International Economic Law Teachers in Africa Need to Beat Their Own Drums

By:

Dunia P. Zongwe

May 13th, 2019

“Not acceptable at this level”, a professor commented on one of my exam questions that asked students to “[d]escribe the salient features of the Southern African Customs Union (SACU).” This happened in 2017 at the University of Namibia (UNAM) where, until last year, I taught the International Economic Law module, a module pitched at the level of a bachelor honors degree. The professor – an academic from a leading South African university hired to moderate examination papers from UNAM’s Faculty of Law – recommended that I tweak my question as follows: “Discuss the validity of the Southern African Customs Union in the WTO framework”.

Surely, at first glance, the open-ended essay task preferred by the professor (let us call her ‘Prof M’) satisfies what most people would expect from a course designed for a bachelor-honors degree program. However, while this question prompts students to demonstrate how they think and not just what they know,

it spoke much less to the circumstances of the law student in Namibia. And, as I show below, it raises the issue of where international economic law (IEL) should stand within the legal curriculum in Africa.

The place of IEL in the curriculum: An example from Southern Africa

I believe that knowing about SACU matters more to the student in Namibia than debating how the World Trade Organization (WTO) sees the validity of a custom union created 85 years before the WTO's birth. This is mainly because SACU represents the largest source of income for Namibia, like it does for eSwatini (i.e., Swaziland) and Lesotho. In other words, the economies of those three Southern African countries pivot on regional trade, which should thus imply that students in those countries will derive greater value from their legal education by learning how SACU works than conversing about the WTO. However, the legal curriculum did not reflect how much international trade weighs for industry and the economy in Namibia. Nor did it sufficiently prepare graduates for the market, despite the shortage of trade lawyers in the country. Although it offered Public International Law in the third year of study, UNAM's Faculty of Law offered IEL only in the final year of its four-year LL.B. program. To compound matters, the Faculty decided to phase out the year-long module I taught and to replace it with another that lasted but one semester. In practice, lecturers find it increasingly difficult to teach this information-intensive course in one semester; they can only give a bird's-eye view of the core areas, such as free trade areas and customs unions. Hence, the IEL that students absorb is too little and too late. In addition to those constraints, a discrepancy arose. On the one hand, UNAM's Senate set the IEL module at the level of a bachelor honors degree; on the other, it expressly laid down that the module "provides a *basic understanding* of the role which law plays in the international economic system,"[1] that is, a module at the level of a higher certificate. The high level of the standard officially imposed on lecturers by the Senate for the IEL module (i.e., NQF Level 8) contradicted the "*basic*" content stipulated by the same Senate, which best suits an introductory course (i.e., NQF Level 5). Besides, because students attending the IEL module would usually lack any prior background in the subject, they struggled to wrap their heads around the rules, the nuts and the bolts of a field that felt to them like a heavy information dump. A student cannot possibly discuss in any great and meaningful depth what he does not know. IEL should first be taught earlier in the curriculum, for example

in the second year, and then spread over the rest of the LL.B. program through more specialized modules, such as foreign direct investments, sales, and regional economic integration.

The 'E' in IEL

Another reason I insisted that my students master the key features of SACU, irrespective of their legal nature, relates to pedagogical concerns. I believe that my students understand IEL better if I avoid a black-letter doctrinal approach and incorporate insights from economics and development studies. Similarly, Lowenfeld's *International Economic Law*, prescribed for the IEL module, devotes its first part to economics, money, exchange rates and the balance of payments. Nonetheless, while the brightest economic minds enlighten the study of IEL, the general references in economics seldom contest the ideological foundations of their own discipline. Thus, from McConnell and Others' *Economics* that I used as a freshman at UNAMto Krugman and Wells' *Economics* – one wanders away from the neoclassical economics tradition. And if they cannot challenge the economics underpinning IEL, teachers will not be able to guide students in challenging the rules and the laws that flow from them.

Perspectives from the South

The neoliberal bias in modern economics carries disturbing implications for the teaching of IEL because IEL scholars like Lowenfeld often take for granted that this sort of tunnel-visioned economics helps developing countries. On the contrary, while Seychelles – the only nation in Africa ranked as a high-income, 'developed' country – has arguably transformed its economy on the back of market-friendly policies , neoliberal programs have wreaked havoc in many developing countries. For teachers in the global South, including Africa, insights from development studies have the advantage of broadening the range of policy possibilities as well as solutions. Most importantly, they assist teachers in empowering students to assess and reform existing laws and come up with alternative rules. A teacher approaching IEL in this manner would not confine herself to asking students to critically discuss the role of subsidies in the WTO system and to distinguish between agricultural subsidies and other subsidies, like Prof M encouraged me to do for one of my exam questions. Instead, like

Tandon in Trade Is War, such teacher would invite her students to “discuss the effect of [European and American] agricultural subsidies with specific reference to the Cotton Four Case and put forward a possible solution to the impact of subsidies on international trade”. Prof M objected that “[t]his is not a legal question,” which brings back the central issue of how lecturers should teach IEL in Africa.

Why IEL teachers in Africa need to write their own books

Eventually, I kept the initial formulation of my exam question on SACU’s features but I expanded it by adding a sub-question requiring students to “ discuss the validity of the SACU in the framework of the WTO”. If IEL teachers do not wish to hear from or sound like Prof M, who seems to relay the Eurocentric paradigm in IEL, they will have to write and share their ideas on how much space universities must clear for IEL in the curriculum and on whether they should fit it with wider development angles. Just like the founders of the WTO saw in it a market-access instrument and not a development institution, the main titles on IEL explain how it regulates business between and within states; they do not offer ways for poor nations to survive and escape the poverty trap.

If IEL teachers want to answer clarion calls to decolonize the legal curriculum in Africa, they must publish. IEL books from big publishing houses in the West have flooded university libraries and classrooms in Namibia and elsewhere on the continent, not because the West conspired against Africa. Rather, mirroring the continent’s anaemic scientific output, IEL scholars from Africa do not write nearly as much. Therefore, their drums do not echo as far and as loudly, drowned out by the tunes of griots from other regions.

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[1]Emphasis added.

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