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Laurence Burgorgue-Larsen, *Les trois Cours régionales des droits de l'homme* in context (2nd edn, Paris Pedone 2023) 598.

A MODEL OF DOCTRINAL PLURALISM?

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Some doctrinal works participate so significantly in the understanding of legal phenomena that they become unmissable. Others become essential on account of the reflection they develop or due to the originality of their approach and thought. The work reviewed here belongs to those two categories, both because the information it contains on the regional courts of human rights is precise, complete and invaluable, and because the approach which underlies it is fundamental and belongs to a necessary movement of renewal of the theory of international law in general and of international human rights law in particular[2].

Les 3 Cours Régionales des Droits de l'Homme in Context – *La Justice qui n'Allait pas de Soi* was written by Professor Laurence Burgorgue-Larsen. Adopting a fiction-like and fluid style, the author offers the reader an immersion into the regional courts of human rights on the African, American and European continents. Far from simply writing a comment on their case law or a description of their institutional architecture, she provides a fascinating critical analysis of each aspect of their creation and activities. Her ambition – which is obviously successful – of offering a global and at the same time subtle vision of the phenomenon is an invitation for the reader to set out on a voyage around the world and through time, starting from the middle of last century, and to live through the foundational moments of the three courts that are the focus of the book. After the 'preliminary chapter' – which is only so in name, so enlightening are its developments on the specific features of each court –, the book is structured around the courts' 'evolution', 'interpretation' and 'application' of the human rights whose protection they are entrusted with, which allows to very closely follow their realisations and the obstacles they face. Such proximity with the object of the study is made possible by the experience of the author in that field which places her so close to the inside – though she presents herself as an *outsider* – that she masters all its inner workings and subtleties. Laurence Burgorgue-Larsen is one of the pioneers of the

1. Julie Ferrero is a Professor of Public Law at Jean Moulin Lyon III University.
2. The recent publication of its second edition, less than three years after the first, demonstrates the topicality of the work and the success of the approach.

study of the Inter-American Court of Human Rights in France[3] and of the African Court upon which she writes a chronicle in the Human Rights Quarterly. There is no need to demonstrate how well she masters European human rights litigation either, which is shown by the long list of her publications in that field.[4] This book itself however is the fruit of a maturation of her thought, of the adoption of a perspective on the multiple realities that she observes, on the evolution of the systems she has studied and those who make them work that only such considerable expertise may offer. From a strictly formal point of view, the impressive thematic bibliography which accompanies the text must be acknowledged and is already an invaluable tool for whoever starts any research in the field of international human rights law.

However, beyond those advantages which show the quality and usefulness of the book here reviewed, the main praise should be reserved for its scope. The global holistic approach of the author accounts for a material, institutional and above all intellectual de-compartmentalisation which, though it is specifically tackled with in the second part, could well be the common thread of her work. Indeed, the text is important for the understanding of the functioning of international human rights law today but also for the apprehension of the movements at play within it and its uncertainties at a time when rights are being more challenged, or even threatened, than ever. Other issues, which are as important from a doctrinal point of view, lie under the text. In the introduction, the author makes a promise which is far from trivial – that of avoiding as much as possible the epistemological biases inherent in a European observer of those phenomena, while admitting that some of them may remain.[5] At a time when critical theories call for the deconstructing of dominant discourses, when the Western prevalence on international law is being questioned even within the teaching of the discipline,[6] the commitment of the book which places on the same level three geographical realities and three different contexts within a real comparative approach is important. Without making it an explicit claim, the discourse participates in a necessary movement of de-compartmentalisation in that it removes 'administrative or psychological partitions which prevent relations among several intellectual disciplines, or two or several human groups, bodies or countries.'[7] The following lines aim not to comment on the considerable mass of information which is fluidly provided in a text that sometimes reads like a novel[8] and is already considered to be a reference in its field, but to underline the importance of the doctrinal approach that underlies it. The de-compartmentalised scientific approach of the author is an invitation to reconsider the role and responsibility of the researcher and professor in the building of the discourse, and the values and biases the latter conveys. Beyond the study of the de-compartmentalisation of the three systems under study, however, the perspective that is broadly adopted is that of a pluralism which has been repeatedly called for as an antidote against persisting Eurocentrism, in international law in

3. See in particular L. Burgorgue-Larsen, A. Ubeda De Torres, *Les grandes décisions de la Cour interaméricaine des droits de l'Homme* (Bruylant 2008).
4. <https://www.pantheonsorbonne.fr/page-perso/burgorguel/> accessed 5 november 2023.
5. 19.
6. See C. Schwobel-Patel, 'Teaching International Law from a Critical Angle', vol. 2, (2013) *Recht En Methode*, 67; C. Schwobel-Patel, *Teaching International Law*, Oxford (OUP 2018).
7. Centre national de ressource textuelle et lexicale, <https://www.cnrtl.fr/definition/decloisonner> accessed 5 november 2023.
8. See in particular the developments on the great men and women who have written the history of the regional protection of human rights, eg, 220ff.

general and in human rights in particular, and which affects the normative production and international institutions as much as teaching and research in that field.[9]

To underline it, the first part of this review will provide an analysis of the de-compartmentalisation of the law (I) and the second will highlight the doctrinal de-compartmentalisation in which this book participates (II).

I. De-compartmentalising the law

The 'de-compartmentalised' approach of the book directly derives from the studied phenomena which offer the observer multiple examples of bridges between the different regional systems,[10] from a normative point of view (A.), as well as from an institutional one (B.).

A. Normative de-compartmentalising: the corpus iuris *of international human rights law*

Among the key features of the analysis conducted in *Les 3 Cours Régionales des Droits de l'Homme* in Context, the developments about interpretation are unquestionably some of the most important. Rather than taking stock of the techniques used by judges, the second part of the book first undertakes to demonstrate the existence of an interpretative de-compartmentalisation and its effects. That lens allows not only to highlight the mechanics working in each courtroom, but, more importantly, to shed light on a general movement that involves both progress and tension. That interpretative de-compartmentalisation is presented as 'the opening onto external sources. A global opening which does not take much into account the nature of the tools that are being used. Soft and hard work alongside one another.'[11] It is ultimately an extremely liberal variant of the rule of Article 31 § 3c VCLT pursuant to which the interpretation of a provision must take into consideration 'any relevant rules of international law applicable in the relations between the parties'. However, the doctrine has already highlighted the potential of 'systemic integration' implied in this article and the fact that human rights courts have appropriated and pushed it to its breaking point. That principle of systemic integration may be defined, following Vassilis P. Tzevelekos, as the method consisting in interpreting a provision 'in a manner that safeguards harmony within the broader normative environment – that is, the international legal order.'[12] Two major consequences ensue from that interpretative dynamic. First, it participates in a form of substantial harmonisation of the protected rights which allows to put into

9. See on that matter M. M. Mbengue, O.D. Akinkugbe, 'Countering and pluralizing the research, teaching, and practice of Eurocentric international law' in A. van Aaken, P. d'Argent, Lauri Malksoo, J.J. Vasel (eds), *The Oxford Handbook of international law in Europe* (OUP 2023).
10. J. Cazala, 'Le rôle de l'interprétation des traités à la lumière de toute autre "règle pertinente de droit international applicable entre les parties" en tant que "passerelle" jetée entre systèmes juridiques différents' in H. Ruiz Fabri, L. Gradoni, *La circulation des concepts juridiques: le droit international entre mondialisation et fragmentation* (Société de législation comparée 2009) 95-136.
11. 255.
12. See in particular V.P. Tzevelekos, 'The use of article 31 (3) (C) of the VCLT in the case law of the ECtHR: an effective anti-fragmentation tool or a selective loophole for the reinforcement of human rights teleology: between evolution and systemic integration', vol. 31, (2009-2010), *Michigan Journal of International Law* 621-90.

perspective not only the assumption of the supremacy of a system over the others, but also that of a fragmentation of the legal *corpus* into different regional spheres. It then contributes to the final scrapping of old worries of case law inconsistencies resulting from the proliferation of international courts that some have mentioned.[13] Then, and above all, its plays a fundamental role in the power struggle which opposes States and international courts. Resorting to the rules and case law from other systems is at the same time a factor of legitimisation of some organ's interpretation, which gives it a stabler foundation than an isolated innovation, but it is at the same time a source of tension for the High contracting Parties which are little prone to submit to the influence of systems they do not belong to.

The Inter-American Court was the first to make its conception of a universal *corpus iuris* of human rights its hallmark. It has indeed considered for a long time that the American Convention is an integral part of a broader normative system the only aim of which is the protection of the human person.[14] Judges would then have the possibility to freely 'pick and choose' from that normative set, which includes the case law of specialised bodies working together towards a final objective. That systemic integration pushed to extremes is realised in a process of *pro homine* interpretation which is characteristic of the Inter-American Court. That is what allowed it for example, on the occasion of the important *Villagran Morales* case, to consider that the American Convention and the New York Convention on the rights of the child – which was outside its regional system – were part of the same *corpus juris* on the protection of children, which in turn gave it the possibility to fill in the content of the first based on the provisions of the second.[15] Although each text offers specific foundations for this approach and though it is practised differently by each court, it is generalised today. While the African approach is the most recent one, the European has been the timidest. However, it is comfortable with its openness today, as shown in the recent case *Fedotova v. Russia*[16] in which, in order to support a position on the legal acknowledgement of same-sex couples that was already recognised in Europe, it referred to the opinion of the Inter-American Court on gender identity, equality and non-discrimination against same-sex couples as a vehicle of additional legitimacy.[17]

Consequently, and beyond the specificities of each system, the author emphasises the common within the singular, which are reconciled through this fortunate de-compartmentalisation.[18] It is at the same time a means to bypass the obstacle of the usual dialectics which opposes universalism and regionalism and/or relativism. By admitting that unity within diversity, the de-compartmentalised approach offers a third path which also has consequences on the institutional level.

13. G. Guillaume, 'Multiplication des instances judiciaires internationales: perspectives pour l'ordre juridique international', *Discours du Président de la Cour internationale de Justice prononcé devant la Sixième Commission de l'Assemblée générale des Nations Unies*, 27 octobre 2000.
14. *'Street Children' (Villagran-Morales* et al.*) v. Guatemala*, Judgement, Inter-American Court of Human Rights, Series C No. 63, §194 (19 November 1999) (Merits).
15. *'Street Children' (Villagran-Morales* et al.*) v. Guatemala,* Judgement, Inter-American Court of Human Rights, Series C No. 63, §194 (19 November 1999) (Merits).
16. *Fedotova and others v. Russia*, ECHR, Judgment (Grand Chamber) of 17 January 2023 (application N^{os} 40792/10, 30538/14 and 43439/14) § 176.
17. *Gender identity, and equality and non-discrimination of same-sex couples*, Advisory opinion OC-24/17, Inter-American Court of Human Rights (24 November 2017).
18. 293ff.

B. Institutional de-compartmentalising: the dialogue of regional courts

The interpretative dialogue which is highlighted in the second part of the book has progressively woven institutional links between the three courts which the author instils throughout the text and which nurture a global movement of de-compartmentalisation within international human rights law.

First, Laurence Burgorgue-Larsen reveals the background to the establishment of meetings among regional judges. Many lessons can be drawn from that first-hand tale of the progressive institutionalisation of the links among judges since it allows to measure their progressive familiarisation to the 'other', which renders continental isolation impossible. From its informal beginning at the Declaration of San José in 2018, which formalised the creation of a permanent forum of institutional dialogue between the three courts, the story of that intercontinental connection shows the opening up of the courts themselves. On the occasion of the first International Human Rights Forum in Kampala in 2019, the three courts adopted a Memorandum of Understanding aiming to deepen and strengthen the established institutional dialogue.

Then, that institutional opening was fostered by a substantial dialogue among the courts that it fed in its turn. The interpretative de-compartmentalisation which has already been highlighted at a normative level entails, on the institutional level, what Anne-Marie Slaughter calls 'judicial globalisation',[19] or the emergence of a 'global community of courts',[20] of which regional human rights law is the epitome. It is the realisation that courts 'interact quasi-autonomously with other courts – national and international. They create information networks. (…) The result is a growing and overlapping set of vertical and horizontal networks that together establish at least the beginnings of a global legal system.'[21] That dialogue then establishes, among human rights judges, a real movement of cross-fertilisation and beyond it, the start of an international system of protection of human rights. That observation is in accordance with the intuition of Syméon Karagiannis according to whom 'A fruitful dialogue among international judges placed, in theory, on the same level may come into existence. One's boldness making the other bold themselves, "global" case law may have a good chance of adapting to circumstances which are increasingly changeable.'[22] It is indeed a technique with a strong evolutionary potential, since 'The interactions among the norms are accompanied by a movement of the relevant *corpus* the ones in relation to the others.'[23] That 'cross-breeding'[24] indeed implies exporting changes, developments and evolutions, in a circular relation among the regional courts of human rights.

Such institutional convergence does not erase the distinctive features of each system which is accounted for in detail. That comparative analysis ventures sometimes up to the boundaries of the judicial sociology of the men and women who have marked those systems, whose portraits are written along the developments, and who have exercised a crucial influ-

19. A.-M. Slaughter, 'Judicial globalization', (1999-2000), vol. 40, *Vanderbilt Journal of International Law* 1103-124.
20. A.-M. Slaughter, 'A global community of courts', (2003), vol. 44, N° 1, *Harvard Journal of International Law* 191-219.
21. A.-M. Slaughter, *A new world order* (Princeton University Press 2005) 69.
22. S. Karagiannis, 'La multiplication des juridictions internationales: un système anarchique?' in S.F.D.I., *La juridictionnalisation du droit international* (Pedone 2003) 153.
23. S. Turgis, *Les interactions entre les normes internationales relatives aux droits de la personne*, *Les interactions entre les normes internationales relatives aux droits de la personne* (Pedone 2012) 506.
24. ibid.

ence – which has rarely been so clearly assessed as in those lines. The book finally offers a comprehensive reading grid of the institutional diversity of the three systems based on multiple explanatory factors integrating the geopolitical[25] and diplomatic context,[26] the institutional choices,[27] the list of protected rights,[28] and the relation with the States parties[29] and non-State actors.[30] That overview shows the merits of the defended thesis according to which those phenomena are not fundamentally different nor exactly identical, but are manifestations adapted to different contexts, necessities, stories and cultures. Here again the spectre of Eurocentrism fades away and an inclusive vision of court practice – which welcomes diversity without falling into relativism and resists the temptation of making one of the objects of the study a model – emerges.

The comparative approach of the institutional aspects also reveals that the issues that regional judges face are recurrent. While State distrust is a general phenomenon the workings and stakes of which have been under the spotlight for some years now, that of the nomination of judges is more rarely described. From a detailed analysis of the statutes and practices of each court, the author emphasises, without using doublespeak, a recurring important loophole in the very composition of those bodies linked to the mode of recruitment of their main actors, which derives from the persisting discretionary power of the State in the process. Though the Inter-American and African systems value expertise, few indications are given as to the modes of designation of the candidates, which leaves ample room for friendship and political relations. The European system claims it is transparent but does not really manage to be so. French practice is not an exception. Indeed, while many countries alternatively choose among judges and university professors to take national positions on international courts, France continues, except in a few cases,[31] to exclusively nominate judges who are closely connected to the Ministry of Foreign Affairs and/or *Conseil d'État*. *Le Monde* newspaper revealed the fraud disguised as a national selection which always led to the alternative appointment of a member of the *Conseil d'État* and the *Cour de Cassation*. Those internal machinations inevitably allow a lingering doubt as to the independence and impartiality of the nomination process and, even more prejudicial, as to the degree of expertise of the selected candidates.

Finally, the last title of the book, which deals with the application rather than the execution of law and case law, shows that institutional de-compartmentalisation by highlighting the development of multiple synergies. The respect of treaty rights and court decisions is indeed the result of the joint action of several actors who are often left aside or considered separately. The *tour de force* of those developments lies in the connection of the different strategies at play which include not only the regional court/national authorities dynamic but also the action of non-State actors like NGOs, diplomats and the academic world. The author even analyses the mechanisms of the national coordination of the execution of the decisions and here again draws a complete map of it, to the slightest detail of the phenomena under study. Thus, 'It is a whole in which the main institutions of the regional systems, the constituted powers of the States, the national human rights institutions and the actors of

25. 22ff.
26. 43ff.
27. 119ff.
28. 167ff.
29. 278ff and 373ff.
30. 415ff.
31. Which were not really exceptions, since the rare academics who filled those positions also had a political stature – like Suzanne Bastid, René Cassin, Pierre-Henri Teitgen or more recently Jean-Pierre Cot.

civil society are all concerned and connected, in varying degrees, and aim to reach the efficient and fast implementation, marked by a spirit of loyal cooperation, of the decisions of the regional courts of human rights.'[32]

II. De-compartmentalising the doctrine

Beyond the analysed institutions and practice, the scope of the book is broader than its object of study or even international law itself. Indeed, the chosen approach is that of unapologetic pluralism (A.) which shows the integration of different criticisms, especially post-colonial ones, both of international law and the doctrine (B.)

A. A pluralistic approach of international human rights law

As has already been said, the author announces in the introduction that she is aware that her discourse is necessarily situated.[33] That awareness and the precautions which surround the reflection to leave aside the possible intellectual biases linked to an origin or to the belonging to a doctrinal analysis are the very condition of a truly comparative approach. They place the book within a pluralistic movement which implies a decentralisation from Europe which is especially important for today's international human rights law.

To start with, it may be appropriate to remember that the legal doctrine, as a discourse on the law, and like any discourse, is necessarily located. Impregnation by social sciences has allowed to reveal the myth of its neutrality and to replace it within its social, historical, ideological and even political context.[34] A universalist and homogeneous perception of the discourse on the law clashes with 'epistemological nationalism', described in particular by Anne Peters as the adoption of positions linked to the initial training of the authors and the interests of their national States,[35] which is revealed in the completely diametrically opposite analyses that jurists from different traditions make of the same international facts.[36] The diversity in the points of view on the same topic has led some researchers to question the international nature of international law given how different its understanding and analysis are depending on the contexts.[37] The change from a philosophy of knowledge centred on the subject to a philosophy centred on language at the end of the 19th and beginning of the 20th centuries, in particular following Ludwig Wittgenstein's work,[38] triggered the 'linguistic turn'. That movement which appeared in social sciences before the science of law, revealed the mediatory function of language and the extent to which it conditions and

32. 371.
33. 19.
34. See in particular M. Koskenniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870-1960* (Cambridge University Press 2001).
35. A. Peters, 'Die Zukunft der Völkerrechtswissenschaft: Wider den epistemischen Nationalismus [The Future of Public International Law Scholarship: Against Epistemic Nationalism]', (2007) vol. 67, *Heidelberg Journal of international law* 721.
36. Emmanuelle Jouannet notes on that topic that 'In reality, internationalists are always sensitive to the way international law is applied in and by their own country and thus can, unconsciously or not, favour the external national policies of their State in its perception of the law', E. Jouannet, 'Regards sur un siècle de doctrine française du droit international', *op. cit.*, p. 4.
37. See in particular A. Roberts, *Is international law international*, Oxford (OUP 2017).
38. *Id.*, 545.

structures the relation with the world. It becomes a favoured access to facts, in contradiction with the 'given' fact that the science of law must only describe, according to the positivist approach. That linguistic turn was at the origin of what is collectively called 'pragmatic approaches' of the law, which, despite their diversity, share a perception of the law as an act of language or communication. The deconstructivist approach of the American critical legal studies, which was adopted following the observation of the indeterminacy of the law as a language in line with legal realism, has the same origin. All those shifts of the analysis of the law allow to refine yet again the understanding of the doctrine as a discourse. It is logical that, like law itself, it conveys values, a system of beliefs or at least to acknowledge that it is necessarily situated. Those theoretical advances lead to consider the doctrine as a complex discourse object, which conveys some stereotyped or presumed biases that reveal a situated point of view.

It was based on the assumption of the located character of the law and of the discourse on the law that the observation of its Eurocentrism progressively appeared. That observation seems to have been built from the controversy on the origins of international law and then to have become the proposal of an alternative epistemological framework to the universalist claims of international law and its science. Indeed, the history of international law has long been marked by a Eurocentric paradigm.[39] In those conceptions, the birth of international law is perceived as a European phenomenon which appeared in the 16th century and was rooted in the history, culture and values of that part of the world. Its expansion in the following centuries eventually allowed it to declare it was universal, which it continues to claim today.[40] Some challenge of the more 'European' than 'international' nature of that legal order were already present in the regionalist claims of the beginning of the 20th century, as in the plea of Alejandro Alvarez in favour of an American international law.[41] Contemporary authors from very different theoretical movements and legal traditions have started to dismantle that Eurocentric historiography of international law over the past decades, and have highlighted the incomplete nature of that narrative.[42] Many have indeed shown that that vision tends to exclude the many non-European historical experiences,[43] and to convey a certain Western bias, which then irrigates the normative structure of the legal order. Finally, based on those factors, it becomes obvious that the proclaimed universality of the doctrinal discourse on international law also hides the different local prisms

39. Eurocentrism is defined by American sociologist William Graham Summer as 'this view of things in which one's own group is the center of everything, and all others are scaled and rated with reference to it.' <https://www.gutenberg.org/files/24253/24253-h/24253-h.htm> accessed 9th April 2023, W.G. Summer, *Folkways*, Boston, Ginn and co, 1906, p. 13. See also V. Genin, 'Eurocentrisme et modernité du droit international, 1860-1920', 2018, vol. 2, N° 14, *Monde(s)* 199-221.
40. See in particular A. Becker Lorca, 'Eurocentrism in the history of international law' in B. Fassbender, A. Peters (eds), *The Oxford handbook of the history of international law*, Oxford (OUP 2012) 1036.
41. A. Alvarez, *Le droit international américain, son fondement, sa nature, d'après l'histoire diplomatique des Etats du Nouveau Monde et leur vie politique et économique* (Pedone 2010).
42. See in particular B. Fassbender, A. Peters, 'Introduction: towards a global history of international law' in B. Fassbender, A. Peters (eds), *The Oxford handbook of the history of international law*, Oxford (OUP. 2012) 2-25; N. Tzouvala, 'The specter of Eurocentrism in international legal history', (2021) vol. 31, *Yale Journal of Law and the Humanities* 413; A. Becker Lorca, *Mestizo international law: a global intellectual history, 1842-1933* (CUP 2014); M. Koskenniemi, 'Dealing with Eurocentrism', (2011) vol. 19, *Rechtsgeschichte* 152-76.
43. See in particular R. Kolb, *Esquisse d'un droit international public des anciennes cultures extra européennes* (Pedone 2010).

which unavoidably condition the internationalist jurists' understanding of their object of study.[44]

That awareness has led to several projects of decentralisation of international law to overcome its Eurocentrism. One of them was to rewrite a global or globalist history of international law,[45] another was to view Europe as 'exotic' or as a 'province', in order to make it one of the places of international law among others,[46] or to make the history of international law plural to include the participation of non-European States and people,[47] or to hybridise concepts to take into consideration the adaptations they undergo when they are transposed to different contexts.[48] The common denominator in all those proposals was the acknowledgement that international law was plural and the adoption of a comparative approach to account for its diversity. Martti Koskenniemi considers that the comparative approach allows to take into consideration the plurality of the field of international law and of the discourse on it by admitting the local approaches defended by jurists and supported by a great variety of cultural and professional biases.[49] That approach meets the '"located" global approach' that Dzovinar Kévonian and Philippe Rygiel are calling for as it 'can usefully reintegrate practices and paths in the construction of a transnational history of internationalist jurists, by pointing at some places and social processes as points of observation of a refracted vision'.[50]

It is precisely within this movement that the approach of the author is situated throughout the book. It is a striking example of what the pluralisation of research which today seems necessary may be. Nowhere is to be found the primacy or admiration of one regional system over the others. Never, above all, is one of them presented as a model. The historical precedence of the European Court, the dynamism of the Inter-American Court or the hope the African Court is the bearer of are admitted as facts, without the famous European bias showing through. As formulated by Makane Mbengue '[P]luralizing the epistemic structures that privilege the past and present production and reproduction of Eurocentric international law is not a task that is limited by time. Not one research, or body of research will completely bring to realisation the transformation that critical scholars of international law seek.'[51] However, the intellectual discipline and ethics of European authors – like those evidenced by Laurence Burgorgue-Larsen in this book – as well as the multiplication and diffusion of that type of work allow to hope for a transition which might be softer than that which is called for by the supporters of the critical theories, but which will probably also be more lasting.

44. See in particular C. Focarelli, *International law as a social construct: the struggle for global justice*, *op. cit.*, 136: 'If international law is socially constructed this construction is the combination and the result of a variety of very different perception, each of which have a different weight in the end result.'
45. B. Fassbender, A. Peters (n 42).
46. N. Tzouvala (n 42); D. Chakrabarty, *Provincializing Europe: postcolonial thought and historical difference* (Princeton University Press 2008).
47. M. Koskenniemi (n 42) 172.
48. *Id.*, 173.
49. V. M. Koskenniemi, 'The case for comparative law', (2009), vol. 20, *Finnish Yearbook of international law* 1-8.
50. D. Kevonian, P. Rygiel, 'Introduction. "Faiseurs de droit": les juristes internationalistes, une approche globale située', (2015) *Monde(s)* 9.
51. M. M. Mbengue, O.D. Akinkugbe, 'Countering and pluralizing the research, teaching, and practice of eurocentric international law' in A. van Aaken, P. d'Argent, Lauri Malksoo, J.J. Vasel (eds), *The Oxford Handbook of international law in Europe*, Oxford (OUP 2023).

B. Responding to the postcolonial criticism of international human rights law

On the edge of the criticism of Eurocentrism appears a second, more radical one. Indeed, the acknowledgement of the plurality and non-neutrality of the doctrinal discourse on international law allows to question those divergences and the power relations that inhabit them. Taking into account differences in points of view leads for example to highlighting, as Anthea Roberts does, that '[F]or lawyers in certain powerful Western States, international law often involves the export of domestic concepts, so they do not experience a strong disconnect between the local and the international. By contrast, international lawyers in other states are much more likely to be aware of this disconnect and to experience international law as a foreign, imported – and possibly illegitimate – construct.'[52]

The postcolonial criticism of international law has been built on those theoretical premises and the fights led by the first Third-World theories in the 1960s at a time of big waves of decolonisation. The objective of that first approach, which was mainly embodied by French-speaking African authors,[53] was to assert the interests of newly independent States of the First World for them to be integrated into the existing legal order on an equal footing. Those theories therefore assumed both the concept of sovereignty and that of the universality of international law from which they hoped they would simply be adapted to the particular situation of the Third World, including for example the advent of a new international economic order,[54] the redefinition of the use of force to include the economic pressures exerted by developed countries or the promotion of permanent sovereignty over natural resources. The second wave of Third-World approaches, called TWAILs, (*Thirld-World Approaches of International Law*) tackled the construction of a truly radical criticism of international law and its doctrinal discourse. Originating at Harvard in the 1990s and composed of English-speaking jurists, that movement was defined in its 'Vision Statement' as a 'network of scholars engaged in international legal studies, and particularly interested in the challenges and opportunities facing "Third-World" peoples in the new world order'.[55] In line with American legal realism and the movement of the critical legal studies, they challenged positivism on destructuralist foundations and especially the assumption of the indeterminacy of the law, to denounce the persistence of underlying colonial values. Among their main topics were the centrality of the colonial phenomenon in the construction of international law and the challenge of the State-centred perspective of international law.[56] They were different from the first Third-World approach wave in that their objective was no longer to integrate the international legal order but to deconstruct it and conduct an in-depth questioning of its foundations – especially of the concepts of sovereignty and equality that govern it. Their members denounced in that respect the universalist claims of

52. A. Roberts (n 37) 11.
53. See for example M. Bennouna, *Droit international du développement* (Berger-Levrault 1983); M. Benchickh, *Droit international du sous-développement* (Berger 1983); M. Flory, *La formation des normes en droit international du développement* (CNRS 1984).
54. See in particular M. Bedjaoui, *Pour un nouvel ordre économique international* (Unesco 1979) 136.
55. The *TWAIL Vision Statement* from those meetings is available in J. T. Gathii, 'Alternative and Critical. The Contribution of Research and Scholarship on Developing Countries to International Legal Theory', (2000) vol. 41, *International Law Journal* 263-75.
56. See for example A. Anghie, *Imperialism, sovereignty and the making of international law*, Cambridge (CUP 2004).

a legal discourse which contributes to hiding the colonial values it conveys.[57] Unlike previous approaches, the TWAILs therefore built a criticism of the majority internationalist doctrine by considering, as Carlo Focarelli said, that '[T]he alienation of international law has produced an alienation of the discipline itself, with the dominant majority of international lawyers formalistically "not speaking on behalf of subaltern peoples"'. That domination would partly rely, according to several authors, on the ideological domination of Western institutions and publications, which would tend to be systematically reproduced.[58]

That criticism flourishes in the field of international human rights law. It is precisely the universalist claims of that branch of the law which are its stumbling block in that it would amount to imposing a dominating model to 'subordinates'. With that transposition a system of monocultural values would be imposed which would obviously raise issues of legitimacy. The movement of human rights in international law indeed originated from Europe at the end of the First World War and relied on ideals, projects and a cultural anchorage which were proper to that region. Then, its expansion beyond the European continent under the pretext of humanism would have acted as a pretext for the diffusion of a Eurocentric model conveying a Western liberal model in the rest of the world. The globalisation of human rights would then have favoured the domination of ways of thinking and societal objectives ill-adapted to the States born from decolonisation. That is what Bhupinder Chimni wants to illustrate with the example of the prevalence of civil and political rights following a neo-liberal orientation where economic, social and cultural rights lack efficiency though it is obvious that they are necessary to disadvantaged people.[59] Others go even further and see it as an instrument of the upholding of stereotypes with regard to non-European cultures. According to Makau Mutua, '[T]he language and rhetoric of the human rights corpus present significant theoretical problems. The arrogant and biased rhetoric of the human rights movement prevents the movement from gaining cross-cultural legitimacy.'[60] In order to demonstrate it, he develops the savage/victim/saviour metaphor. In that narrative, human rights are designed to save the non-European 'savages' and to put an end to the suffering of the 'victims' – who are also non-European – thanks to a 'saviour' – who is embodied by the developed States or the international institutions they control –, which legitimates for example some interventions today. Célestine Nyamu develops a slightly different argument but which belongs to the same order of ideas, according to which international human rights law participates in the stigmatising of Third-World cultures, the values, cultural practices or social representations of which are different from those of Western societies.[61]

Faced with those criticisms, the doctrinal approach that the author of *Les 3 Cours* adopts seems to be the adequate solution. Rather than a direct answer in the form of a participation in the debate on the decolonisation of international law and also on the decolonisation of knowledge, which is particularly criticised in France– where the postcolonial issue is obviously too sensitive to be tackled peacefully –, the legal and doctrinal pluralisation allows to remedy the shortcomings from which Western research and teaching may have suffered in

57. J. Gathii, O. Okafor, A. Anghie, 'Africa and TWAIL', (2010) vol. 18, *African Yearbook of International Law* 9-40; K. Ginther, 'Re-defining international law from the point of view of decolonization and development in African regionalism', (1982), vol. 26, N° 1, *Journal of African Law* 49-67.
58. B. Chimni, 'Third World Approaches to International Law: A Manifesto', (2006) vol. 8, *International Community Law Review* 15.
59. *Id*., 17.
60. M. Mutua, 'Savages, victims, and saviors: the metaphor of human rights', (2001) vol. 42, N° 1, *Harvard International Law Journal*, p. 206.
61. C. Nyamu, 'How Should Human Rights and Development Respond to Cultural Hierarchy in Developing Countries?', (2000) vol. 41, N° 2, *Harvard International Law Journal* 381-419.

the past. That type of book opens the path for a truly de-compartmentalised approach of knowledge, without any hierarchisation hidden under formal comparatism. Lastly, in that respect, what she brings to the study of international human rights law is considerable. The book is simultaneously realistic and optimistic, critical and benevolent, humble and important, at a time when, more than ever, the rights that used to be considered to have been secured for a long time are being challenged from all sides and on all the continents.