

# Pandemic, Maternity, and International Lawyers from the Global South: a Call for an Intersectional Approach

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## Abstract

What are the impacts of virtualisation on mothers from the Global South who are international law scholars and practitioners? This article argues that it created both challenges and opportunities. It starts with a general overview of international legal academia and states that the Divisible College of International Law is a predominantly male global-north college. Next, it provides some data on the pandemic and how it has affected output in academia in unequal ways by using Brazil as a case study. On that basis, the paper finds that motherhood requires distinct attention as against other performative identities. As a remedy, the paper applies TWAIL feminisms as the approach and framework to revisit this debate and render mothers from the Global South visible, especially in the post-pandemic context. Synthesising these

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findings, the article finally calls for an intersectional approach, namely a TWAIL matricentric feminist approach to international law.

## Keywords

Maternity – international law scholars – Global South – pandemic – TWAIL – feminism – intersectionality

## I. Introduction

For some time it seemed that the COVID-19 pandemic caused a paradigm shift in the ways people meet, research, learn, and work. With the social distancing measures, the whole international community had to adapt. Moving became logging into online meeting platforms. Now that the pandemic is over many organisations and conferences went back to full in-person and others keep hybrid work. This paper reflects on the two following questions: How, if at all, has the virtual shift affected the existing power dynamics between the Global North and the Global South,<sup>1</sup> male and female, mother and non-mother international law scholars and practitioners? How can we analyze the challenges of mothers from the Global South who are international law scholars or practitioners from an intersectional perspective?

To do so, this paper relies on the Brazilian reality as a case study. It is therefore aware that it presents only an initial and limited framework of the problem, which has to be expanded by further works addressing other Global South States. The article is based on a feminist approach, which I understand as the political project that aims at achieving equality and that has an interest in women's lives and equality.<sup>2</sup> However, feminist approaches present limits of focusing only on gender and rendering invisible the specific realities of Global South women and motherhood. In recent years, third-world feminist approaches to international law to some extent provide answers to these limitations. Yet, also third-world feminist approaches often

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<sup>1</sup> By Global South I mean 'one of a family of terms, including "Third World" and "Periphery", that denote regions outside Europe and North America, mostly (though not all) low-income and often politically or culturally marginalised'.

Nour Dados and Raewyn Connell, 'Jargon Key Concepts in Sociological Research – The Global South', *Contexts* 11 (2012), 12-13.

<sup>2</sup> Hilary Charlesworth, 'Feminist Approaches to International Law', UN Audiovisual Library of International Law (2012), <[https://legal.un.org/avl/ls/Charlesworth\\_IL.html](https://legal.un.org/avl/ls/Charlesworth_IL.html)>, last access 3 May 2024.

disregard the specific reality of mothers. This article precisely aims to contribute towards closing this gap by emphasising the importance of third-world matricentric feminism, which means adding the perspective of motherhood to the debate. Therefore, the article's methodology turns to the concept of 'intersectionality'<sup>3</sup>, which considers that a single-axis analysis threatens effective comprehension of complex situations, legal reasoning, and a fight for equality, as will be further explored in section V.<sup>4</sup>

The criticism conveyed through this paper is directed at patriarchal societies, neocolonial power dynamics, and academic structures that reflect both patriarchy and global-north dominance. It is also directed at the invisibility of motherhood throughout those power dynamics.

## II. Critical Overview of International Legal Academia: a Dominance of a Male Global-North College

As it is widely known, the expression 'invisible college of international law' was coined by Oscar Schachter. In his 1977-1978 paper entitled 'The Invisible College of International Lawyers'<sup>5</sup> he argued that the professional community of international lawyers, even though dispersed across the globe and involved in various occupations, forms a community committed to a shared intellectual endeavor.<sup>6</sup> He adds that this phenomenon is evident through international law journals and yearbooks, the global mobility of professors and students within transnational networks, and the diverse conferences, seminars, and colloquia convened across various regions of the world.<sup>7</sup>

Countering Schachter's invisible college claim Anthea Roberts in her book 'Is International Law International?'<sup>8</sup> provides empirical evidence that what we have is instead a divisible college of international law 'whose members hail from different states and regions and often form separate, though sometimes overlapping, communities with their own understandings and ap-

<sup>3</sup> Sumi Cho, Kimberlé Williams Crenshaw and Leslie McCall, 'Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis', *Signs* 38 (2013), 785-810.

<sup>4</sup> Cho, Crenshaw and McCall (n. 3), 787.

<sup>5</sup> Oscar Schachter, 'Invisible College of International Lawyers', *Nw. U. L. Rev.* 72 (1977-1978), 217-226.

<sup>6</sup> Schachter (n. 5), 217.

<sup>7</sup> Schachter (n. 5), 217. See also Santiago Villalpando, 'The "Invisible College of International Lawyers" Forty Years Later', (5 December 2013), ESIL 2013, 5th Research Forum: International Law as a Profession Conference Paper No. 5/2013, available at SSRN: <<https://ssrn.com/abstract=2363640>> or <<http://dx.doi.org/10.2139/ssrn.2363640>>.

<sup>8</sup> Anthea Roberts, *Is International Law International?* (Oxford University Press 2017).

proaches, as well as their own distinct influences and spheres of influence'.<sup>9</sup> She provides data to unveil patterns of dominance in the field, meaning that on the educational and discursive practices across the five permanent members of the United Nations Security Council some States, publications, and approaches tend to prevail in the comprehension of international law.<sup>10</sup> Flows of people occur mainly from peripheral and semi-peripheral states to core states and from non-western states to western, as there is a symbolic capital of acquiring education in core states.<sup>11</sup> Flows of books, articles, and ideas prevail in the opposite direction, from core to periphery.<sup>12</sup> Despite shedding light on the asymmetric relations between core and periphery, western and non-western, Robert's book does not discuss further inequalities such as gender.

The reality is that the invisible college is reserved for the privileged few who are able to study in leading academic institutions from the Global North such as Oxford, Cambridge, the Max Planck Institute, the Hague Academy, and Ivy League Universities in the United States.<sup>13</sup> This academic pathway belongs to the Global North. This means that Global South scholars face challenges in getting in and that by studying there, their lines of thought will almost inexorably be colonised to some degree by a Global North perspective. They may, for example, inadvertently privilege Global North citations over locally relevant sources and perspectives. The most prestigious journals and conferences might perpetuate the prevalence of global-north voices, even as a side effect. The writing styles of different Global South States might also be a barrier to publishing papers since editorial boards<sup>14</sup> from the most prestigious international journals are mainly from the Global North, namely

<sup>9</sup> Roberts (n. 8), 2.

<sup>10</sup> Roberts (n. 8), 9.

<sup>11</sup> Roberts (n. 8), 53.

<sup>12</sup> Roberts (n. 8), 53.

<sup>13</sup> Martti Koskenniemi, 'Foreword', in: Anthea Roberts, *Is International Law International* (Oxford University Press 2017). 'The culture of international law has grown around a limited number of academic centers. It is really hard to enter the profession without an LLM or a doctorate from one of a handful of law schools in the Anglophone world, or maybe Paris, or at least without having taken a course at The Hague, or having spent some time at the Max Planck Institute in Heidelberg. No matter where one has been born, what school one has attended, access to the college is about being socialized into a professional vocabulary and a set of cultural mores conveyed through a well-known but narrow academic pathway.'

<sup>14</sup> The European Journal of International Law and the American Journal of International Law, for instance, currently have no members from Africa or Central and South America <[https://academic.oup.com/ejil/pages/Editorial\\_Board](https://academic.oup.com/ejil/pages/Editorial_Board)>, last access June 2022, <<https://www.cambridge.org/core/journals/american-journal-of-international-law/information/editorial-board>>, last access June 2022. The Brazilian Journal of International Law, for instance, has in its editorial board members from Brazil, France, Geneva, and Colombia <<https://www.publicacoes.uniceub.br/rdi/about/editorialTeam>>, last access June 2022.

Europe and the United States. For example, some cultures may place greater emphasis on establishing context and background information before presenting the main arguments, while others may adopt a more direct approach. Furthermore, scholars from the Global South may utilise different storytelling techniques or modes of argumentation which might face challenges in passing through Global North reviewers who are trained with other modes of argumentation. English as the lingua franca might also shield participation for mothers from the Global South to publish and present research in the global-north events.<sup>15</sup> Those who do not master both oral and written English might be rendered silent. The Global South *curriculum vitae* (CV) can be an obstacle to being accepted to the Global North arena, as most journals and calls for presentations require a CV attached to the work proposal. Specific citation requirements might be a hardship for Global South scholars who are unfamiliar with them. Added to that are the gender discrimination hardships, meaning a second layer of challenges for women from the Global South to become part of the invisible college, if the woman is a mother, there is a third layer of challenges to overcome.

As regards international legal practitioners, the United Nations (UN) has never had a woman secretary-general. Lawyers acting at the International Court of Justice (ICJ) exemplify a longstanding huge gap between men and women and between Global North and Global South States.<sup>16</sup> As regards ICJ judges, the gap between Global North and Global South is less a problem, as, by statutory requirement, the Court must ensure 'the representation of the main forms of civilization and of the principal legal systems

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<sup>15</sup> Roberts (n. 8), 91. Roberts makes a similar argument as regards English as the lingua franca and as regard western and non-western scholars 'Many transnational international law journals are published in English by major Western publishing houses like Oxford University Press. The editorial boards of many of them are drawn exclusively or predominantly from Western states. When it comes to publishing in these transnational journals, the language criterion creates distinct advantages for scholars from English-speaking states over those from non-English-speaking ones. The Western nature of some of the editorial boards may also advantage Western scholars over non-Western ones.'

<sup>16</sup> Shashank P. Kumar and Cecily Rose, 'A Study of Lawyers Appearing before the International Court of Justice, 1999-2012', *EJIL* 25 (2014), 893-917. 'As discussed above, only 23 women spoke during oral proceedings during this period, thus accounting for 11.2 per cent of the 205 lawyers who appeared before the Court, and 7.4 per cent of the total speaking time during oral proceedings. Among the ICJ Bar, women were even less represented, as only four female lawyers appeared before the Court more than once, thereby constituting just 6.3 per cent of the 63 members of the ICJ Bar. Furthermore, the lawyers who appeared before the Court were overwhelmingly nationals of developed states, as 72.2 per cent of the 205 lawyers were nationals of OECD member states. Again, this figure is even more extreme among the ICJ Bar, 85 per cent of which comprised nationals of OECD member states. Moreover, the data shows that non-nationals on legal teams were almost entirely from OECD member states, whether or not the party before the Court was an OECD member state.'

of the world'.<sup>17</sup> However, its history demonstrates an extreme inequality in female representation. It has only had five female judges, compared to one hundred and five male judges.<sup>18</sup> Currently, out of the fifteen judges, there are four women. Women's representation has improved, but the ICJ has a long way to go to achieve gender equality.

International law both in the field of scholarship and practice have long replicated gender discrimination patterns in States, where women tend to remain in more subordinate roles.<sup>19</sup> Over thirty years ago, the now judge of the ICJ, Hillary Charlesworth, co-wrote a groundbreaking paper on Feminist Approaches to International Law in which the authors highlighted that "The Group on Equal Rights for Women in the United Nations has observed that "gender racism" is practiced in UN personnel policies "every week, every month, every year" and that it would take "until 2021 to reach equality (i. e.: 50 % of professional jobs held by women)."<sup>20</sup> Back then, they described the situation as grotesque. The current situation is even more bizarre.

Gender inequality also occurs in the inter-American system of human rights. The Inter-American Court of Human Rights currently has three female and four male judges.<sup>21</sup> However, it only had five women judges since 1979.<sup>22</sup> The International Law Commission is also a male helm, and among the thirty-four members in office until the end of 2022, only four women are present.<sup>23</sup> Furthermore, there are only five women among the thirty-four members who will start an office in 2023.<sup>24</sup> At the Committee on the Elimination of Discrimination against Women, there is only one man out of

<sup>17</sup> Art. 9 Statute of the International Court of Justice of 26 June 1945, 1055 UNTS, No. 993.

<sup>18</sup> International Court of Justice, All Members website <<https://www.icj-cij.org/index.php/all-members>>, last access June 2022.

<sup>19</sup> Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law Source', *AJIL* 85 (1991), 613-645.

<sup>20</sup> Charlesworth, Chinkin and Wright (n. 19), (623).

<sup>21</sup> Inter-American Court of Human Rights composition <<https://www.corteidh.or.cr/composicion.cfm?lang=en>>, last access June 2022.

<sup>22</sup> Composiciones Corte Interamericana de Derechos Humanos 1979-2019 <<https://www.corteidh.or.cr/docs/composiciones/composiciones.pdf>>, last access June 2022.

<sup>23</sup> International Law Commission Membership <<https://legal.un.org/ilc/membe.shtml>>, last access June 2022.

<sup>24</sup> Membership, 2021 Election of the International Law Commission <[https://legal.un.org/ilc/elections/2021election\\_outcome.shtml](https://legal.un.org/ilc/elections/2021election_outcome.shtml)>, last access June 2022. In the Committee against Torture, only three of the 10 independent experts are women. Membership Committee against Torture <<https://www.ohchr.org/en/treaty-bodies/cat/membership>>. The Human Rights Committee has a more representative female membership; among the eighteen members, seven are women, but it has not yet achieved gender equality. Membership Human Rights Committee <<https://www.ohchr.org/en/node/33623/membership>>, last access June 2022.

the 23 members,<sup>25</sup> which is explainable due to a tendency to have more women in international law activities associated with women's lives. However, such a tendency is hostile to the aim of achieving gender equality as it is likely to reinforce stereotypical views of their roles, perpetuating discriminatory patterns.

A silver lining in gender equality is the International Criminal Court, in which seven of the fifteen judges are women.<sup>26</sup> The reason is that the Rome Statute expressly requires 'fair representation of female and male judges',<sup>27</sup> coming from 'Equitable geographical representation'.<sup>28</sup> This is a good practice that aligns both with TWAIL and Feminist claims, but still disregards motherhood.

To conclude, the overall scenario is that on the ground, in less prestigious positions, we see many women as international law scholars and practitioners, but as power increases, the number of women participating decreases. Although women make up for about half of the world's population, the international legal system has a predominantly male 'organizational and normative structure'.<sup>29</sup> Despite some advances and good practices such as the International Criminal Court, the reality is that international law is predominantly a gendered system, and its structure favours men and marginalises women.<sup>30</sup> Furthermore, apparently neutral policies and rules might encapsulate a gender bias.

The predominance of a gendered system in international law, where its structure favors men and marginalises women, can be attributed to several factors, including the underrepresentation of women in international organs discussed above, which marginalises women's voices and perspectives. Among the other factors is the context, that international law has evolved in a historical environment with prevailing patriarchal power dynamics and cultural and social norms that have long reinforced gender stereotypes. Con-

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<sup>25</sup> Membership Committee on the Elimination of Discrimination against Women <<https://www.ohchr.org/en/treaty-bodies/cedaw/membership>>, last access June 2022.

<sup>26</sup> International Criminal Court, The Judges of the Court <<https://www.icc-cpi.int/sites/default/files/Publications/JudgesENG.pdf>>, last access June 2022. Two examples of committees where there is gender equality with nine women, and nine men are the Committee on the Rights of the Child – Membership Committee on the Rights of the Child <<https://www.ohchr.org/en/treaty-bodies/crc/membership>> last access June 2022 – and the Committee on the Elimination of Racial Discrimination – Membership Committee on the Elimination of Racial Discrimination <<https://www.ohchr.org/en/treaty-bodies/cerd/membership>>, last access June 2022.

<sup>27</sup> Art. 8 Rome Statute of the International Criminal Court of 17 July 1998, 2187 UNTS 3.

<sup>28</sup> Art. 8 Rome Statute of the International Criminal Court of 17 July 1998, 2187 UNTS 3.

<sup>29</sup> Charlesworth, Chinkin and Wright (n. 19), 613–645.

<sup>30</sup> Charlesworth, Chinkin and Wright (n. 19), 615.

text, cultural, and social norms have evolved but still need concerted efforts to deconstruct and transform the underlying structures.

The supposed invisible college was and is rather exclusive. Its institutions, voices, and academic paths reflect the unfairness and inequalities of the world,<sup>31</sup> including but not limited to inequalities between Global South and Global North and between male and female, which are relevant to the present article. Even in the 21<sup>st</sup> century is still mainly a global-north male college.

In short, in search of equality, participation, diversity, and justice, international law has to build paths to overcome the hurdles and break the barriers of the divisible college of international law to those who have remained excluded. As Koskeniemi observed '[...] there is a need to make the college eventually visible, to debate its biases and reform its ideals and its practices so that the "international" of the future would be less a reflection of past privilege than present needs'.<sup>32</sup>

### III. The Pandemic, Academia, and Maternity: Challenges and Opportunities

#### 1. Challenges

The pandemic aggravated gender inequalities and discrimination in general, especially for mothers of young children. The situation recalls Simone de Beauvoir's famous quote, 'Never forget that it only takes a political, economic or religious crisis for women's rights to be called into question. These rights can never be taken for granted. You must remain vigilant throughout your life.'

In Brazil, studies have shown that the pandemic generated significant roadblocks for female scholars and practitioners.<sup>33</sup> Difficulties balancing private life and work, as virtualisation blurred the former physical bound-

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<sup>31</sup> Koskeniemi (n. 13). 'Its rules and institutions, ideas and symbols, its cultural and professional mores bear the history of a divided and unjust world. It would be a miracle if that burden were not borne also in the professional education that we carry and reproduce as part of what we do.'

<sup>32</sup> Koskeniemi (n. 13). 'Its rules and institutions, ideas and symbols, its cultural and professional mores bear the history of a divided and unjust world. It would be a miracle if that burden were not borne also in the professional education that we carry and reproduce as part of what we do.'

<sup>33</sup> The researcher did not find data on the pandemic and how it has specifically affected output in international legal academia in Brazil. Therefore, the data presented is about the academia in general.



aries. Children stayed for almost two years without in-person school, and in patriarchal societies, the burdens of taking care of home and children fall prevalently on women.<sup>34</sup> Many women lost their jobs<sup>35</sup> or had to quit to take care of children and spent hours helping kids with the burden of moving to online teaching. They also had a predominant role in dealing with child stress due to social distancing. Patriarchal structures remained during the pandemic or were even enhanced by social distancing and constraining human bodies to homes.

Furthermore, it was often not possible to rely on a support network, such as grandparents since the elderly are in the group at risk for Covid-19. Among other impacts, their academic production dropped, they faced an accumulation of tasks and, consequently, emotional overload, stress, anxiety,<sup>36</sup> had a higher dropout rate, and experienced a triple shift of work. Some argue that the academic environment, including many universities, denied that the pandemic aggravated women's vulnerability.<sup>37</sup>

The Brazilian movement 'parents in science' interviewed almost fifteen thousand scientists and concluded that 'black women (with or without children) and white women with children (mostly aged up to 12 years) were the groups whose academic productivity was more affected by the pandemic'. Only 32 % of women with children under one year and 28,8 % of women with children aged 1-6 submitted papers, compared to 61,1 % of man with children under one year and 52,4 % of man with children aged 1-6.<sup>38</sup> Men with children were much less affected than women with children, and men without children were those least affected by the pandemic.<sup>39</sup> The results draw our attention to gender, race, and maternity as factors that shield the

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<sup>34</sup> In Brazil, official statistics demonstrate that before pandemic, in 2019, working women spend 18,5 hours a week average on housework whereas working men 10,3 hours a week. Agência IBGE de notícias, 'Mulheres dedicam mais horas aos afazeres domésticos e cuidado de pessoas, mesmo em situações ocupacionais iguais a dos homens', IBGE (26 Abril 2019), <<https://agenciadenoticias.ibge.gov.br/agencia-sala-de-imprensa/2013-agencia-de-noticias/releases/24266-mulheres-dedicam-mais-horas-aos-afazeres-domesticos-e-cuidado-de-pessoas-mesmo-em-situacoes-ocupacionais-iguais-a-dos-homens>>, last access 3 May 2024.

<sup>35</sup> Alessandra Saraiva, 'Desemprego de Mulheres Bate Recorde em 2021' O Globo (8 March 2022) <<https://valor.globo.com/brasil/noticia/2022/03/08/desemprego-de-mulheres-bate-recorde-em-2021-aponta-fgv.ghtml>>, last access 3 May 2024.

<sup>36</sup> 'Pesquisadoras refletem sobre o desafio de ser mulher na pandemia', UFJF Notícias (21 February 2022) <<https://www2.ufjf.br/noticias/2022/02/21/pesquisadoras-refletem-sobre-o-desafio-de-ser-mulher-na-pandemia/>>, 3 May 2024.

<sup>37</sup> UFJF Notícias (n. 36).

<sup>38</sup> Parent in Science, 'Produtividade Acadêmica Durante a Pandemia: Efeitos de gênero, raça e parentalidade' (2020), <[https://www.parentinscience.com/\\_files/ugd/0b341b\\_81cd8390d0f94bf8d8cd17ee6f29bc0e.pdf?index=true](https://www.parentinscience.com/_files/ugd/0b341b_81cd8390d0f94bf8d8cd17ee6f29bc0e.pdf?index=true)>, last access 3 May 2024.

<sup>39</sup> Parent in Science (n. 38), 12.

participation of women in science and also demonstrate the need for public policies to promote mothers in the academy.<sup>40</sup> Some possible measures include flexibility and extended deadlines, specific calls for more impacted groups, and scheduling meetings during school hours.<sup>41</sup> Among *Parents in Science* postulates is that ‘In the absence of gender equity, support policies should be centered on motherhood, since converging evidence from Brazil and the world demonstrates that women are primarily responsible for domestic care and child care’.<sup>42</sup> Among other issues, *Parents in Science* advocates for considering maternity in academic selective processes, which has led to positive impacts such as academic funding opportunities considering periods of maternity leave when analyzing resumes.<sup>43</sup>

## 2. Opportunities

While the pandemic had many negative impacts on women, especially mothers, it is important to emphasise that virtualisation is a double-edged sword. Notably, it also had positive effects. It might be an opportunity for longstanding new forms of participation, but also a danger, by bringing unbalanced relations between work and personal life, especially when work is excessive,<sup>44</sup> and also by reducing networking opportunities. From a feminist perspective, ‘emergent properties of the digital workplace might result in a fulfilling and inclusive experience but also an exploitative and isolating one’.<sup>45</sup>

Until here, we focused on the negative impacts of the pandemic on mothers who are scholars and practitioners. Yet, specifically for persons engaging with international law, the pandemic also had some positive effects. Since international law work and research require cross-border activities and dealing with international organs, the impacts are specific.

The temporary positive side for mothers from the Global South who are international scholars and practitioners was the possibility to participate in online meetings, conferences, courses, UN debates, host side events, present

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<sup>40</sup> Parent in Science (n. 38), 12.

<sup>41</sup> Parent in Science (n. 38), 12.

<sup>42</sup> Parent in Science, Princípios norteadores do Movimento Parent in Science, <<https://www.parentinscience.com/sobre-o-parent-in-science>>, last access 3 May 2024.

<sup>43</sup> Parent in Science, ‘Nossas ações’, <<https://www.parentinscience.com/sobre-o-parent-in-science>>, last access 3 May 2024.

<sup>44</sup> Lizzie Richardson, ‘Feminist Geographies of Digital Work’, *Progress in Human Geography* 42 (2018), 244–263, (246).

<sup>45</sup> Richardson (n. 44), 246.

works, and give lectures. It created a possibility to bridge the disadvantage gap of being far from the main centers where international law is discussed (global-north elite institutions) and from the UN headquarters. Before virtualisation, Global South mothers used to face many barriers to participate. They had to travel long distances, struggle for financial aid to participate in events and courses, and face patriarchal structures and related discrimination. Mothers face additional layers of challenges to travel, such as suspending breastfeeding, and organising the care and agenda of their children in predominantly patriarchal societies. Besides, there are generally few incentives and funding opportunities for those wanting to dedicate their work to academic life in the Global South. Thus, many international law scholars have to practice law alongside research, which creates obstacles for mothers' participation, as in the context of patriarchal societies, they are the main caregivers and responsible for the child. They must undergo a quadruple shift of academic, work, family, and child life. In short, with the virtualisation brought by the pandemic, Global South mothers increasingly have the opportunity to participate remotely without struggling to leave their homes and children. There are various benefits of meeting in person, such as networking and informal exchange of viewpoints, which is essential to enhance diversity and reduce inequalities, but for many mother international law scholars, and practitioners from the Global South, meeting in person might be a barrier that prevents participation. Now that the pandemic is over, there must be a Global South feminist matricentric call to maintain hybrid events to foster participation and reduce the inequality gap.

Access to libraries and newly published scholarship is also a barrier for Global South mothers since they are likely to have fewer resources to pay for accessing them and fewer opportunities to access cutting-edge libraries as visiting researchers of Global North elite institutions. Open access opportunities during the pandemic made international law scholarship temporarily more accessible to all on an equal footing. Sadly despite raising awareness for the importance of open access, it did not last long, and in the post-pandemic word, open access to academic work decreased significantly, meaning that Global South mothers are again deprived of most of the impactful and up-to-date articles. Significantly enough, access to libraries and publications, only solved part of the problem (and only temporarily). Platforms for submitting papers such as Scholastica<sup>46</sup> often require a fee, and often those affiliated to global-north universities can access them without personal cost and can submit papers to various journals at once, having a higher chance of being accepted, whereas most Global South universities, at least Brazilian ones, do

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<sup>46</sup> Scholastica <<https://scholasticahq.com/>>, last access 3 May 2024.

not fund access to those platforms. In this context, Global South researchers often have to pay with their own funds to submit articles through those programs, and as it is charged per paper, they have a much lower chance of succeeding in publication. Considering the income gap between men and women,<sup>47</sup> women are even less likely to submit their papers through those platforms, and mothers, who have to provide for their children are even less likely to submit papers through those programs.

Applying my framework with a view to render visible those scholars bared by the invisible college, the aforementioned shift brought by virtualisation, which was boosted by the Covid-19 pandemic, brings some participation opportunities but does not shake the structural inequalities. To sum up, despite new opportunities brought by virtualisation, it is necessary to question to what extent voices of mothers from the Global South who are international law scholars and practitioners are being heard. There is a lot to suggest that they still remain largely silent.

To address this situation, it is thus necessary to analyze existing critical approaches that address the power dynamics between the Global North and the Global South, male and female, mother and non-mother international law scholars and practitioners that are causing such challenges and exclusions. The next section shows that they are insufficient to address the challenges of mothers from the Global South who are international law scholars or practitioners and advocates for an intersectional perspective.

## IV. Motherhood, Intersectionality, and Academia

Maternity is such a critical moment in a women's life that it deserves a critical and intersectional approach. Motherhood is one of the pillars of oppression in patriarchal societies. By emphasising motherhood this article stresses the physiological factors. It aims also to foster motherhood equality and deconstruct the power structures that convey that raising children is something predominantly for women, as children are the duty of both parents.

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<sup>47</sup> World Economic Forum, 'Global Gender Gap Report – Insight Report' (14 March 2021) <[https://www3.weforum.org/docs/WEF\\_GGGR\\_2021.pdf](https://www3.weforum.org/docs/WEF_GGGR_2021.pdf)>, last access 3 May 2024. 'Beyond inequality in access to labor force opportunities, financial disparities continue to represent a major area of concern for working women and their dependents. Despite some progress this year, the wage gap (the ratio of the wage of women to that of men in a similar position) is still approximately 37 % and the income gap (the ratio of the total wage and non-wage income of women to that of men) remains close to 51 %.'

As Simone de Beauvoir put it, from a physiological viewpoint, pregnancy is a tiring work, requiring sacrifices that benefit the species but does not benefit the woman as an individual. Breastfeeding is also an exhausting labor. The woman is her body which is the instrument of dominating the world. However, during this period, her body is not her as an individual, but something else. From a biological perspective, it is only in menopause that a woman's body coincides with herself and that a woman is freed from the female servitude. The physiological framework does not mean an immutable destiny and does not justify the situation of women, and here I add the specific situation of mothers, as the other.<sup>48</sup> However, de Beauvoir's physiological remarks reinforce the specific challenges faced by mothers.

Motherhood requires distinct attention as against other performative identities, as the physical and mental challenges of maternity are joined with stigmatisation, especially in patriarchal societies such as Brazil, and many Global South States. During pregnancy and after giving birth, the patriarchal power dynamics tend to reinforce women's obligations of taking care of the home and the child, and their bodies are linked to stereotyped responsibilities. 'In academia, pregnancy is arguably largely considered unprofessional, and maternal bodies are usually abject.'<sup>49</sup> Among practitioners, employers are often resistant to hiring women at a fertile age or with young children, as they might go on leave and have to adapt work to address their child's needs. Mothers are associated with underproduction.

However, motherhood is not a homogenous category and might be experienced differently by different women, and also by different groups of women, such as migrants, indigenous, blacks, with disabilities, and sexual orientations, depending on whether they have a network of support or not.

## V. TWAIL Feminisms as the Framework to Revisit These Debates in the Post-Pandemic Context

The pandemic fostered a paradigm shift by establishing that being there also means being remotely present, which, to some extent, removed the physical barrier and increased the opportunity of Global South scholars to participate in events taking place in the Global North. However, it did not remove the invisible barriers of participation and prevailing power struc-

<sup>48</sup> Simone de Beauvoir, *O segundo Sexo* (Nova Fronteira 2019), 57-60.

<sup>49</sup> Suvi Satama and Astrid Huopainen, 'Mothers and Researchers in the Making: Negotiating 'New' Motherhood within the 'New' Academia', *Human Relations* 72 (2019), 98-121 (99).

tures that exclude woman and mother international law scholars from the Global South that are grounded on an underlying colonial structure of power. Therefore, this section will reflect on the underlying power dynamics between the Global North and the Global South, male and female, mothers and non-mothers and propose TWAIL Feminism as the approach and framework to revisit these debates and questions, especially in the context of the post-pandemic world. Despite being extremely relevant to our purpose of questioning the lack of participation of mothers from the Global South who are international law scholars and practitioners, we will further argue that the matricentric perspective has to be added to the TWAIL feminist debate.

The third world refers to 'a geographical area whose pre-colonial knowledge systems have been delegitimized and replaced with colonial ones'.<sup>50</sup> The fact that there is no such thing as a 'monolithic third-world category'<sup>51</sup> is not a per se a problem, even though of course it is based on a simplification. Rather, what is relevant is 'the existence of a group of states and populations that have tended to self-identify as such coalescing around a historical and continuing experience of subordination at the global level that they feel they share'.<sup>52</sup> The TWAIL project aims to shed light and counter those power imbalances as well as oppression. It is thus a 'locus of enunciation from where the hegemony of Eurocentric knowledge systems can be contested'.<sup>53</sup> Obregón presents various peripheral histories of international law and highlights that the critique aims at 'showing the impact of Europe's colonial history on the economic, political, racial, or religious structural underpinnings of international law, which resulted in injustice and inequality for the most impoverished states and peoples around the world'.<sup>54</sup>

International law's colonial framework is embedded in across power structures that, even as a side effect, prioritise a Global North viewpoint, as was discussed in the topic regarding the dominance of a male global-north college. The most prestigious centers of research, leading publishers, journals, and academic seminars, are mainly situated in the Global North.

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<sup>50</sup> Giovanna Maria Frisso, 'Third World Approaches to International Law: Feminists' Engagement with International Law and Decolonial Theory' in: Susan Harris Rimmer and Kate Ogg (eds), *Research Handbook on Feminist Engagement with International Law* (Edward Elgar Publishing 2019), 479-498 (480).

<sup>51</sup> Obiora Chinedu Okafor, 'Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective', *Osgoode Hall L.J.* 43 (2005), 171-191 (174).

<sup>52</sup> Okafor (n. 51), 174.

<sup>53</sup> Frisso (n. 50), 480.

<sup>54</sup> Liliana Obregón, 'Peripheral History of International Law', *Annual Review of Law and Social Science* 15 (2019), 437-451.

For international practitioners, the main events, for instance, happen in the UN headquarters in Geneva, the Hague, or New York, where international Courts, Tribunals, and International Organisations have headquarters. In turn, this creates a natural physical and linguistic barrier of participation for Global South scholars and practitioners, leaving them as ‘others’ in the shade.

The TWAIL feminisms vary, meaning that it is internally diverse, and presents a wide array of intellectual perspectives and political compromises.<sup>55</sup> However, it can be broadly defined as a feminist perspective that aims at achieving equality and is interested in women’s lives and equality, but that treating the struggles of women all around the world alike might normalise colonial power dynamics and render third-world women invisible. Scholarship that combines feminist and TWAIL criticises the ‘traditional’ feminist perspective for negatively impacting third-world women’s lives by silencing their initiatives and knowledge and labeling them as vulnerable. The critique argues that traditional feminism might be a section of a broader patriarchal and colonial system from the Global North. In short it ‘denounces the limits of international law and aims at reconstructing it in order to address the concerns of marginal and oppressed women in the third world’.<sup>56</sup>

The TWAIL perspective highlights how international law’s power relations might foster multiple aspects of marginalisation of the third world, including gender. Therefore it is necessary to combine TWAIL and feminism.<sup>57</sup> Questioning and unveiling processes of invisibility of third-world women plays two crucial roles: assuring their right of participation and strengthening international law. A diversity of perspectives both among men and women, Global South and Global North, is essential to a democratic international legal system. The TWAIL feminist approach highlights that ‘women in the Third World deserve no less dignity, no less security and no fewer rights or benefits within the international system than women in other states’.<sup>58</sup>

Ramji-Nogales acknowledges that women have increased representation both in terms of numbers and power positions, but there is a huge gap in parity. Furthermore, she highlights that ‘the core work of international law, namely lawmaking, adjudication, and governance, remains largely the

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<sup>55</sup> Vasuki Nesiah, ‘TWAIL Feminist Perspectives on Conflict’, *Völkerrechtsblog*, 19 March 2022, doi: 10.17176/20220320-000933-0.

<sup>56</sup> Frisso (n. 50), 483.

<sup>57</sup> Frisso (n. 50), 483.

<sup>58</sup> Frisso (n. 50), 483.

province of the privileged'<sup>59</sup> and argues that elite woman 'walk the halls of power, from academia to international institutions to NGOs, but have not yet transformed international law in a way that might move it closer towards its emancipatory potential'.<sup>60</sup> She claims that numbers are insufficient to measure inclusion, as it requires more and diverse voices at the table.<sup>61</sup>

TWAIL feminism, through its different perspectives, is vital to unveiling power dynamics that render invisible women from the Global South at the helm of international law practice and scholarship.

However, to render mothers visible it is necessary to add the intersectionality of maternity to the TWAIL feminist debate. Intersectionality calls for analysing the dynamics of distinctions and commonalities and how it has significantly contributed to the thoughtful examination of gender, race, and other vectors of power within a wide array of political dialogues and academic domains. It therefore helps to establish connections between feminism and other critical theories.<sup>62</sup> In other words, it highlights that different women have different experiences, as, for instance, the outcomes of international law vary for the elites in the Third World and those experiencing situations of social vulnerability.<sup>63</sup> For the present context, this means that mothers from the Global South who are international scholars might have diverse experiences, depending on race, ethnicity, religious background, sexual orientation, among other factors. This paper agrees with Wadlig's statement that to pursue an intersectional path, both in the academic and political activism spheres, we must focus on gender and at the same time recognise that gender is invariably intertwined with other identities, including but not limited to race, class, and religion, operating simultaneously. 'Only a "feminist" approach to international law that attempts to recognize the varied experience of women under international law can truly exercise its full transformative potential.'<sup>64</sup>

This paper's aim is not to put all in the same bucket but to try as far as possible to open the discussion on an intersectional matricentric

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<sup>59</sup> Jaya Ramji-Nogales, 'Revisiting the Categori "Woman"' in: Susan Harris Rimmer and Kate Ogg (eds), *Research Handbook on Feminist Engagement with International Law* (Edward Elgar Publishing 2019), 240-252 (241).

<sup>60</sup> Ramji-Nogales (n. 59), 241.

<sup>61</sup> Ramji-Nogales (n. 59), 241.

<sup>62</sup> Gabriele Wadlig, 'TWAILing Feminist Engagement with International Law: Toward an Intersectional Governance Feminism', *Völkerrechtsblog*, 10 January 2020, doi: 10.17176/20200110-174028-0.

<sup>63</sup> Frisso (n. 50), 496.

<sup>64</sup> Wadlig (n. 62).



feminist<sup>65</sup> approach of Global South mothers who are international law scholars and practitioners regarding participation in the divisible college of international law.<sup>66</sup>

Therefore, I argue for the necessity of a matricentric TWAIL feminist approach to international law, besides all other critical approaches, which has yet to be developed but that might be sparked by this paper. In a nutshell, a maternity layer of challenge has to be added to the TWAIL feminist perspective, which highlights two layers of challenges women from the Global South encounter: facing gender discrimination and countering Global North privileges. Therefore, it is necessary to combine decolonial thoughts with a feminist matricentric approach, which means highlighting the challenges Global South mothers face to deconstruct the power imbalances and stigmatisations that gravitate around it. Matricentric feminism ‘emphasize[s] that the category of mother is distinct from the category of woman and that many of the problems mothers face – social, economic, political, cultural, psychological, and so forth – are specific to women’s roles and identity as mothers’.<sup>67</sup>

At the helm of international law, this means a compromise of shedding light on the discrimination and stigmatisation Global South mothers might face, and finding venues to a more inclusive international community as regards mothers from the Global South that ensures them the right to participate.

Critics might argue that it does not make sense to have another branch of a critical approach and to focus on maternity rather than on structural issues such as patriarchal societies, economic power, and neocolonialism. As argued by Ochy Curiel, it is necessary to consider the multiple and complex relations of subordination faced by those rendered invisible and considered “others” to counter colonial power dynamics. Therefore, critical perspectives such as Latin American black feminism, Chicana feminism, and indigenous perspectives are extremely relevant.<sup>68</sup> To that, we add the necessity of TWAIL matricentric feminism.

<sup>65</sup> Andrea O’Reilly, ‘Matricentric Feminism: A Feminism for Mothers’, *Journal of the Motherhood Initiative for Research and Community Involvement* 10 (2019), 13–26.

<sup>66</sup> For academic transparency reasons, I must disclose that this is, to some extent, an autoethnographic article of a white, heterosexual, middle-class, mother of two kids aged 2 and 4 years, who breastfed for 4 years (in total), working forty hours a week as a federal public defender in Brazil besides doing research, and being a Ph.D. candidate in Brazil and who had the opportunity to study at an Ivy League university. Another example of an autoethnographic article on maternity and academic life is Satama and Huopainen (n. 49), 121.

<sup>67</sup> O’Reilly (n. 65), 13.

<sup>68</sup> Ochy Curiel, ‘Crítica poscolonial desde las prácticas políticas del feminismo antirracista (en Nómadas, 2007)’ in: Alejandra de Santiago Guzmán, Edith Caballero Borja and Gabriela González Ortuño (eds) *Mujeres intelectuales Feminismo y liberación en América Latina y el Caribe* (CLACSO 2017), 149–163 (161).

In short, it is vital to have this intersectional critical approach as mothers face specific and widespread challenges and are discriminated against for 'committing a child' in the academic and practitioner's sphere. This must be evidenced and addressed so that mothers don't remain invisible.

A paradigm shift is necessary to respect and foster maternity and to dismantle all visible and invisible barriers to power and high-level positions. Being a mother has to be seen as a positive inclusion in the CV, rather than a burden. Lack of academic records or a career pause due to having a child must be deemed positive, rather than a sign of unproductivity. In the CV analyses, we suggest establishing metrics that consider patriarchal structures and maternity conditions to strive for inclusivity that values maternity experiences. This may involve implementing strategies such as universities or international organisations establishing a percentage goal for mothers teaching international law or working in international organisations, including tenured and power positions. Good practices such as those the above-mentioned movement *Parents in Science* advocates for, like considering maternity in academic application processes,<sup>69</sup> have to be widespread.

While considering a TWAIL feminist perspective, it must be emphasised that 'reference to women and, more specifically, women in the Third World might disregard the different living experiences of women not only among Third World states, but also within states'.<sup>70</sup> This blind spot is a product of international law's incapacity to question 'the overall unidimensional construct of women in order to deal with the marginalization processes that take place at the intersection of the various hierarchical classifications relevant to women'.<sup>71</sup> Among those rendered invisible by negligent perspectives are mothers.

## VI. Final Considerations

Before virtualisation, participating in international law debates, congress courses, and seminars required to be in person at the *locus* of the discussions, struggling for funds for traveling to meetings and conferences, and being able to research in the best libraries. This paper claims that the widespread digitalisation and the paradigm shift in means of communication catalysed by the COVID-19, despite all the challenges, meant opportunities

<sup>69</sup> Parent in Science, 'Nossas ações', <<https://www.parentinscience.com/sobre-o-parent-in-science>>, last access 3 May 2024.

<sup>70</sup> Frisso (n. 50), 496.

<sup>71</sup> Frisso (n. 50), 496.

for mothers from the Global South who are scholars and practitioners in the field of international law. With virtualisation, mothers from the Global South could increasingly participate in the divisible college of international law, present papers, and participate in meetings, conferences, talks, groups of discussions, both in the Global North and the Global South. Hybrid workshops and conferences are necessary to maintain the opportunities created. Access to articles, and libraries were temporarily improved with open access, which also opened up research possibilities for mothers from the Global South, but this is regrettably over. Fostering open access to research and data must be a goal for the international community as a step towards inclusivity.

Nonetheless as this paper discusses, opportunities temporarily increased (even though far from creating a level playing field), male and female, mothers and non-mothers, Global South and Global North scholars do 'get into the race' at different starting points. The (temporary) changes brought by the pandemic did not alter the underlying power dynamics. Power imbalances between the Global North and the Global South, men and women, and mothers and non-mothers mark international law. The so-called invisible college of international law entails a predominance of institutions, organisations, and voices located in the Global North, and is shaped by power structures that favour men. It is hence a divisible college. Thus, women in the Global South face a double disadvantage. Maternity creates a gap between mothers and men and women and non-mothers. Therefore, the paper argues that mothers from the Global South face three layers of challenges: they have to fight for a decolonial perspective, gender equality, and against stigmatisation and challenges of maternity. It necessary not only to render mothers from the Global South visible and audible, but also to challenge the power dynamics of the dominance of male global-north perspectives that are ignorant to the matricentric perspective, turning mothers from the Global South a permanent and necessary part of the invisible college of international law and the international law debate. Therefore, the discussed barriers still need to be evidenced and incentives created for effective participation. The intersectional TWAIL feminist matricentric approach is urgent to render mothers from the Global South visible. Looking forward, one of the necessary building blocks is to develop qualitative and quantitative research on two main categories: mothers from the Global South who are international law scholars and mothers from the Global South who are working in international law positions in international organisations. Quantitative analysis will furnish insights into several key dimensions, including tenure status for scholars, employment status (consultant versus staff) for those within international organisations, their representation in positions of power, and comparative percentages

with their counterparts who are male or non-mothers or/ and from the Global North. Qualitative research will delve into the nuanced experiences of mothers from the Global South, documenting their perceived obstacles and instances of discrimination and identifying potential strategies to bolster their involvement and representation within the field.