# Critical Perspectives of International Economic Law

**By:**

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Critical perspectives can be both distinct from and form part of the broadly defined ‘socio-legal’ approach to social inquiry. To adopt a critical perspective is to commit to the project of demystifying and disrupting dominant narratives, interpretations and ways of both knowing and understanding legal phenomena. It represents a quest for truth and offers alternative ways of seeing the world around us. As such, critical perspectives encompass doctrinal, empirical and interdisciplinary approaches to the study of law. In short, it is the purpose of critical approaches to challenge and disrupt that which has been taken to be a ‘given’ in mainstream discourses and narratives.

As a scholar of Law and Development, my interests lie at the intersection between trade, justice and (sustainable) development. My primary agenda 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. The critical perspective I adopt 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. Building on the constructivist approach advanced by Fredrik Söderbaum, I aim to identify *how* norms, values and interests are shaped, *by whom* and *for what purpose*.

To understand the significance of critical perspectives it is important to recognise the competing, and sometimes complementary, discourses that have emerged from scholarship across disciplines in the Global North and Global South. The framing of IEL through sociological perspectives has been led by influential scholars based in the Global North like Moshe Hirsch, Stephan W. Schill and Andrew Lang. At around the same time, a group of scholars from the Global South were pioneering Third World Approaches to International Law (TWAIL) with a view to challenging the presumed neutrality of international law while exploring the emancipatory potential of other ways of knowing and doing international law. TWAIL scholars – and, notably Antony Anghie, B.S. Chimni and James Gathii – have paved the way for the modern articulation of the 'decolonisation' and 'Africanisation' agendas to gain prominence across legal disciplines, including IEL. The collective and unrelenting commitment of TWAILers in revealing the intersection between international law, power and colonialism has also enabled other critical approaches, such as feminisms, to challenge the epistemic injustice of international law's assumed objectivity and neutrality. In their book, *The Boundaries of International Law* (published in 2000), Hilary Charlesworth and Christine Chinkin offered a compelling account of international law through the lens of feminisms and this remains one of the most influential texts on the subject. And, yet, there remains little in the way of feminist accounts that specifically address the epistemological assumptions on which IEL rests.

What, then, does a critical perspective of IEL offer in terms of our ways of knowing and doing IEL? How can adopting a critical perspective of IEL contribute to our understanding of IEL in Africa? While the transformative potential of Africa has long been recognised, so too have the challenges facing the realisation of that potential.

In 2012, TIME Magazine published its unforgettable piece on 'Africa Rising'

which noted the unrelenting promise of Africa as the 'world's next economic powerhouse'. However, to unleash the transformative potential of IEL – and the *Africanisation* of IEL – we must first understand and interrogate the history of the norms, values and interests that have come to regulate legal and social relationships. As Ngũgĩ wa Thiong'o wrote in his ground-breaking book, *Decolonising the Mind*, 'language is… inseparable from ourselves as a community of human beings with a specific form and character, a specific history, a specific relationship to the world'. The same holds true for legal language: the proclaimed universalism, objectivity and neutrality of international law (and IEL) is itself an expression and reflection of values, norms and ideals that have a specific history and a specific relationship to the world.

Critical perspectives of IEL can reveal the power structures through which economic relationships between states have been, and continue to be, articulated. Analysing the legal provisions of international trade agreements from a critical perspective adds colour to the text and it can illuminate that which might otherwise be obscured if that agreement were to be interpreted absent from its social context. Telling stories and retracing the origins of values, ideas and norms plays an important role in demystifying the law. *For example*, the role of African women in shaping modern trading systems and practices on the African continent are entirely absent from contemporary accounts of international law and IEL. Yet, historically, women have been influential trade actors in the pre-colonial and colonial periods. It is the distortions in the historical story-telling of women, and the roles that women have played in shaping African norms and ideals, that have diminished the significance of the feminist perspective in narratives of trade.

The absence, and/or silencing, of interests and values enables the deepening of existing structural inequalities by perpetuating and maintaining dominant narratives, which in turn results in the material reproduction of certain ideologies to the exclusion of others. For modern North-South relationships, it is especially important to recognise the persistence and pervasiveness of colonial narratives and imperialist discourses inherent to those trading relationships in order that harmful structural inequalities can be identified, challenged and reoriented. This holds true not only in the context of specific trade agreements or partnerships, like the revised Cotonou framework between the EU and

African, Caribbean, Pacific countries, but also in the creation of new trading frameworks, like the African Continental Free Trade Agreement. One comment stands out from Alex Perry's 2012 TIME article: '…if Afro-pessimism is outdated, undiluted Afro-optimism is premature'. In 2020, Afro-optimism seems stronger than ever and, notwithstanding the diversity and pluralism of ideologies and philosophies within and among African countries, the AfCFTA offers an unprecedented opportunity to bring the discussion of how IEL can be reoriented in a manner that prioritises African values and interests to the fore.

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