Symposium Introduction: Assessing the Roles of Theory and Methodology in the Study of IEL in Africa

By:

Olabisi D. Akinkugbe

January 13, 2020

International Economic Law (IEL) is positivist in its evolution and orientation. IEL as a field is intricately intertwined with international law. Unlike the field of Public International Law (PIL), where the discourse of decolonizing international law of its universality and Eurocentrism has been critically engaged by different generations of critical (Third World) international law scholars, pluralizing the discourses of IEL in Africa in particular through an examination of the role of theoretical and methodological approaches is still unravelling.

The discourse of IEL is not monolithic. The historical and dominant narratives are skewed in favor of rules-based regimes. That the architecture of virtually all IEL organizations in Africa and their operational treaties – including the AfCFTA

– are transplanted and modelled after the European Union (EU) or the World Trade Organization (WTO) does not suggest that they are bound by the strictures of the practices of the EU or the WTO. The global spread of these institutions should not limit academic research's role of expanding the contours of how they are operationalized in different parts of the world.

As I have argued elsewhere, adopting a strictly legal positivist approach to studying IEL in Africa will only reproduce a narrative of failure! In fact, such an approach, perhaps inadvertently, reifies the dominant narrative of how IEL should be studied, practiced and understood. To be sure, I am not suggesting that there is no value to a rules-based legal regime. After all the extant AfCFTA and many of its predecessor regional trade agreements tout this narrative. In reality, therein lies my caution – that the ways in which theory and method inform the output of our study of IEL in the African context deserves a lot more attention.

In May 2019, Afronomicslaw hosted an important Symposium on Teaching International Economic Law in Africa. What was evident from the contributions to the symposium is the need for a more critical approach to the teaching of IEL in Africa. The teaching of IEL in Africa cannot and must not be separated from the scholarly research of the field.

This Symposium, and the contributions carry on the conversation by examining the ways in which the contributors have harnessed theory and method in their critical scholarship on IEL in Africa. Continuing to build the knowledge base on IEL that is both rigorous and relevant to Africa has a lot to do with the lens through which research work is conducted. As the teaching of IEL on the continent grows, we must avoid the error of encouraging research in ways that are neither innovative nor relevant to the disciplinary practice of the field in Africa.

IEL in Africa is at a critical juncture. How theoretical and methodological approaches deployed in the study of IEL in Africa offer alternative, but, critical narratives of the historical and contemporary practices of the field is an important aspect of the mission of decolonizing IEL. Reflecting on the role of theory and method for the study of IEL in Africa in ways that do not simply reify

or reproduce the dominant discourses of IEL is critical to understanding the past and constructing the present and future generation of development of the field in Africa.

Following this introduction in Clair Gammage's contribution – "Critical Perspectives to IEL." For Clair, her goal in researching issues of law and development as they intersect with trade, justice and sustainable development "is to reveal the otherwise hidden *social, cultural* and *political* consequences of economic transactions and relationships – often between asymmetric trading 'partners' – that are framed in formalistic legal language." Clair contribution emphasizes the value of interdisciplinary approaches to the study of legal phenomena. Accordingly, the critical perspective Clair adopts in her research is "rooted in constructivism and is heavily influenced by the scholarship and ideas set out in other branches of social sciences including philosophy, development studies, international relations and international political economy." In particular, by adopting the constructivist approach advanced by Fredrik Söderbaum, Clair aims to identify *how* norms, values and interests are shaped, *by whom* and *for what purpose*. Her contribution further discussed fascinating insights to the question: How can adopting a critical perspective of IEL contribute to our understanding of IEL in Africa?

Amaka Vanni's contribution reflections her thoughts on IEL research and scholarship from a non-legal background. While also interdisciplinary, Amaka's research is "conceptually and methodologically informed by empirical (interviews and archival research visits) and critical approaches." These approaches allow Amaka to focus on the "constitutive power of international economic law, norms and practices to affect social relations and everyday life, especially in the developing world where this impact is felt more starkly…" Amaka reflects on how a blend of Critical Legal Theory, and Third World Approaches to International Law theory with an empirical twist underpins her work and forthcoming book in particular.

Ohio Omiunu's fascinating contribution provides a personal account of his journey from graduate school to the present and finding his own voice in the researching and writing about IEL. Ohio expresses how his skepticism with the dominant narrative embedded in the research of IEL provided a springboard for

his journey through various methodological approaches and research tools which “explore alternative narratives of IEL without being revisionist as dogmatic stance.” Further, Ohio notes that as “the current trajectory of global economic governance indicates, principles of IEL considered sacrosanct a few decades ago are now being questioned”, so will the need to be flexible in the theoretical and methodological approaches we harness for understanding the issues of the moment.

In her contribution, Vellah Kedogo, who is Doctoral Research Fellow at Technical University of Munich shares her experience in making a decision on a comparative research methods. Her contribution provides important steps that a scholar should engage prior to adopting a comparative legal research method. Vellah cautions before “employing a comparative legal research method, understand what it entails, why you are adopting, justify the case selection and sampling. Finally, be very clear how you are going to carry out the comparative analysis.”

The final post by Titilayo Adebola’s focus on the methodologies I employed during my doctoral research at the University of Warwick, from October 2013 to September 2017 while conducting her pioneering research. At its core, Titilayo’s doctoral research engaged three important questions: what type of intellectual property rights (IPRs) for plant varieties is best suited to Nigeria? How can Nigeria design and introduce such system? Why do Global South members of the World Trade Organization (WTO) design and introduce systems that differ from their rhetoric at the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Council? To unpack these questions, Titilayo zeroed in on the interests of the often marginalized small-scale farmers, who are significant contributors to the agricultural sector in Nigeria. Her contribution explicates how her doctoral research combines different strands of Third World Approaches to International Law (TWAIL), socio-legal, empirical (first-hand discussion with stakeholders, semi-structured interviews) and comparative methodologies. She also discussed the challenges she confronted (funds, ethics approval at the institutions etc.) of adopting empirical research and how she addressed them.

Deciding on which theoretical and methodological approach is best for one’s

research is not an easy one for many graduate students. Beyond the simple issue of applying the theory analytically, methodology questions involve practical considerations in some cases. Issues such as funds, ethics approval, accessibility of documents, archival research, availability of interview subjects can be critical.

Titilayo, Ohio and Vellah's contributions highlight the value of theory and methods Workshops in constructing a combination of theories or truly deepening their understanding on the value of one that is chosen. Some institutions, such as the Cardiff Law and Global Justice led by Prof. Ambreena Manji; the Centre for Law, Regulation & Governance of the Global Economy guided by Dr. Celine Tan; the Commercial Law Research Network Nigeria led by Dr. Bolanle Adebola and the Tanzanian-German Centre for Eastern African Legal Studies among others have committed resources to providing helpful doctoral workshops in a supportive environment for doctoral researchers. The teaching of IEL on the continent is another arena where support will need to be provided to colleagues who do the hard work of teaching and supervising graduate students in Africa.

I thank many organizations, institutions, professors who we cannot mention here but do important work in building IEL in Africa.

I am grateful to Clair, Ohio, Amaka, Titi, and Vellah who agreed to participate in this Symposium. On our part, we hope that this Symposium, like the Teaching IEL in Africa one adds to the conversation is an important way.

Contributors

Clair Gammage: Critical Perspectives of International Economic Law

Amaka Vanni: Through A Glass Darkly: Some Thoughts on International Economic Law Research and Scholarship from a Non-Legal Background

Ohio Omiunu: Reflections on my methodological approach researching on International Economic Law

Titilayo Adebola: Intellectual Property Rights for Plant Varieties in Nigeria: Critical Reflections on TWAIL, Empirical and Comparative Methodologies

Vellah Kedogo: Comparative Legal Research

View online: Symposium Introduction: Assessing the Roles of Theory and Methodology in the Study of IEL in Africa

Provided by Afronomicslaw