he colonial period in Africa, if considered against the background of African history as a whole, is of negligible duration.'[10] So it is obvious that, in time and space, African international legal histories deserve a larger spectrum. This is possible since there are, as James Thuo Gathii argued in an article summarizing the state of the art, indeed multiple examples that 'offer evidence of the presence of "internationality" or contact between Africa and Europe'.[11] Yet, it is high time to widen this perspective beyond the South-North, African-European axis and to ask for other 'contacts', other arenas of 'internationality' in Africa's past.

Even though it is not entirely clear how Gathii defines his concept of 'internationality', the term is at least to be understood as a precondition of any manifestation of 'international law'. Asked differently, can it be useful in the African historical context, as some have suggested as a potential avenue for 'overcoming Eurocentrism', to seek for a 'radical shift of vocabulary' and try, for example, to consider the meaning of 'international law' in a somewhat broader context? This is being understood as a means to 'enable us to see things that were previously hidden'.[12] After all, it is part of the prevalence of Western narratives (politically and historiographically) to define 'subjects' of international law and 'members of the international community'. These powers to define must, however, not be allowed to develop into a hindrance to historical research by categorically declaring that this or that act, discourse, or custom in the past is or is not international law, but (only?) international relations. The term 'internationality' then can abstain from distinguishing between states and 'quasi-states'.[13] Looking at the existing literature, for historians and other researchers of Africa, it has barely been a question whether or not to call an African polity a 'state' (in the English language). Ali Mazrui, for example, mentions that 'the pre-colonial African states have indulged in ... land worship'.[14] Others analyze the 'political economy of a precolonial African state', Bagirmi, near Lake Chad.[15] The term 'empire', too, has been used in an intra-African, pre-colonial setting, Songhay being one example.[16] Similarly, the meaning of 'rules' and 'customs' applied in a specific historical context between such states must not adhere to the latest definitions in international

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[9] J.F. Ade Ajayi, 'Colonialism. An Episode in African History', in L.G. Gann and P. Duignan (eds.), *Colonialism in Africa 1870–1960* (1969), vol. I.

[10] C.H. Alexandrowicz, *The European-African Confrontation. A Study in Treaty Making* (1973), 127; cf. also V. Y. Mudimbe, *The Invention of Africa* (1988), 1.

[11] J. T. Gathii, 'Africa', in B. Fassbender and A. Peters (eds.), *Oxford Handbook of International Law* (2012), 407, at 411.

[12] A.-C. Martineau, 'Overcoming Eurocentrism? Global History and the Oxford Handbook of the History of International Law', (2014) *25 European Journal of International Law* 329, at 330.

[13] R. H. Jackson, *Quasi-States. Sovereignty, International Relations and the Third World* (1990).

[14] A. Mazrui, *The Africans. A Triple Heritage* (1986), 272.

[15] S.P. Reyna, *Wars without End. The political economy of a precolonial African state* (1990).

[16] J.O. Hunwick, *Timbuktu and the Songhay Empire. Al-Sa'di's Ta'rikh Al-sudan down to 1613 and other contemporary documents* (2003); see J. Vansina, 'A Comparison of African Kingdoms', (1962) 32 *Africa: Journal of the International African Institute* 324 (classifying Sub-Saharan kingdoms); see W. Hawthorne, 'States and Statelessness' in J. Parker and R. Reid (eds.), *Oxford Handbook of Modern African History* (2013), 77 at 79f.

law text books (to the issues of 'presentism' and 'anachronism', we turn later). Perhaps it suffices here to recall that in the field of comparative law legal scholars also use the concept and terminology of 'functional equivalent',[17] and so historians have done successfully when analyzing the past.[18]

By giving European colonialism its fair share – not more but also not less – in these African histories, we can go beyond the dichotomies and ask for arenas of international law on the African continent that lay outside the orbit of European domination. Thereby, we can explore blind spots in the historiography of 'internationality' understood to include international law that nevertheless had decisive impact on the historic development of wide regions within and beyond the continent. Arnulf Becker Lorca recently argued that, before the second half of the nineteenth century, international law had not yet acquired 'a global geographical scope'; rather, this prehistory consisted of 'different – geographically and culturally disconnected – regional orders'.[19] Be that as it may, these regional orders of 'internationality' in Africa also need to be taken into consideration – not the least because this enables scholars to discuss more critically the 'origins' of international law and the contributions of particular regions on its development.

2.2. 'Presentism' and 'relevance': What (legal) histories of Africa are we writing, and why?

Many are the warnings against 'presentism'. Lynn Hunt, then-president of the American Historical Association, warned in 2002: 'Presentism, at its worst, encourages a kind of moral complacency and self-congratulation. Interpreting the past in terms of present concerns usually leads us to find ourselves morally superior.'[20] This warning holds particular bearing for legal historians who may be tempted to interpret the laws of the past in light of present-day laws and morals.

An additional element of 'presentism' besets international legal history in yet a different way than the 'presentist' interpretation of the past. Apart from questions of colonialism from 1880 to 1960 and slavery, the sub-field of African international legal history plays a marginal role in the study of law and legal history in Africa. For example, the *African Yearbook of International Law* (founded in 1993) rarely publishes articles with a focus on history.[21] In turn, in the *Journal of African History* (founded in 1960), probably setting the 'gold standard' in the Africanist discipline, legal subjects are equally rare except for questions related to African statehood, which are frequently discussed.[22] This apparent lack of research in African international legal

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[17] K. Scheiwe, 'Was ist ein funktionales Äquivalent in der Rechtsvergleichung? Eine Diskussion an Hand von Beispielen aus dem Familien- und Sozialrecht', (2000) 83 *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft*, 30.

[18] See M. Pernau, *Bürger mit Turban. Muslime in Delhi im 19. Jahrhundert* (2008), 2–12.

[19] A. Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (2015), 10.

[20] L. Hunt, 'Against Presentism', *AHA Perspectives on History*, 1 May 2002, available at www.historians.org/publications-and-directories/perspectives-on-history/may-2002/against-presentism.

[21] D.C.J. Dakas, 'The Role of International Law in the Colonization of Africa. A Review in Light of Recent Calls for Re-colonization', (1999) *7 African Yearbook of International Law / Annuaire Africain de droit international* 83.

[22] The *Journal of Modern African Studies*, less influential though, published one article by the barrister-at-law Nii Lante Wallace-Bruce. See N.L. Wallace-Bruce, 'Africa and International Law. The Emergence to Statehood', (1985) 23 *Journal of Modern African Studies* 575; see also G.N. Uzoigwe, 'Spheres of Influence and the Doctrine of the Hinterland in the Partition of Africa' (1976) 3, *Journal of African Studies* 183.

histories may have to do with what can be called a sort of double-blindness that affects this subject. Citing their lack of specific disciplinary knowledge, general historians leave questions of legal history overwhelmingly to legal scholars based in the faculties of law. The latter, including those scholars working in the field of international law, on the other hand, have their eyes fixed on questions posed by the present. It is not uncommon for international law scholars to describe their own work as forming part of efforts 'through which the relevance of international law to the solution of the most urgent problems of our time ought to be enhanced'.[23] Under these conditions, questions of the past are mostly worth consideration only if they hold 'relevance' for the present. For legal scholars, questions such as '[i]f we have rarely ... heard about the history of international law beyond the West, have we missed something?'[24], or even '[w]hy does the history matter?', are legitimate – and open – questions; whereas professional historians would consider this as a mere rhetorical exercise since answers in the negative would question one's own professional life.[25]

Apart from the above-quoted work of Dirdeiry Ahmed, who meticulously analyzes the history and present of the principle of *uti possidetis* in the context of African independence and 'the prohibition of secession in Africa' since the 1960s,[26] two recent contributions (notably also written by legal scholars) demonstrate that this argumentative prominence of 'present-day relevance' for one's own research is true also for African international legal histories:

Touching upon the 'Courts of Mixed Commission' in Sierra Leone and Angola, among others, since the 1820s, Jenny S. Martinez examines the 'role of international law in the ending of the transatlantic slave trade'.[27] In her own words, these commissions were 'the first international human rights courts' and she thus suggests that 'this episode forms an important part of the history of international human rights law'.[28] Leaving aside the question of whether Martinez's terminology is merely a blunt projection of present categories onto that past, we first and foremost have to ask: Would it be worth it to write the history of these international courts in Africa (an 'episode'[!], i.e., on the periphery?) if they were *not* 'important' in the history of international human rights law and 'international humanitarian intervention' (as some of her critics have argued)? These key words reverberate in the minds of any informed reader of the news; in recent years they repeatedly stood at the centre of international debates. The insistence of 'present-day relevance' of one's own (historical) research object, however, runs the risk of perpetuating the separation of periphery and centre. Why is it so important to show the relevance of one's own 'peripheral' research object (courts in Africa) to the history and present of the

[23] K. Ginther, 'Preface', in K. Ginther and W. Benedek (eds.), *New Perspectives and Conceptions of International Law. An Afro-European Dialogue* (1983), at v.
[24] Becker Lorca, *supra* note 19, at 13.
[25] P. Alston, 'Does the Past Matter? On the Origins of Human Rights. An analysis of competing histories of the origins of international human rights law', (2013) 126 *Harvard Law Review* 2043; J. Martinez, 'Human Rights and History', (2013) 126 *Harvard Law Review* 221, at 236.
[26] Ahmed, *supra* note 3, at 4.
[27] J.S. Martinez, *The Slave Trade and the Origins of International Human Rights Law* (2012).
[28] Ibid., at 6; Martinez, *supra* note 25, at 221.

'centre' (humanitarian intervention)? Is it that the 'earlier' plays a role because it had an impact on a significant (more significant?) 'later', most of all the present?[29]

Mieke van der Linden addresses the question of a *present* responsibility under international law of former colonial states for the *past* actions of the European colonial powers.[30] Aware of the trappings of the principle *nulla poene sine lege*, van der Linden lays out with intellectual acuity in her introduction the challenge that 'jurists must always be aware of and avoid the fallacy of presentism: the anachronistic application of present-day norms and values to the interpretation and evaluation of past actions'.[31] Thus, for her, the present state responsibility presupposes the violation of the international law that was applicable at the time of Africa's colonization by Europeans starting in the 1880s. This is evidently a historical undertaking ('What was the international law that was applicable at the time of Africa's colonization? How, why, and by whom was this law violated?'). Still, these questions about the past are merely raised in order to determine, based on this factual 'context', European states' *current* legal responsibility and, subsequently, *present* means of 'redressing the illegality of Africa's colonization'. Considering the amount of Africanist historiography that van der Linden has used and her eagerness to 'evaluate the past' in light of the 'standards as they stood at the time', there are indeed 'no obstacles to a fruitful co-operation between historians and jurists in writing the history of international law'.[32]

Contemporary politics thus influences historical writing on 'Africa and International Law', which, as the three authors mentioned above show, seeks to be utilitarian for the present day.[33] And this has a direct influence on the production of knowledge about the past. Legal scholars like Anne Orford vehemently defend this approach with a focus on the present and reject in no uncertain terms 'contextualist historians' who have concentrated 'on policing the idea that past texts must not be approached anachronistically in light of current debates'.[34] In her opinion anachronism is not a methodological problem for legal scholars exactly because the discipline of law 'resist[s] such an easy temporal division' between past and present. Orford recognizes in the contextualist school's 'policing of anachronism ... a major theme in the response to critical histories of international law'. As a result, she sees in the rejection of anachronism the refusal of 'an overt engagement with contemporary politics'.[35]

Whether or not the 'political promise of critical international legal scholarship'[36] provides a more encompassing view, not only of the present but also of the past,

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[29] On the problem of 'present-day relevance', see P. Borowsky, B. Vogel and H. Wunder, *Einführung in die Geschichtswissenschaft I, Opladen* (1989), 14.

[30] See M. van der Linden, *The Acquisition of Africa (1870–1914). The Nature of Nineteenth-Century International Law* (2017).

[31] Ibid., at 28.

[32] Ibid., at 29, 245.

[33] Cf. A.-C. Martineau, 'A Forgotten Chapter in the History of International Commercial Arbitration. The Slave Trade's Dispute Settlement System', (2018) 31 *Leiden Journal of International Law* 219, at 222 ('While the focus of the article is historical, the interest feeding it lies in the present.').

[34] A. Orford, 'On International Legal Method', (2013) 1 *London Review of International Law* 166, at 171.

[35] Ibid. at 173–4.

[36] M. Shahabuddin, *Ethnicity and International Law. Histories, Politics and Practices* (2016), 7.

need not be discussed here. However, for the purposes of our symposium, which is asking 'why it is that we write the histories we write?',[37] it is, despite the claims of an 'apolitical' or 'uncritical' impetus, nevertheless valid to point to presentism as a force that determines 'what we write' and 'what questions we fail to explore'. For, those histories of international law (or for this purpose other fields such as economic history[38]) in Africa that cannot boast reverberations and repercussions for our own present-day, will, if anachronism is allowed to determine what is 'relevant', barely be considered for 'interpretation and evaluation'[39] by historians or jurists. As long as such African histories are not judged to be 'relevant' in the present-day, like, for example, human rights, territorial claims, or piracy, the chances for these other African international legal histories to be written remain dim. And these chances get lower and lower the farther the research subject lies in the past. If it is true that 'post-colonialism has now become international law's official ethos',[40] this certainly has an influence on the writing about the histories of international law. If we seek for historical traces and repercussions of Western colonialism, imperialism, and inequalities in the international arena, then the research perspective necessarily excludes all periods prior to the rise of these ideologies. Lynn Hunt, in her above-quoted piece, noted the 'shift of general historical interest toward the contemporary period'. She is concerned that the twentieth century would 'crowd out everything else'.[41] In the historiography of international law this particular trend of presentism is not as distinct as in other historical sub-disciplines given that a number of key interpreters of international law laboured in more distant centuries. Yet, the period of approximately 1880 to 1970 is probably the most widely researched in the field.[42] Interests triggered by the present dominate or even dictate the subjects researched about the past.[43] This is the pattern underlying the analysis of what legal scholar Pio Caroni, not too long ago, called the 'loneliness of the legal historian'.[44] Those researchers who are interested in the origins of *Mindermeinungen* (minority views) or legal provisions that no longer leave traces in present legislation or customs will find it hard to boast about the 'relevance' of their research.

Yet, these presentist characteristics of research practices can change in the future. Why should questions about the 'relevance' of historical considerations in research related to international law always be at the forefront, threatening entire research

[37] See G. Simpson, 'Call for Papers', *Leiden Journal of International Law* Symposium on 'The Trajectories of International Legal Histories', 20 October 2017, available at www.cambridge.org/core/journals/leiden-journal-of-international-law/information/call-for-papers.

[38] Cf. M. Jerven, *Africa. Why Economists get it wrong* (2015), 45, on the presentist dealing of economists with historical data about Africa.

[39] van der Linden, *supra* note 30, at 28.

[40] M. Koskenniemi, 'Histories of International Law. Dealing with Eurocentrism', (2011) 19 *Rechtsgeschichte* 152, at 155.

[41] Hunt, *supra* note 20.

[42] This is at least the impression created by the titles of the two leading series in the field: *Studien zur Geschichte des Völkerrechts* (Nomos) and *Studies in the History of International Law* (Brill).

[43] See O.C. Okafor, 'After Martyrdom: International Law, Sub-State Groups, and the Construction of Legitimate Statehood in Africa', (2000) 41 *Harvard International Law Journal* 503, at 508, for another example of trying to 'understand' the 'fragmentation of the post-colonial African state' with an 'exploration into the history of state-building in Africa'.

[44] P. Caroni, *Die Einsamkeit des Rechtshistorikers. Notizen zu einem problematischen Lehrfach* (2005).

subjects with prejudicial verdicts of 'irrelevance' and 'worthlessness'? In light of recent publications in the field, David Armitage and Jennifer Pitts notice a 'new history of international law in our own globalizing, historicist moment'.[45] Finally, it is worth repeating a rather old and simple insight that sometimes gets out of sight: 'The controversy about relevance is indissoluble, since it cannot be resolved *wissenschaftsimmanent*.'[46]

2.3. The weight of disciplinary divides: The languages of history or law and their sources

Strangely enough, in the past decades historical scholarship about Africa did not play a prominent role in the attempts of critical legal scholars of international law in Africa to reevaluate their own research subject. In their works, methodological concerns that would attest to the insight that, when writing (and reading) about 'history', we are rather dealing with *representations* of history are barely noticeable.

Adherents to a positivist reading of the sources that would allow for direct access to 'history', neither T.O. Elias nor Charles. H. Alexandrowicz, seem to have bothered about engaging with the state of the art of Africanist historiography. The latter was burgeoning since the 1960s, having an eminently political task as its goal: to show that pre-colonial Africa *did* have a history (the favourite opponent here was the philosopher G.W.F. Hegel due to his damning verdict on Africa's exclusion from universal history – and thus reason[47]), whose sources were worthy of the same methodological analysis and rigors as any other history.[48] This intention to 'de-exoticize' Africa (and thus the newly independent states) as a research object by 'correct[ing] the historical record' was, indeed, very similar to that at which scholars like Elias, Okoye, or Alexandrowicz aimed.[49]

However, one would have liked to know, for example, what Alexandrowicz would have made of Jan Vansina's *Kingdoms of the Savanna*, about Central African political units from the late fifteenth century to 1900, in which the author speaks of the African elite as 'knights', 'dukes', and 'marquis'.[50] To inform himself about general historical events, Alexandrowicz seems to have relied completely on the small

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[45] D. Armitage and J. Pitts, '"This Modern Grotius": An Introduction to the Life and Thought of C. H. Alexandrowicz', in D. Armitage and J. Pitts (eds.), *C.H. Alexandrowicz: The Law of Nations in Global History* (2017), 1, at 1.

[46] Borowsky, Vogel and Wunder, *supra* note 29, at 14.

[47] See M.A.R. Habib, *Hegel and Empire. From Postcolonialism to Globalism* (2017), 49–64; B. Camara, 'The Falsity of Hegel's Theses on Africa', (2005) 36 *Journal of Black Studies* 82; R. Bernasconi, 'Hegel at the Court of the Ashanti', in S. Barnett (ed.), *Hegel After Derrida* (1998), 45.

[48] See three autobiographical accounts by the most outstanding 'pioneers': R. Oliver, *In the Realms of Gold. Pioneering in African History* (1997); J. Vansina, *Living With Africa* (1994); J.D. Fage, 'British African studies since the Second World War. A personal account', (1989) 88 *African Affairs* 397; cf. also D. Henige, *The Chronology of Oral Tradition. Quest for a Chimera* (1974); B. Heintze and A. Jones, 'European Sources for Sub-Saharan Africa before 1900. Uses and Abuses', (1987) 33 *Paideuma*; H. Behrend and T. Geider, *Afrikaner schreiben zurück. Texte und Bilder afrikanischer Ethnographen* (1998); K. Arnaut and H. Vanhee, 'History Facing the Present. An Interview with Jan Vansina', (2001) 21 *Forum: Nieuwsbrief van de Belgische Vereniging van Afrikanisten – Bulletin de l'Association Belge des Africanistes* 11; G. Castryck, S. Strickrodt and K. Werthmann (eds.), *Sources and methods for African history and culture. Essays in honour of Adam Jones* (2016).

[49] Gathii, *supra* note 11, at 409; cf. C. Landauer, 'Things Fall Together: The Past and Future Africas of T. O. Elias's Africa and the Development of International Law', (2008) 21 *Leiden Journal of International Law* 351, at 361.

[50] J. Vansina, *Kingdoms of the Savanna* (1966).

volume by Roland Oliver and John D. Fage, *A Short History of Africa*, a 'classic' ever since its first edition in 1962.[51] To be fair, Elias quoted at least once the journalist Basil Davidson, one of Britain's most acclaimed Africanists of his generation and a strong supporter of African independence movements, making a comparison between Frankish kingship and the rise of kingdoms in West Africa.[52] Unmistakably, 'Elias' charge here is to establish the parallel of African and European kingdoms'.[53] However, when Elias tried to highlight the historical 'Contribution of Africa to International Law' in 1972,[54] the *Journal of African History* was already in its twelfth year and yet he did not refer to its articles once even though it would have furnished him with ample material about African states.

What Africanists and legal scholars with a focus on Africa's past have in common is their regret about 'the paucity of evidence about early African institutions'.[55] Historians of international law, just as legal historians in general, cannot do without written sources. This is, at least, the impression created when one looks at the list of 'sources' of any given legal history treatise. Material culture, so *en vogue* among historians of culture and everyday life,[56] has a hard time among legal historians.[57] Even photographs or maps are barely used.[58] For historians of Africa's international legal past, this holds particular pitfalls. Apart from Amharic, Coptic (-Demotic), and Arabic texts, there are barely any documents written by Africans that could give insights into the continent's past before the arrival of Arab and European visitors, and later 'explorers' and empire-builders of the nineteenth century. The question is thus: Is the writing of African international legal histories possible at all, if the practices and customs applied in the handling of international affairs between African peoples, however defined, are not recorded? What can be said about pre-colonial African legal vocabularies and inter-state dispute mechanisms in this case? Given the fact that '[m]ost actors, contexts and events have been irredeemably lost', Martti Koskenniemi's warnings against the 'dangers of anachronism and conceptual imperialism' seem justified.[59] In this respect, the (European) terminology used by historians and legal scholars alike is telling. To refer to the quotations above, is it useful to draw a comparison between Frankish 'kingship' and the rise of kingdoms in West Africa? What do we understand better by establishing a 'parallel of African and European kingdoms'?[60] Where does comparison end and 'conceptual

[51] R. Oliver and J.D. Fage, *A Short History of Africa* (1962); see the review by G.N. Uzoigwe, 'A Short History of Africa by Roland Oliver, J. D. Fage', (1978) 11 *International Journal of African Historical Studies* 137, on the book's 'instant success'.

[52] B. Davidson, *The Africans: An Entry to Cultural History* (1969), 185, as quoted in Elias, *supra* note 6, at 13.

[53] Landauer, *supra* note 49, at 363.

[54] Elias, *supra* note 6, at 3 ('Chapter 1, The Contribution of Africa to International Law').

[55] Elias, *supra* note 6, at 13. On the challenges of the pre-colonial sources, cf. Jones, *supra* note 5, at 32–9.

[56] R. Habermas and M. Füssel (eds.), (2015) 23(3) *Historische Anthropologie*, 'Die Materialität der Geschichte'.

[57] J. d'Aspremont, S. Besson (eds.), *Oxford Handbook of the Sources of International Law* (2017).

[58] It is undoubtedly bad style to flag one's own work, but it is noteworthy that this author's *Naulila 1914. World War I in Angola and International Law: A Study in (Post-)Colonial Border Regimes and Interstate Arbitration* (2016), is apparently the first among 35 volumes in the *Studien zur Geschichte des Völkerrechts* series that contains maps and photographs – other than portraits; also several articles in (2018) 31 *Leiden Journal of International Law*, contain photographs which attests to a new openness to sources other than texts.

[59] Koskenniemi, *supra* note 40, at 170.

[60] Landauer, *supra* note 49, at 363.

imperialism' commence? On the other hand, it seems clear that it is not always possible to replace this European terminology. Replace it with what? 'One cannot write by stepping outside the professional vocabulary in which these stories are told and learned.'[61] Others go so far as to argue that historians of international law seem to have 'accept[ed] that international law is a European vocabulary'.[61]

There are attempts by historians to find new and different terminologies to overcome the colonialist heritage in the vocabulary they use. This is true in particular when it comes to finding the correct terminology for leaders of polities or states. In order to replace the language of colonial sources (chief, *kaptein*, etc.), historians have referred to terms used by the concerned African communities, such as '*omuhona*', or they resorted to general terms which avoided a direct comparative element with European institutions, such as 'big man'. Whether this is analytically successful remains to be discussed, however. Legal historians have repeatedly pointed to a conceptual 'state of emergency'. It is the 'crux' for historiography, wrote the constitutional historian Ernst Pitz, if it 'cannot substantiate the legal concepts, which it must use'.[63] When writing about African societies the problem arises that certain European categories of historical analysis are transferred and translated to African systems of order. Thus, there are institutions that are presupposed for any analysis of political systems, and therefore the Western historian of Africa seeks for a 'familiar constellation of king, nobility, church, and merchants'.[64] It seems a matter of academic integrity to admit that to annul this conceptual 'state of emergency' was hitherto not yet possible.[65]

In addition, it is important in the context of African historiography to point out sources other than texts. Linguistics and, most of all, archaeology are major 'source providers' for historians of Africa. The prominence of archaeological findings in the analysis of the continent's past (especially prior to the nineteenth century) is unmistakable, even though the fields of history and archaeology are not without a sense of disciplinary competition.[66] Legal historians should, thus, not hesitate to widen their research perspectives and methodologies in order to be able to learn from the insights of these disciplines. The long-established field of *cuneiform* law indicates how specialist legal historians can enrich the entire field with their insights.[67]

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[61] Koskenniemi, *supra* note 40, at 171.

[62] Martineau, *supra* note 12, at 335.

[63] E. Pitz, *Verfassungslehre und Einführung in die deutsche Verfassungsgeschichte des Mittelalters* (2006), 411. Es ist eine „Crux" für die Geschichtsschreibung, wenn sie „die Rechtsbegriffe, deren sie sich bedienen muß, nicht begründen kann".

[64] S. Feierman, 'Afrika in der Geschichte. Das Ende der universalen Erzählungen', in S. Sebastian Conrad and S. Randeria (eds.), *Jenseits des Eurozentrismus. Postkoloniale Perspektiven in den Ge-schichts- und Kulturwissenschaften* (2002), 50, at 63; see Pernau, *supra* note 18, at 8.

[65] G. Krüger, 'Der Löwe lagert unter der Schirmakazie. Der (mögliche) Beitrag der Afrikanischen Geschichte zu einer Geschichtswissenschaft als Verflechtungsgeschichte', (2014) 64 *Schweizerische Zeitschrift für Geschichte/ Revue Suisse d'Histoire*, 224, at 233 (Krüger speaks of 'Begriffs-U-Boote' and stipulates: 'Dieses Problem ist nicht zu lösen'.)

[66] J. Vansina, 'Historians, are archeologists your siblings?', (1995) 22 *History in Africa* 369; P. Robertshaw, 'Sibling rivalry? The intersection of archaeology and history', (2007) 27 *History in Africa* 261; see also the journal *African Archaeological Review*.

[67] R. Haase, *Einführung in das Studium keilschriftlicher Rechtsquellen* (1965); K. Radner and E. Robson (eds.), *The Oxford Handbook of Cuneiform Culture* (2011).

3. Still to be written: Arenas of 'internationality' and international law on the African continent

3.1. African regions in the historiography of international law

Decades ago Konrad Ginther, one of the European pioneers in his plea to include 'African cases and materials' in the teaching of and research about international law, argued for 'a new "wholeness" in the approach to international law'. In this context he spoke of the need to take into account 'new regions'. This quest for 'new regions' can be taken literally for research about African international legal histories as well.[68] 'Wholeness', then, must be taken in its spatial and temporal meaning in order to come closer to the academic goal of 'expanding histories of International Law'.[69]

The African regions considered most important in the historiography of international law so far have been: the 'Barbary Coast' region along the middle and western coastal regions of North Africa due to questions of piracy and slave trade; the African west coast for its relevance to the Atlantic slave trade; the Congo basin for its relation to the 'scramble for Africa' and the 'Congo Act' of 1885; and finally, those regions along the coast and further inland whose rulers entered into treaties with European powers, mostly in the decades from 1870 to 1890.[70] Considering these 'geographies of research' of international lawyers,[71] at least two of these research subjects are directly related to European colonialism in Africa. However, the above-mentioned diagnosis of Jacob Ajayi of colonialism as *An Episode in African History*[72] must also be read as an invitation to look for other 'episodes'.

It is a matter of course that international law treatises in their introductions refer to the 'roots of international law' as to be found 'in the ancient histories of the Egyptians, Jews, Greeks, and Romans'.[73] All of these four peoples have dwelled on the African continent (admittedly only in its northern part). However, even works that focus particularly on the role of Africa in international law mention the pre-colonial part of these histories only in passing. For instance, Elias, probably still the most-cited legal authority in the field,[74] devoted merely 11 pages of his 250-page volume, *Africa and the Development of International Law*, to 'Ancient Africa' and 'Indigenous African States to 1500 AD'. (Other histories of international law understood as a *jus gentium europaeum* naturally do not concern themselves with these subjects at all.) Elias was, like other 'non-Western scholars … [eager to] assert claims on behalf of and, fundamentally, within their own locality to a place in

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[68] K. Ginther, 'The Teaching of International Law under a Developmental Aspect. The Relevance of African Cases and Materials', in K. Ginther and W. Benedek (eds.), *New Perspectives and Conceptions of International Law. An Afro-European Dialogue* (1983), 216, at 224; Ginther, *supra* note 23, at v.

[69] M. Koskenniemi, 'Expanding Histories of International Law', (2016) 56 *American Journal of Legal History* 104.

[70] See 'List of Treaties', in Alexandrowicz, *supra* note 10, 129–41.

[71] See N.M. Rajkovic, 'The Visual Conquest of International Law. Brute Boundaries, the Map and the Legacy of Cartogenesis', (2018) 31 *Leiden Journal of International Law* 267, at 288.

[72] Ade Ajayi, supra note 9.

[73] J. Dugard, *International Law. A South African Perspective* (2001), 10.

[74] See Landauer, *supra* note 49, and the other contributions in the same issue of the *Leiden Journal of International Law* (Issue 2, Vol. 21 (2008)).

law's historical construction of its own narrative'.[75] Yet, his historiographical efforts went only so far. Using rather sketchy footnotes in his chapter on 'Ancient Africa', he concerned himself mostly with Carthage and the Portuguese travelers, but he also made allusion to 'historical accounts of the inter-relationships between the East African littoral and the Arabs, the [Indians and] Chinese and the Europeans, as well for purposes of trade as for exploration and adventure'.[76] The connection between these topics and the 'development of international law' is not laid out by Elias. He was more interested in situating his 'narrative of Africa at the intersection of analyses of world history, legal consciousness, and legal pluralism'.[77] However, these 'inter-relationships' attest undoubtedly to the above-quoted 'internationality' in African history.

3.2. Putting new regions and periods on the map

Given the limited regional scope of research on Africa in the historiography of international law, it is about time to ask for other 'contacts', other arenas of 'internationality' in Africa's past[78] and use contacts between African and non-African peoples as a guide towards potential avenues of such hitherto unexplored spaces. These contacts reach back very far in history. Here, only a few arenas will be cursorily mentioned: the Red Sea area and Ethiopian-Arab relations starting in the pre-Christian period; the Indian Ocean rim and, most of all, the Yemeni lordship along the Swahili Coast; and finally, the case of nineteenth century Ethiopia and the question of its admittance to the 'family of nations', which opens a perspective that connects African history with the development of European international law.

3.2.1. The Southern Red Sea connection

The ancient Egyptian and Near Eastern dimension of the history of international law has been referred to repeatedly. Amnon Altman traces the *Earliest Recorded Concepts of International Law (2500-330 BCE)* in this region.[79] For example, the Pharaonic international treaties of alliance with Middle-Eastern partners count among the oldest international law documents. A prime example is the international correspondence of Amenophis III and Akhenaten, dating from 1400 BC, detailing individual provisions and their acceptance by Egypt's alliance partner.[80]

The history of the regions further south at the Horn of Africa is far less explored with regard to their relevance for the history of international law, even though over the last millennia the political history of the southern edge of the Red Sea also shows clear signs of 'internationality'.[81] Over recent decades, archaeologists and

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75 Toufayan, *supra* note 7, at 32.
76 Elias, *supra* note 6, at 5.
77 Toufayan, *supra* note 7, at 36, 44 (referencing Ali Mazrui).
78 Gathii, *supra* note 11, at 411.
79 A. Altman, *Tracing the Earliest Recorded Concepts of International Law. The Ancient Near East (2500-330 BCE)* (2012).
80 R. Westbrook, 'International Law in the Amarna Age', in R. Cohen and R. Westbrook (eds.), *Amarna diplomacy. The beginnings of international relations* (2000), 28–40; see also L. Török, *Between two worlds. The frontier region between Ancient Nubia and Egypt 3700 BC – 500 AD* (2009).
81 G. Hatke, *Africans in Arabia Felix. Aksumite Relations with Himyar in the Sixth Century CE*, Ph.D. thesis, Princeton University (2011).

linguists have found and explored a 'small corpus' of Sabean scriptural testimonies in the Ethiopian highlands originating in the first millennium BC.[82] They have established a massive cultural transfer from South Arabia into the Ethiopian highlands. Archaeologists and linguists do not hesitate to speak of 'states' in the region.[83] We know, however, very little about the political and diplomatic arrangements found between the Sabeans and the (former) rulers of Tigray in Ethiopia. What is evident from Sabean sources is that the rulers (*Malik*) were willing and capable to undertake diplomatic initiatives in order to further their trade interests (secure passage for incense caravans to the Mediterranean Sea) to the north with the Assyrians. The texts found so far in the Sabean heartland, such as the *Gesta of Yiṯaʿamar of Saba* (found in 2005 in Sirwah, dating from around 715 BC), are of special interest to legal historians insofar as they not only refer to campaigns (unfortunately not on the African side of the Red Sea) or construction projects. Rather, they contain 'legal documents such as definitions of borders', and also mention the acquisition of territory and people, property rights and ownership transfer (including land sale) after the king's conquest, questions of retaliation, and legality. The 'alliance' and 'treaties' with those communities conquered were concluded formally with a set phrase that reiterated the claim to power by reference to Saba's main god.[84]

3.2.2. The Indian Ocean connection: Trade and rule in East Africa

In recent years the (international and transnational) history of the Indian Ocean rim has received considerable attention by researchers around the world.[85] Concentrating on the East African coast, it will suffice here to point to the connections (in the first millennium) between Africans and traders from Southern Arabia and India as another arena of African international legal histories, in particular as it concerns foreign rule and the exercise of 'sovereignty' over distant territories.

According to the Graeco-Egyptian *Periplus Maris Erythraei*, a travelogue for merchants written in the first century AD, the 'country' south of the Red Sea, the coastal region in present-day Somalia, was 'not subject to a King, but each market-town is ruled by its separate chief'. This must, however, not mean that the East African region is of no interest to those interested in 'international legal histories'. The authorities of the coastal territories summarily called 'Azania' in the *Periplus*, located south of the Somali coast, were described in more detail:

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[82] I. Gerlach (ed.), *South Arabia and its Neighbours. Phenomena of Intercultural Contacts (14. Rencontres Sabéennes)* (2015).

[83] N. Nebes, *Der Tatenbericht des Yiṯaʿmar Watar bin Yakrubmalik aus Ṣirwāḥ (Jemen). Zur Geschichte Südarabiens im frühen 1. Jahrtausend vor Christus. Mit einem archäologischen Beitrag von Iris Gerlach und Mike Schnelle* (2016) (Epigraphische Forschungen auf der Arabischen Halbinsel, Bd. 7), 72.

[84] N. Nebes, *Könige der Weihrauchstraße. Zur Geschichte Südarabiens und Äthiopiens im frühen 1. Jahrtausend vor Christus* (2014), 31, 38–43 (43 on the '*Bundesschließungsformel*'); N. Nebes, 'Epigraphic South Arabian inscriptions in Arabia', (2007) 3 *Encyclopaedia Aethiopica*, at 153 f.; see H. Parzinger, 'Vor und Frühgeschichte', in H.J. Gehrke (ed.), *Die Welt vor 600. Frühe Zivilisationen* (2017), 41, at 182.

[85] G. Campbel (ed.), *Early Exchange between Africa and the Wider Indian Ocean World* (2016); H. Dalton, J. Salo, P. Niemelä and S. Örmä, 'Frederick II of Hohenstaufen's Australasian Cockatoo. Symbol of Detente between East and West and Evidence of the Ayyubids' Global Reach', (2018) 35 *Parergon* 35.

> Along this coast [near the market-town Rhapta, in the vicinity of the islands Zanzibar and Mafia] live men of piratical habits ... under separate chiefs for each place. The Mapharitic chief governs it under some ancient right that subjects it to the sovereignty of the state that is become first in Arabia. And the people of Muza now hold it under his authority, and send thither many large ships, using Arab captains and agents, who are familiar with the natives and intermarry with them ...[86]

This hint at foreign rule along the East African coast is most relevant, as it points to the Red Sea port town Muza in the Ma'afir region, Yemen. The Yemeni rulers are said to have not only controlled the East African trade (e.g., in ivory) with the Mediterranean world, but possessed 'sovereignty' over this far-flung place two thousand kilometers south of Yemen.[87] However, it is hitherto unknown what exactly is meant by the term translated into English as 'sovereignty'; it is unknown, for example, whether it entailed rights to tax and obligations to defend the territory.

3.2.3. Ethiopia – an African sovereign state 'to be admitted to the Family of Nations' [88]

In the writings of Charles Henry Alexandrowicz about Africa, the history of Ethiopia plays, considering the index-entries of *The European-African Confrontation*, a prominent role.[89] The 'encouraging' story of the only African state to withstand the onslaughts of colonialism is indeed a fascinating one.[90]

The contacts between Ethiopian and European rulers reach back at least to the European Middle Ages. The Vatican, Portugal, and Russia count among the states having the oldest ties with this African state.[91] There is indeed no dearth in (legal) sources about international relations between European and Ethiopian governments, which were hampered by distance rather than lacking interest. Still, in the late nineteenth century, Europeans and Americans were hesitant to recognize Ethiopia as a sovereign member of the 'family of nations', to use a contemporary expression.[92] During a period when Africans were generally relegated by European politicians and academics to the place of 'the uncivilized', Ethiopian rulers, despite their Christian faith, found it challenging for their country to be given a place among the tables of the 'civilized' states. Still, in 1884, Ethiopia's Emperor Menelik II signed a treaty with the British over their respective spheres of influence. In 1889, a similar treaty was concluded with the Italians.[93] Considering these

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[86] L. Casson, *The Periplus Maris Erythraei (Greek-English)* (1989), 61 f. (cpt. 14; 16).

[87] T. Power, *The Red Sea from Byzantium to the Caliphate. AD 500–1000* (2012); R.L. Pouwels, 'Eastern Africa and the Indian Ocean to 1800. Reviewing Relations in Historical Perspective', (2002) 35 *International Journal of African Historical Studies* 385; R. Mauny, 'Le périple de la mer Érythrée et le problème du commerce romain en Afrique au sud du Limes', (1968) 38 *Journal de la Société des Africanistes* 19.

[88] C.H. Alexandrowicz, 'The Partition of Africa by Treaty (1974)', in D. Armitage and J. Pitts (eds.), *C. H. Alexandrowicz, The Law of Nations in Global History* (2017), 230, at 231.

[89] Alexandrowicz, *supra* note 10, at 174. The index of the collected works of C.H. Alexandrowicz gives a similar impression. See D. Armitage and J. Pitts (eds.), *C. H. Alexandrowicz, The Law of Nations in Global History* (2017), 424.

[90] S. Rubenson, 'Some Aspects of the Survival of Ethiopian Independence in the Period of the Scramble for Africa', (1961) 1 *University College Review* 8; S. Rubenson, 'The Protectorate Paragraph of the Wichale Treaty', (1964) 2 *Journal of African History* 243; H. Erlich, *Ethiopia and the challenge of independence* (1968).

[91] L. Prijac (ed.), *Foreign relations with Ethiopia. Human and diplomatic history* (2015).

[92] L. Oppenheim, *International Law* (1905), 108.

[93] H. Elliesie, 'Treaties and Multilateral Conventions', (2014) 5 *Encyclopaedia Aethiopica* 537; H. Erlich, *Ethiopia and the challenge of independence* (1968); H. Erlich, *Ethiopia and Eritrea during the scramble for Africa. A political biography of Ras Alula 1875-1897* (1982).

processes of an Ethiopian–European *rapprochement* and Menelik's own expansionist agenda, historians speak of 'Ethiopia's success ... to have actively participated as the only African state in the partitioning of the continent'.[94] In 1891, Menelik boldly announced to the European rulers: 'I have no intention at all to remain an indifferent spectator while distant powers take it upon themselves to divide Africa.'[95] He saw himself as a monarch of equal standing with his European brothers. In this spirit he immediately acceded to the Act of Brussels (1890) in the year of its enactment. The Act was 'entirely concerned with African problems' and Ethiopia (and two years later also Liberia) 'appear[s] here as contracting parties and active participants in the development and application of the Official Guardianship principle as proclaimed by the Berlin Conference [in 1885]'.[96] Yet, Ethiopia's ultimate success is explained by Menelik's military victory against the Italians in 1896. Following this victory and a treaty with Italy recognizing Ethiopia's sovereignty, Menelik followed a 'carefully constructed, non-committal foreign policy'. His goal was to strengthen his hard-won sovereignty and to use to Ethiopia's advantage the competition of his three European neighbours.[97] Given that Ethiopia bordered six different colonial territories of three European powers, around 1900 the international agreements about the exact course of the borders was a main task of the Ethiopian officials dealing with foreign policy.[98]

Several European states and the United States now began to consider Ethiopia as a potential ally. 'Ethiopia stipulated diplomatic exchanges in treaties'.[99] Britain, France, Italy, Belgium, Russia, the United States, Germany, and later Turkey set up Legations in the new capital Addis Ababa and extended their consular jurisdiction over Ethiopia. From now on, Ethiopia was indisputably on the map of international politics. The victory over the Italians was its *billet d' entrée* into the family of 'civilized nations' – where the 'chief standard of civilization was, of course, power'. Or, as an often-quoted Japanese diplomat put it cynically after his country's victory over Russia in 1905: 'We show ourself at least your equal in scientific butchery, and at once we are admitted to your council tables as civilized men.'[100] Alexandrowicz depicted this absurdity in similar terms in his legal study,

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[94] C. Marx, *Geschichte Afrikas. Von 1800 bis zur Gegenwart* (2004), 69.

[95] Menelik to French President Carnot, 21 April 1891, as quoted in R. Caulk, *'Between the Jaws of Hyenas'. A Diplomatic History of Ethiopia (1876–1896)* (2002), 269.

[96] Alexandrowicz, *supra* note 10, at 116.

[97] H.G. Marcus, 'The Foreign Policy of the Emperor Menilek 1896–1898. A Rejoinder', (1966) 7 *Journal of African History* 117, at 122.

[98] B. Tafla, *Ethiopia and Germany: Cultural, Political, and Economic Relations, 1871–1936* (1981), 128 f.; see Franco-Ethiopian agreement of 29 and 30 January 1897, DDF XIII: 147; [British] Treaties with Ethiopia, and with Ethiopia and Italy respecting Frontiers between the Soudan, Ethiopia, and Eritrea, 15 May 1902. P. P. Cd. 1370. Treaty Series, No. 16. (1902); [British] Agreement with Ethiopia respecting Frontiers of British East Africa, Uganda, and Ethiopia, 6 December, 1907. P. P. Cd. 4318. Treaty Series, No. 27 (1908); see the map of 1908 detailing the boundaries of Ethiopia according to the relevant treaties reprinted in B. Zewede, 'Boundaries with the Sudan', (2003) 5 *Encyclopaedia Aethiopica*, 613; H. Marcus, *The Life and Times of Menelik II: Ethiopia 1844–1913* (1995), 179–90.

[99] Alexandrowicz, *supra* note 10, at 109; On 16 November 1909 President Fallières promulgated a law extending consular jurisdiction to French citizens and protégés in Ethiopia, see (1910) 16 *Revue Générale de Droit International Public* 680.

[100] Quoted by R.P. Anand, 'Influence of History on the Literature of International Law', in R.P. Anand, *International Law and the Developing Countries. Confrontation or Cooperation?* (1987), 1, at 29.

stating that 'when Ethiopia defeated the [Italians in 1896], she became at once a civilised country'.[101]

4. Conclusion

'In most academic literature', writes Gbenga Oduntan, 'it would seem as if international laws have never had roots in Africa.'[102] This may explain why writing about the 'periphery' or 'semi-periphery' of international law seems to be, considering a number of recent contributions, still in urgent need of justification. Some authors employ an almost apologetic tone towards their readers, to whom they apparently feel obliged to explain why they should continue reading about the 'periphery'. Arnulf Becker Lorca, for example, cautions: 'One may think about the history of international law in Africa, Asia, Latin America or Russia as minor or local histories.' He continues to show that these histories are more than 'non-Western cultural heirloom', but 'local stories [that] are part of a common history of international law'.[103] With regard to 'Africa', others go so far as to characterize the mere writing about 'Africa's contribution to the history of international law' as 'an empowering act'.[104] It seems, therefore, necessary to ask whether the Hegelian narrative on Africa and its alleged 'irrelevance' for global history and philosophy[105] is still looming large in Western minds, and thus the mere fact of mentioning 'Africa's contribution' can be stylized as 'an empowering act'.

However, more important than such political epithets, a thorough, source-based analysis of the past that goes beyond the somewhat parochial paradigm of 'Africa's contribution to the history of international law' is needed. This includes due consideration of the methodological traps and risks of projecting European international law categories onto Africa's past. And still, when asked 'why does th[is] history matter?'[106], the answer given by Martti Koskenniemi when considering how to deal with Eurocentrism holds true for this research subject too:

> Histories of non-European worlds are needed to illuminate the diversity of human experience and to create critical distance towards the intuitive naturalness of stories we have learned. So far, the attention of postcolonial critics has been perhaps more on the critique of European practices than on examining alternative institutions and vocabularies.[107]

Laying bare these institutions and vocabularies is then another stepping stone in the monumental task awaiting the social sciences to 'provincialize Europe'.[108]

The previous section on the three African 'arenas' takes up the challenge posed by Elias and others following him in the attempt 'to break new ground by bringing to light aspects of inter-state law which has existed in Africa prior to the [European]

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[101] Alexandrowicz, *supra* note 10, at 22.
[102] Oduntan, *supra* note 8, at 6.
[103] Becker Lorca, *supra* note 19, at 13.
[104] Martineau, *supra* note 12, at 335.
[105] Dübgen and Skupien, *supra* note 4, at 9.
[106] Martinez, *supra* note 25, at 236.
[107] Koskenniemi, *supra* note 40, at 171.
[108] D. Chakrabarty, *Provincializing Europe. Postcolonial thought and historical difference* (2000).

scramble for colonial territories'.[109] Evidently, these histories are barely part of the development of the *jus gentium europaeum*, and thus historians of international law hitherto wrote the histories they wrote without due consideration to the developments in Africa that did not involve or affect the *jus gentium europaeum*. By describing 'the East African littoral' as an ancient arena of 'inter-state law which has existed in Africa prior to the [European] scramble for colonial territories', historians shed light on the possibilities and perspectives of African 'internationality'. By doing so they can write international legal histories beyond the narrative frame set by European colonialism and its involvement with international law. Many other arenas of 'internationality' in Africa await further research.

[109] A.K. Mensah-Brown (ed.), *African international legal history (United Nations Institute for Training and Research)* (1975), 1, quoted in Gathii, *supra* note 11, at 417.