Theoretical Foundations and Techniques for Conducting International Law Research from Critical Approaches*

Fundamentos teóricos y técnicas para realizar investigaciones en derecho internacional desde enfoques críticos

Fundamentos teóricos e técnicas para realizar pesquisas em Direito Internacional a partir de abordagens críticas

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Abstract

This article aims to construct a state-of-the-art resource regarding the theoretical foundations and methodological options for any researcher interested in working with critical international law perspectives. The four views chosen for this exercise (TWAIL, CILS, feminist theories, and social idealism) will be dissected regarding their theoretical foundations and relevant research methods and techniques. It establishes the framing of critical research in international law through monodisciplinary, multidisciplinarity, and interdisciplinarity, depending upon the interaction between legal-international concepts and methods.

Keywords

Critical theories; international law; theoretical foundations; research methods; research techniques.

Resumen

El objetivo de este artículo será el de construir un estado del arte respecto de los fundamentos teóricos y las opciones metodológicas de las que puede hacer uso un investigador interesado en trabajar con perspectivas críticas del derecho internacional. Con las cuatro perspectivas escogidas para este ejercicio (TWAIL, CILS, teorías feministas e idealismo social), se hará una disección sobre sus fundamentos teóricos y los métodos y técnicas de investigación pertinentes. También, vale la pena establecer el encuadramiento de las investigaciones críticas en derecho internacional en la monodisciplinariedad, la multidisciplinariedad y la interdisciplinariedad dependiendo de la interacción entre conceptos y métodos jurídico-internacionales.

Palabras clave

Teorías críticas; derecho internacional; fundamentos teóricos; métodos de investigación; técnicas de investigación.

Resumo

O objetivo deste artigo é construir um estado da arte a respeito dos fundamentos teóricos e das opções metodológicas das quais pode fazer uso um pesquisador interessado em trabalhar com perspectivas críticas do Direito Internacional. Com as quatro perspectivas escolhidas para este exercício (TWAIL, CILS, teorias feministas e idealismo social), é feita uma análise de seus fundamentos teóricos e dos métodos e técnicas de pesquisa pertinentes. Além disso, vale a pena estabelecer o enquadramento das pesquisas críticas em Direito Internacional na monodisciplinaridade, na multidisciplinariedade e na interdisciplinaridade, dependendo da interação entre conceitos e métodos jurídico-internacionais.

Palavras-chave

Teorias críticas; Direito Internacional; fundamentos teóricos; métodos de pesquisa; técnicas de pesquisa.

Introduction: Classical and critical international law research

What are the theoretical and methodological options available for a heterodox international law researcher? We answer this question by assuming the difficulties encountered by researchers in this area who are at the beginning of their careers and whose training has focused on classical research in international law. Classical research in international law (hereinafter, "international law research") adopts a positivist epistemological approach to researching and analyzing international law. This means accepting state-centric and realistic foundations governing international law practice and producing subsequent scholarly work coherent with said assumptions. Authors such as Corten (2009) argue that this type of international law research is based on four basic premises, which they consider to be entirely accepted by classical researchers. These premises are not debated; they are considered the reality of international law. The premises are as follows.

First, research must use the traditional categories of international legal analysis to conduct a descriptive-analytical study that does not challenge the Westphalian structure of international law based on the concepts of supremacy, hierarchy, enforceability, intergovernmentalism, sources, and subjects (analytical theory of international law).

Second, international law research accepts and reflects that the essence of international law is the expression of the will of States (state-centrism) and defines the production of international legal rules (disregarding sub-state or social actors).

Third, despite being formalist regarding the subjects and sources of international law, research only analyzes behavioral contradictions through the lens of the traditional categories of international law, such as the breach of treaties (a critical perspective within clearly established limits).

Fourth, international law research rarely leads to profound reflections on the moral conduct of actors in global society but focuses on its normative power (as with realism in international relations), thus favoring institutional interactions over moral points of view (realistic position). Notwithstanding this tradition, researchers and practitioners have shown that international research can also be approached from epistemological perspectives that reject positivism. This second type of research includes theoretical frameworks based on the criticism of modernity and its subjectivities, such as the Third-World Approaches to International Law (TWAIL), Critical International Legal Studies (CILS), feminist theories, and social idealism, which are particularly relevant.

These four perspectives have been chosen for this study because, except for specific feminist approaches, they share an interpretivist epistemological view. It implies the denouncement of ontological materialism (the school of thought that posits that reality is not determined only by the material conditions of existence) and of epistemological foundationalism (a philosophy that holds that assumptions cannot be accepted without questioning them).[1] Therefore, this article aims to build a state-of-the-art resource regarding the theoretical foundations and the methodological options that may be referred to by any researcher interested in working with these critical perspectives.

For authors who adopt these approaches, social phenomena result from belief systems and knowledge production-acquisition methods. Moreover, ontology and epistemology are co-constitutive, reflected in open research questions that examine various elements and observable processes that help shape the result. Accordingly, interpretivism promotes the formulation of research questions to analyze how social agents represent the world through their intersubjective interpretations, allowing rules, perceptions, language acts, and texts to be explored as representational practices from which reality is socially constructed.[2]

As a result, critical approaches involving TWAIL, CILS, feminist theories, and social idealism have been defined by Robert Cox and Timothy Sinclair as those whose purpose is "to become clearly aware of the perspective which gives rise to theorizing, and its relation to other perspectives (to achieve a perspective on perspectives); and to open up the possibility of choosing a different valid perspective from which the problematic becomes one of creating an alternative world.[3] Thus, a critical approach not only proposes epistemological versatility to expand the visions of the world but also involves an ethical commitment to the possibility of social and international change.

1 Mario URUEÑA-SÁNCHEZ, *Mercenarios y compañías militares y de seguridad privadas: estructuración de sus redes normativas*, Valencia, Tirant lo Blanch, 2020, p. 202, https://editorial.tirant.com/es/libro/mercenarios-y-companias-militares-y-de-seguridad-privadas-estructuracion-de-sus-redes-normativas-mario-uruena-sanchez-9788413368979

2 Alexandre MACLEOD and Dan O'MEARA, eds., "Le constructivisme," in *Théories des relations internationales: contestations et résistances*, Montréal, Athéna éd, 2007, pp. 244–68.

3 Robert W COX and Timothy J SINCLAIR, *Approaches to World Order*, Cambridge, Cambridge University Press, 1996, p. 88.

In this framework, this study analyzes the theoretical foundations of international law research from critical approaches to international law, including the rejection of positivism and the construction of alternative theoretical frameworks (Section 2). Moreover, given their characteristic use of the qualitative interpretative method, this paper explains the research techniques available for developing critical approaches to international law, distinguishing between those that are exclusive to CILS, TWAIL, and other critical approaches and methods that are also common to classical international law research, such as case study, problem analysis, and genealogy of knowledge[4] (Section 3). The study ends with an analysis of the meaning and scope of monodisciplinary, multidisciplinary, and interdisciplinary international law research (Section 4) and the presentation of the conclusions (Section 5).

1. Theoretical foundations of international law research from critical approaches

1.1. Rejecting positivism and adopting theoretical frameworks based on the denouncement of modernity and its subjectivities

Just as the interpretivist epistemological orientation opposes Hume's positivism and the preconceptions of classical empiricism, critical approaches to international law depart with similar vehemence from other types of positivism more typical of the legal discipline, such as Kelsen's methodological positivism and Hart's analytical positivism. As Kammerhofer and D'Aspremont point out,[5] the debate on the meaning of legal positivism has become unfathomable and unintelligible. Nevertheless, the need for a formal determination of law, the political and creative quality of interpretation, the idea of autonomy, or the possibility of a critique of law can be positioned as central ideas of this perspective. Therefore, returning to these traditional authors is pertinent to present a clearer picture of what this approach represents and how it views international law.

Kelsen and Hart dedicated much of their works to explaining the role of international law and its relationship to domestic legal orders. Although both authors reclaim the universalist approach of international law, Kelsen's meth-

4 Harvey GOLDMAN, "From Social Theory to Sociology of Knowledge and Back: Karl Mannheim and the Sociology of Intellectual Knowledge Production," in *Sociological Theory* 12, no. 3 (1994): pp. 266–78, https://doi.org/10.2307/202125; David M McCOURT, "The 'Problem of Generations' Revisited: Karl Mannheim and the Sociology of Knowledge in International Relations," in ed. Brent J STEELE and Jonathan M ACUFF, *Theory and Application of the "Generation" in International Relations and Politics*, New York, Palgrave Macmillan US, 2012, pp. 47–70, https://doi.org/10.1057/9781137011565_3

5 Jörg KAMMERHOFER and Jean D'ASPREMONT, *International Legal Positivism in a Post-modern World*, Cambridge, Cambridge University Press, 2014, pp. 13-14.

odological positivism is characterized by implying the prevalence of a single and uniform legal order, in which normative hierarchy makes domestic rule secondary to universal (fundamental) rule[6]; for this reason, he is considered a monist theorist focused on the supremacy of international law.

Hart's analytical positivism nuances this universalism by acknowledging the existence of different social structures and considering international law as a set of primary substantive rules not bound by any fundamental rule of recognition (as in the case of domestic law). This understanding of the international legal order is viable to the extent that, as mentioned by Hart,[7] the rule of recognition is not necessary for the existence of primary substantive rules. Even though Hart's analytical positivism acknowledges particular cultural rules as collaborators in legal construction, critical approaches to international law highlight that Hart's approach does not overcome the severe limitations that characterize the positivist views of the international legal order for four main reasons: (i) the understanding of international law as a mere instrument; (ii) the defense of its static and closed position; (iii) the adoption of a top-down epistemology in its construction; and (iv) the promotion of state-centrism.

First, discussing the international legal order as a set of norms or rules confines it to being an instrument of the political-legal elites, as shown in Kelsen's proposal to establish an international court endowed with compulsory jurisdiction for peacekeeping purposes.[8] Thus, delegating universal peace to a collegial body of legal operators helps methodological positivism analyze international law as the sum of agencies isolated from social structures and processes.

Second, ignoring the process of normative construction (or deconstruction) undermines the characteristic dynamism of international law, making it static and anachronic to address the increasing challenges of a global society. It also has ethical implications for closing the door to agents' authority in defining the structure of the normative system or even subverting it, which ultimately means adhering to an ideology to preserve the status quo.[9]

Third, despite the intention of Hart's analytical positivism to minimize Kelsen's radical normative hierarchy, in general, positivism is identified as a theoretical approach that prioritizes top-down analysis of international law. This view underestimates the role of cultural rules or domestic interactions in norma-

6 Hans KELSEN and Roberto J VERNENGO, *Teoría pura del derecho*, 2nd ed., Ciudad de México, Universidad Nacional Autónoma de México, 1982, http://ru.juridicas.unam.mx:80/xmlui/handle/123456789/10001

7 H L A HART, *The Concept of Law*, 2nd ed., New York, Oxford University Press, 1994.

8 Ramón CAMPDERRICH BRAVO, "¿Derecho internacional o guerra imperial? Hans Kelsen y Carl Schmitt ante la pacificación de las relaciones interestatales por medio del derecho," in *Anales de la Cátedra Francisco Suárez*, 43 (2009), pp. 19–38, https://doi.org/10.30827/acfs.v43i0.816

9 Mario Iván URUEÑA-SÁNCHEZ, "El positivismo de Kelsen y Hart en el derecho internacional contemporáneo: una mirada crítica," in *International Law: Revista Colombiana de Derecho Internacional* 15, no. 31 (2017), https://doi.org/10.11144/Javeriana.il15-31.pkhd

tive production, reproduction, or revaluation. The universalism promoted by the positivist approach, in line with the Kantian reflections that allow it, ultimately shows a complete Eurocentrism and a consequent generalization and imposition of western values over the rest of the world.[10]

Fourth, although Kelsen and Hart developed the notion of the international community, they continued to consider the State as the unit of analysis since it is the only subject that can impose sanctions (or war and reprisal, in the case of Kelsen)[11] and create substantive rules.[12] By taking the State and its political-legal elites as the sole units of reference, positivist authors reduce the characteristic heterogeneity of the contemporary international legal order.[13]

Shaw sets forth many arguments on the limitations of positivist views on the international legal order to critique the positivist epistemological approach, given its lack of dynamism and the disarticulation between international law and the different societies it claims to regulate. In Shaw's words,[14] "[t]his means that to understand the operation of law, one has to consider the character of the particular society, its needs and values. The law thus becomes a dynamic process and has to be studied in the context of society and not merely as a collection of legal rules capable of being comprehended on their own."

In moving away from positivism, critical approaches sought other theoretical frameworks closer to their purposes, with the criticism of modernity and the subjectivities it produces as a common feature. Thus, Marxism, neo-Gramscianism, the Frankfurt School of Critical Theory, and poststructuralist, postmodern, and postcolonial perspectives became their guiding frameworks.

This is particularly true in the case of CILS, where these influences are questioned by authors such as Rasulov,[15] who consider legal historiography as an inflection point in the relationship between Marxism and CILS. In addition, Carty[16] exposes the influence of postmodern theories on CILS, which aim to "unearth difference, heterogeneity, and conflict as reality in place of fictional representations of universality and consensus." Therefore, CILS put the questions of alterity and the discontinued and uneven reality of international society before the universalist pretension of positivist views and global legal orthodoxy. This postmodern inspiration in the CILS also impacts methodol-

10 MACLEOD and O'MEARA, "Le constructivisme."
11 KELSEN and VERNENGO, *Teoría pura del derecho*.
12 HART, *The Concept of Law*.
13 URUEÑA-SÁNCHEZ, "El positivismo de Kelsen y Hart en el derecho internacional contemporáneo."
14 Malcolm N SHAW, *International Law*, 6th ed., New York, Cambridge University Press, 2008.
15 Akbar RASULOV, "CLS and Marxism: A History of an Affair," in *Transnational Legal Theory* 5, no. 4 (2014), pp. 622–39, https://doi.org/10.5235/20414005.5.4.622
16 Anthony CARTY, "Critical International Law: Recent Trends in the Theory of International Law," in *European Journal of International Law* 2, no. 1 (1991), pp. 66–96, https://doi.org/10.1093/ejil/2.1.66

ogy in terms of techniques such as discourse analysis, language deconstruction, and genealogy.[17]

Marxism and poststructuralist, postmodern, and postcolonial views are also evident in TWAIL and feminist theories. In the former, it is particularly apparent in the attempts to draw attention to the asymmetries of international society and the control exercised by hegemonic States to criticize how world power normalizes Eurocentrism and relegates anything that does not adjust to it.[18] In feminism, this link is explicit, given that some of its aspects, especially Marxian, materialist, poststructuralist, and postcolonial theories, fully embrace these influences.[19]

Among the four approaches mentioned above, the inspirational sources of social idealism need to be firmly anchored in the critical perspectives of modernity. In social idealism, this is compensated for by Vattel's intellectual project and some aspects of modern jus-naturalism. This means exploring its questions regarding modernity through its contraposition with the renewed views of the legal philosophy of other eras, as opposed to the other critical approaches to international law.[20]

1.2. Perception of the current world in critical approaches to international law

Having established the intellectual context of the critical approaches to international law analyzed in this work, with their roots and constitutive debates, we will now address their perception of the current world, views of international law, and the alternative world they envisage. This is particularly important given that researchers must understand the epistemological and ethical dimensions implied when adopting any perspective. Although critical approaches share specific epistemological features, they have substantial differences, which merit a close review to assist researchers in appropriately applying these frameworks.

To analyze the perception of critical approaches to the world, we turn to the three levels of analysis proposed in neo-Gramsciamscianism: world order, forms of State, and social forces.[21] At the world order level, TWAIL denounces the international legal order as illegitimate because it is a predatory system

17 Martti KOSKENNIEMI, "The Fate of Public International Law: Between Technique and Politics," in *The Modern Law Review* 70, no. 1 (2007), pp. 1–30, https://doi.org/10.1111/j.1468-2230.2006.00624.x

18 Makau MUTUA, "What Is TWAIL?," in *Proceedings of the Annual Meeting (American Society of International Law)*, 94 (2000), pp. 31–40, https://www.jstor.org/stable/25659346

19 J Ann TICKNER, "What Is Your Research Program? Some Feminist Answers to International Relations Methodological Questions" in *International Studies Quarterly* 49, no. 1 (2005), pp. 1–21, https://www.jstor.org/stable/3693622

20 SCOBBIE, "'The Holiness of the Heart's Affection.'"

21 COX and SINCLAIR, *Approaches to World Order*, p. 90.

that "legitimizes, reproduces, and sustains the plunder and subordination of the Third World by the West." Neither the alleged universality nor its promises of global order and stability make international law a just, equitable, legitimate code of global governance for the developing world. Furthermore, this alleged universalization was used by European conquest and imperial expansion over non-European peoples and societies.[22]

This perspective is shared by Chimni,[23] who argues that powerful States and international institutions combine their actions to dominate third-world countries by submitting them to a particular culture and set of ideas. They also use physical force from time to time "[…] both to manifest their overwhelming military superiority and to quell the possibility of any challenge being mounted to their view of world order." Therefore, international institutions help powerful States ideologically legitimize the norms of the world order and co-opt the elite from peripheral countries, with a view of absorbing counter-hegemonic ideas.[24]

CILS partially shares these arguments. According to Carty,[25] the fundamental problem of international law is the absence of practical cross-border democratic humanitarianism. The main obstacle to achieving this is that although a pro-democracy discourse is promoted, it still needs to be expanded beyond the scope of sovereign territorial states. Consequently, "[…] the new language of self-determination, that of democratic nations, whatever its superior paradigmatic power, has not effectively replaced the expectation that traditional territorial sovereigns should set themselves up."

Current issues in the area of recognition regarding the invocation by multiple entities of the principle of self-determination and differences arising out of their recognition exemplify how powerful subjects of international law apply allegedly universal concepts instrumentally to legitimate their self-interest. There are, for example, cases of the recognition of South Sudan and Kosovo, which the United Nations and the European Union endorsed. This included using a fast-track United Nations membership process for South Sudan (A/65/PV.108 General Assembly Sixty-sixth session 108th plenary meeting Thursday, 14 July 2011, 10 a.m. New York). On the other hand, there have been other cases in which the interests of powerful blocs of States were endangered and in which similar claims to self-determination, including the effects of referenda and other methods of attaining independence, have been met with strict rejection, as in the case of Crimea.

22 MUTUA, "What Is TWAIL?"

23 B S CHIMNI, "Third World Approaches to International Law: A Manifesto," in *International Community Law Review* 8, no. 1 (2006), pp. 3–27, https://doi.org/10.1163/187197306779173220

24 CHIMNI.

25 Anthony CARTY, "Myths of International Legal Order: Past and Present," in *Cambridge Review of International Affairs* 10, no. 2 (1997), pp. 3–22, https://doi.org/10.1080/09557579708400132

Feminist theories understand international society through an artificial division between the public and private domains. According to liberal and Marxian feminist approaches, it is disguised as a natural and objective division, but with the final purpose of conferring the management of the government's political power to men. At the same time, women are relegated to the home and family sphere, thus hiding the experiences of many women and silencing their voices in law.[26] Through an intersectional approach, postcolonial feminism posits that the act of hiding goes beyond the issue of sex or gender, covering more comprehensive sections in an international society whose rights are restricted on the grounds of race, nationality, and education.[27]

Social idealism affirms that the inner world and what it is composed of (particularly at the level of human consciousness) determines how the external world is constituted and the institutions that humans create and to which humans choose to confer the power to govern them.[28]

At the "forms of the State" level of analysis, a common concern among critical approaches to international law is how the relationship between the State and society becomes asymmetric to the detriment of the latter. Based on TWAIL, Chimni[29] highlights that by imposing the neoliberal State as the only rational form of legal, political, and economic organization in the global context, efforts have been made to justify the erosion of the sovereignty of third-world countries and its shift to international institutions. This facilitates extracting their wealth to benefit influential state leaders and private sector partners.

CILS does not have a predilection for analyzing "forms of State." This is reflected in the works of authors such as Carty,[30] according to whom the tension in the world of law is between social interactions and international geopolitical forces. Koskenniemi[31] makes similar statements by focusing on international legal professionals' observations.

Regarding feminism, it is established that the liberal and Marxian schools are more concerned with the role of the State. Whether being viewed as an apparently neutral actor that perpetuates inequalities (liberal) or as representing the patriarchy and its artificial excision between what is public and what is private (Marxian), these feminisms accuse the State of guaranteeing a *status quo* of dominance on the grounds of gender.[32]

26 Hilary CHARLESWORTH, "Feminist Methods in International Law," in *Studies in Transnational Legal Policy* 36 (2004), p. 164, https://heinonline.org/HOL/Page?handle=hein.journals/stdtlp36&id=171&div=&collection=

27 Chandra MOHANTY, "Under Western Eyes: Feminist Scholarship and Colonial Discourses," in *Feminist Review* 30, no. 1 (1988), p. 61, https://doi.org/10.1057/fr.1988.42.

28 Phillip ALLOTT, "The Concept of International Law," in *European Journal of International Law* 10, no. 1 (1999), pp. 31–50, https://doi.org/10.1093/ejil/10.1.31

29 CHIMNI, "Third World Approaches to International Law."

30 CARTY, "Myths of International Legal Order."

31 KOSKENNIEMI, "The Fate of Public International Law."

32 TICKNER, "What Is Your Research Program?"

According to Allott,[33] the primary representative of social idealism, the unequal relationship between the State and society has created an international scene that he calls "unsociety," where greed, ego, and evil have emerged as central values. In this unsociety, the State imposes itself over the people it claims to represent, generating a lack of correspondence between people and state institutions. This gives rise to a relationship so inorganic that it leaves an authentic puzzle to be resolved. Finally, at the "social forces" level of analysis, critical approaches to international law seek to reveal the social groups whose agency has significantly contributed to developing an unfair and unequal world. Regarding TWAIL, Anghie concerns himself with the practice of international law, focusing his gaze on the effects of imperialism on third-world lawyers. The decolonization period made them optimistic about international law, even though that faith has been unfounded and imperialism has been redirected into supposedly humanitarian and anti-colonial initiatives such as the Mandate System. Understanding international law at various levels (national and international, economic, political and social, public and private) becomes necessary to oppose imperialism.[34]

Several studies about the origin of the early models of bilateral investment treaties and the procedural rules devised by international organizations dedicated to finance and commerce exemplify how the participation of third-world countries in the design of such institutions as ICSID was unequal in the representation of social forces. While investors from highly developed countries were influential in the process, the developing States' communities were practically absent.[35] Other studies exemplify the ideas explained above within the context of the WTO. The rules regarding unique and differentiated treatment meant to assist developing countries are being used before the WTO panels in favor of massive economies that present themselves as developing ones.[36]

According to Koskenniemi,[37] an exponent of CILS, the way international law is practiced by its most influential professionals is characterized by what he defines as "managerialism" (a particular form of technical expertise), which conceives the international legal order as objective and neutral.[38] For Koskenniemi,[39] what has been sought is a strategy to favor the increasingly technical transformation in the exercise of law, which is ultimately responsible

33 ALLOTT, "The Concept of International Law," pp. 40–42.

34 Antony ANGHIE, "The Evolution of International Law: Colonial and Postcolonial Realities," in *Third World Quaterly* 27, no. 5 (2006), pp. 739-753, https://doi.org/10.1080/01436590600780011.

35 Katia Fach GÓMEZ, "Latin America and ICSID: David versus Goliath," in *Law & Business Review of the Americas* 17, no. 2 (2011), p. 195.

36 Kyoungseo HONG, Ho Yoo JEONG, and Inkyo CHEONG, "WTO's Special and Differentiated Treatment (S&DT) Principle and Solutions of the US-China Conflict," in *Journal of International Logistics and Trade* 19, no. 4 (2021), pp. 185-196.

37 KOSKENNIEMI, "The Fate of Public International Law."

38 Andrea BIANCHI, *International Law Theories: An Inquiry into Different Ways of Thinking*, 1st ed., New York, Oxford University Press, 2016.

39 KOSKENNIEMI, "The Fate of Public International Law."

for many of the chief contemporary problems faced by international law and society, including marginalization, the absence of a normative force, and the feeling that diplomatic customs are the cause of all evil.

As to feminisms, the distinction between public and private is crucial. It is understood that this distinction is a tool men use to prevent public intervention in their private injustices. This results in women suffering from private evils while at the same time becoming "analytically invisible" for purposes of international law since only the State would represent them at a global level. Accordingly, public and private categories become devices for manipulating power to obtain or retain freedom.[40] Finally, social idealism focuses on the dominant classes or elites that cause a disconnection between the domestic dimension of social life and unsociety, giving rise to the evil evidenced in contemporary international society. Although the imposition of the State over the social body is a central element of unsociety, it does not translate directly as the State being an evil entity; it is the elites who have made the State a hierarchically higher entity, opposed to other spaces of political power and private interest.[41] The elites have transformed the State into an external entity, deprived of any concern with being democratic or organic with its society. This causes the prioritization of "purposes related to the survival and prospering of each of those state-societies rather than the survival and prospering of an international society of the whole human race."[42]

1.3. The view of international law from critical approaches

In this challenging panorama, the researcher addressing the international legal order from critical approaches must understand that this system manifests through two opposite sides: one of involvement with the *status quo* and another as an aspirational project seeking a different future.

Following the former, Chimni[43] proposes that the international legal order has played a crucial role in helping legitimize and sustain unequal structures that have increased the global North and South gap. Furthermore, international law has been the first language in which dominance has begun to be expressed in the era of globalization. As a result, despite allowing dominated States a certain degree of autonomy, international law has always served the interests of the dominant social forces to advance "a growing assemblage of interna-

40 Aaron Xavier FELLMETH, "Feminism and International Law: Theory, Methodology, and Substantive Reform," in *Human Rights Quarterly* 22, no. 3 (2000), pp. 658-733.
41 SCOBBIE, "'The Holiness of the Heart's Affection.'"
42 SCOBBIE.
43 CHIMNI, "Third World Approaches to International Law."

tional laws, institutions and practices coalescing to erode the independence of third world countries in favor of transnational capital and powerful States."[44]

This argument is, however, partially refuted by Koskenniemi,[45] for whom the international legal order is more a field of tension between actors, values, and concepts than an instrument of domination. The most relevant current tensions exist between universalism and particularism and formalism and dynamism.[46] In this context, the challenge of fragmentation, the struggle for institutional hegemony, and the incapacity of new legal regimes to establish vertical control make international law a scene of dispute open to change from within its practice.[47]

In contrast, the other face of the international legal order wishes to transform it in the following four ways: (i) an epistemology of human experience; (ii) a tradition and a political project; (iii) a representation of the common interest; and (iv) a methodology of visibility.

First, Carty[48] considers that any idea of law must be based on an anthropology of the human being who recognizes themselves and others to avoid causing any harm, thus being able to respect and support everyone's essence and happiness. Ultimately, fear needs to be replaced with respect, for which it is necessary to study the human being as a complex entity susceptible to multidisciplinary understandings before applying the law.

Second, Koskenniemi[49] considers international law a process of articulating political preferences through legal claims that cannot be detached from the conditions of the political disputes in which they are made. Therefore, the international legal order is rendered into an area of hegemonic conflict, where technique is placed to articulate political claims regarding legal rights and duties.[50] Nevertheless, this does not mean that international law is limited to the level of hegemonic dispute; it also contains utopian elements in its language. These elements seek to separate political actors from their idiosyncratic preferences to establish a legal community that creates a fairer international society. Consequently, shaping the international legal order is considered a "tradition" and a "political project."[51]

44 CHIMNI, p. 26.
45 KOSKENNIEMI, "The Fate of Public International Law."
46 SHAW, *International Law*.
47 KOSKENNIEMI, "The Fate of Public International Law."
48 Anthony CARTY, "New Philosophical Foundations for International Law: From an Order of Fear to One of Respect," in *Cambridge Review of International Affairs* 19, no. 2 (2006), pp. 311–30, https://doi.org/10.1080/09557570600724785
49 KOSKENNIEMI, "The Fate of Public International Law."
50 Martti KOSKENNIEMI, "International Law and Hegemony: A Reconfiguration," in *Cambridge Review of International Affairs* 17, no. 2 (2004), pp. 197–218, https://doi.org/10.1080/0955757042000245852
51 KOSKENNIEMI, 197.

Third, based on feminist theories, Charlesworth[52] presents two methods (which she calls "searching for silences" and "world traveling") through which the international legal order could become an effective tool to render women's situations and rights visible. The first method considers that "[…] the silences of international law may be as important as its positive rules and rhetorical structures" because the silence of women has been perpetual in all stages of the development of international law. Therefore, she proposes to decode these silences from the dichotomies used in the structure of international law, including the distinctions between "objective/subjective, legal/political, logical/emotional, order/anarchy, mind/body, culture/nature, action/passivity, public/private, protector/protected, and independence/dependence."

The second method proposed by Charlesworth[53] aims to highlight the differences between women because the international legal order assumes women as a universal category. The occasional references that international law makes to the diversity of women are only related to the distinction between western and third-world women. Nevertheless, as stated by the author, "[t]hese monolithic categories carry a lot of baggage: assumptions of wealth, education, work, and progress, on the one hand, and of poverty, oppressive traditions, illiteracy, and overpopulation, on the other." Therefore, it can be acknowledged that "[t]hey are not 'women'—a coherent group—solely based on a particular economic system or policy."

1.4. Potential alternative worlds in critical approaches to international law

Despite the similarities between the perception of international society and the role of the international legal order, the most relevant characteristic of critical approaches is their proposal for action to achieve a fairer and more equitable world than the one we currently live in. According to TWAIL, the key lies in the counter-hegemonic struggle, whose proponents are, above all, established as change-makers because they make the history of resilience an integral part of international legal history. This proposal includes experimenting with art and literary forms to capture the imagination of those who venture into international law.[54]

The strategy adopted to achieve this end entails calling for intercultural dialogue to give substance to universally accepted standards where needed.[55]

52 CHARLESWORTH, "Feminist Methods in International Law," p. 163.
53 CHARLESWORTH, p. 165.
54 CHIMNI, "Third World Approaches to International Law."
55 MUTUA, "What Is TWAIL?"

The search for innovation in language and the persuasion of new committed followers allow for obtaining new allied sectors in the fight against neoliberal globalization and the havoc it wreaked in the third world. The plan revolves around "a shared ethical commitment to the intellectual and practical struggle to expose, reform, or even retrench those features of the international legal system that help create or maintain the generally unequal or unjust global order."[56] According to Chimni[57], this would aid in achieving the effective vindication of the language of human rights to protect the interests of disadvantaged marginal groups. Eslava and Pahuja[58] call for small revolutions from 'Third Worldism' and towards the desecration and reincorporation of international legal concepts, sites, artifacts, and forms, and to commit to forms of resistance that prioritize histories of mentalities of self-determination and self-government revolving around the recognition of cultural plurality and diversity.

For CILS, this commitment also brings together those who apply international law outside the classroom, as international law is "what lawyers make of it." Authors such as Koskenniemi[59] aim to rebuild the profession's policies to raise awareness of the need for shared sensitivity, which would produce a double effect. On the one hand, it would contribute to "[…] the development of a professional sensitivity that feels at home in all regimes yet is confined by in none of them. This would be what cosmopolitanism can be today: the ability to break out and connect, participate in the politics of regime definition by narrating regimes anew, giving voice to those not represented by the regime's institutions." On the other, "[…] politicized governance means rethinking the activity of expert institutions as not the technical production of pre-determined decisions by some anonymous logic, but by choices of well-placed men and women at various spots where power happens: not only in diplomacy or intergovernmental organizations but also in transnational corporations, interest-groups, banks, armies, development agencies, and universities and so on."[60]

The reinvention of the practice of international law professionals would unveil the power relationships embedded in the international legal order, even in the least acknowledged power structures. This would allow for identifying the interests and values of those who develop the standards, leading to their deconstruction and reconstruction based on the perspective of marginalized individuals.[61]

56 Obiora Chinedu OKAFOR, "Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?" in *International Community Law Review* 10, no. 4 (2008), p. 376, https://digitalcommons.osgoode.yorku.ca/scholarly_works/892.
57 CHIMNI, "Third World Approaches to International Law."
58 Luis ESLAVA and Sundhya PAHUJA, "Between Resistance and Reform: TWAIL and the Universality of International Law," in *Trade, Law and Development* 3, no. 1 (2011), pp. 129-130.
59 KOSKENNIEMI, "The Fate of Public International Law," p. 29.
60 KOSKENNIEMI, p. 29.
61 KOSKENNIEMI, p. 29.

Kennedy, for his part, 'historicizes' the current situation of the international order through 'three globalizations' and how these have been episodes throughout the history of military force, economic power, and hegemonic ideology during the capitalist period. This period's paradox intersects universal rationalization with the 'death of reason.' This "death" permits the regaining of alienated powers, which can be used for local or national ends or global change in the direction of equality and community. These powers commit an ethical exercise that must start from accepting what is existential and the dilemmas of legal discourse's undecidability.[62]

Among the possible alternative worlds set forth by feminist theories, the perspective of *imagined communities* for third-world women, which also introduces ideational elements to its legal principle of a different world, deserves particular attention. Based on Benedict Anderson's texts, Mohanty[63] highlights that "[t]he epithet 'imagined' is used in contrast to existing boundaries of nation, color, sexuality, and so on to indicate the potential for collaborative endeavor across them. The term 'community' refers to the possibility of a 'horizontal comradeship' across existing hierarchies. An imagined community of feminist interests does not imply homogeneity, a single set of feminist concerns, but rather a strategic political alliance […] it is not color or sex which constructs the ground for these struggles. Rather it is the way we think about race, class, and gender: the political links we choose to make among and between struggles."

Finally, social idealism considers that the revolution transforming international society must begin on the human mind's level. Being both the global society and the international legal order created by the human conscience, individuals and humanity take on the responsibility for this. Given their leading role in this revolution, individuals, rather than States, are called upon to define the factual content of international law.

In this regard, Allot reminds us that international law is currently based on chaos, inconsistency, and control in almost every aspect, which causes a degree of pain that has left society on the brink of mental breakdown. Nevertheless, as this pain is suffered, it also contains the potential for change, that is, to rebuild the international legal order and to restructure global society into a new order. As change-makers for this new order, there is a particular need for lawyers "[…] who are willing and able to make possible the social construction of a truly universal human reality within which humanity can and will act in the present to transform its past into the future which is the potentiality of the self-created human being."

62 Duncan KENNEDY, "Two Globalization of Law & (and) Legal Thought: 1850-1968," in *Suffolk University Law Review* 36, no. 3 (2003), pp. 631-680.

63 MOHANTY, "Under Western Eyes."

2. Research techniques in critical approaches to international law research

Having analyzed the rejection of critical approaches to positivism and their construction of alternative theoretical models that disown modernity and the subjectivities produced by it, we now begin to evaluate the research techniques prominently used in international legal research based on critical approaches, which are developed according to the qualitative-interpretative method. To that end, we will first assess techniques shared by classic international legal research, such as case study, problem analysis, and genealogy of knowledge.

2.1. Research techniques shared with classic international law research

2.1.1. Case study and problem analysis

Learning practices and research techniques based on case study and problem analysis are commonplace in several areas of law today due to the shift toward empirical approaches in social sciences and legal education.[64] When applied to international law, the unique system of sources and the procedures for creating international norms should be considered to avoid approaching an international case from domestic preconceptions.

Case law plays a significant role within this method by serving a double function. On the one hand, it is an auxiliary means for assessing and implementing formal sources (e.g., treaties, customary law, and the general principles of law),[65] as laid out in the classic understanding of Article 38(1) of the Statute of the International Court of Justice.[66] On the other hand, it is a powerful instrument of study, analysis, and debate on international courts (which is one of the most relevant areas in international legal research at present, around which most research proposals and contemporary theories on the effectiveness of international law revolve).[67] Therefore, the first consideration when planning international legal research is whether it will be developed as case-based or problem-based research. Adopting one of these two research techniques facilitates the adaptation of the study into the publication and dissemination standards that are commonplace in international law, such as networks, forums, calls for papers, collective volumes, and special issues of indexed journals in the field, which tend to revolve around specific case-based or problem-based research.

64 Detlef MÜLLER-BÖLING and Heinz KLANDT, *Methoden empirischer Wirtschafts- und Sozialforschung: eine Einführung mit wirtschaftswissenschaftlichem Schwerpunkt*, 3rd ed., Köln Dortmund, Universität Dortmund, 1996.

65 H W A THIRLWAY, *The Sources of International Law*, 2nd ed., Oxford, Oxford University Press, 2019.

66 Andreas ZIMMERMANN et al., eds., *The Statute of the International Court of Justice: A Commentary*, 3rd ed., Oxford Commentaries on International Law, Oxford, Oxford University Press, 2019.

67 Cesare ROMANO, Karen J. ALTER, and Yuval SHANY, eds., *The Oxford Handbook of International Adjudication*, Oxford, Oxford University Press, 2014.

Concerning case-based studies, international legal research is categorized as a case study[68] when the subject matter includes specific cases (commonly referred to as international disputes or controversies). This implies that the study: (a) focuses on the legal aspects of a dispute or case, usually one that has been submitted to a dispute resolution method (i.e., arbitration or international adjudication), that may also have other historical, social, political or cultural aspects; and (b) addresses the specific procedure for the settlement of the international controversy. For example, while an international conflict such as the war that took place from 1991 to 1995 in the Balkans has multiple historical-social issues, a legal case study that has frequently been a subject of scholarly work is the judicial process (including the decisions made therein) against Duško Tadić before the International Criminal Tribunal for the former Yugoslavia (ICTY).[69]

Once the case is chosen, international legal research works are usually designed from a descriptive-analytical starting point, approaching the different variables that case studies focus on, notably the following: (a) the internal logic of the decisions made and their consequences, including their impact on other normative orders, such as the domestic laws of the affected State; (b) the role of the decisions made as an effectiveness parameter of the international court issuing them; (c) the significance of the decisions made in developing a particular theory of international law or social science. All these variables, solely or cumulatively, may be subject matters once the researcher implements the case study technique.

As for problem analysis, research works may be proposed based on a problem intrinsic to international law as a discipline,[70] legal training,[71] or legal practice (litigation). First, this research technique requires researchers to identify a relatively broad global legal issue, such as the effectiveness of international judgments, local actors' compliance with treaties, jurisprudential dialogue, international court funding, the value of separate opinions of international judges,[72] or the lack of cooperation in arresting individuals responsible for international crimes.

Second, research works shall be designed by mapping and describing an international legal problem—its rationale to be considered a relevant problem, its

68 Kenneth S BORDENS and Bruce B ABBOTT, *Research Design and Methods: A Process Approach with PowerWeb*, 5th ed., New York, McGraw-Hill Higher Education, 2003.

69 International Tribunal for the former Yugoslavia (ICTY), "Prosecutor v. Dusko Tadic (Appeal Judgement) IT-94-1-A," July 15, 1999, https://www.refworld.org/cases,ICTY,40277f504.html

70 Rudra SIL, "Simplifying Pragmatism: From Social Theory to Problem-Driven Eclecticism," in *International Studies Review* 11, no. 3 (2009), pp. 648–52.

71 José Antonio MOLINA ORTIZ et al., "Aprendizaje basado en problemas: una alternativa al método tradicional," in *Revista de la RED-U* 3, no. 2 (2003), pp. 79–85, https://redined.educacion.gob.es/xmlui/handle/11162/91288

72 Andres SARMIENTO LAMUS and Walter ARÉVALO RAMÍREZ, "Non-Appearance before the International Court of Justice and the Role and Function of Judges Ad Hoc," in *The Law & Practice of International Courts and Tribunals* 16, no. 3 (2017), pp. 398–412, https://doi.org/10.1163/15718034-12341358

spatial-temporal location, and the possibility of assessing it using one or more theoretical approaches.[73] Finally, a solution to the problem will be proposed, thus encouraging researchers to go beyond its descriptive-analytical scope.

Furthermore, it is crucial to consider that problem-based international legal research cases are particularly relevant in analyzing the identified problem. However, their selection for study purposes is not due to interest in themselves but due to their representation of the problem assessed. For example, if the broader problem is treaty compliance by local authorities, a certain number of cases can be selected based on which discourse elements they add to the analysis of the broader issue.

2.1.2. Resorting to the generations of knowledge perspective

Identifying available knowledge regarding an international law topic and its possible contribution to preexisting and new discussions is essential to constructing the subject matter of international legal research. The researcher aims to place their project in the context of the efforts of previous researchers, avoid repeating already performed research, and look for their current, fresh, and relevant contribution to international law.

The perspective of what the sociology of knowledge has called "generations of knowledge" or "generations of a discipline" is frequently used to perform this analysis. McCourt[74] and Goldman[75] note that first-generation research seeks to describe and discuss an international legal problem considered new at the time (e.g., the first body of research on a treaty under development or a new international court). The traditional legal issues of international law have already surpassed this phase; for example, establishing the relationship between international law and constitutional law due to the emergence of twentieth-century constitutions.

The second generation of knowledge comprises research on already identified, described, and problematized issues based on specific situations or cases (e.g., research on the problem caused by the constitutional control of treaties in Colombia under the new Constitution of 1991).

The third generation of knowledge includes research that, based on the first-generation problem and considering cases studied in the second generation, proposes new forms of subject matter, rebuts the classic explanations, or introduces new concepts that restate or supplement previously studied cases.

73 MOLINA ORTIZ et al., "Aprendizaje basado en problemas."
74 MCCOURT, "The 'Problem of Generations' Revisited."
75 GOLDMAN, "From Social Theory to Sociology of Knowledge and Back."

This is the case of research carried out with the awareness that compliance with the international legal order is not just a matter of (a) hierarchy when compared to national constitutions (first generation) or (b) its incorporation into domestic law in concrete cases (second generation). For this type of research, the actual explanation of the research problem (previously described and studied mainly from a classical perspective) can be found on different grounds, such as public opinion about the international legal order, knowledge of the decision-making process of judges who are part of the international courts, or patriotic or nationalist fights (in which the argument against international law may be used as part of election campaigning).

Considering international legal research through the generations of knowledge perspective is essential to determining the purpose of a research work and its development plan, as it helps (i) to identify the relevance of the research problem; (ii) to establish which aspects of the research problem may be worth addressing (and which are not); and (iii) to avoid conducting redundant, repetitive, or irrelevant studies.

Conducting a literature review from the perspective of generations of knowledge perspective also helps the researcher approach available knowledge effectively and systematically, in addition to identifying the scope of the research work (e.g., deciding between (a) a second-generation study by descriptively and analytically looking into a problem already identified by first-generation authors; or (b) a third generation study, by drafting a text aiming to rebut, supplement, or change the theoretical perspective from which the problem was initially raised as part of the first generation).

2.2. Specific research techniques in international legal research based on critical approaches

In line with the interpretivist epistemological orientation and the qualitative interpretative method, which characterize critical international legal research, a complete range of specific research techniques is used to support the arguments proposed by researchers who adopt these theoretical approaches. Genealogy, critical discourse analysis, deconstruction, content analysis, ethnography, and participant observation are notable among them.

2.2.1. Genealogy

Genealogy does not look at history as the result of sacred texts that should be dogmatically construed. Instead, genealogy is focused on the meanings and assumptions about causes found in narratives of resistance. To this end, it stresses processes and opposes the deterministic argumentation of other tra-

ditional approaches that refer to historical stages as unavoidable or attribute the response to structural changes to single factors.[76]

Foucault's "Nietzsche, Genealogy, History"[77] addresses how history is approached—from a historical perspective and what he calls "the historians' history." For Foucault, the best way to depict genealogy as a research technique is through *entstehung* and *herkunft*. Despite both terms generally being translated as "origin," Foucault aims to give back their proper word meaning. This way, concerning *herkunft*, he considers that "[…] the traits it attempts to identify are not the exclusive generic characteristics of an individual, a sentiment, or an idea, which permit us to qualify them as 'Greek' or 'English'; rather, it seeks the subtle, singular, and sub-individual marks that might potentially interest them in forming a network that is difficult to unravel."[78]

As for *entstehung*, this term relates more to the moment of arising (understood as the principle and singular law of appearance) that cannot be exempt from the existing forces (and the struggle these forces have with each other or against adverse circumstances).[79]

Genealogy, thus defined as the pursuit of *herkunft* and *entstehung*, is connected with the "historical sense" (*wirkliche history*), which "[…] gives rise to three uses that oppose and correspond to the three Platonic modalities of history. The first is parodic, directed against identity, and opposes the theme of history as reminiscence or recognition. The second is dissociative, directed against identity, and opposes history given as continuity or representative of a tradition. The third is sacrificial, is directed against truth, and opposes history as knowledge. They imply a use of history that severs its connection to memory, as well as its metaphysical and anthropological model, constructing a counter memory—a transformation of history into a totally different form of time."[80]

These three modalities of history establish genealogy as a counter-memory but differently from what Nietzsche considered in 1874: it is not about judging the past in the name of a current truth but about risking the destruction of the subject of knowledge, parodying the veneration of monuments, and eradicating the respect for communities through dissociation.[81]

76 Audie KLOTZ and Cecelia LYNCH, *Strategies for Research in Constructivist International Relations*, International Relations in a Constructed World, New York, Routledge, 2007; Audie KLOTZ and Deepa PRAKASH, eds., *Qualitative Methods in International Relations: A Pluralist Guide*, London, Palgrave Macmillan UK, 2008.

77 Michel FOUCAULT, *Microfisica Del Poder*, ed. Julia VARELA, trans. Fernando ÁLVAREZ-URÍA, 2nd ed., Madrid, La Piqueta, 1980, p. 18.

78 FOUCAULT, p. 14.

79 FOUCAULT, p. 18.

80 FOUCAULT, p. 18.

81 FOUCAULT, p. 18.

Resorting to genealogy thus challenges two of the most relevant forms of ahistoricism in social sciences: "chronofetishism" and "tempocentrism." According to Bennett and Elman,[82] "[t]he former is said to denote a "sealing off" of the present such that it appears as an autonomous, natural, spontaneous and immutable entity. The latter refers to the extrapolation of this "naturalized" present backwards through time such that discontinuous ruptures and differences between historical epochs and state systems are smoothed over and consequentially obscured."

The recommendation for researchers interested in going through this path is thus to observe history as a field of risks and complexities to withdraw from the preference given by mainstream theories to intellectual parsimony and the totalist vision of history. The priority would then involve exploring historical ruptures and essential differences to identify alternatives that allow redirecting the international order.[83]

2.2.2. Critical discourse analysis

Critical discourse analysis (CDA) is a suitable technique for interpreting the values and ideas of social actors. According to Van Dijk,[84] far from being neutral and harmless expressions, discourses represent the imposition of an ideology by one group of individuals upon others.

Ideologies, defined as socially shared group representations, are the foundation of the attitudes of a group. They are also the foundation of the (partial) control of the pre-established mental models over group members. In this context, CDA shows how ideologies are discursively produced by a group and undertaken by its members.

Furthermore, although CDA acknowledges that ideology can also be expressed and represented by social practices other than discourse, it considers the acquisition, legitimization, and promotion of ideology discursive (through ideological opinions) on most occasions.[85]

When ideologies are reflected in discourses, these are expressed through underlying structures to represent or manipulate the description of the group itself (usually with a positive assessment) and the exogenous group (in a generally opposite manner). Van Dijk[86] explains that not all discourse structures are ideologically driven because everything depends on the context, defined

82 Joel QUIRK, "Historical Methods," in *The Oxford Handbook of International Relations*, Oxford Handbooks, Oxford, Oxford University Press, 2008, p. 523.
83 QUIRK, p. 532.
84 Teun A. VAN DIJK, "Ideología y análisis del discurso," in *Utopía y Praxis Latinoamericana*, 29 (2005), p. 34, https://dialnet.unirioja.es/servlet/articulo?codigo=2734720
85 VAN DIJK, p. 34.
86 VAN DIJK, p. 35.

as "[…] subjective mental models (that may be ideological themselves) representing relevant characteristics of communicative situations."

Therefore, CDA is relevant for international law because it allows for taking together discourses by political/legal leaders (e.g., heads of State, ambassadors or plenipotentiaries before international bodies, magistrates, legislators, military commanders, representatives of international organizations, academics, and journalists, among others) and those of alternative voices (e.g., opposition leaders, representatives of peripheral countries in international forums, unionists, members of NGOs, and commanders of illegal armed groups, among others) to corroborate dominant discourses and resistance speeches in order to understand underlying structures and the representations they make of other groups.[87]

Five tools are used to operationalize CDA to deconstruct the texts subject to analysis. First, since discourse is framed within a spatially and temporally defined social practice, the text is separate from the social world from which it emerges. Second, given the dialectical relationship between discourse and social structures and relationships, other social phenomena are equated with the content of the text. Third, social phenomena are re-contextualized from other phenomena. Fourth, the different representations that every discourse may have been set forth with a focus on (a) the arguments put forward by validators to convince of the authenticity or relevance of their representations to justify actions and behaviors; (b) the promotion of the attitudes of validators through their viewpoints and the expression of their stance in a mitigated or intensified manner; and (c) the legitimization and delegitimization of discursive representations of events by social actors, their relationships, and the discourse itself. Fifth, the material phenomenon's whole meaning becomes visible to discourse *users*.[88]

2.2.3. Deconstruction

Regarding deconstruction, this research technique aims to reorganize Western thought. Derrida describes it as a strategy for breaking down Western metaphysics.[89] It is a dynamic movement of transformation and liberalization of (a) the "hegemony of logos" and (b) the imposition of logocentric thinking strategies that shape the whole cultural system and bring together the social fabric. In this scenario of the dominance of one specific culture, deconstruction is introduced as a process that seeks to make visible the invisible, the displaced, or the overshadowed by the supremacy of Western logos.

87 URUEÑA-SÁNCHEZ, *Mercenarios y compañías militares y de seguridad privadas*.

88 Luisa MARTÍN ROJO, "El análisis crítico del discurso: fronteras y exclusión social en los discursos racistas," in *Análisis del discurso: manual para las ciencias sociales*, 2nd ed., Sociología 74, Barcelona, Editorial UOC, 2006, pp. 161–96.

89 Jaques DERRIDA, *Du Droit à la philosophie*, Paris, Éditions Galilée, 1990.

In deconstruction, making the concealed visible involves the reversal of hierarchies imposed by the dominant categories of logos. Thus, the unexpressed absence comes into being in new rediscovered contents, manifested as traces over footprints of the established structures and reinterpretations instituted based on what Derrida calls the "difference." It specifies the meaning by providing it with specific content.[90]

The resistance that symbolizes the deconstruction of logos and its ambition to develop metaphysical categories based on the superstructure of its power ends up turning deconstruction into a revolutionary movement capable of questioning the instauration of the final truths. The aim is to minimize the value of logos as an undisputable referent of reality, uncovering the impossibility of its statements' absolute and fundamental nature through the same tools, procedures, logical constructs, and rigor of the structure.[91] By highlighting other referents of the difference derived from the absence of logos and its power, the objective is to express different meanings and ways of interpreting and understanding reality. Accordingly, deconstruction is proposed as an emancipation strategy for human beings because it breaks the hegemonic structures of knowledge and power.[92]

2.2.4. Content analysis

Concerning content analysis, the relevant aspect of critical theories is the qualitative-interpretative method. In the orthodox view of social sciences, content analyses are classified into substantive (what is said) and structural (how it is said and presented and by whom). This happens even when software tools for word count purposes and particular types of textual analysis are available.[93] In contrast, critical research content analysis comprises a set of procedures to draw inferences from texts to exemplify how people use or handle symbols to give meaning to their messages. This analysis follows the eight steps suggested by Hermann[94] based on the following questions:

- Does your research question involve extracting meaning from communications?
- What kinds of materials are available, and how accessible are they?
- Does what you are interested in studying lend itself more to qualitative or quantitative analysis?

90 Jaques DERRIDA, *La escritura y la diferencia*, Barcelona, Anthropos, 1989.
91 DERRIDA, 1989.
92 Barry STOCKER, *Routledge Philosophy Guidebook to Derrida on Deconstruction*, Routledge Philosophy Guidebooks, London; New York, Routledge, Taylor & Francis Group, 2006.
93 Lisa HARRISON, *Political Research: An Introduction*, London, Routledge, 2001.
94 Margaret G HERMANN, "Content Analysis," in Audie KLOTZ and Deepa PRAKASH (eds.), *Qualitative Methods in International Relations: A Pluralist Guide*, London, Palgrave Macmillan UK, 2008, p. 151.

- Do you view the materials as representational or instrumental in understanding your study subjects?
- What is your unit of analysis, and what coding rules and procedures do you plan to use?
- Can one contextualize to consider the situation, culture, and history?
- Can others replicate your analysis?
- Does the analysis capture what you are interested in learning about?

Taking the eight steps proposed by Herman into account, it is possible to study the texts and their development by the prominent actors of international society concerning the specific subject matter of research. The content analysis thus helps deconstruct the representations made by these actors to restate or question certain viewpoints. This type of deconstruction is more thorough because it aims to identify and understand each actor's situation and the cultural systems and historical structures influencing the development of the texts studied.

2.2.5. Ethnography and participant observation

These last two techniques directly address human communities. Participant observation may be considered part of ethnography, as the latter may combine it with other methods, such as interviews, to assess societies at the local level. In both techniques, the researcher acts as an observer who asks about the meaning of given practices within specific contexts, inquiring "what rules and norms people follow, and what institutions result."[95]

These techniques highlight the micro-processes of socialization, reinforcement of institutionalized practices, traditional thought patterns, and procedures for standardizing and organizing knowledge.[96] A factor by which these techniques are considered an exciting alternative for international legal researchers involves distancing from the narratives of the principal States' elite to visualize the cosmogonies of those excluded and marginalized by power groups. This is a significant change from international law's classical issues and approaches.

Ethnography (or ethnomethodology) assumes that reality is not objective, which leads the researcher to delve into the social environment in which the research focuses, not only to know "what is happening" but also "why" and "how" social phenomena take place. Instead of looking for generalizations or regularities, ethnography supports the view that the events within the social

95 KLOTZ and LYNCH, *Strategies for Research in Constructivist International Relations*, p. 58.
96 KLOTZ and LYNCH, p. 38.

world are unique. In other words, "[…] every event depends for its sense on the context within which it occurs, where the context is made up of the time, the place and the people involved."[97] Consequently, ethnographies have a theoretical preference for (a) considering social and cultural events as categories distinct from natural events; and (b) rejecting any demand for neutrality or objectivity in the scientific method itself.[98]

As part of ethnography, participant observation is understood as a less structured approach to analysis when compared to systematic observation because the latter entails accurate definitions of observable behaviors which can be measured.[99] Given that there is no limitation on the traits the researcher may study, participant observation seeks to approach subject matters that are more difficult to address. The possibility of delving into power structures, exclusive decision-making groups, or isolated social movements may aid in reaching a deeper understanding of the decision-making that underlies international legislation.

3. Monodisciplinary, multidisciplinary, and interdisciplinary international legal research

The last section of this paper analyzes how international legal research (either critical or classical) addresses issues related to other disciplines, such as political science, international relations, foreign policy, economy, history, sociology, or ethnography, among many others.[100]

The European Legal Realist approach, which deals with international legal problems and case studies from an empiricist and realistic approach, has addressed this situation by proposing a series of categories to reflect the interrelation between international law and other disciplines.[101] For this approach, a discipline comprises a group of concepts and methods applied to solve the problems dealt with. Moreover, depending upon the level of interaction between international legal concepts and practices, and those from other disciplines, it is possible to establish whether a particular research study is monodisciplinary, multidisciplinary, or interdisciplinary.[102]

International legal research is monodisciplinary when it uses informative concepts from other disciplines at the heuristic and auxiliary levels. Heuristi-

97 HARRISON, *Political Research*, p. 77.
98 HARRISON, p. 78.
99 HARRISON, p. 83.
100 J D ARMSTRONG, Theo FARRELL, and Hélène LAMBERT, *International Law and International Relations*, 2nd ed., Themes in International Relations, Cambridge, Cambridge University Press, 2012.
101 Jakob V H HOLTERMANN and Mikael RASK MADSEN, "European New Legal Realism and International Law: How to Make International Law Intelligible," in *Leiden Journal of International Law* 28, no. 2 (2015), pp. 211–30, https://doi.org/10.1017/S0922156515000047
102 Bart van KLINK and Sanne TAEKEMA, eds., *Law and Method: Interdisciplinary Research into Law*, Tübingen, Mohr Siebeck, 2011.

cally, the subject matter is specific to international law (e.g., issues relating to principles, procedures, sources, or subjects belonging to the international legal order or issues addressed in cases heard in international courts). Nevertheless, across the analysis and interpretation of international law, concepts from other disciplines supplement the interpretation of the context, facts, or consequences of legal relations within the global society (which does not deprive the subject matter of research of its international legal nature).[103]

At the auxiliary level, other disciplines supply arguments to supplement the legal reasoning, but the legal arguments do not borrow their validity from said other disciplines. As a result, they will be interpreted in light of the international legal arguments presented in the research. Typical examples of this situation can be commonly found in international law of the sea and international environmental law.[104] Specific scientific data (such as the extension of the continental shelf, the features of a specially protected environmental region,[105] the depth of a maritime area, or the geomorphological study of a group of islands) are used as scientific evidence to strengthen the solution proposed for the subject matter of research, which is always based on international legal criteria.

There is also international legal research of a multidisciplinary and interdisciplinary nature; concerning the first, Taekema and Van Klink[106] highlight that multidisciplinary research uses concepts from other disciplines (e.g., international relations) to frame, conduct and validate the international legal analysis. Nevertheless, these different disciplines have a limited capacity to resolve the questions subject to research. Therefore, the methods used in multidisciplinary, international legal research are not entirely borrowed from other disciplines (e.g., in particular, research about Statehood, the concepts of sovereignty, foreign policy, and governance that belong to political science, are relied on in the study to frame, conduct and validate the analysis, which is carried out from an international law standpoint).

Interdisciplinary research is characterized by specific questions from international legal research that other disciplines may only answer.[107] Furthermore, interdisciplinary research is usually conducted by teams of several members

103 KLINK and TAEKEMA.

104 Ted L MCDORMAN, "The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World," in *The International Journal of Marine and Coastal Law* 17, no. 3 (2002), pp. 301–24, https://doi.org/10.1163/157180802X00099

105 Ricardo ABELLO-GALVIS and Walter AREVALO-RAMIREZ, "Inter-American Court of Human Rights Advisory Opinion OC-23/17: Jurisdictional, Procedural and Substantive Implications of Human Rights Duties in the Context of Environmental Protection," in *Review of European, Comparative & International Environmental Law* 28, no. 2 (2019), pp. 217–22, https://doi.org/10.1111/reel.12290

106 KLINK and TAEKEMA, *Law and Method*.

107 Héctor OLÁSOLO ALONSO, Mario Iván URUEÑA-SÁNCHEZ, and Andrés SÁNCHEZ SARMIENTO, "Marco analítico y metodológico," in *La función de la corte penal internacional: Visiones plurales desde una perspectiva interdisciplinar: Volumen Especial por el X Aniversario del Instituto Ibero-Americano de la Haya para la Paz, los Derechos Humanos y la Justicia Internacional*, Valencia, Tirant lo Blanch, 2021, https://dialnet.unirioja.es/servlet/libro?codigo=833736

(each representing their discipline(s), and every field fully addresses the problem by applying its concepts and methods to compare the results and blend the contributions made subsequently).

Conclusions

As seen throughout this work, international legal research has yet to adopt a positivist epistemological approach nor been conducted by unquestioningly assuming the voluntary state-centric and realistic premises that classical research is built upon. Instead, it can be completed from the rejection of positivism and the adoption of theoretical frameworks: (a) that abandon modernity and its subjectivities; and (b) from which, based upon their perception of international society and the international legal order, the creation of an alternative world may be sought (this entails an ethical commitment with the possibility of social and international change).

Except for some feminist theories, international legal research developed from critical approaches adopts an interpretivist epistemological orientation, under which social phenomena are presented as the result of belief systems and knowledge acquisition methods. Thus, critical approaches propose open research questions that analyze rules, perceptions, language acts, and texts as representations of how social actors interpret international society subjectively.

To answer these questions, international legal research from critical approaches adopts the qualitative interpretative method, which assesses international law as a historical process involving the values, ideas, and rules of the different actors in a global society. To this end, a series of research techniques that may be classified into two main groups are used.

The first group is composed of those techniques, such as the case study, problem analysis technique, or the generation of knowledge perspective, which are shared with classical international legal research, and whose use allows for (a) their inclusion among the primary means of scientific divulgation of international law; (b) avoidance of repetition of research already conducted; and (c) promotion of genuine contributions to international law.

The second group comprises research techniques, such as genealogy, CDA, deconstruction, text analysis, ethnography, and participant observation, specific to critical international legal research. These techniques allow for a deeper assessment of the context of events and how social actors interact to understand better their intersubjective interpretations, which ultimately give meaning to the various fields of international society and international law.

Lastly, it is worth considering that critical international legal research (like classical international legal research) can be monodisciplinary, multidisciplinary,

or interdisciplinary, depending on the interaction between international legal concepts and methods and those coming from other disciplines.

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