Georgetown University Law Center
Scholarship @ GEORGETOWN LAW

2024

Micro International Law

Katrin Kuhlmann
Georgetown University Law Center, kak84@georgetown.edu

This paper can be downloaded free of charge from:
https://scholarship.law.georgetown.edu/facpub/2633
https://ssrn.com/abstract=4984408

61 Stanford J. Int'l L. (forthcoming 2025)

This open-access article is brought to you by the Georgetown Law Library. Posted with permission of the author.
Follow this and additional works at: https://scholarship.law.georgetown.edu/facpub

Part of the International Law Commons

Micro International Law

Katrin Kuhlmann[*]

[61 STANFORD J. INT'L L. (forthcoming 2025)]

Abstract

International law has long been viewed as the domain of countries and capitals, not fields or factories, but this overly top-down perspective misses a critical and under-studied part of the picture. Underneath the macro level of standardized legal norms, international law is much more nuanced, with multiple sites of influence, production, design, adoption, and decision-making that scholars have largely neglected but which need to be better understood. Models stemming from legal systems in less powerful states, smaller-scale stakeholder interests, and local solutions are often treated as one-off anecdotes or isolated case studies without broader implications. Capturing these lessons, cataloging them, and building a methodology around them could be transformational at a time when international law needs a refresh to make it more responsive to a new set of global challenges ranging from inequality to food insecurity to climate change. This paper presents a conceptual and methodological framework for "micro international law" as a sub-field of international law. Adding a micro dimension to international law would bring it in line with other disciplines that recognize the importance of studying smaller-scale, more granular interventions. It would also make a significant contribution to the international legal field by integrating theoretical and empirical approaches to focus on the impact innovations within domestic legal systems and the interests of individuals have on international law (and the impact of international law on these systems and stakeholders), ultimately providing a framework for designing international law differently to equitably address more specialized needs and positively impact the lives of those international law aims to serve and benefit.

---

[*]Professor, Graduate and International Programs and Faculty Director and Co-Founder, Center on Inclusive Trade and Development, Georgetown University Law Center. I am grateful to Lauren Iosue, Dhari AlSaleh, Rashi Narayan, Cloris Li, Carlos Pedraza Pena, and Kennedy Pivnick for their excellent research support. I would also like to thank Daniel Bradlow, Harlan Cohen, Frank Garcia, Jennifer Hillman, Chimène Keitner, Simona Novinec, Obiora Okafor, Mario Osorio Hernandez, and Joel Trachtman for their insightful comments on this work and to Desirée LeClercq and faculty colleagues in the Georgetown International Economic Law Colloquium, particularly Gregory Shaffer, for insights shared during early discussions on this concept.

Outline

I. Introduction
II. Conceptual Framework: What is Micro International Law, and Why is It Needed?
  A. The Challenge with "Macro" International Law
    1. Challenges with International Law's Design
    2. Challenges with International Law's Aspirations
    3. Challenges with International Law's Application
  B. What is the Sub-field of Micro International Law?
III. Interdisciplinary Micro Models
  A. The Established Micro Dimension: Economics
  B. The Emerging Micro Dimension: Political Science
IV. Methodological Framework for Micro International Law
  A. Illustrative Micro International Law Studies
  B. Comparative and Contextual Methods
  C. Mixed Methods: Micro Mapping
V. Combining Micro and Macro Approaches to Address Challenges in International Law
  A. Micro Approaches to Reframe International Law Rulebooks
  B. The Importance of Process in Micro International Law
VI. Conclusion

I. Introduction

International law is long overdue for a more bottom-up, micro dimension. International law will consistently fall short of its "international" promise if it does not reach all people at the most local levels everywhere in the world. It will also fall short of its aspirations, including its progressive and transformative goals, if it does not meaningfully account for the lived experience of individuals and groups influenced by its norms. Micro International Law is designed to address these gaps by focusing on the design and implementation of international law through the lens of the people and communities it affects and the domestic legal systems that both implement and influence international law. This paper introduces Micro International Law to international legal scholarship as a proposed sub-field of international law.[1]

At its most macro level, international law is a vast body of rules, norms, standards, and institutions with the defining feature of governing relations among states and international actors.[2] It extends over every country in the world and covers areas as diverse as human rights, the environment, conflict and peace, and international trade, finance, and investment. The study of international law has traditionally centered around where and why it is generated, how it is spread around the world, how it is enforced, and what role a limited set of stakeholders, primarily powerful states and international institutions, play in shaping and enforcing it.

International law's design is multi-faceted and complex, but the study of international law has focused mainly on its highest levels, without sufficient focus on the complexity and layers beneath. There are countless factors that could impact the design of international law, going beyond states to include the interests of individuals and communities worldwide. Domestic law is not just a receiver of international legal norms but also a driver, implementer, and adaptor of international law. Yet, these dimensions of international law are not always studied, recognized, or cataloged in detail, and, as a result, their value is sometimes reduced to mere anecdotes or one-off case studies without systemic application. While small businesses, workers, farmers, women, minority communities, and Indigenous

[1] This article builds upon Katrin Kuhlmann, *The Need for a 'Micro' Approach to International Economic Law* (October 31, 2023), available at SSRN: https://ssrn.com/abstract=4628605 or http://dx.doi.org/10.2139/ssrn.4628605 [hereinafter Kuhlmann 2023a]. While the concept of micro international law is new, the author acknowledges a number of contributions to international legal scholarship throughout this paper that relate to the conceptual framework and methodology.
[2] Individuals are considered "subjects" of international law to a degree, although it is important to distinguish this role from the micro dimension presented in this paper. *See* Chimène Keitner, *International Law Frameworks,* Foundation Press (Fifth Edition, 2021).

Peoples sometimes appear in international legal scholarship, as examples in this paper will highlight, they receive much less attention than international institutions like the World Trade Organization (WTO), World Bank, International Monetary Fund (IMF), and United Nations. In many ways, however, these stakeholders could shape the future of international law.

The study of international law is expanding, paving the way for a micro dimension. Constructivist and institutionalist dimensions of international law place greater emphasis on international law's role in shaping global order.[3] This shift more closely connects the international legal field with other disciplines, such as political science and economics, which already recognize the importance of studying both micro and macro dimensions. International law also extends into domestic legal systems, as studied under transnational and comparative law, which need to be explored from additional angles. The instruments of international law are also shifting. Although the officially recognized sources of international law remain limited,[4] the increasing focus on soft law in the form of non-binding principles and measures calls for study of a broader range of legal instruments that scholars would have previously overlooked.[5] While these dimensions of international law highlight its expanding scope, so far none of these areas of study has focused exclusively on smaller-scale, micro-level interventions as an important component of international law. This article fills that gap.

Although international law is often approached as an objective, universal system of rules and norms, in reality it is much more nuanced, subjective, recursive,

[3] Gregory Shaffer and Tom Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 AM. J. INT'L L. 1 (2012) at 6 [hereinafter Shaffer & Ginsburg 2012].

[4] Among the recognized sources of international law according to Article 38 (1) of the Statute of the International Court of Justice (treaties, customary international law, widely recognized principles of international law, and judicial decisions and teachings of the most highlight qualified publicists of international law), this article will focus in particular on international treaties and conventions and, to an extent, customary international law. While there is debate concerning whether these sources of law are narrow and exclusionary, a dimension to which micro international law could contribute, the main emphasis of this article is on a different framing that could be applied to international law and not on the sources of law themselves.

[5] Soft law has the potential to shape international norms and "harden" into international law. *See* Dinah L. Shelton, *Soft Law*, in HANDBOOK OF INT'L LAW, Routledge Press (2008). *See also* Andrew T. Guzman and Timothy Meyer, *Soft Law*, in ECON. ANALYSIS OF INT'L L., E. Kontorovich and F. Parisi, eds., Elgar Publishing (2016). *See also* Daniel Bradlow and David B. Hunter, *Exploring the Relationship Between Hard and Soft International Law and Social Change*, in ADVOCATING SOCIAL CHANGE THROUGH INT'L LAW: EXPLORING THE RELATIONSHIP BETWEEN HARD AND SOFT LAW, D.D. Bradlow and D.B. Hunter eds., Koninklijke Brill NV (2020) [hereinafter Bradlow and Hunter 2020] and Gregory C. Shaffer and Mark A. Pollack, *Hard v. Soft Law: Alternatives, Complements, and Antagonists in International Governance*, 94 MINN. L. REV. 706 (2010).

and dissimilarly applied.[6] Different nations interpret the patchwork of international rules differently,[7] and international law is continually and incrementally shifting in its substance and application. The norms and ideals underpinning international law are also not universal,[8] which necessitates an understanding of a much wider range of inputs and interventions. These dynamics call for alternative ways of viewing and understanding both the design of international law and its nature and function.

Micro international law is needed as a sub-field of international law to give a name and structure to understanding and bringing together the more granular pieces and parts that play an increasingly important role in shaping international law. It focuses on innovative aspects of domestic and international legal systems that may not yet be universal but have the potential to address common challenges and advance equity in the system. It also highlights the experiences of those who have been marginalized and underrepresented.

Micro international law draws upon numerous theories and approaches, including transnational law, new legal realism, Liberal International Law, Third World Approaches to International Law (TWAIL), the New International Economic Order (NIEO) approach, Law and Political Economy (LPE), socio-legal studies, and numerous other contributions.[9] While it shares some characteristics

---

[6] *See* Anthea Roberts, Paul B. Stephan, Pierre-Hughes Verdier, and Mila Versteeg, *Comparative International Law*, Oxford University Press (2018) [hereinafter Roberts et al. 2018]. *See also,* Anthea Roberts, *Is International Law International?,* Oxford University Press, 2017 [hereinafter Roberts 2017] at 1-2. *See also,* Lori F. Damrosch, María Teresa Infante Caffi, and Jacques deLisle, *How International is International Law*, PROC. AM. SOC'Y INT'L L. ANN. MEETING April 12-15, 2017, Vol. 111, pp. 69-78, Cambridge University Press, available at https://www.jstor.org/stable/26628017 and Terrence C. Halliday and Pavel Osinsky, *The Globalization of Law*, ANN. REV. OF SOCIOLOGY*,* Vol. 32 (2006) 447 [hereinafter Halliday and Osinsky 2006].

[7] David Kennedy, *The Disciplines of International Law and Policy*, 12 LEIDEN J. INT'L L. 9, 17 (1999).

[8] Roberts 2017, *supra* note 6, at 1.

[9] Although this paper proposes a new concept of micro international law, a number of contributions to international legal scholarship relate to micro international law. *See* Victoria Nourse & Gregory Shaffer, *Varieties of New Legal Realism: Can a New World Order Prompt a New Legal Theory?*, 95 CORNELL L. REV. No. 1 (2009) [hereinafter Nourse & Shaffer 2009] and other work by Shaffer as referenced throughout; James Thuo Gathii, *The Promise of International Law: A Third World View*, Grotius Lecture Presented at the 2020 Virtual Meeting of the American Society of International Law, June 25, 2020 [hereinafter Gathii 2020]; Obiora Chinedu Okafor, *Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?* 10 INT'L COMMUNITY L. REV. 371 (2010) [hereinafter Anghie 2008 hereinafter Okafor 2010]; Anthony Anghie *TWAIL: Past and Future* 10 (4) INT'L COMMUNITY L. REV. 479 (2008) [hereinafter Anghie 2008] and other work by Anghie, Gathii, Okafor, and other TWAIL scholars

with these other theories and models,[10] it presents a particular set of conceptual, methodological, and procedural factors that are unique. For example, like TWAIL and NIEO, micro international law acknowledges systemic inequalities in international law and contests its universality. However, while micro international law is inspired by these approaches and other antecedents discussed below, it is less of a movement and more of methodological approach designed to study and understand the granular details that implement and inform international law. In this way, micro international law is complementary of the approaches on which it builds and could make a contribution across substantive areas, including international trade law, international human rights law, rules governing agricultural development and food security, international environmental law, and international finance law, with lessons for how each of these fields can evolve.

Micro international law is also inherently interdisciplinary[11] and would better align international law with other disciplines by integrating an important trend in the social sciences.[12] Economics has long recognized a micro dimension, which actually predates its macro focus. Fields like political science are

---

referenced throughout; ANNE-Marie Slaughter, *A Liberal Theory of International Law*, PROC. AM. SOC'Y INT'L L. ANN. MEETING, Vol. 94 (April 5-8, 2000) at 241.

[10] *See also, Law and Globalization from Below: Towards a Cosmopolitan Legality*, Boaventura de Sousa Santos and César A. Rodríguez-Garavito eds., Cambridge University Press (2009).

[11] *See* Daniel Abebe, Adam Chilton, and Tom Ginsburg, *The Social Science Approach to International Law*, CHIC. J. INT'L L., Vol. 22, No. 1, Article 4 (2021), available at https://chicagounbound.uchicago.edu/cjil/vol22/iss1/4/?utm_source=chicagounbound.uchicago.edu%2Fcjil%2Fvol22%2Fiss1%2F4&utm_medium=PDF&utm_campaign=PDFCoverPages.

[12] Although the micro dimension has not been emphasized in international legal studies, it has long been a focus in economics, where it is quite consistently combined with macro approaches, and is emerging as a recognized dimension in political science as well, as discussed in Part III. Scholars in economics have recently added depth to the micro dimension through new methods like randomized control trials and other innovations. *See, e.g.,* Francisco J. Buera, Joseph P. Kaboski, and Robert M. Townsend, *From Micro to Macro Development*, NAT'L BUREAU ECON. RESEARCH WORKING PAPER No. 28423 (2021), 2, available at https://www.nber.org/papers/w28423 [hereinafter Burera et al. 2021] and Abhijit Bannerjee, Rukmini Banerji, James Berry, Esther Duflo, Harini Kannan, Shobhini Mukerji, Marc Shotland, and Michael Walton, *From Proof of Concept to Scalable Politics: Challenges and Solutions with an Application*, J. ECON. PERSPECTIVES November 2017, 31 (4), 73-102 [hereinafter Bannerjee et al.]. Micro interventions have recently become more prevalent in political science as well. *See, e.g.,* Roland Willner, *Micro-politics: An Underestimated Field of Qualitative Research in Political Science*, GER. POL. STUD. Vol. 7, No. 3 (2011) [hereinafter Willner 2011], available at https://spaef.org/article/1320/Micro-politics-An-Underestimated-Field-of-Qualitative-Research-in-Political-Science and Philip Verwimp et al., *The Microeconomics of Violent Conflict*, 141 (2019) J. DEV. ECON. 1 at 1-2 [hereinafter Verwimp et al. 2019], available at https://doi.org/10.1016/j.jdeveco.2018.10.005, accessed 09 November 2023.

increasingly emphasizing micro interventions as well. International law is late to this trend, but it is well-suited to micro study.

This paper proceeds as follows. Part II presents a conceptual framework for Micro International Law, emphasizing what it is and what it is not in relation to "macro," or traditionally recognized, international law. Part III draws lessons from other disciplines like economics and political science, which use empirical approaches relevant to micro international law. Part IV outlines a methodological framework for the sub-field of Micro International Law. In particular, this section introduces a new empirical method of "micro mapping,"[13] which highlights the granular elements of legal systems and maps implementation and lived experiences in navigating national and international legal systems. Part V links micro studies with macro application, framing micro international law in the context of current challenges facing international legal systems, drawing the methodology and theory discussed earlier in the paper back to concrete examples. Part VI concludes and briefly outlines research questions for future study.

II. Conceptual Framework: What is Micro International Law, and Why is it Needed?

Micro international law attempts to respond to challenges in the global legal order by suggesting a reframing of how international law is viewed and approached along with a set of practical empirical tools that have been initially tested and could be much more widely adopted and applied. It was inspired by a series of empirical studies, particularly in-depth studies on food security, trade, and development, which are elaborated upon in the methodology section that follows. These studies formed the initial foundation for micro international law, including a multi-year, multi-stage set of studies throughout the African continent with farmers, small businesses, and communities that involved micro mapping of domestic legislation to assess where the needs of these stakeholders were integrated and how these lessons could inform both domestic implementation and new international rules.[14]

---

[13] Micro mapping is an empirical method developed by the author and co-contributors that is contained in various works. It has been applied primarily to developing economy legal and regulatory systems but has broader application. *See* Katrin Kuhlmann, *Mapping Inclusive Law and Regulation: A Comparative Agenda for Trade and Development*, 2 AF. J. INT'L ECON. L. 48 (2021), available at https://www.afronomicslaw.org/journal-file/mapping-inclusive-law-and-regulations-comparative-agenda-trade-and-development [hereinafter Kuhlmann 2021].

[14] *See* Katrin Kuhlmann, *Mapping Inclusive Law and Regulation: A Comparative Agenda for Trade and Development*, 2 AF. J. INT'L ECON. L. 48 (2021), available at https://www.afronomicslaw.org/journal-file/mapping-inclusive-law-and-regulations-comparative-agenda-trade-and-development [hereinafter Kuhlmann 2021]. *See also* Katrin Kuhlmann et al., *A Legal Guide to Strengthen Tanzania's Agricultural Input Markets*, SAGCOT, AGRA, and USAID

While these studies focused on developing economies, the methodology presented in Part IV could be applied globally, including to European Union (EU) law. This real-world development of the concept, expanded upon in Parts IV and V, is designed to help international law better meet its "international" promise by reaching a much wider group of people.[15]

The empirical aspect of micro international law is particularly important for highlighting several central dimensions: (1) innovations in domestic legal systems with greater application internationally and the link between domestic and international law as it is adapted, implemented, and created; (2) the lived experiences and contextual needs of stakeholders (including individuals, enterprises, and communities) as they engage with current and prospective domestic and international law; and (3) pathways for individuals, enterprises, and less powerful nations to engage in legal design, both procedurally and substantively.

Across its distinct conceptual, methodological, and procedural dimensions, micro international law is ultimately about the individuals and marginalized and underrepresented groups that have much to contribute to international law's design. Individual nation states play a central role as the testing ground for more equitable implementation of international law and sources of domestic legal innovation that could inform future international law.

(2017), available at https://www.newmarketslab.org/assets/regulatory_systems_map/5.pdf [hereinafter Kuhlmann et al. Tanzania Mapping]. *See also,* Katrin Kuhlmann, Bhramer Dey, Mulugetta Mekuria, Adron Naggayi Nalinya, and Tara Francis, *Development and Comparison of Seed Regulatory Systems Maps in Ethiopia*, Catholic Relief Services and USAID (2022), available at https://www.crs.org/our-work-overseas/research-publications/development-and-comparison-seed-regulatory-systems-maps [hereinafter Kuhlmann et al. Ethiopia Mapping]; Katrin Kuhlmann, Adron Naggayi Nalinya, Tara Francis, and David J. Spielman, *Mapping the Design and Implementation of Seed Sector Regulation: The Case of Uganda*, IFPRI DISCUSSION PAPER 022200, International Food Policy Research Institute (2023), available at https://www.ifpri.org/publication/mapping-design-and-implementation-seed-sector-regulation-case-uganda [hereinafter Kuhlmann et al. Uganda Mapping]; Katrin Kuhlmann, Adron Naggayi Nalinya, Tara Francis, and David J. Spielman, "Mapping the Design and Implementation of Seed Sector Regulation: The Case of Rwanda," IFPRI DISCUSSION PAPER, International Food Policy Research Institute (2024, publication forthcoming; draft on file) [hereinafter Kuhlmann et al. Rwanda Mapping]. Note that the aspect of implementation assessed in these and other studies focuses on how domestic incorporation of international law through specialized laws and regulations impacts individual stakeholders, which is an understudied aspect of implementation that will be the focus of future scholarship.

[15] On the importance of "real-world testing," see Shaffer & Ginsburg 2012, *supra* note 3, at 1 (emphasis removed). Shaffer and Ginsburg (2012) also note that "while generalizing from any specific domain can be risky, in the aggregate, a series of particular analyses help to provide a picture of how international law as a whole works, and why it works differently in discrete areas." at 21.

The elements that differentiate "micro" international law from "macro" international law are summarized in Table 1 and discussed in the sub-sections that follow.

Table 1: Micro International Law vs. Macro International Law

"Micro" International Law	**"Macro" International Law**
CONCEPTUAL	
Studies **how domestic legal systems inform and interpret international law** and **how domestic and international law incorporate the interests of individuals and communities**	Studies the **design and application of international legal instruments** and **the role of states and institutions in the formation and enforcement of international law**
International law impacted by many stakeholders who are not engaged in legal design (Note: this is true in domestic legal systems as well, where micro approaches also have application.)	**International law designed by powerful few** (e.g., international economic law)
Focus on **differences in implementation of law at domestic level through specialized legal and regulatory instruments** (e.g., micro mapping)	Focus on **compliance with international law** (e.g., empirical studies focused on treaty compliance in human rights, international trade, and environmental law)
Fit-for-purpose responses to social and sustainability issues and local nature of "behind the border" and extraterritorial rules (e.g., legal flexibility,[16] as shown in series of food security studies)	**Focus on uniformity in models, despite differences across states and stakeholders** (e.g., special and differential treatment in international trade law)
DIRECTIONAL	
Flows from bottom (local, national) up to international, drawing greater focus on bottom-up dimension	**Flows from top** (international treaties and institutions) down to states, with top-down dimension heavily studied

[16] Katrin Kuhlmann and Bhramar Dey, *Using Regulatory Flexibility to Address Market Informality in Seed Systems: A Global Study* 11 AGRONOMY (2023) 1 [hereinafter Kuhlmann and Dey].

METHODOLOGICAL	
Empirical and comparative methods to highlight stakeholders' **contextual needs, engagement channels, and interplay between design and implementation of domestic law and international law** (examples: stakeholder interviews, micro mapping, indicators)	Empirical and comparative studies often focused on **treaty design and compliance** (e.g., comparative human rights compliance, studies on WTO dispute settlement)
PROCEDURAL	
Central role for more extensive **accountability and engagement systems** at all levels of governance to gather input and implement law based on stakeholder needs (e.g., New Zealand model for inclusion of the Māori community)	**Institutions and governments lack sufficient channels for engagement**, limiting participation by under-represented stakeholders and states (e.g., developing country engagement in international financial law and institutions)

A. "Macro" International Law

International lawyers and scholars place strong value on institutional structures, power dynamics, and the role of states as drafters, negotiators, and followers (or violators) of international law. While this "top-down" or "macro" focus of international law is of great significance, it does not fully capture the breadth of the field. For example, in international trade law, a top-down approach would focus heavily on developments at the WTO level, which are often led by dominant economies, or trade disputes under the WTO or regional trade agreements (RTAs). A bottom-up approach, in contrast, would emphasize diversity in how national legal systems implement trade rules and how RTA and WTO provisions impact stakeholders and communities. Another example is the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), which contains important, top-down protections for biodiversity and farmers' rights. However, domestic innovations for incorporating these rights in national legal systems, and the degree to which stakeholders can effectively take action under these processes, are not adequately studied or compared, despite the importance of these bottom-up efforts in making the treaty operational. While important, the top-down framing fails to recognize the contribution of small and vulnerable nations or the disconnect between international rules and the needs of vulnerable communities, small businesses, women, and farmers. It also largely overlooks areas in which law is evolving, particularly through domestic regulatory administration and

implementation,[17] outside of disputes or legal innovations in more powerful economies' legal systems.

More powerful nations and stakeholders have had a disproportionately unequal influence on international law's development, and neither its overall history nor its imperialist and colonialist foundations can be separated from the study of international law.[18] These dynamics have historically led to the exportation of law in the name of universality, including under the early "Law and Development" movement, a field of study focused on law's relationship to development,[19] and problematic efforts to standardize all aspects of international law[20] and accept norms as universal, failing to address historical legacies, inequalities, and politics that continue to shape and inform international law.

International law's "macro" approach has limitations that call for a "micro" approach that highlights how international law is – and could be – constructed from the bottom up, not just the top down. The challenges with "macro international law" can be broadly grouped into challenges with international law's design, challenges with international law's aspirations, and challenges with international law's application. These are briefly discussed below.

---

[17] Implementation in this context refers to a broad range of national legal and regulatory instruments needed to align domestic law with broader international legal principles, and it necessarily includes rules and regulations in diverse substantive areas. Domestic implementation of international law also encompasses the narrower category of domestic doctrines and legislative processes relevant to treaty making and implementation. Although this latter aspect of implementation is relevant to the concept of micro international law, it is not the focus. *See* Pierre Hughes-Verider and Mila Versteeg *International Law in National Legal Systems: An Empirical Investigation*, AM. J. INT'L L., Cambridge University Press (20 January 2017) 514, available at https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/international-law-in-national-legal-systems-an-empirical-investigation/C2C4194AD35BCC763FFE1D39819393D9. Regarding the important process of "translating" international law in a domestic context, *see* Karen Knopp, *Here and There: International Law and Domestic Courts*, 32 N.Y.U. J. INT'L L. & POLICY 501 (2000).

[18] For a more general discussion of the history of international law, *see* Martii Koskenniemi, *Histories of International Law: Dealing with Eurocentrism*, Universiteit Utrecht, November 16, 2011, available at https://www.uu.nl/sites/default/files/gw_koskenniemi_martti_oratie_definitief.pdf; for a discussion of TWAIL and international law, *see, e.g.,* Gathii 2020, *supra* note 11.

[19] *See* David Trubek and Mark Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 4 WIS. L. REV. 1062 (1974); David Trubek and Alvaro Santos (eds.) *The New Law and Development: A Critical Appraisal* Cambridge University Press (2006); and Kevin Davis and Michael Trebilcock, *The Relationship Between Law and Development: Optimists vs. Skeptics*, 56 AM. J. COMP. L. 895 (2008). *See also* Halliday and Osinsky 2006, *supra* note 6.

[20] *See* Katharina Pistor, *The Standardization of Law and Its Effect on Developing Economies*, G-24 Discussion Paper Series, No. 4 (2000).

1. Challenges with International Law's Design

One of challenges with the design of international law is that it often stems primarily from nations and regions with more economic and political power. From a design perspective, power imbalances affect all aspects of international law and institutional engagement,[21] including recourse under international law.[22] Uneven state power is ingrained in international legal systems, with a prominent Western-centric approach shaping rules and institutions since the origins of modern international law following the Peace of Westphalia in 1648 that ended the Thirty Years' War in Europe and established the principle of state sovereignty. More recently, the "Brussels Effect," a term coined by Bradford to describe Europe's dominant influence on the laws within and among nations, has become a compelling and common frame of reference.[23] It extends across diverse areas, more recently including digital regulation and environmental, social, and governance (ESG) legislation. While this influence should continue to be studied, international law's overreliance on Western legal models and norms,[24] and the tendency to cast the rules of more powerful nations as a common standard in the name of "universality" or "best practices,"[25] contribute to some of the pressing challenges facing international law today. These include divergent approaches on climate change and social inequality, where developed and developing economies are often at odds with each other due to the perception that the rules result largely from Western priorities and approaches. Deeper understanding of a more diverse set of domestic legal approaches and a better system for giving weight to alternative good practices could help offset these imbalances.

---

[21] *See* Halliday and Osinsky, *supra* note 6.

[22] As Gathii notes "supranational efforts at seeking justice across national boundaries are often subject to imbalances in bargaining power such that the richest countries are not as limited in their power as poor countries are." James T. Gathii, *International Justice and the Trading Regime*, 19 EM. INT'L L. REV. 1407, 1413 (2005) [hereinafter Gathii 2005].

[23] Anu Bradford, *The Brussels Effect,* Oxford University Press (2020, 2021).

[24] *See* Mor Mitrani, *Demarcating the International Community: Where Do International Practices Come From?*, in Ljiljana Biukovic and Pitman B. Potter eds., LOCAL ENGAGEMENT WITH INT'L ECON. L. AND HUMAN RTS., Edward Elgar (2017) at 146.

[25] Gathii highlights the "façade of neutrality regarding how the rules of the international trading regime are crafted, applied, and adjudicated." James Thuo Gathii, *Fairness as Fidelity to Making the WTO Fully Responsive to All Its Members*, 97 PROC. AM. SOC'Y INT'L L. ANN. MEETING 157 (2003) [hereinafter Gathii 2003]. Akinkugbe voices concern with "pluraliz[ing] the false universal narratives of conventional" international law, particularly international economic law. Olabisi Akinkugbe, *Reflections on the Value of Socio-Legal Approaches to International Economic Law in Africa,* 22 CHI. J. INT'L. L. 1 (2021) [hereinafter Akinkugbe 2021] at 4.

Less powerful nations, individuals,[26] and non-governmental entities tend to more indirectly affect international institutions and norms.[27] Some non-governmental organizations, particularly international non-governmental organizations, can play an important role by acting as observers in international institutions and diffusing international law, effectively serving as "intermediary norm conveyors" and creators of soft law.[28] However, many of these stakeholders are still substantively and procedurally left on the periphery of international law, despite their potentially considerable contributions to its design.[29] Although some non-governmental stakeholders, primarily larger corporations and the business associations that represent them, have a more direct hand in designing international law,[30] their interests cannot be viewed as broadly representative,[31] which raises significant issues as their influence becomes part of "universal" international law. While practices and texts are sometimes taken from private stakeholders and incorporated into international law, as has been the case with a number of international instruments as noted by Shaffer and Coye,[32] the practices and rules that are "borrowed" tend to come from more powerful stakeholders and countries. This uneven influence also reinforces the power imbalance in international law that has led to disruption in international legal structures (e.g., the WTO) at a time when new issues require attention. While systemic, global efforts will always be needed, international law cannot survive these new dynamics without more micro, local solutions and adoption of a wider range of good practices from a broader set of stakeholders and states.

2. Challenges with International Law's Aspirations

There is an aspirational dimension to international law,[33] and international rules and the international organizations that facilitate, monitor, and sometimes

[26] Tamar Megiddo, *The Missing Persons of International Law Scholarship: A Roadmap for Future Research*, in INT'L LAW AS BEHAVIOR*,* Harlan Grant Cohen and Timothy Meyer eds., Cambridge University Press (2018).
[27] Shaffer and 2012, *supra* note 3, at 7.
[28] Gregory Shaffer and Carlos Coye, *From International Law to Jessup's Transnational Law, From Transnational Law to Transnational Legal Orders*, in THE MANY LIVES OF TRANSNATIONAL LAW: CRITICAL ENGAGEMENTS WITH JESSUP'S BOLD PROPOSAL, Peer Zumbansen, ed., Cambridge University Press, 2020 [hereinafter Shaffer and Coye] at 15.
[29] *See* Obiora Chinedu Okafor & Maxwel Miyawa, *Africa as a 'Theatre' of International Law and Development: Knowledge, Practice, and Resistance*, in OXFORD HANDBOOK OF LAW AND DEVELOPMENT [hereinafter Okafor and Miyawa].
[30] *See* Shaffer and Coye, *supra* note 28; *See also,* Braithwaite and Drahos (2000).
[31] For discussion of the important example of intellectual property rights law, *see* Shaffer and Coye, *supra* note 28.
[32] Shaffer and Coye, *supra* note 28, at 17.
[33] Roberts 2017, *supra* note 6, at 1.

adjudicate questions of international law often strive to ensure equal representation at least on paper. However, they often fall very short of this goal in both word and practice.[34]

At the moment, international rules and institutions are undergoing significant upheaval, and nations and institutions are struggling to address the current set of collective global challenges in a more sustainable and equitable way.[35] These issues range from equity across states and stakeholders to inequality and uneven distribution of wealth,[36] sustainable development and climate change,[37] social inclusion,[38] food security,[39] and reparations in time of war and conflict.[40] Significant reforms are underway in a number of these areas, ranging from

---

[34] *See* Dani Rodrik, *The Globalization Paradox* (2011); Sonia E. Rolland and David M. Trubek, *Emerging Powers in the International Economic Order: Cooperation, Competition, and Transformation* (2021); and Antony Anghie, *Time Present and Time Past: Globalization, International Financial Institutions, and the Third World*, 32 NYU J. INT'L L. & POL. 243 (2000) [hereinafter Anghie 2000]. *See also,* Thomas Pogge, *Assisting the Global Poor*, in ETHICS OF ASSISTANCE: MORALITY & THE DISTANT NEEDS 260 (Deen K. Chatterjee, ed., 2004).

[35] Kuhlmann 2021, *supra* note 13.

[36] *See, e.g.,* David Trubek et al., "World Trade and Investment Law in a Time of Crisis: Distribution, Development, and Social Protection," in *WORLD TRADE AND INVESTMENT LAW REIMAGINED: A PROGRESSIVE AGENDA FOR AN INCLUSIVE GLOBALIZATION* (A. Santos et al. eds., 2010) and Chantal Thomas, *Income Inequality and International Economic Law: From Flint Michigan to the Doha Round, and Back*, CORNELL LEGAL STUD. RSCH. PAPER No. 19-08, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3341523.

[37] *See* Remaking Trade for a Sustainable Future, *Villars Framework for a Sustainable Global Trade System, Version 2.0*, January 2024, available at https://remakingtradeproject.org/villars-framework; Thabo Fiona Khumalo, *Sustainable Development and International Economic Law in Africa*, 24 L. DEMOC. & DEV. 133 (2020).

[38] *See, e.g.,* Robert Howse & Kalypso Nicolaïdas, *Toward a Global Ethics of Trade Governance: Subsidiarity Writ Large,* 79 L. & CONTEMP. PROBS. 259, 282 (2016), available at https://scholarship.law.duke.edu/lcp/vol79/iss2/12; Gregory Shaffer, *Retooling Trade Agreements for Social Inclusion*, 2019 U. ILL. L. REV. 1, 29 (2019), available at https://www.illinoislawreview.org/wp-content/uploads/2019/03/Shaffer.pdf; and Gillian Moon, *Trade and Equality: A Relationship to Discover,* 12 J. INT'L ECON. L. 617 (2009).

[39] James J. Nedumpara, *Food Security for a Sustainable Future*, Remaking Trade for a Sustainable Future (2023), available at https://drive.google.com/file/d/1tMM1L5tbZnF-SMdelw5mJwwdjHLoMioi/view; Katrin Kuhlmann, *The Trade and Food Security Debate*, Center for Strategic and International Studies, February 2024, available at https://www.csis.org/analysis/trade-and-food-security-debate; and Michael Fakhri, *A History of Food Security and Agriculture in International Trade Law: 1945-2017*, in J. D. Haskell and A. Rasulov (eds.), *New Voices and New Perspectives in International Economic Law*, EURO. YEARBOOK OF INT'L ECON. LAW, (Spring 2020) 55, (Read pp. 55-65 and pp. 73-85), available at https://law.uoregon.edu/sites/law1.uoregon.edu/files/fakhri_history_of_food_2020.pdf.

[40] *See, e.g.,* Oona A. Hathaway, Maggie M. Mills, and Thomas M. Posten, *War Reparations: The Case for Countermeasures*, STAN. L. REV. Vol. 76 Issue 5 (2024), available at https://www.stanfordlawreview.org/print/article/war-reparations-the-case-for-countermeasures/.

proposals to make international law more inclusive, diverse legal approaches to address climate change, and calls for reform of international law to better integrate food security, debt relief, business and human rights, and reparations.

Some see this period of change leading to an expansion of international law, while others emphasize the danger of collapse or fragmentation of existing systems. Regardless, new approaches and methods will be needed.[41] Micro international law is one such approach that could provide a granular method for evaluating proposed changes to international law and their potential impact.

3. Challenges with International Law's Application

In its application, international law has an impact well beyond the states and institutions that shape it. Ultimately, international law affects every individual in every nation, yet many of these "stakeholders" in international law lack both a voice and a channel for contributing to its design. Very few individuals know what international law contains and how it impacts them, including the rights they have under international law. These oversights have significant implications. For example, an informal study based on a series of interviews with women in Morocco in 2006, not long after the U.S.-Morocco Free Trade Agreement (FTA) had been concluded, highlighted that most had little knowledge of the agreement or its provisions, including aspects that enhanced women's rights as workers and entrepreneurs.[42] Despite efforts to build more accountability into international negotiations, as this study highlighted, many are still left outside of the development and application of international law. While this is not a unique experience, it does signal that engagement and accountability mechanisms are insufficient in both international and domestic law and that international law is not sufficiently inclusive. Governments and international institutions need better processes to ensure that international law is equitably designed and evenly applied, and these processes should be more deeply studied and compared.

Domestic law and international law are inextricably connected.[43] International law rests heavily on domestic implementation through specialized legal and regulatory instruments in order to be effective, even though how states

[41] *See* Joel Trachtman *The Future of International Law: Global Government,* ASIL STUDIES IN INT'L LEGAL THEORY, Cambridge University Press (2013).
[42] This informal study underscored the importance of strengthening channels for consultation and engagement in treaty negotiations, and it highlighted the disconnect between normative goals (economic development and women's economic empowerment in this case), stakeholder interests and context, and operational engagement with affected communities.
[43] Slaughter 2000, *supra* note 11, at 241. *See also* Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EURO. J. INT'L L. 503 (1995).

incorporate international law into domestic law and apply these changes in practice receives far less focus than disputes focused on states' compliance with international law. International law also increasingly reaches beyond borders, as transnational law recognizes, including expanded "behind-the-border" measures that impact how countries can regulate and domestic rules on climate action, digital regulation, and supply chain governance that have international compliance implications that may necessitate changes in domestic law.

B. The Proposed Sub-Field of Micro International Law

What is micro international law? It is a proposed sub-field of international law that is distinct in its combination of conceptual, methodological, directional, and procedural elements. While other theoretical frameworks are important antecedents, as discussed below, micro international law is distinct and attempts to build upon these foundations by combining a conceptual framework with an empirical methodology and practical application focused on the mechanics and contributions of domestic law and the engagement of stakeholders in shaping international legal norms.

1. Micro International Law's Components

Conceptually, micro international law encompasses several interrelated components. First, under micro international law, individuals, non-governmental stakeholders,[44] and domestic legal systems are viewed as generators of international law and diverse sources of legal design, giving rise to the possibility of incorporating legal innovation from a wide range of sources into current and future international law. This is an important distinction that contrasts with their role as "subjects" or "receivers" of international law. Domestic legal systems and individuals can be viewed as "micro" drivers and, in many cases, loci of international law and norms,[45] ensuring that international law has a greater impact on the ground and fostering more diverse approaches for addressing social and global challenges. Contrary to how international law is often approached, the origins of micro international law come from a much more diverse range of sources, with a stronger voice for small, vulnerable nations and stakeholders compared with those that have traditionally held power in shaping global rules. Under a micro international law model, domestic legal systems take on a new role as innovators,

---

[44] *See* Barbara K. Woodward, *The Role of International NGOs: An Introduction*, WILLAMETTE J. INT'L L. & DISPUTE RESOLUTION, Vol. 19 No. 2 (2011).

[45] Jeffrey W. Legro, *Which Norms Matter? Revisiting the "Failure" of Internationalism*, INT'L L. & INT'L REL., Beth A. Simmons and Richard H. Steinberg, eds., Cambridge University Press (2006), 233 at 234.

implementers, adaptors, and systems within themselves that hold important lessons for what should become more universally accepted.

Micro international law also recognizes that domestic legal systems often cannot function if they are imported from powerful international actors, making domestic implementation and adaptation particularly important. Accordingly, micro international law is framed around differences in domestic legal systems and implementation rather than compliance, placing emphasis on the day-to-day application of law as a learning process. While the difference between de jure design and de facto application deserves greater attention, an excessive focus on compliance and enforceability can undermine other important normative aspects of international law.[46]

One important example of the role of domestic legal systems and stakeholders in micro international law is the Indigenous Rights movement, through which marginalized communities have pressed for important changes from the bottom up that led to high-level improvements in international human rights law, including creation of the United Nations Declaration on the Rights of Indigenous People (UNDRIP).[47] The protection of traditional knowledge and biodiversity is a related example, although here international law has yet to fully reflect innovations on the ground, including under domestic law. For example, a number of countries, including Kenya, Peru, Costa Rica, South Africa, Ethiopia, Tanzania, and Zambia, have laws in place protecting traditional knowledge and Indigenous communities. These domestic legal innovations have helped inform regional protections for traditional knowledge, including under the African Continental Free Trade Area (AfCFTA) Protocol on Intellectual Property Rights and other international trade treaties.[48] However, protection for traditional knowledge has not yet been fully incorporated into international law at the

---

[46] *See* Robert Howse and Ruti Teitel, *Beyond Compliance: Rethinking Why International Law Really Matters*, GLOBAL POL. (ONLINE), Vol. 1, No. 2 1 (2010) at 3 [hereinafter Howse & Teitel], available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1551923; *see also* William L.F. Felsteiner, Richard L. Abel, and Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming*, L. & SOC. REV. 15 (3/4) 631 (1980-81).
[47] Shaffer and Coye, *supra* note 28 at 6-11.
[48] *See* Katrin Kuhlmann and Akinyi Lisa Agutu, *The African Continental Free Trade Area: Toward A New Model for Trade and Development Law*, 51 GEO. J. INT'L L. 4 (2020) [hereinafter Kuhlmann and Agutu] for a discussion of the link between domestic law and African traditional knowledge frameworks (these also include the Swakopmund Protocol on the Protection of Traditional Knowledge and Traditional Cultural Expressions under the African Regional Intellectual Property Organization), and Sergio Puig *At the Margins of Globalization: Indigenous Peoples and International Economic Law*, Cambridge University Press (2021) at 48-54 for a broader discussion of the connection between traditional knowledge and biodiversity and regional trade agreements.

multilateral level, highlighting an area in which further bottom-up work is needed on high-level legal frameworks.

Contextually, like many of the sub-fields and approaches referenced above, micro international law recognizes that the human element is often sidelined, along with social inequality and historical bias and discrimination. Micro international law provides a complementary approach to consistently assess smaller-scale challenges and interventions, along with domestic legal approaches to address them, and to aggregate study of these issues and innovations to address gaps in international law. Unlike much of international law, it is less concerned with how states interact with each other than with ensuring that certain inputs are considered in international law. Without recognition of a sub-field that prioritizes these dimensions, however, study of the micro will remain marginalized and ad hoc.

Methodologically, micro international law relies heavily on empirical methods and models. It focuses on studying smaller-scale interventions to better understand how individuals interact with the law and how domestic legal systems innovate and adapt in ways that could influence international law from the bottom up. Through the application of empirical approaches at the micro level, international rulemaking could gain useful insight into intervention points better tailored to an understanding of the "context, object, and purpose" of law,[49] particularly under specific circumstances. These models are important to the larger empirical movement in international law, and the methodological approach for studying and applying micro models in international law, which has been preliminarily tested, would benefit from much greater application.

As a central part of this methodological approach, Part III presents a mixed method called "micro mapping" that can be used to identify and compare similarities and differences across stakeholder experiences and national legal systems.[50] Micro mapping has resulted from a series of studies primarily focused on food security and agricultural regulation that involved development of a series of step-by-step maps of relevant rules and regulations, allowing for more granular comparison within and across domestic legal systems. The maps were developed across a range of African states, including an agricultural corridor in Tanzania, and incorporated stakeholder interviews and consultations, which enabled them to both

---

[49] *See* Gathii 2003, *supra* note 25, at 157. Although not without challenges, the International Financial Institutions do have community-based accountability mechanisms. *See The Perspectives Project: Documenting and Reimagining IFI Accountability*, American University College of Law, [hereinafter Perspectives Project] available at https://digitalcommons.wcl.american.edu/accountability-perspectives/.

[50] *See, e.g.,* Kuhlmann 2021, *supra* note 13.

help build capacity regarding complex legal systems and pinpoint stakeholder interests in aspects of the legal system. Micro maps also compare the law on the books with stakeholder experience, establishing a useful tool for assessing implementation of both domestic and international law. As they are expanded and compared, they provide a way to highlight and aggregate domestic legal innovations, in some cases tracking how these have changed international law from the bottom up.

Micro mapping is a useful comparative tool, and the granular nature of the maps allows for process- and input-based comparison of domestic law, from which more socially-tailored indicators could be drawn that incorporate non-economic factors. By combining comparative and empirical methods at a micro level, differences and similarities can be compared among domestic legal systems that incorporate diverse sources of legal design, enhance flexibility and accountability, and improve implementation of laws in practice. This comparative aspect provides a way to understand how different nations understand, interpret, apply, and approach international law, which Roberts has coined "comparative international law."[51] This paper explores another dimension of this approach by proposing to understand how the design of national laws reflect "micro" interventions and observations that can be compared and contrasted to assess where domestic legal systems differ both within and outside of the current system of international law, with important implications for both the implementation of current international law and the design of future international rules and standards.

Directionally, micro international law proceeds from a different starting point than "macro" international law. It is more interested in how domestic law and the needs of individual stakeholders could shape or reshape international law from the bottom up rather than how international and transnational law have been received in countries, flowing from the top down. Thus, it is not particularly focused on why states enter into treaties, which a number of empirical studies evaluate,[52] the degree of compliance, or why international law is invoked in certain circumstances. It is concerned instead with *whether* international law is well suited to local needs (and how it could be made more so), *how* domestic law both impacts and implements international law, *what* stakeholders know about international law, and, in particular, *how international law could be produced differently*, contributing

---

[51] *See* Roberts 2017 and Roberts et al. 2018, *supra* note 6.

[52] Tom Ginsburg and Gregory Shaffer, *How Does International Law Work: What Empirical Research Shows*, in OXFORD HANDBOOK OF EMPIRICAL LEGAL STUDIES, Peter Can and Herbert Kritzer, eds. 1 (2010) at 5 [hereinafter, Ginsburg and Shaffer 2010], referencing T. Miles and E. Posner, *Which States Enter Into Treaties and Why?*, UNIV. CHICAGO LAW SCHOOL, LAW & ECONOMICS WORKING PAPER 420 (2008).

to the literature by studying these details in combination and highlighting lessons they provide for current and future international law. While other sub-fields incorporate bottom-up dimensions, they differ in both their focus and scope (e.g., organizational level in socio-legal studies) and the methodological approaches used.

There is a strong case to be made for combining micro and macro approaches in international law, as has been done in other fields, and the paper will conclude with some preliminary thoughts in this regard. Strengthening the connections between states, communities, and individuals at the micro level should help address the current crisis of confidence at the macro level and enhance avenues for pursuing justice, including within international institutions.[53] International rules and institutions are undergoing significant upheaval, which could be addressed, at least in part, through micro international law approaches.

A number of scholarly contributions focus on the need to reframe the narratives that underpin global rules, including in global trade and international finance. For example, scholarship has highlighted that international trade rules should be reframed and rebalanced to take into account distribution, domestic regulation, and the public good.[54] Here, bottom-up, domestic and local solutions should be prioritized. Using empirical methods discussed in the following section, micro international law could be used to identify domestic goals and models that could work from the bottom-up to inform international law. This could also integrate new "epistemic site[s] of production" for international law,[55] as TWAIL calls for, and pluralistic approaches that help to overcome the "Anglocentric" bias in the current international economic law system that make it ill-suited to address current global challenges.[56]

Micro international law also has a process-focused dimension, which involves better accountability and engagement mechanisms within international legal structures and institutions to gather input and act based on stakeholder needs at all levels of governance, presenting more diverse input and expanding the voices at the table internationally and domestically. With limitations, international legal

---

[53] *See* Gathii 2005, *supra* note 2, at 1430.
[54] Harlan Grant Cohen, *What is International Trade Law For?*, Editorial Comment 113 AM. J. INT'L. L. 326 (2019) at 327, 332 available at https://digitalcommons.law.uga.edu/fac_artchop/1283/#:~:text=It%20suggests%20that%20an%20international,to%20passenger%20in%20international%20negotiations.
[55] Gathii 2020, *supra* note 11, at 378.
[56] Mario Osorio Hernandez, *Reimagining International Trade Regulation*, forthcoming 43 BERKELEY J. INT'L. L. (2025) at 4, 7.

systems have procedures that recognize a role for non-state actors, such as consultation and engagement processes. Notable examples exist under international labor law and international environmental law,[57] and international trade agreements increasingly incorporates coordination and consultation provisions.[58] However, in some cases these mechanisms are more of an ex ante box-checking exercise to show engagement and less of a process for incorporating the interests of these stakeholders in international law's design and implementation on an ongoing basis. They are also sometimes viewed as a challenge to state sovereignty, but it is important to note that the more granular, micro approach, which recognizes the contributions of states without pressing for a universal legal or normative approach, provides a counterbalance for recognition of state sovereignty on the other hand. The important issue of sovereignty cannot be overlooked in the context of micro international law and deserves deeper research and study in the future.

2. Micro International Law's Antecedents

Micro international law builds upon, rather than replaces, other approaches. One important foundation is TWAIL, which powerfully challenges the lack of pluralism in international law. Along with the NIEO approach, TWAIL highlights the important design flaws in the current system, emphasizing that international law must recognize more diverse "locales and ideals."[59] This scholarship continues to play a critical role in rethinking international law, and it paves the way for additional models and methods, within which micro international law is situated.

Micro international law also shares characteristics with Slaughter's Liberal International Law, which emphasizes the importance of bottom-up approaches, state-society relations, and domestic law. It is also related to later-generation law and development theory, which eventually extended the field beyond economic development to social development and recognized challenges with legal

---

[57] *See, e.g.,* Steve Charnovitz, *Participation of Nongovernmental Organizations in the World Trade Organization*, UNIV. PENN. J. INT'L L. Vol. 17 Iss. 1 (1996) [hereinafter Charnovitz 1996]; and Richard Shell, *Trade Legalism and International Relations Theory: An Analysis of the World Trade Organization*, 44 DUKE L. J. 5 (March 1995) [hereinafter Shell 1995].

[58] Katrin Kuhlmann, *Handbook on Provisions and Options for Sustainable and Inclusive Trade and Development in Trade Agreements,* United Nations Economic and Social Commission for Asia and the Pacific (2023), available at https://www.unescap.org/kp/2023/handbook-provisions-and-options-inclusive-and-sustainable-development-trade-agreements.

[59] Gathii 2020, *supra* note 11, at 2. *See also* Anghie 2008 and Okafor 2010, *supra* note 9, and Makau Mutua, *What is TWAIL?*, PROC. AM. SOC'Y INT'L L. ANN. MEETING April 5-8, 2000, Vol. 94, Cambridge University Press.

transplantation and standardization.[60] Aspects of systems theory, which studies the interconnections between elements and stakeholders, are relevant, as is network theory, which evaluates the connections between actors and institutions within legal systems.[61]

Micro international law also draws upon socio-legal models, with their emphasis on using the law to address social issues and the role of law in action,[62] as well as legal realism (and new legal realism), which recognize that "law is socially contingent,"[63] addressing important gaps in the reasoning and prescriptions underlying law.[64] Like new legal realism, micro international law incorporates "law in action studies" and engagement with "law's subjects on the ground" and emphasizes the importance of connecting bottom-up and top-down analysis.[65] In doing so, it incorporates the subsidiarity principle, which can be traced back to Aristotle and suggests that international legal principles and standards should be implemented at the lowest level of governance that could bring about change.[66]

---

[60] *See* David Trubek and Alvaro Santos, *The New Law and Economic Development: A Critical Appraisal,* Cambridge University Press, 2006; *See also* Benjamin van Rooij and Penelope Nicholson, *Inflationary Trends in Law and Development*, 24 DUKE J. COMP. & INT'L L. Iss. 2 297 (2013). With respect to earlier stage law and development theory, *see* David M. Trubek and Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, WISC. L. REV. 1062 (1974).

[61] "Networks represent any empirically verifiable and demonstrable group of actors and their interactions throughout certain law making processes that lead to international normative development. These can include but are not limited to states, international organizations, non-governmental organizations, international or domestic courts and tribunals, and even corporations or individuals." Nadia Banteka, *A Network Theory Approach to Global Legislative Action*, SETON HALL L. REV. 50:339, 348 (2019).

[62] These concepts date back to Roscoe Pound. *See* Roscoe Pound, *The Need for a Sociological Jurisprudence*, 19 THE GREEN BAG 607 (1907); Roscoe Pound, *Law in Books and Law in Action* 44 AM. L. REV. 12 (1910); and Roscoe Pound *Social Control Through Law* Yale University Press (1942). *See* Malcolm M. Feeley, *Three Voices of Socio-Legal Studies*, 35 ISRAEL L. REV. 173 (2001) at 179.

[63] Feeley, *supra* note 61, at 179.

[64] *See* Nourse & Shaffer 2009, *supra* note 11.

[65] *Id.* at 75, referencing Howard Erlanger, Bryant Garth, Jane Larson, Elizabeth Mertz, Victoria Nourse, and David Wilkins, *Foreword: Is It Time for a New Legal Realism?*, 2005 WISC. L. REV. 335, 345-56 [hereinafter Erlanger et al. 2005] and Steward Macaulay, *Renegotiations and Settlements: Dr. Pangloss's Notes on the Margins of David Campbell's Papers*, 29 CARDOZO L. REV. 261, 262 (2007).

[66] *See* Paolo G. Carozza, *Subsidiarity As a Principle of International Human Rights Law*, 97 AM. J. INT'L. L. 38 (2003), available at https://scholarship.law.nd.edu/law_faculty_scholarship/564/; Isabel Feichtner, *Subsidiarity*, MAX PLANCK ENCYCLOPEDIA OF INT'L. LAW (2007), available at https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1477.

Micro international integrates elements of transnational law, comparative law, and soft law, although it attempts to answer a somewhat different set of questions. Like transnational law, micro international law crosses national borders, but it does so from a different vantage point. A more pluralistic view of transnational law that views it as a mechanism for understanding and resolving differences across legal systems is interesting in the context of micro international law.[67] While micro international law is not focused on reconciling these differences through a "transnational conflict of laws system,"[68] its concept and methodology do involve comparing national legal systems. Importantly, however, micro international law does not seek uniformity or harmonization but instead calls for recognition of differences across legal systems, maintaining flexibility and customization when and if they are incorporated into higher-level international law.

Micro international law largely relies upon legal norms that can be found at a smaller scale in states where pressing social issues necessitate different legal approaches. This emphasis on social norms has parallels in soft law, which Shelton argues involves incorporation of "social rather than … legal norm[s]" at an international level,[69] and provides a lens through which to assess the possibility of changed circumstances under international law[70] and "indeterminate provisions in a binding treaty."[71] Bradlow and Hunter highlight the role of non-state actors in creating soft law, emphasizing its more transparent and participatory nature, with non-state actors more concerned with international law 'in action' than with international law 'on the books,' and greater ability to bring about social change.[72] Although micro international law is focused on studying more granular interventions, both hard and soft, regardless of the nature of the interventions themselves, it also integrates law's social dimension and involves understanding how states have interpreted and implemented broad treaty provisions through binding domestic law. Overall, the multi-layered and complex nature of international law may warrant consideration of additional sources of international law, although this is outside of the scope of this paper.

It is also important to delineate what micro international law is *not*. Notably, micro international law is not primarily focused on why states generate international law, nor does it emphasize institutions, which is a hallmark of

---

[67] *See* Roger Cotterrell, *What is Transnational Law?*, LAW & SOCIAL INQUIRY, Vol. 37, Issue 2, 500-524, Spring 2012 at 501 (referencing Berman 2007).
[68] *Ibid.*
[69] Shelton, *supra* note 6, at 3.
[70] Andrew T. Guzman and Timothy L. Meyer, *Explaining Soft Law*, BERKELEY OLIN PROGRAM IN LAW & ECONOMICS WORKING PAPER (2009).
[71] Bradlow and Hunter 2020, *supra* note 5, at 4.
[72] *Id.* at 3.

international legal studies and some other disciplines.[73] Relatedly, micro international law is not heavily focused on compliance and adjudication or the use of dispute settlement mechanisms to enforce international law. Rather it focuses on domestic implementation, or how international law is being applied and sometimes adapted at the domestic level. In many cases, international legal instruments are rather general and leave significant interpretation to states, which can result in widely differing domestic legal approaches. Assessing implementation involves studying not just whether domestic laws and regulations exist but also necessitates a deeper dive into their contents as well. Implementation itself can have many dimensions, and many areas of international law, including international human rights law, are built on laudable principles but lack consistent and effective implementation. However, while implementation is a state function, it also relies on stakeholder knowledge of rules and procedures, reduction of bureaucratic gateways, and more locally suitable processes.

Micro international law also draws from other disciplines, especially economics and political science. While the substantive focus of these other micro dimensions differs from the conceptual framework underpinning micro international law, it is important to understand how these other disciplines give weight to a micro dimension. As Section III highlights, micro dimensions hold significant value in other disciplines and are well integrated alongside macro models, with important lessons for international law.

III. Interdisciplinary Models for Incorporating a Micro Dimension

Micro International Law differs from yet draws upon micro methods applied in economics, political science, sociology, development, and other disciplines. Among these, some of the strongest lessons come from economics, political science, and international relations, although these fields are notably distinct from international law.[74]

There are two main reasons why studying micro approaches stemming from other disciplines has value. First, as international law expands to address an increasing number of challenges, interdisciplinary approaches will be needed to

---

[73] Ginsburg and Shaffer, *supra* note 52, at 1.

[74] *See* Nourse and Shaffer 2009, *supra* note 11, at FN 46 referencing Hans Joas, *The Creativity of Action,* Jeremy Gaines & Paul Keast trans., Univ. of Chi. Press 1996) (1992); *See also,* New Legal Realism, http://www.newlegalrealism.org/ and Robert J. Beck, *International Law and International Relations: A Scheme for Classifying Their Literatures*, PROC. AM. SOC'Y INT'L L. ANN. MEETING April 5-8, 2000, Vol. 94, Cambridge University Press [hereinafter Beck 2000], drawn from *The Prospects for Interdisciplinary Collaboration*, 1 J. INT'L. L. STUD. 119, 149 (1995) and Robert J. Beck et al. eds., *International Rules: Approaches from International Law and International Relations* 3-30 (1996).

devise effective legal solutions.[75] Second, the methods used to study the micro dimension in other disciplines provide important lessons for micro international law, where understanding how smaller subsets of stakeholders and domestic law interact with – and inform – international law is central to the model. While other disciplines both make the case for micro international law and highlight areas of overlap, including in empirical methods, there are important significant differences. For example, micro international law's conceptual framework focuses on equity over efficiency,[76] the latter of which is prominent in microeconomics. Nonetheless, methods and approaches from other disciplines can still provide insight.

As discussed below, interdisciplinary movements present lessons for approaching the macro (system-wide change and international governance) through the micro (the decisions and interests of individuals and enterprises, along with domestic law). It is insightful to see how these fields have evolved, and continue to evolve, to incorporate a micro dimension. In some cases, most notably economics, the micro dimension has not only existed alongside the macro dimension for decades but actually predates it.[77]

A. The Established Micro Dimension: Microeconomics

Microeconomics is the most established among the "micro" foundations and models. It studies the distribution of resources at the firm or industry level, in contrast to more systemic factors like output and employment as a whole.[78] The origins of microeconomics date back at least to the 18th century, even though the

---

[75] *See* Shaffer and Ginsburg 2012, *supra* note 3.

[76] This has its roots in the NIEO movement, as Gathii notes. James Thuo Gathii, *Third World Approaches to International Economic Governance*, in INT'L LAW & THE THIRD WORLD: RESHAPING JUSTICE, Richard Falk, Balakrishnan Rajagopal, and Jacqueline Stevens, eds., Routledge-Cavendish (2008). Nourse and Shaffer 2009, *supra* note 11, presents the challenges with incorporation of efficiency theory in international law and how opposition to neoclassical law and economics evolved into a "new legal realism."

[77] Christos P. Baloglou, *The Tradition of Economic Thought in the Mediterranean World from the Ancient Classical Times Through the Hellenistic Times Until the Byzantine Times and Arab-Islamic World,* in HANDBOOK OF THE HISTORY OF ECONOMIC THOUGHT: INSIGHTS ON THE FOUNDERS OF MODERN ECONOMICS (Jürgen G. Backhaus, ed., Springer 2012), available at https://competitionandappropriation.econ.ucla.edu/wp-content/uploads/sites/95/2017/08/HandbookHistoryThought.pdf. *See also, Student's Guide to the Economy: Macro vs. Microeconomics*, MARYVILL UNIV. BLOG 2020, available at https://online.maryville.edu/blog/microeconomics-vs-macroeconomics/.

[78] John Maynard Kenyes articulated the difference between micro and macroeconomics in *The General Theory of Employment, Interest, and Money,* 1936, reproduced by International Relations and Security Network at 146, available at https://www.files.ethz.ch/isn/125515/1366_keynestheoryofemployment.pdf.

term "microeconomics" was coined later. Microeconomics has its roots in philosophy, mathematics, and utilitarianism.[79] Microeconomics predates macroeconomics, which focuses on economic systems overall and government interventions and policies to generate systemic gains and also stems from philosophy, as well as the work of empiricists John Locke and David Hume.[80]

Interestingly, macro and microeconomics were initially united, with macro interventions flowing from individual actions.[81] The work of John Maynard Keynes, who is considered the founder of macroeconomics, expanded upon microeconomic theory, building upon earlier work by Adam Smith and others. Microeconomics encompasses a number of principles and models that shed insight into how a micro field can evolve.[82] Although conceptually different, microeconomic methods can inform a micro approach to international law, even though some substantive aspects of microeconomic theory, like efficiency theory, diverge from the micro international law concept.

Microeconomic empirical studies have particular implications for micro international law. Micro-level interventions tend to be viewed as "pilot studies" in a policy context, with the ability to scale results for a greater impact.[83] However, micro studies can produce precise results, foundations, and data that can then be applied more holistically, linking micro, individually-focused observations with macro, larger-scale outcomes, with important distributional and welfare implications.[84] Without these micro-foundations, macro policies may not have the intended effect. In addition to contributing to macro policy design, micro

[79] Bentham's "principle of utility" introduced in *An Introduction to the Principles of Morals and Legislation* (1780) includes the interest, benefit, advantage, or happiness of individual persons and the communities they comprise.

[80] Margaret Schabas and Carl Wennerlind, *Hume on Money, Commerce, and the Science of Economics*, J. ECON. PERSPECTIVES Vol. 25 No. 3 (Summer 2011) at 225-27.

[81] G. Chris Rodrigo, *Micro and Macro: The Economic Divide*, International Monetary Fund, available at https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/Micro-and-Macro

[82] These include efficiency, rational choice, game theory, public goods, and behavioral economics. *See, e.g.,* Nourse & Shaffer 2009, *supra* note 11, at 100, noting that elements of microeconomics, including rational choice and efficiency theory have been challenged by behavioral economics and attitudinalists.

[83] *See* Burera et al. 2021 and Bannerjee et al., *supra* note 10.

[84] Buera et al. 2021, *supra* note 10, at 6, 9, 18. This can particularly be the case when there are heterogenous actors and disparate impacts. In the context of international trade, for example, microeconomics could help to separate the effects of a policy at the local and even individual levels. Buera et al. at 24.

"evidence" can also be used to evaluate macro policy impacts in important areas like access to credit.[85]

The methodology for randomized control trials (RCTs) developed by Esther Duflo, Abhijit Bannerjee, and Michael Kremer, which has been applied within microeconomics and development economics in particular, is also especially relevant in its attempt to study the difference an isolated change, or "micro intervention," could make. RCTs have been applied to a number of issues related to poverty and economic development, including health, education, agriculture, and gender.[86] RCTs can be used to identify interventions that should be prioritized or rejected and generate micro empirical data and observed effects to help refine macro models.[87] RCTs are a helpful methodology for micro experimentation, and they allow for deeper comparisons across stakeholders, sectors, and countries. RCTs function as a "laboratory," providing a method for assessing proposed measures or approaches that is uniquely valuable. However, they are a relatively new method and are not without criticism,[88] making a case for mixed methods.[89]

RCTs are one of the strongest methodological link between microeconomics and Micro International Law, because of their emphasis on micro interventions and development implications. Although RCTs have already been used to assess policy interventions, they could perhaps be adapted more substantially to a legal context. Future work could explore this possibility of "Legal RCTs" to measure the impact of prospective legal or regulatory changes on specific population, taking into account the ethical issues and limitations surrounding RCTs.

Another area in which economics has particular ties with micro international law is in the context of its established track record of combining macro and micro approaches. Going back to Adam Smith and David Ricardo, economists often approached "macro questions" beginning with "micro foundations."[90]

---

[85] Buera et al., *supra* note 10, at 13.
[86] *See* Abhijit Banerjee and Esther Duflo, *Good Economics for Hard Times* (2019).
[87] Buera et al., *supra* note 10, at 20. Examples include studies on universal impacts of micro-credit, evaluation of the impact of cash grants to the poor, and use of RCTs to evaluate regional programs. Buera et al. at 13-14.
[88] Among the limitations of RCTs do have limitations, including that they are not actually "random," as their target populations tend to be carefully chosen and that is difficult to extrapolate from random subsets to larger populations.
[89] Wendy Olsen, *Bridging to Action Requires Mixed Methods, Not Only Randomised Control Trials*, EURO. J. DEVT. RESEARCH 31:139-162 (2019). *See also* Jamie Morgan, *A Realist Alternative to Randomised Control Trials: A Bridge Not a Barrier,* EURO. J. DEVT. RESEARCH 31:180-88 (2019).
[90] Margaret Levi, *The Economic Turn in Comparative Politics* (2000) 33 COMP. POL. STUD. 822, 823.

Combined macro-micro approaches have become more common and have taken off as micro empirical research, including RCTs, has expanded.[91] Microeconomic studies provide critical foundational inputs for macroeconomic application; for example, the development implications of market and policy interventions can be better understood through systematically integrating microeconomic assessment of the "welfare and distributional implications" of policies.[92] Such a "bottom up to top down" approach to economic development[93] has particular implications for international legal studies, including micro international (economic) law. This is the focus of Section V below.

B. The Emerging Micro Dimension: Micro Approaches in Political Science

Political science, including international relations (IR), is increasingly integrating a micro dimension as well. While the micro aspect here is not nearly as developed as in the field of economics, it has a particularly strong connection to international law. In political science, the micro dimension, which is sometimes referred to as "micro-politics,"[94] is used to understand the role of the local and individual in global governance, although these have often been positioned in the context of more macro, systemic structures. Political science also often draws upon microeconomic foundations, including rational choice theory, game theory and collective action or free rider theory,[95] which raises some conceptual differences as noted above.

---

[91] Buera et al. 2021, *supra* note 10, at 2.
[92] *Id.* at 2.
[93] *Id.* at 2-3. Integration of macro and micro approaches are used in development economics, economic modeling, and policy design. Buera et al., *supra* note 10, at 37.
[94] Willner 2011, *supra* note 10, noted that the term "Micro-politics" was first coined by Tom Burns in *Micro-politics: Mechanisms of Institutional Change*, ADMIN. SCI. Q. 6 (3) 257-81 (1961).
[95] Levi, *supra* note 90, at 825-34. According to Levi, who coined the term "comparative political economics" to apply to the intersection between economic reasoning and political effects on the economy, there was little application of political science in economics from Marx until the 1960s, when descriptive case studies or statistical investigations were used to assess the correlation between economic and political variables. Later, comparative political economists assessed economic policymaking at the national level "appl[ying] microeconomic methods to political behavior and to institutional emergence, stability, and change." Levi at 823-24.

Empirical methods such as surveys and field research are central to developing "micro-level" methods and findings,[96] or "microfoundations,"[97] which can be used to answer "macro-level questions."[98] Incremental study and replication are paramount to these approaches and provide the ability to learn from micro-level experiments in the form of "iterated studies over time."[99] Political science studies also encompass stakeholders beyond the state, such as non-state actors,[100] illustrating the importance of "going down to lower levels of analysis" to better understand issues of globalization, governance, and power structures.[101]

Micro models in political science come with limitations relevant to international law. One is the caution that these models overly focus on the local and fail to connect it with the international and national level. Another is that they can prohibit generalization, since micro-level approaches tend to necessitate a specialized focus on a particular case.[102] These limitations could, however, be overcome by more systemically linking micro approaches with macro approaches, as economics has historically sought to do. They could also be addressed by empirically connecting granular issues at the local level with domestic legal systems and by comparing domestic approaches to highlight larger conclusions and trends, as micro international law attempts to do.

Although not yet the norm in political science, micro approaches are sometimes combined with macro or meso (regional) analysis of institutions and their processes to understand the "construction, reproduction, modification, and transformation of political policies, processes, and structures in concrete situations."[103] Importantly, micro-level empirical work, focused on the "smallest

---

[96] *See* Cyrus Samii, *Causal Empiricism in Quantitative Research*, J. POLITICS 2016; *see also* Susan D. Hyde, *Experiments in International Relations: Lab, Survey, and Field*, ANN. REV. POL. SCI. 2015. 18: 403-24, available at https://www.annualreviews.org/content/journals/10.1146/annurev-polisci-020614-094854.

[97] Joshua D. Kertzer and Kathleen M. McGraw, *Folk Realism: Testing the Microfoundations of Realism in Ordinary Citizens*, INT. STUD. Q. Vol. 66 Issue 2, Oxford University Press (June 2012), available at https://academic.oup.com/isq/article-abstract/56/2/245/1796298?redirectedFrom=fulltext.

[98] Hyde, *supra* note 96, at 405.

[99] *Id.* at 418.

[100] Beck 2000, *supra* note 74, at 211-12.

[101] Ty Solomon and Brent J. Steele, *Micro-moves in International Relations Theory*, EURO. J. INT'L. REL. Vol. 23 Issue 2 (2017).

[102] *Ibid*.

[103] Willner 2011, *supra* note 10, at 158 citing Patzelt *Mikroanalyse in der Politikwissenschaft: Eine Ethnomethodologische Perspektive*, in S. Immerfall (Ed.), PARTEIEN, KULTUREN UND KONFLIKTE, BEITRÄGE ZUR MULTIKULTURELLEN GEGENWARTSGESELLSHAFT, Westdeutscher Verlag (2000).

unit of action between specific actors," is complementary to rather than contradictory of the macro and "tries to answer macro and meso questions using discoveries on the micro-level."[104] In other words, micro methods analyze dimensions of international institutional structures and their rulemaking that macro methods cannot. One of the reasons micro-methods are necessary is that "rules are formulated generally and, hence, there is no direct relation to concrete situations."[105] Drawing a parallel with international law, where rules are also often general and left to domestic interpretation,[106] micro methods are important to understand how international law is interpreted, implemented, and applied differently in different contexts.

In political science, micro-level approaches, or "microfoundations," have particularly been applied in peace and conflict studies. Here, "systemic micro-level work, both theoretical and empirical" is important given the nature of conflict-related work, which has a considerable local dimension.[107] A micro dimension of political science and political economy studies in this context is related to the network approaches that have also emerged to study dynamics at a more disaggregated level than the state itself.[108]

Peacekeeping and conflict resolution studies use micro-level analysis to assess policy responses in the context of conflict,[109] as micro approaches can identify important policy gaps, making them better suited to inform policy in conflict prevention.[110] Micro approaches have been applied in a number of

---

[104] Willner, *supra* note 10, at 155, 157.
[105] *Id.* at 160.
[106] *See, e.g.,* Joost Pauwelyn, *Is It International or Not, and Does It Even Matter?*, in INFORMAL INT'L LAWMAKING, Pauwelyn, Wessel, and Wouters, eds., Oxford University Press (2012).
[107] Joshua D. Kertzer, *Microfoundations in International Relations*, CONFLICT MGT. & PEACE SCI. 2017 Vol. 31 (1) 81-97 at 90.
[108] "Networks represent any empirically verifiable and demonstrable group of actors and their interactions throughout certain law making processes that lead to international normative development. These can include but are not limited to states, international organizations, non-governmental organizations, international or domestic courts and tribunals, and even corporations or individuals." Banteka, *supra* note 61 at 348. Scholars, including Robert Keohane, Joseph Nye, Peter Haas, and Anne-Marie Slaughter, who contributed to the "conceptual and epistemological shift from states as sole unitary actors acting within an international system . . . to 'disaggregation' into their many individual components" Banteka at 349.
[109] Philip Verwimp et al., *The Analysis of Conflict: A Micro-Level Perspective*, (2009) 46(3) J. PEACE RES. 307, 309–10, <https://journals.sagepub.com/doi/10.1177/0022343309102654> accessed 09 November 2023 [hereinafter Verwimp et al., 2009].
[110] *See* Santiago Sosa *The Micro-dynamics of Conflict and Peace: Evidence from Colombia* 49:2 INT'L INTERACTIONS 163 at 165 (2023) [hereinafter Sosa 2023].

contexts, including the Arab uprisings,[111] Indonesian civil war,[112] and Colombian conflict,[113] with important lessons on migration and forced displacement, land tenure, and post-conflict scenarios.

Micro analysis and "micro-level foundations" of conflict can be used to bridge a disconnect between the macro- and micro-level challenges and solutions,[114] although both micro- and macro- level assessment are needed.[115] Peacekeeping studies highlight the need for a "bottom-up" approach, which, in the case of peacekeeping, begins with "those on the margins" in order to develop approaches that can be applied more broadly.[116] In other studies, including studies on the "microeconomics of violent conflict" that examine the intersection between development economics and cross-country studies of conflict, individuals (people, households, and communities) are central to assessing pathways for conflict resolution.[117] Conflict resolution programs traditionally created by international, regional, and national bodies have tended to be limited due to their failure to take into account the people affected by conflict itself,[118] which has implications for a micro dimension in international law.

IV. Micro Methods: A Methodological Framework for Micro International Law

Interdisciplinary approaches do have connections with law, including links between law and power, law and development,[119] and law and conflict. However,

---

[111] Isabel Bramsen *How Violence Breeds Violence: Micro-dynamics and Reciprocity of Violent Interaction in the Arab Uprisings*, INT'L. J. CONFLICT & VIOLENCE Vol. 11 (2017), available at https://www.tandfonline.com/doi/full/10.1080/03050629.2023.2189705.

[112] Mathias Czaika and Krisztina Kis-Katos, *Civil Conflict and Displacement: Village-level Determinants of Forced Migration in Aceh*, J. PEACE RES. (Special Issues on Micro-Level Dynamics of Violent Conflict) Vol. 46 No. 3 (May 2009).

[113] *See* Sosa 2023, *supra* note 110.

[114] Sosa 2023, *supra* note 110, at 163-64.

[115] *See* Laia Balcells and Jessica A. Stanton, *Violence Against Civilians During Armed Conflict: Moving Beyond the Macro- and Micro-Level Divide*, ANN. REV. POL. SCI. 24, No. 1 (May 2021), 45–69.

[116] Willner, *supra* note 10, at 163, 165.

[117] *See* Verwimp et al., *supra* note 10. These studies connect political science, microeconomics, international relations, peace research, conflict and security studies, development studies, sociology, and social psychology. *See also,* Verwimp et al. 2009, *supra* note 119, at 307–308 "[A]t a fundamental level, conflict originates from individuals' behaviour and their interactions with their immediate surroundings, in other words, from the micro-foundations."

[118] Verwimp et al. 2009, *supra* note 10, at 307, 308.

[119] Law and development theory originally focused on how the laws of Western nations have been disseminated worldwide in the name of international development. However, this narrow view of law and development has been replaced with a broader field of law and development that

international law is distinct from other disciplines in theory and methodology,[120] and it should not be "reduce[d] … to other disciplines."[121] This reinforces the importance of establishing a micro dimension in international law.

Empirical methods are central to micro international law, including surveys, questionnaires, structured and semi-structured interviews, stakeholder consultations, ethnography/participant observation, process tracing, and legal content and contextual analysis.[122] This section will also present a novel empirical method, micro mapping, which is particularly suited to studying granular interventions and impacts. Small-N and large-N quantitative analysis are relevant as well, although, like in other areas of empirical legal study, qualitative methods are most common. In addition to micro mapping, surveys, stakeholder consultations, and contextual analysis are particularly relevant to micro studies. Case studies can also be used to complement legal empirical research,[123] highlighting specific examples from which more in-depth conclusions can be drawn.[124] Contextual approaches are essential for connecting the design of international law to the interests of stakeholders,[125] integrating "bottom-up,

---

examines connections between law and different facets of economic and social development. *See, e.g.,* David Trubek and Alvaro Santos, *The New Law and Economic Development: A Critical Appraisal,* Cambridge University Press, 2006.

[120] Shaffer & Ginsburg 2012, *supra* note 3, at 1, 3. Shaffer and Ginsburg note that here are differences between methods and analytical frameworks and theory in legal scholarship versus other social sciences. Legal scholarship tends to mix methods and theory, whereas methods and theories are approached distinctly in social sciences, where economists, political scientists, and others view methodology as a "rigorous empirical examination of practice" that cannot be replaced by theory.

[121] Nourse & Shaffer 2009, *supra* note 11, at 129-30; *see also,* Victoria Nourse & Gregory Shaffer, *Empiricism, Experimentalism, and Conditional Theory*, 67 SMU L. REV. 101 (2014) [hereinafter, Nourse & Shaffer 2014].

[122] For a discussion of empirical methods used in international legal scholarship more broadly, see Shaffer & Ginsburg 2012, *supra* note 3, at 4.

[123] Antonia Chayes, *International Agreements: Why They Count as Law*, PROC. AM. SOC'Y INT'L L. ANN. MEETING Vol. 103 International Law as Law (2009) Cambridge University Press [hereinafter Chayes 2009] at 159, referencing Harold Jacobson and Edith Brown Weiss eds., *Engaging Countries – Strengthening Compliance with International Accords* (1996).

[124] Lydia Brashear Tiede, *The Role of Comparative Law in Political Science* 69 AM. J. COMP. L. 720 (2021), at 746-47.

[125] *See* Katrin Kuhlmann, *Gender Approaches in Regional Trade Agreements and a Possible Gender Protocol Under the African Continental Free Trade Area: A Comparative Assessment*, TRADE POLICY & GENDER EQUALITY, Cambridge University Press (October 2023) [hereinafter Kuhlmann 2023b], available at https://www.cambridge.org/core/books/trade-policy-and-gender-equality/gender-approaches-in-regional-trade-agreements-and-a-possible-gender-protocol-under-the-african-continental-free-trade-area/BC406A9D888E43C3EC51E224221377E5[hereinafter Kuhlmann 2023c] and Katrin Kuhlmann and Amrita Bahri, *Gender Mainstreaming in Trade Agreements: A Potemkin Façade?*, MAKING TRADE WORK FOR WOMEN: KEY LEARNINGS FROM

participatory forms of empiricism."[126] Contextual analysis is also critical for understanding the "law in action" in contrast to the "law on the books."[127]

Micro international law is also distinguishable within international legal scholarship through its combination of conceptual elements and its particular methodological approach, which is the focus of this section. However, it is also important to situate it within the growing body of scholarship on use of empirical models in international law,[128] even though international legal empirical scholarship, or "legal empirical studies,"[129] is still evolving.[130] One aspect that is particularly relevant to the micro methods proposed here is the trend in legal empirical scholarship, influenced by social science approaches, to explore the "scope and efficacy" of international law, including the "*conditions* under which international law is produced and has effects, as well as the *actors* and *mechanisms* involved."[131] While micro international law explores particular dimensions of these questions, this both underscores the importance of looking at micro dimensions of other disciplines and integrating relevant methods into the evolving

---

THE WORLD TRADE CONGRESS ON GENDER (September 2023), available at https://www.wto.org/english/res_e/booksp_e/making_trade_work_for_women_ch12_e.pdf [hereinafter Kuhlmann and Bahri 2023] [hereinafter Kuhlmann and Bahri 2023]. *See also,* Lucie White, *African Lawyers Harness Human Rights to Face Down Poverty*, ME. L. REV. Vol. 60 No. 1 Art. 5, January 2008, available at https://digitalcommons.mainelaw.maine.edu/cgi/viewcontent.cgi?article=1297&context=mlr.

[126] Nourse & Shaffer 2009, *supra* note 11, at 70.

[127] *See* Nourse & Shaffer 2009, *supra* note 11 and Roscoe Pound *Law in Books and Law in Action* (1910); *See also,* Jean-Louis Halperin, *Law in Books and Law in Action: The Problem of Legal Change*, 64 ME. L. REV. 45 (2011).
Available at: https://digitalcommons.mainelaw.maine.edu/mlr/vol64/iss1/4.

[128] *See* Gregory Shaffer & Tom Ginsburg, *Empirical Work in International Law: A Bibliographical Essay*, MINN. LEGAL STUD. RSCH. PAPER 09-32, 2009) [hereinafter Shaffer & Ginsburg 2009]; *see also* Ginsburg & Shaffer 2010, *supra* note 52. A study by Ho and Kramer focused on empirical trends in *Stanford Law Review* articles found that empirical study has increased across different areas of legal scholarship, including contract law, democracy and election law, corporate law and governance, and criminal law. Daniel E. Ho & Larry Kramer, *Introduction: The Empirical Revolution in Law*, 65 STAN. L. REV. 1195, 1196 (2013) [hereinafter Ho & Kramer 2013].

[129] Nourse & Shaffer 2014, *supra* note 73, at 102. *See also,* Nourse & Shaffer 2009, *supra* note 11, at 129-30 and Victoria Nourse & Gregory Shaffer, *Empiricism, Experimentalism, and Conditional Theory*, 67 SMU L. REV. 101 (2014) [hereinafter, Nourse & Shaffer 2014].

[130] Some scholars question the application of empirical methods in law. Among the critics of the empirical turn in international law, Martii Koskenniemi notes that "these new realists, in their hubris, believe in the power of their predictive and explanatory matrices.... But since expert systems are no less indeterminate than law, this move only institutionalizes an anti-political, technical mindset." Martti Koskenniemi, "Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization," 8.

[131] Ginsburg and Shaffer 2010, *supra* note 52, at 2.

legal empirical movement. Like in other fields, methodological approaches in international law also need to contend with challenges in accessing data, selection bias, ethical issues, and the difficulty of assessing complex legal systems within factor-limited studies.[132]

To date, empirical work in international law has tended to focus at a more macro level, with an emphasis on treaty formation, the role of states and institutions and, like in international relations, treaty compliance.[133] Common questions include why international law is produced and invoked, how it is produced, and why it matters to the behavior of states and other actors.[134] Studies cover a range of international issues, including international human rights law, international trade law,[135] and international environmental law, making use of varying methods,[136] depending upon the type of study.[137] As one notable example, several studies use empirical methods to assess compliance with international human rights treaties, such as a study by Hathaway that uses quantitative methods to assess whether countries that have ratified human rights treaties score better on human rights rankings.[138] These studies are designed to evaluate the behavior of states in ratifying and complying with international legal instruments.

While insightful, these examples track more with macro international legal approaches rather than micro international law. However, there are also some emerging examples of a micro-level focus that could be expanded upon. Instead of focusing largely on compliance with treaty obligations,[139] micro international law approaches focus on understanding smaller-scale, contextual legal interventions

---

[132] The author would like to thank Simona Novenic for contributions on this point.
[133] Chayes, *supra* note 123 at 158-59. *See also* Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (1991).
[134] Ginsburg and Shaffer 2010, *supra* note 52, at 2.
[135] *See* Gregory Shaffer, *Emerging Powers and the World Trading System: The Past and Future of International Economic Law*, Cambridge University Press (2021) [hereinafter Shaffer 2021].
[136] Ginsburg and Shaffer 2010, *supra* note 52, at 2. *See also* Katerina Linos and Melissa Carlson, *Qualitative Methods for Law Review Writing*, UNIV. CHIC. L. REV. 84:213 (2017).
[137] For example, Shaffer and Ginsburg 2012, *supra* note 3, at 11 present the example of a study of a WTO judgment as a case in which quantitative approaches would be suited due to the macro effects, while qualitative work can be more useful in generating theory and understanding the effects of norms on individuals and communities.
[138] Oona Hathaway, *Do Human Rights Treaties Make a Difference*, 111 YALE L. J. 1935 (2002), which compares treaty ratification with different human rights metrics, such as Freedom House data and the Purdue Political Terror Scale. As another example of a study focused on compliance with human rights instruments, *see* Beth Jenkins, *Mobilizing for Human Rights: International Law in Domestic Politics* (2009).
[139] The caution against overreliance on compliance voiced by Howse and Teitel, *supra* note 45, is relevant here.

and innovations that could inform more inclusive international law. It focuses heavily on understanding domestic law, which is an area in which international legal empirical studies need to be expanded.[140] These approaches hold value across international law, emphasizing the importance of participation of underrepresented nation states, communities, and individuals in the design of international law;[141] the value of isolating micro interventions to identify and address the needs of stakeholders, particularly those who are most vulnerable, through legal design and implementation; and the push-pull relationship between domestic and international law.

Instead of relying on other disciplines to fill in the gaps, micro international law needs an empirical toolkit of its own. Empirical methods and contextual and comparative analysis should be central features, and socio-legal methods can also be instructive,[142] in particular, because they focus more precisely on stakeholder needs.[143] The methodological framework for micro international law must consist of at least four interrelated components: tailored empirical methods to assess factors related to the design and application of international law, contextual approaches to identify how law intersects with the needs of particular stakeholders, comparative approaches to highlight patterns across domestic legal systems, and methods to connect micro analysis with macro application. Across these, micro-level empirical studies highlight several important areas: intervention points for increased engagement among underrepresented stakeholders in international legal design, both procedurally and substantively; incorporation of contextual needs into legal design approaches; and domestic legal systems and their connection with international law.

A. Illustrative Micro International Law Studies

Although micro international law is a new concept, examples of micro empirical legal studies exist that could provide a foundation for future work. A number of these studies explore the connection between domestic legal models and shifts in international law, while some also illustrate how individuals and small enterprises relate to international law on a more micro level.

---

[140] Ginsburg and Shaffer 2010, *supra* note 52, at 2-3.

[141] *See* Balakrishnan Rajagopal, *International Law From Below: Development, Social Movements and Third World Resistance*, Cambridge University Press (2003).

[142] *See* Reza Banakar & Max Travers, *Law, Sociology, and Method*, *in* THEORY AND METHOD IN SOCIO-LEGAL RESEARCH 1-25 (Reza Banakar & Max Travers eds., 2005); Adam Chilton et al., *The Social Science Approach to International Law,* 22 CHI. J. INT'L. L. 1 (2021); Akinkugbe 2021, *supra* note 25.

[143] Kuhlmann 2021, *supra* note 13, at 32.

Several highlight the importance of legal capacity in the form of knowledge among individuals and small enterprises of national and international legal processes, along with avenues for shaping domestic and international rules as they change. An informal study built around interviews with women workers, entrepreneurs, and advocates in Morocco in 2006, not long after the FTA between the United States and Morocco went into force, highlighted the lack of knowledge among individual stakeholders of trade agreements, even though their provisions could have a significant impact on their work and livelihoods, as well as the lack of consultation with affected groups.[144] This early study highlighted the important insights that could be gained from empirical, field-based work and paved the way for future micro-observations, including the micro mapping discussed in the next section.

In a more recent study, micro-level enterprise data was collected to assess how a potential future change in international law at the WTO level would impact small businesses in Kenya and South Africa.[145] The measure in question is something called the WTO Moratorium on Customs Duties on Electronic Transmissions, or the E-Commerce Moratorium for short, which has been in place since 1998 to prevent governments from assessing duties on digitally-delivered goods and services. As the debate in Geneva intensified over whether or not to continue the measure, national governments were not adequately consulting local micro, small, and medium-sized enterprises (MSMEs) to understand how lifting or continuing the measure might affect them. The study focused on this local-level, micro impact through combined methods in the form of a survey instrument to gather a statistically significant sample from interested MSMEs, taking measures to preserve anonymity of respondents and data, and structured interviews to obtain

[144] Based on interviews and field research conducted by the author in Morocco in July 2006.

[145] Katrin Kuhlmann and Tara Francis, *The MSME Moratorium: Stories from MSMEs in South Africa and Kenya on the WTO Moratorium on Customs Duties on Electronic Transmissions*, New Markets Lab February 2024. The study, conducted in 2023-24, focused on the possible expiration of the WTO Moratorium on Customs Duties on Electronic Transmissions (E-Commerce Moratorium) and its impact on MSMEs in South Africa and Kenya in the leadup to the WTO Ministerial Conference in February 2024. The study used a structured survey instrument to gather nearly 450 impressions from MSME as well as interviews with over 30 MSMEs to gather more detailed "stories" or case studies. Of the 447 MSMEs interviewed, the majority (57%) of them were unaware of the existence of the E-Commerce Moratorium and its potential expiration, and most had not been consulted by their governments as they discussed possible changes to international law. Among the MSMEs surveyed, the overwhelming majority (74%) indicated that they do not possess the capacity to comply with the customs and administrative requirements that may be imposed following the expiry of the Moratorium. Further, an overwhelming majority (82%) reported that there would be negative impact on the future growth and competitiveness of their business due to potential import tariffs and customs requirements.

more detailed responses with appropriate consent. Based on the study's findings, the majority of enterprises were not aware that changes in international law that would directly affect them were under discussion, and few had been consulted by their home governments as international negotiations unfolded. Results showed that the impact of a possible change in international law would be serious and could cause some of the MSMEs to go out of business, underscoring the importance of gathering micro level data before a change in international law takes place. The study was used to engage governments in the leadup to the thirteenth WTO Ministerial Conference in Abu Dhabi in February 2024, when the decision had to be made among WTO member whether to extend the measure in question. In the final hours of the Ministerial Conference, the South African government changed its position of supporting termination of the E-Commerce Moratorium, and ultimately, the Moratorium was extended until 2026. This is an important example of how macro-level decisions by governments at a forum like the WTO need to be informed by micro-level considerations in order to take into account domestic priorities and stakeholder input.

Micro empirical models can also be used to understand the design elements of domestic law and their relation to international law, both current and prospective. Because international law is often more general in its design, it is often interpreted differently across domestic legal systems. In addition, international law may be silent on important aspects, such as engagement with local communities and social dimensions, in which domestic law could be more innovative. These design elements can be uncovered through a process called "micro mapping," which is described in the sub-section that follows, and they can be important points of study and comparison to understand both how domestic law relates to international law and where domestic law may contain innovations that should be scaled at the international level.

Other studies, particularly legal realist studies, illustrate how international law can stem from more diverse foundations, such as domestic capacity and policy innovation.[146] A comprehensive study by Shaffer uses a series of interviews and consultations to assess the "legal organization of trade," including how international trade law shapes domestic legal systems and how the "subterrane" of legal capacity in Brazil, India, and China have influenced international trade law at

[146] The multilateral law in question here had initially been crafted by powerful economies in the West, but Shaffer's study show how the legal innovations arising from Brazil, India, and China reshaped international law in important ways over time. Shaffer 2021, *supra* note 135.

the multilateral level, assessing the "micropolitics" of the global trading system and drawing "macro" lessons from the practice of law.[147]

An additional legal realist study, an example of a bottom-up "law in action" study by Larson, applied the international human rights law concept of "progressive realization" to housing regulation and titling in colonias on the Mexico-Texas border. Using quantitative and qualitative methods, including a large survey, focus groups, and economic analysis of the land market, the study highlighted that secure property ownership through land titling enhanced political engagement for the marginalized communities in the colonias.[148] This ground-level study could have implications for future international legal approaches, particular with respect to implementation.

Finally, there is a strong connection but important difference between micro and network approaches, the latter of which provides an insightful, disaggregated method for studying coordination in legal interventions, including the interplay between formal and informal legal systems.[149] Application of network theory to international law provides a method for understanding the connections between non-state actors (and the implications for states) in international law. Networks can also be a source of production of hard and soft law instruments, as several studies have explored through use of case studies.[150] However, networks are inherently more meso-level structures. In effect, network approaches that study the connection between actors[151] could link macro and micro approaches. They could be combined with micro approaches to evaluate intervention points within and between legal systems and create an avenue for understanding what kind of legal interventions should be emphasized and coordinated, leading to different outcomes in international law going forward.

---

[147] Shaffer 2021, *supra* note 135 at 9, 11. This qualitative empirical analysis was based on hundreds of in-country and institutional interviews in the form of "para-ethnography." For further discussion of legal capacity, *see also* Alvaro Santos, *Carving Out Policy Autonomy for Developing Countries in the World Trade Organization: The Experience of Brazil and Mexico* 52 VA. J. INT'L. L. 551 (2012).

[148] Erlanger et al. 2005 at 346-50. A study by Wilkins on excluded and marginalized Black lawyers is another example of a "ground up" empirical new legal realist study focused on the intersection between law, social change, and race from the top down. Erlanger et al. at 350-56.

[149] For an example of international legal scholarship focused on non-state actors and networks, see Mark A. Pollack and Gregory C. Shaffer, *The Interaction of Formal and Informal Lawmaking*, in INFORMAL INTERNATIONAL LAWMAKING 251 (Joost Pauwelyn, Ed. 2012); *See also* Banteka, *supra* note 61, at 351.

[150] Ginsburg and Shaffer 2010, *supra* note 52, at 7; *see also* Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law,* VA. J. INT'L. L. 43: 1-92 (2002).

[151] Banteka, *supra* note 61, at 348.

B. Comparative and Contextual Methods

Comparative legal approaches are crucial to micro analysis, as they allow for micro-level observations to be compared and aggregated in order to draw higher-level conclusions. Integrating comparative methods can shed light on similarities and differences in domestic legal systems, highlighting legal innovations and illustrating whether nations tend to "import" or "export" international law.[152] Comparative factors can vary and include substantive comparisons (issues and legal design elements), contextual comparisons (how different approaches address common challenges), and comparisons of administrative processes and procedures.

Historically, comparative legal models were used to standardize differences, justifying arguments for international law's universality.[153] However, comparative methods have evolved and expanded and can be central to understanding and comparing differences in law that are particularly insightful for micro international law. Comparative methods can catalogue patterns, combining theoretical approaches with practical references and integrating economic, social, and historical factors.[154]

Domestic law is an important unit of comparative measurement, as it is both closer to the ground and shapes evolving international rules. While "macro" international law is often studied in the context of its effect on domestic law,[155] micro international law necessitates studying the reverse, i.e., tracing the impact of domestic law on international law. The "meso" level of regional and bilateral treaties[156] serves as a bridge between domestic and multilateral law. For instance,

---

[152] Roberts et al. 2018, *supra* note 6, at 7-8.

[153] Anne Peter and Heiner Schwenke, *Comparative Law Beyond Post-Modernism*, INT'L & COMP. L. Q. Vol 49, October 2000, at 832.

[154] Uwe Kischel, *Comparative Law,* Oxford University Press (2019) at 2. *See also* Sabrina Ragone and Guido Smorto, *Comparative Law: A Very Short Introduction*, Oxford University Press (2023) at 6.

[155] Ljiljana Biukovic and Pitman B. Potter, *Local Engagement with International Economic Law and Human Rights,* Edward Elgar (2017).

[156] *See* Jiangyu Wang, *Between Power Politics and International Economic Law: Asian Regionalism, the Trans-Pacific Partnership and U.S.-China Trade Relations*, 30 PACE INT'L. L. R. 383 (2018), available at https://digitalcommons.pace.edu/pilr/vol30/iss2/4/. *See also* C. Fred Bergsten, *Competitive Liberalization and Global Free Trade: A Vision for the Early 21st Century*, Institute of Peterson Institute of International Economics Working Paper No. 96-15 (1996), available at

the domestic law of some African states is instructive in understanding developments at the African Regional Economic Community (REC) and continental levels. One example is the shift in continental investment law under the AfCFTA in response to changes in South African law and subsequent REC law under the Southern African Development Community (SADC).[157] Another example is strengthened provisions on traditional knowledge in the AfCFTA Intellectual Property Protocol, which were also influenced by domestic law. As noted above, which is an area in which international rules still need to evolve and a space to watch to determine whether the AfCFTA, pushed by domestic law, will eventually lead to a change in global rules.

Combining empirical and comparative approaches can enhance the micro focus in international law. For example, Landman's 2002 study on international human rights law applied an interdisciplinary and comparative approach to assess domestic human rights laws and practices and develop global comparisons stemming from trends in domestic human rights protections, which are influenced by a number of contextual factors, including economic development.[158] This study used single-country studies to provide context for larger comparisons, generate hypotheses for further testing, and validate (or invalidate) existing theories, as well as classify novel political events and outcomes and explain "the presence of deviant cases."[159] This serves as an example of using "micro-comparisons" to assess legal systems at a higher level, leading to "macro-comparisons."[160]

One specific dimension of comparative law that is applicable to micro international law is the study of the difference between law on the books and law as it is implemented. This not only integrates a sociological and political science dimension,[161] but it also provides a mechanism to understand law as it is encountered by individuals, incorporating a "realistic, bottom-up" approach."[162] This aspect is featured in the mixed-method micro mapping discussed below.

---

https://piie.com/publications/workingpapers/competitive-liberalization-and-global-free-trade-vision-early-21st and Raj Bhala, *Competitive Liberalization, Competitive Imperialism, and Intellectual Property*, 28 LIVERPOOL L. R. 77 (2007).

[157] *See* Kuhlmann and Agutu, *supra* note 47.

[158] Todd Landman, *Comparative Politics and Human Rights* (2002) 24 HUM. RTS. Q. 890, 895, 922–923

[159] *Id.* at 912.

[160] Kischel 2019, *supra* note 156, at 9 "while micro-comparisons focus on specific legal norms and institutions, macro-comparisons analyze legal systems and legal families.".

[161] Kischel 2019, *supra* note 156, at 4; Pound, *supra* note 88.

[162] Ragone & Smorto, *supra* note 156, at 11.

Context is important in comparative methods as well,[163] particularly when approached from a micro perspective. The context in which a rule is created is crucial to understanding law's impact,[164] as well as the applicability of legal design models in different countries and systems. Contextual analysis is especially valuable for determining whether legal design interventions align with the specific needs of marginalized and vulnerable stakeholders. This analysis applies to a wide range of areas of international law, including sustainable development,[165] inclusive approaches in international economic law,[166] human rights,[167] and many other areas.

Comparative legal approaches can also help structure the study of micro interventions by integrating indicators, including non-economic and social factors, to classify and categorize comparative factors, allowing for easier comparison across domestic systems and issues. Indicators can take various forms and are frequently used to evaluate compliance with human rights, particularly economic and social rights.[168] For example, the Sustainable Development Goals contain targets and indicators. Indicators have also been used by institutions like the World Bank, including under its Doing Business approach,[169] which was tied to the legal origins work of de Soto and is designed to analyze standardized measures to compare the degree of regulation across countries.[170] These include the time and cost of different legal actions and, in some cases, the extent to which legal factors inhibit different legal actors, including women, from participating in economic

---

[163] *See* Uwe Kischel, *The Method in Comparative Law: The Contextual Approach* COMP. CONST. REV., Vol. 29, No. 2, 18-32 (2020) and Mathias Siems *Comparative Law*, 3rd Ed. Cambridge University Press (2022).

[164] Constantinesco, Léontin-Jean, Rechtsvergleichung, Vol. 3, DIE RECHTSVERGLEICHENDE WISSENSCHAFT 1983, 54ff.

[165] *See* Kuhlmann 2023a, *supra* note 1.

[166] For a discussion of the contextual approach in international economic law, *see* Kuhlmann 2023b and Kuhlmann and Bahri, *supra* note 77.

[167] *See* Shubhangi Roy *Approaching International Law as if Context Matters: Towards an Integrated Framework of Compliance*, EUI AEL 2023/07, EURO. SOC. INT'L L. PAPERS, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4504256.

[168] Sally Engle Merry, *Indicators, Human Rights, and Global Governance*, CURRENT ANTHROPOLOGY Vol. 52, Supplement 3, April 2011, at S87 [hereinafter Merry 2011].

[169] *See* Simeon Djankov, Edward Glaser, Rafael LaPorta, Florencio Lopez-de-Silanes, and Andrei Shleifer, "The New Comparative Economics," *Journal of Comparative Economics* 31 (4) 595-619 (2003). As of the time of writing, the original Doing Business project had been reframed as the Business Ready (B-Ready) project with an extensive new methodology that was intended to address challenged discussed in this section. Other World Bank benchmarking projects, such as Benchmarking the Business of Agriculture and Women Business and the Law projects, also exist.

[170] Ragone & Smorto, *supra* note 156, at 85.

systems.[171] Although the use of indicators often faces critique and challenges of bias and methodology,[172] including questions of the exertion of political influence for moving up in rankings in the case of the World Bank's previous methodology, and the inherent prioritization of common law over civil law,[173] they can provide important insight and contain some elements that could be adapted to a more micro approach, such as integrating social measurement factors.

Indicators can also derive from mixed-method studies, as discussed below. Beyond some of the more common indicators used to assess law, such as bindingness, qualitative indicators based on factors such as law's effectiveness, equity, and sustainability can also be created.[174] Development of expanded indicators would enable benchmarking to assess law's efficacy using social and non-economic factor, providing an important tool for prioritizing micro interventions. Such an approach would highlight for governments, non-governmental stakeholders, and others how a social dimension could be integrated into legal design and implementation at both the micro and macro levels. Methodologically, how these indicators are developed will also be important. Engle suggests an ethnographic approach, which is critical for building understanding of the "role and impact" of new indicators and their function in non-governmental and social networks and decision-making processes "in the contest over who counts and what information counts."[175]

C. Mixed Methods: Micro Mapping

Applying a range of empirical tools and methods and combining them with comparative and contextual methods can be instrumental in assessing micro dimensions of international law. This section introduces "micro mapping," a mixed method that serves several purposes.[176] First, micro mapping can be used to break

---

[171] *See* World Bank, Women Business, and the Law (2024), available at https://wbl.worldbank.org [hereinafter World Bank 2024].

[172] *See* Kevin E. Davis, Angelina Fisher, Benedict Kingsbury, and Sally Engle Merry eds., *Governance by Indicators: Global Power Through Quantification and Rankings,* Oxford University Press (2015); *See also* Sally Engle Merry, Kevin E. Davis, and Benedict Kingsbury, eds., *The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law*, Cambridge University Press (2015).

[173] *See* World Bank 2024, *supra* note 173.

[174] *See* Kuhlmann 2021, *supra* note 13.

[175] Merry 2011, *supra* note 170, at S85.

[176] Micro mapping is based on a series of studies (Kuhlmann 2021, *supra* note 13 and Kuhlmann et al, *supra* note 14), also referred to as "Regulatory Systems Maps" which are designed to isolate micro legal and regulatory intervention points and innovations, providing a way of identifying where rules could be better tailored to the needs of different stakeholders. *See* Kuhlmann et al. Tanzania Mapping and including Kuhlmann et al. Ethiopia Mapping; Kuhlmann et al. Uganda Mapping; and

down rules and regulations into smaller components in order to pinpoint smaller-scale interventions and allow for more granular comparisons within and across domestic legal systems. Second, the empirical methods used to develop the micro maps necessarily rely upon stakeholder engagement, making them valuable for identifying stakeholder interests and facilitating capacity transfer and inclusion. Third, micro mapping assesses the implementation of laws and regulations, bridging the gap between law as it is written and law as it is applied, with a particular focus on interaction with vulnerable stakeholders. Fourth, this form of mapping presents categories for comparing domestic legal challenges and innovations, which could be expanded upon through use of indicators. Fifth, and finally, micro mapping traces innovations and flexibilities from the domestic level to the international level, aggregating good practices and encouraging bottom-up legal design.

Micro mapping stems from ongoing empirical work, and it builds upon broader methods for legal and regulatory mapping. In general, mapping tends to involve collecting data and details on laws and regulations related to a particular issue or sector.[177] Higher-level legal and regulatory mapping catalogs specific laws and regulations in an area, their features, and processes and procedures for changing the rules. Legal mapping can also be combined with mapping stakeholders, institutions, and networks, both to understand who determines how laws are changed and how stakeholder input is integrated. While mapping does not always include a temporal dimension, it could be used to track changes over time and can be combined with methodologies from other disciplines, making it inherently multi-dimensional and interdisciplinary.[178] For example, legal mapping in a food security context can involve understanding legal frameworks, regulatory procedures, the role of institutional actors and other factors such as agronomic, societal, and economic dimensions.

Adding a micro dimension to legal and regulatory mapping involves integrating empirical approaches like interviews and stakeholder consultations alongside comparative methods to study micro intervention points. It also involves mapping at a more granular level, which helps build understanding of domestic law in context, isolates legal and regulatory steps, and pinpoints areas of intervention,

---

Kuhlmann et al. Rwanda Mapping, *supra* note 14. *See* New Markets Lab, "Regulatory Systems Maps," available at https://www.newmarketslab.org/regulatory_systems.html.

[177] *See* International Trade Centre, "Regulatory Mapping," available at https://ntmsurvey.intracen.org/what-we-do/regulatory-mapping/.

[178] *See, e.g.,* Matias E. Margulis, *The Global Governance of Food Security*, In: Koops J, Biermann R (ed.) HANDBOOK OF INTER-ORGANIZATIONAL RELATIONS, 2016, London: Palgrave MacMillan, https://doi.org/10.1057/978-1-137-36039-7.

innovation, and change. Micro mapping can be used to highlight innovations, implementation challenges, and areas in which rules could be tailored to the needs of different stakeholders, particularly marginalized communities, women, small businesses, workers, farmers, and other stakeholders.

Micro mapping is based on the structure of laws and regulations, which form the outline of the "map." The maps are then refined with stakeholder input from field interviews and consultations, along with ongoing dialogue among stakeholders.[179] Substantively, micro mapping has been used to assess agricultural regulation, regional trade agreements, business registration, intellectual property rights (IPR), and the digital economy,[180] although it could apply to a wide range of legal issues and areas.

Maps can also be used to highlight areas in which law on the books differs from the application of law in practice, creating a helpful tool for understanding implementation.[181] This form of mapping can be used to illustrate the relationship between domestic law and international rules, highlighting where domestic law aligns with international structures, where international law is yet to be implemented, and where domestic law innovates beyond often more general international rules. Innovations highlighted by micro mapping can provide important contextual reference to areas that either facilitate or hinder broader development goals. Micro intervention points can be viewed as "regulatory gateways," or decision points at which stakeholder use of the legal system and engagement in processes and procedures can be measured, enhanced, or better integrated into domestic and international law.[182]

A series of empirical studies focused on food security, sanitary and phytosanitary (SPS) measures, and agricultural regulation illustrate the use of micro mapping. Initial research began in 2008 during the global food security crisis and focused on how a farm in Tanzania was impacted by domestic and regional law as it tried to diversify production into seeds and crops that had been previously unavailable in the market.[183] In order to commercialize a new crop, potatoes in this

[179] For example, the study in Kuhlmann et al. Tanzania Mapping, *supra* note 14, involved review of nearly 70 laws and regulations and consultations with over 90 stakeholders from the public, non-governmental, and private sectors, as well as a dynamic process for integrating stakeholder priorities into proposed legal and regulatory changes.
[180] *Ibid*.
[181] *See* Kuhlmann et al. Tanzania Mapping; Kuhlmann et al. Ethiopia Mapping; Kuhlmann et al. Uganda Mapping; and Kuhlmann et al. Rwanda Mapping, *supra* note 14.
[182] Kuhlmann 2021, *supra* note 13.
[183] *Ibid. See also,* Kuhlmann et al. Tanzania Mapping, *supra* note 14 and *Improving Livelihoods, Removing Barriers: Investing for Impact in Mtanga Farms,* GLOB. IMPACT INV. NETWORK (NOV.

case, the farm had to go through a series of regulatory processes to get potato seed registered, certified, and available for sale to farmers, who had not been able to produce commercially due to the lack of disease-free, high-yielding seed potatoes in the market. Contextual aspects included the desire for higher yields, new job opportunities for men and women, and the improvements in the larger context of food security.

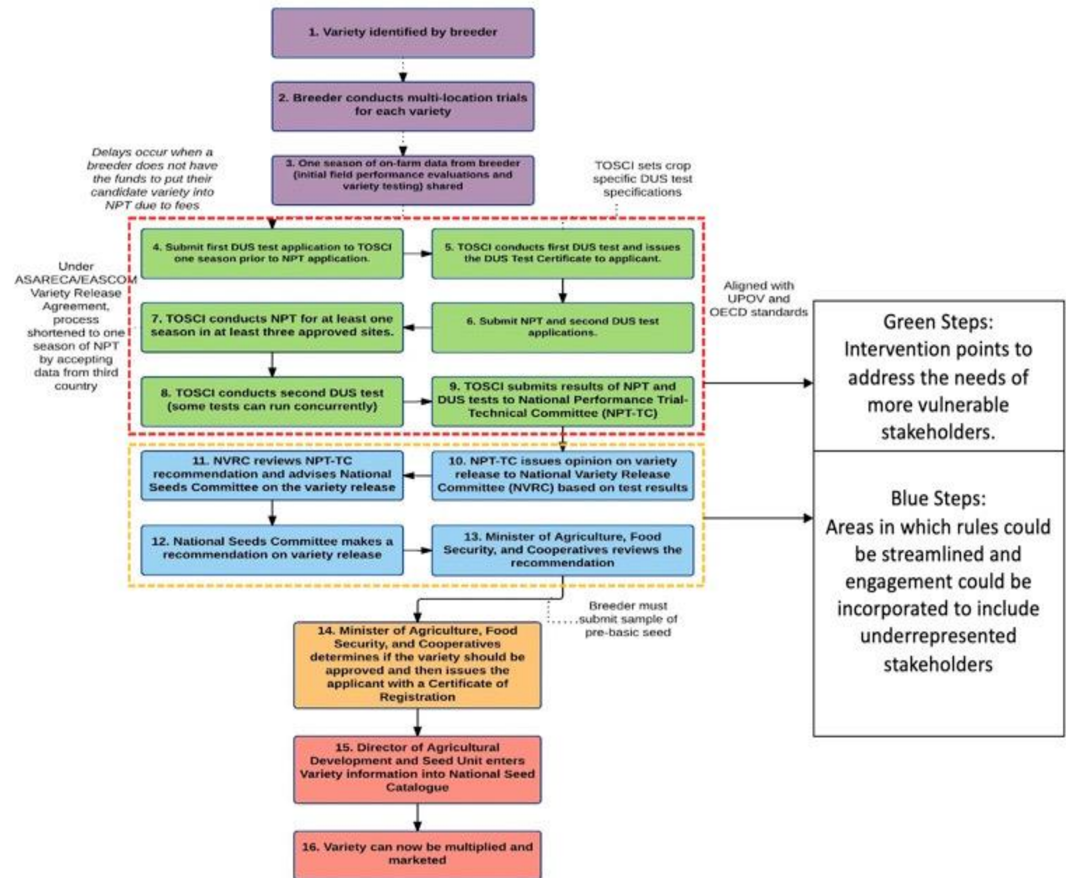
The farm had to go through a series of complex regulatory processes, including seed variety registration, in order to diversify into seed potato production. Variety registration alone had sixteen steps that could repeat up to six time. This process was also just one of many; once registered in Tanzania, seed must go through a separate process to be formally certified, and separate rules apply to obtain IP protection or trade seed. The farm was initially unable to navigate this lengthy and complex regulatory process due to the number of steps and degree of discretion at each stage in the process. A regional agreement that simplified this process if the seed variety had already been registered in a neighboring country existed but had never been implemented; however, in this initial case study it proved to be the key in shifting from a high-level agreement on paper to an impact in practice. The farm-level study was later extended to farms across Tanzania along the Southern Agricultural Growth Corridor of Tanzania (SAGCOT), with interviews and consultations along the SAGCOT agricultural corridor leading to development of a series of maps to break down rules and regulations into smaller parts for study from the user perspective.

The map in Figure 1 shows a legal and regulatory process as a series of individual steps, or "micro" intervention points, that helped illustrate how law operated in context and highlight discrete points for improving legal design.[184] At many steps in the map, "regulatory gateways" appeared – legal and regulatory steps that were difficult to overcome and examples of where existing law was not effectively and consistently implemented. The dotted clusters of steps in the map show micro intervention points in domestic rules that could be tailored to individual stakeholder needs (top set of highlighted boxes) and intervention points for integrating underrepresented stakeholders into the legal process (bottom set of highlighted boxes).

28, 2011), https://thegiin.org/research/publication/improving-livelihoods-removing-barriers-investing-for-impact-in-mtanga-farms.

[184] Kuhlmann 2021, *supra* note 13; Katrin Kuhlmann et al., *Fostering a Dynamic Seed System in Tanzania*, SAGCOT, AGRA, and USAID (2017), available at https://www.newmarketslab.org/assets/articles/19.pdf; and Kuhlmann et al. Tanzania Mapping, *supra* note 14.

Figure 1: Regulatory Systems Map Highlighting Legal and Regulatory Gateways and Opportunities for Inclusive Regulation in Tanzania[185]



In Tanzania, the maps were used to facilitate engagement with private, non-governmental and public sector stakeholders, directly resulting in enhanced capacity and legal and regulatory changes at the domestic level that better addressed stakeholder needs. The bottom-up empirical process that these maps generated to evaluate how the national system functioned in law and practice not only led to changes in Tanzania's laws, eventually it also informed international law, as rules

[185] Kuhlmann 2021, *supra* note 13, adapted from Kuhlmann et al. Tanzania Mapping, *supra* note 14.

under the Southern African Development Community (SADC) were implemented and new rules were developed in the East African Community (EAC).[186]

In the Tanzania case, international and national law were closely intertwined, and the micro dimension not only highlighted specific interventions to address gaps in domestic law, stemming from the disconnect between farmers' needs and legal design, it had broader implications for international law. Although the map details a domestic legal and regulatory process, it does so in the context of international rules, which are referenced on the map's margins and inform the more granular steps in domestic law shown in the map. However, in this case the relevant international rules both lacked sufficient detail and did not come to life in practice until domestic implementation began. The study surrounding this mapping also highlighted how significant complexity in an "imported" regulatory process can pose challenges for stakeholders, especially women and smaller enterprises, as reinforced by interviews and stakeholder consultations.

This example is an "iterated study over time," with several different phases starting with the identification of micro interventions at the farm level, country, and corridor levels, and regional/international level through a series of separate studies. The set of maps developed under the Tanzania study have also been used in combination with maps of the same legal and regulatory processes in other countries, providing a means for cross-country comparison across different variables, including substantive legal processes, legal innovations, flexibilities, and implementation gaps.[187] Across countries, micro mapping has proven to be a useful tool for assessing how law is working in practice, identifying legal design elements an, ways in which to make law and regulation more inclusive and sustainable, and providing a tool for engaging stakeholders more directly in legal and regulatory processes.[188] As additional maps were developed for other African countries, good practice examples increasingly emerged showing where other countries – and international law – could integrate fit-for-purpose legal innovations to benefit small farmers, women, and local communities. For example, the 2022 micro mapping study in Ethiopia dove deeper into how to assess where stakeholder experience differed from the law, where rules are aligned with stakeholder interests, and ways

---

[186] New Markets Lab, *Economic Impact Assessment and Legal Review and Analysis of the East African Community Seed and Fertilizer Legislation*, East African Community (2019), available at https://www.newmarketslab.org/assets/legal_guide/7.pdf.

[187] Kuhlmann 2021, *supra* note 13.

[188] *Id.* This work is based on a series of studies and projects and has benefitted from funding from the William and Flora Hewlett Foundation, Bill and Melinda Gates Foundation, Syngenta Foundation for Sustainable Agriculture, Alliance for a Green Revolution in Africa, U.S. Agency for International Development, and other partners.

in which law and regulation could be made more inclusive.[189] Like Tanzania, the mapping process in Ethiopia involved engagement with public sector and non-governmental stakeholders, as well as the relevant REC (the Common Market for Eastern and Southern Africa (COMESA)). Mapping was done based on a series of consultations as well as an intensive process to validate the maps. Findings from the mapping study related to regional alignment, enhanced inclusion and equity, and adoption of good practices led to refinement of the draft legal instrument and ultimately changes in law.

Ethiopia's case is particularly noteworthy. Ethiopia's laws were changing when the initial study was done, shifting from a heavily government-focused model to a system that allowed for both public and private involvement. This shift allowed for comparison between the current and proposed systems, with two sets of maps created for each process to show the difference between current law and the proposed changes under the new law. Highlighting was used to show where Ethiopia's new laws improved implementation, inclusion, and innovation, and validation focused on options for addressing gaps.

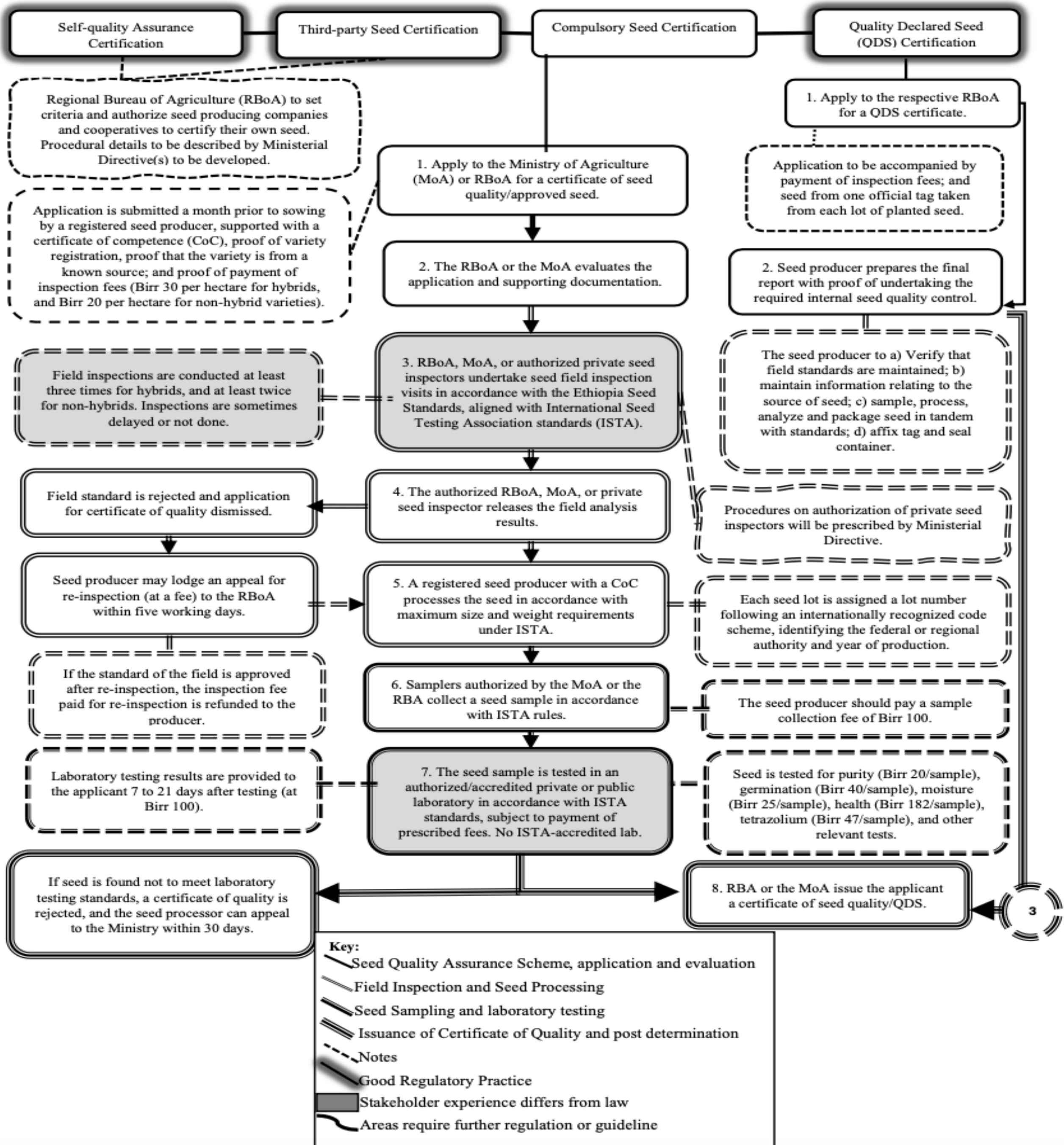
Changes to Ethiopia's laws were finalized in 2023, incorporating a number of the potential good practices highlighted in the 2022 study, such as the differentiated process for seed quality assurance shown in Figure 2 (the processes for self-quality assurance certification, third-party seed certification, and quality declared seed (QDS) certification).[190]

---

[189] Kuhlmann et al. Ethiopia Mapping, *supra* note 14.

[190] Katrin Kuhlmann, Adron Naggayi Nalinya, Tara Francis, and David Spielman, *A Comparative Study of the Legal and Regulatory Dimension of Seed Sector Development in Sub-Saharan Africa Using Regulatory Systems Maps: The Case of Ethiopia, Rwanda, and Uganda* in J. AG. AND FOOD RESEARCH (forthcoming; draft on file with author) adapted from Kuhlmann et al. Ethiopia Mapping, *supra* note 14.

Figure 2: Micro Map Highlighting Legal and Regulatory Gateways and Opportunities for Inclusive Regulation in Ethiopia



In most African countries, these alternative forms of quality assurance do not exist, and compulsory seed certification is the only possible process. However, self-quality assurance, third-party certification, and QDS in particular, which allows for less expensive, more local quality assurance procedures, can all help farmers engage more fully in both the legal system and the market.

Overall, Ethiopia has a history of incorporating a social dimension into its laws, especially concerning small farmers.[191] With legal reform underway in other countries, Ethiopia's case highlights important emerging innovations in areas, such as greater flexibility for farmers in the context of quality assurance (Figure 2) and intellectual property for seed, which could possibly be applied across national systems.[192] In agricultural regulation and food security, for example, options could include reduced testing requirements (as Tanzania did), more flexible quality assurance standards (as Ethiopia shows), or tailored certification or registration requirements.[193]

As both Figures 1 and 2 show, breaking laws into discrete or micro steps provides a method for looking more closely at how legal design impacts vulnerable stakeholders. The micro maps highlight specific points where the legal system could be improved to better link domestic law with specific needs. In the case of Figure 2, there are quite a few steps in the process that require additional legal instruments (those outlined with a wavy line) or areas in which application of law in practice differs from law as written. Although Ethiopia's system highlights some notable good practices aligned with farmers' interests, these good practices will not be effective if these gaps remain.

---

[191] *See* Kuhlmann and Dey, *supra* note 15.

[192] Other countries have integrated expanded rights for farmers into their systems, such as India and Malaysia. These signal that the sui generis requirement of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) Art. 27(3)(b), requirements of the International Convention for the Protection of New Varieties of Plants (UPOV Convention), and rights under the International Treaty for Plant Genetic Resources for Food and Agriculture (ITPGRFA) could be applied to afford greater flexibility for farmers. *See also,* Bram De Jonge & Peter Munyi, *A Differentiated Approach to Plant Variety Protection in Africa*, 19 J. WORLD INTELL. PROP. 28 (2016). However, local communities cannot hold rights in most countries. *See* Loretta Feris, *Protecting Traditional Knowledge in Africa: Considering African Approaches*, 4 AFR. HUM. RTS. L.J. 242, 243 (2004).

[193] Countries like Benin, Brazil, and Peru have more flexible registration processes in place that benefit farmers, for example. Some countries have also adopted more flexible quality control measures like truth-in-labeling (India, South Africa, and Nepal, for example), quality declared seed schemes that can be administered in local regions, and community-focused seed clubs and associations that focus in particular on the needs of smaller farmers (Vietnam, Myanmar, and Zimbabwe, for example). Kuhlmann and Dey, *supra* note 15, at 16, 19.

Micro mapping can be used comparatively to assess common elements, micro interventions, and trends across countries, as well as notable differences in legal and regulatory systems. Micro maps can show similarities and differences across substantive focus areas, such as the processes depicted in Figures 1 and 2. Qualitative indicator categories can also be drawn from the maps and benchmarked with those for inclusive legal design in Kuhlmann 2021: (1) differentiation; (2) flexibility; (3) sustainability; (4) equity and inclusion; (5) engagement, inclusion in process, and transparency; (6) regulatory gateways; and (7) implementation and impact.[194] Efficiency, while more closely tied with economic measures than social, can also be added as a factor and can be somewhat quantified, although it should not be the sole factor for comparison, as is sometimes the case with other indicators. When combined with micro mapping, the following comparative categories emerge: length of process, cost, and time of process (a measure of efficiency); design of the legal system and proposed changes to laws and regulations (design); areas in which laws and regulations lack specificity and detail (bindingness); areas in which stakeholder experience differs from law and regulation (engagement and implementation); and fit-for-purpose good practices, flexibilities, and legal innovation (effectiveness, equity and inclusion, and innovation).[195]

Mapping can be adapted to specific research questions to compare various factors, such as similarities and differences in legal approaches at the national and international levels, legal innovations, areas in which law and regulation are changing within a system, the gap between de jure and de facto law, cost and average time of regulatory procedures, and factors of inclusion, such as gender considerations.[196] Over time, changes in law could also be compared across different countries and regions (as well as substantive legal areas), enabling comparison of how law is evolving across systems. When more micro legal innovations are compared and compiled, particularly when the context of the needs of underrepresented stakeholders is a focus, this could signal possible trends or good practices for future regional and international law, combining bottom-up and top-down approaches that integrate the needs of a more diverse group of stakeholders. This temporal application is also relevant in the context of assessing law's impact, and this is being initially tested in a forthcoming study that uses short stakeholder surveys and qualitative consultations. Here, future work could benefit from deeper study of how to assess the impact of international law on stakeholders and communities, perhaps expanding upon the micro mapping methodology and drawing from methods applied in other disciplines.

---

[194] Kuhlmann 2021, *supra* note 13.
[195] These categories are based on Kuhlmann 2021, *supra* note 13 and additional work.
[196] *Id*. *See also,* Kuhlmann et al. Ethiopia; Kuhlmann et al. Uganda; and Kuhlmann et al. Rwanda, *supra* note 14.

Micro mapping can also be used to highlight legal innovations not yet present in international law, such as more flexible approaches tailored to the needs of marginalized stakeholders and expansion of rights. The maps shown illustrate the details that can emerge from the micro mapping process. For every legal and regulatory issue, legal innovations and micro interventions exist under national law that could contribute to a more diverse set of comparative examples that may inform international law.[197]

As noted in the introduction, micro mapping could be applied to a range of different countries (e.g., diverse developing and developed economies, including the EU, which is a planned forthcoming application). It has also been used beyond food security and could be extended to additional areas of international, regional, and domestic law, including business and human rights, land tenure, digital regulation, and others. As the examples above highlight, micro mapping is particularly useful in assessing areas of international law that require considerable domestic implementation and are difficult to enforce, such as the food security examples in this section. The method can, however, also be applied to laws with clear enforcement mechanisms and administrative procedures. The examples discussed in this section arose from practical challenges stakeholders faced on the ground, making them particularly bottom-up examples. However, researchers could decide to conduct micro mapping even without stakeholder demand if it serves research and scholarly purposes.

V. Application in Practice: Combining Micro and Macro Dimensions to Address Challenges in International Law

Although international law is often seen as a solution to global challenges, the design, aspirations, and application of international law require new approaches that blend both macro and micro dimensions and enhance institutional and government accountability. Since micro international law focuses on individuals and communities, with domestic law acting as an important source of design input for international law, integrating micro findings at the macro level, especially when done repeatedly and systemically, would help make international law more responsive to a broader range of issues, interests, priorities, and legal innovations. International rules and institutions at the highest levels cannot address the new set of global challenges alone. Combining micro solutions, including expanded engagement in international legal institutions, with macro solutions can

[197] Kuhlmann 2021, *supra* note 13.

bring more fit-for-purpose design and inclusive participation to international law and its institutions.

This section addresses two interconnected challenges that require new approaches to blend micro and macro interventions. Micro solutions could be the missing ingredient in reshaping international rulebooks in different areas of international law, including international economic law, where international efforts have stalled and fragmented. Micro approaches are also needed to change institutional structures and address the challenge of the lack of diverse voices that have historically shaped international legal design and the ingrained inequalities that have caused faith in international systems to wane, with significant implications for global governance.[198] In both of these areas, scholarship stemming from legal movements like TWAIL must be a significant focus.

Micro approaches have significant implications for future international law. First, micro interventions could influence the development of future international law and the implementation of existing rules, integrating community-level and domestic legal innovations into international rules on an ongoing and incremental basis. Second, much more diverse engagement in international law – including among nations, stakeholders, and networks – could connect individuals to higher-level legal systems. The first of these approaches is closely connected with reframing normative narratives, while the second is central to redistributing power in international law and institutions. These approaches are interconnected, however, and should ideally be pursed in tandem.

A. Micro Approaches to Reframe International Law Rulebooks

In a number of areas of international law, including international economic law, current rules are struggling to respond to issues of climate change, social inclusion, and ways to address global inequality.[199] Micro approaches could help bridge this divide. Micro international law methods could help isolate and prioritize legal and regulatory innovations, intervention points, and social dimensions across all areas of international law, both as new international rules are developed and as existing rules and standards are implemented.

---

[198] *See* James Thuo Gathii and Sergio Puig, *The West and the Unraveling of the Economic World Order: Thoughts from a Global South Perspective*, in IS THE INTERNATIONAL ORDER UNRAVELING? David Sloss Ed. Oxford University Press (2022), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3907527 [hereinafter Gathii & Puig]; *See also,* Daniel Bradlow, *The Law of the International Financial Institutions*, Oxford University Press (2023).

[199] *See, e.g.,* Kuhlmann 2021, *supra* note 13; Daniel D. Bradlow, *The Law of International Financial Institutions,* Oxford University Press (2023), *supra* note 200.

The WTO E-Commerce Moratorium study discussed above could serve as a model when new rules are under development, with surveys and structured interviews used to gather input on how different legal proposals would impact individuals and small businesses. Micro studies could also be used to gather input as new treaties are negotiated, highlighting and addressing the interests of women, Indigenous Peoples, small businesses, and other stakeholders before and after a treaty is signed. Micro mapping could be applied in areas like international trade and environmental law to study the role of domestic legal models and stakeholder engagement, promoting legal innovation from a broader range of domestic legal systems and advancing legal pluralism in a concrete, measurable, and incremental manner.

In international financial law, where legal design has been relatively top-down with insufficient representation from developing economies,[200] micro approaches can illuminate possible avenues for reframing the current narrative and reshaping rules. For example, a study of domestic regulatory approaches in the area of financial inclusion highlighted that the macro-level policies of international financial standards-setting bodies, such as the Basel Committee on Banking Supervision, should be reshaped to encourage variation in domestic regulatory innovations in order to advance greater financial inclusion, despite the trend to do the opposite.[201] Micro analysis of these domestic legal variations could be instrumental in making a case for more – rather than less – domestic legal and regulatory innovation, with implications for other areas of international law. For financial inclusion, micro mapping could be particularly helpful in highlighting similarities and differences across domestic legal systems and tracking the impact of these approaches. When combined with accountability mechanisms in the International Financial Institutions (IFIs), and considering the Equator Principles designed to integrate environmental and social dimensions in projects, recognition of domestic models that address local needs could help ensure that projects and programs are more inclusive in practice.

International environmental law, despite incorporating mechanisms like common but differentiated responsibilities and respective capabilities (CBDR-

---

[200] *See., e.g.,* Emily Jones and Peter Knaak, *Global Financial Regulations: Shortcomings and Reform Options*, GLOBAL POLICY VOLUME 10, Issue 2, May 2019 (Durham University and John Wiley & Sons, Ltd.), available at https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12656.

[201] Mariana Magaldi de Sousa *Financial Inclusion and Global Regulatory Standards: An Empirical Study Across Developing Countries*, Centre for International Governance Innovation, NEW THINKING AND THE G20 SERIES PAPER No. 7 (March 2015).

RC),[202] has also not been fully representative of less powerful nations or stakeholders either in design or application. Micro approaches could help identify tailored domestic approaches and challenges to integrating international principles and norms, providing pathways for applying CBDR-RC. They could also shed light on other issues under the expanding group of multilateral environmental agreements, as well as on the just energy transition and application of loss and damage funds, building support for more diverse approaches to environmental challenges.

Micro solutions are not only needed to reframe the narrative on international environmental law and rebalance the rulebook, they are also necessary for addressing the pressing challenge of climate change itself. As an important micro example, Indigenous (Aboriginal) knowledge was incorporated into climate practices in Australia to combat wildfires, drawing on practices that have been around for thousands of years.[203] However, as Gathii has highlighted, these Indigenous practices were not considered early enough, reinforcing the need to prioritize local solutions,[204] as micro international law emphasizes.

B. The Importance of Accountability and Process in Micro International Law

Micro international law has a strong procedural and accountability element, which is closely tied to implementation, meaning that institutions and governments, both internationally and domestically, will need to change their practices to allow increased engagement from individuals, non-governmental bodies, and states in the design and application of international and domestic law. This shift could move international law away from the dominant interests and economies that have monopolized its production, rebalancing it to address equity, inclusion, and social

---

[202] *See., e.g.,* Shawkat Alam, *Trade and the Environment: Perspectives from the Global South*, pp. 297-316 in INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH Cambridge University Press 2015 (Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez, and Jona Razzaque eds.); Zuzana Selemontova, *Common But Differentiated Responsibilities for Developed and Developing States: A South African Perspective* in LAW AND DEVELOPMENT: BALANCING PRINCIPLES AND VALUES (Piotr Szwedo, Richard Peltz-Steele, and Dai Tamada, eds., Springer, 2019); Yursa Suedi, *Loss, Damage, and the Quest for Climate Reparations Beyond COP27*, AFRONOMICSLAW (February 2023).

[203] James Thuo Gathii, *Without Centering Race, Identity, and Indigeneity, Climate Responses Miss the Mark*, Woodrow Wilson Center, September 2020 [hereinafter Gathii 2020 a] referencing Leah Asmelash, *Australia's Indigenous People Have a Solution for the Country's Bushfires. And It's Been Around for 50,000 Years*, *CNN* (Jan. 12, 2020) and Aarti Betigeri, *How Australia's Indigenous Experts Could Help Deal with Devastating Wildfires*, *TIME* (Jan. 14, 2020).

[204] Gathii 2020, *supra* note 11.

issues.[205] It could also address embedded power structures in international law and institutions,[206] which exist at all levels, including internationally, regionally, nationally, and sub-nationally.[207] Expanding the voices at the table to include both less powerful nations and individuals and marginalized communities could improve processes for negotiating treaties and implementing domestic law, as discussed in the context of micro mapping, integrating important distributional issues that have historically been overlooked and improving equity and sustainability in practice not just in theory.[208]

Some scholars emphasize macro solutions to these challenges, such as redistributing power within international organizations like the WTO and IMF.[209] While important, these macro approaches must be complemented by more micro solutions. For example, there is rather extensive scholarship on the need for reforming mechanisms for integrating the interests of non-state actors in areas like international economic law.[210] Mechanisms to incorporate stakeholder input exist in a number of treaty instruments, such as the United States-Peru Trade Promotion Agreement, which includes provisions on promoting public awareness of environmental laws and soliciting public views on the implementation of the agreement's environmental provisions.[211] A number of other examples exist of trade agreement provisions related to consultation and cooperation in areas like women's economic empowerment, Indigenous Peoples' rights, labor, and the environment.

---

[205] *See Katrin Kuhlmann, More Than Words?: Sustainable and Inclusive Trade and Development*, in NEXT GENERATION APPROACHES TO TRADE AND DEVELOPMENT: BALANCING ECONOMIC, SOCIAL, AND ENVIRONMENTAL SUSTAINABILITY, Center on Inclusive Trade and Development, Georgetown University Law Center, 2023; Kuhlmann 2021, *supra* note 13.

[206] *See, e.g.,* Anne Oreford, *How to Think About the Battle for State at the WTO*, 24 GERMAN L. J. 45 (2023).

[207] *See* Susan Strange, *The Defective State*, Daedalus, Spring 1996, at 64. Although regional law is also international, it too contains power imbalances that should be addressed. *See* James T. Gathii, *The Neoliberal Turn in Regional Trade Agreements*, 86 WASH. L. REV. 471 (2011) [hereinafter Gathii 2011].

[208] *See* Cohen, *supra* note 53, at 334; *See also,* Kuhlmann 2021, *supra* note 13.

[209] Gathii 2005, *supra* note 22, at 1413; *See also* Anghie 2000, *supra* note 24.

[210] *See* Charnovitz 1996 and Shell 1995, *supra* note 56; and Emilie Kerstens *Walking the Talk: Improving the Role of Civil Society in the Implementation of Gender Responsive EU Trade Agreements*, in NEXT GENERATION APPROACHES TO TRADE AND DEVELOPMENT: BALANCING ECONOMIC, SOCIAL, AND ENVIRONMENTAL SUSTAINABILITY, Katrin Kuhlmann ed., Center on Inclusive Trade and Development, Georgetown University Law Center, 2023.

[211] United States-Peru Trade Promotion Agreement, Art. 18.7, April 12, 2006, available at https://ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file953_9541.pdf.

The conceptual framework for micro international law requires methods to collect stakeholder input and ensure that it is acted upon. Individuals and non-governmental stakeholders should have a stake in rulemaking through ongoing outreach, consultation, and engagement as rules are made. It is especially important that this is done equitably and fairly.[212] New Zealand has advanced a particularly innovative model for inclusion of the Māori community which, among other things, has incorporated Māori priorities into trade agreement negotiations since 2001 in accordance with the Te Tiriti o Waitangi (Treaty of Waitangi), which involves engagement to identify Māori priorities and involvement of the Māori community before, during, and after treaty negotiations.[213] While studies on this model show that not all issues raised by Māori representatives have been addressed, and this along with the possibility of backsliding as governments change raises important questions, it is an example of a micro model that warrants further study.

The need for expanded coordination and input from non-state actors exists in many areas of international law.[214] In international financial law, although steps have been taken for the IFIs to interact with non-state actors, formal mechanisms are not yet in place for doing so.[215] Micro international law studies could complement evaluations of how non-state actors currently engage with the IFIs and explore possible pathways for institutionalizing their engagement.[216] Further, the duty of the IFIs to comply with formal and customary international law in human rights and environmental law raises important questions about protecting human rights and environmental sustainability across IFI operations.[217] In both cases, micro international law models could be used to assess stakeholder needs and

---

[212] *See, e.g.,* Gathii and Puig, *supra* note 200, at 16.

[213] S*ee* Te Taumata *An Assessment of What the EU FTA Delivers, or Could Deliver, for Māori* https://www.tetaumata.com/nz-eu-fta-poised-to-deliver-for-maori/; Ngā Toki Whakarururanga, *Te Tiriti O Waitingi Assessment: New Zealand-European Union Free Trade Agreement* (May 2023), available at https://static1.squarespace.com/static/62d0af606076367ebf83b878/t/6463471db83ddc54d78978dc/1684227873906/NZ+EU+FTA+ToW+Assessment.pdf and ACE Consulting *Ūropi Tauhokohoko Ka Taea New Zealand – European Union Free Trade Agreement: An Independent Assessment of the Impacts for Māori* (May 2023), available at https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-An-Independent-Assessment-of-the-Impacts-for-Maori.pdf.

[214] Banteka *supra* note 61, at 350. See also, Asher Alkoby, *Non-State Actors and the Legitimacy of International Law*, 3 NON-STATE ACTORS AND INTERNATIONAL LAW 23 (2003).

[215] Bradlow, *supra* note 198, at 189.

[216] *See* Andria Naudé Fourie, *The World Bank Inspection Panel and Quasi-judicial Oversight: In Search of the 'Judicial Spirit' in Public International Law*, Eleven International Publishing (2009), available at https://repub.eur.nl/pub/16996/Naude%20proefschrift.pdf; *See also* Perspectives Project, *supra* note 57 and the research of the Accountability Counsel, available at https://www.accountabilitycounsel.org/research/.

[217] Bradlow, *supra* note 198, at 919-202.

practices from national legal systems that might lead to more systemic macro-level lessons.

Models for enhanced engagement can help connect micro and macro level systems, and it is very important that these mechanisms are designed to identify stakeholder needs, allow policymakers to respond to these needs, and ensure ongoing interaction to implement rules to respond to these needs or adapt where gaps exist. The New Zealand model is instructive here, as are studies that illustrate how stakeholder priorities can be understood and communicated to government at all levels using methods discussed above and other innovative approaches like listening sessions and focus groups,[218] which should take place at the local, national, regional, international levels.

Micro international law models are also useful for highlighting innovative methods for implementing international rules and norms at the domestic level. In some cases, this can establish an important avenue for dispute settlement and recourse.[219] For example, specialized domestic institutions and courts can link bottom-up legal innovation with international environmental and human rights law and provide an important avenue for the engagement of individual stakeholders. In international environmental law, examples of domestic innovation to implement international norms include the proliferation of specialized environmental courts and tribunals, or "green courts," "green tribunals," and "green benches" in Kenya, Chile, India, China, and the Philippines.[220] These bottom-up institutions "support global innovation and experimentation in environmental law."[221]

---

[218] *See, e.g.,* Listening for America, *Connecting People with International Trade: Summary Findings and Recommendations from Nationwide Listening Tour* (October 2021), which collected priorities on international trade through listening sessions and focus groups in 37 cities in the United States.

[219] While new models for dispute settlement and recourse are appearing across different areas of international law, these still tend to be state-focused. Individual rights of action, while existent in human rights law, are much less common in other areas of international law, particularly international economic law. There are some exceptions, however. Such as pathways for an individual right of action under African regional treaties and institutions, such as the Common Market for Eastern and Southern Africa (COMESA). As Gathii highlights, African trade bodies encompass so much more than economic priorities, and the courts these institutions create can also hear human rights cases. James Thuo Gathii, *African Regional Trade Agreements as Flexible Legal Regimes*, 35 N.C. J. INT'L. L. 571, 589 (2010) [hereinafter Gathii 2010].

[220] J. Michael Angstadt, *Environmental Norm Diffusion and Domestic Legal Innovation: The Case of Specialized Environmental Courts and Tribunals*, REV. OF EURO., COMP. & INT'L. ENVT. L. (2022). The study relied on an interdisciplinary and multi-method approach, using empirical methods such as surveys and interviews, to understand how individuals, communities, and institutions have advocated for these specialized courts and tribunals.

[221] Ibid.

In international human rights law, where a micro dimension is more inherent with the case-by-case assertion of rights, there is a need for more detailed micro studies of individual challenges in accessing remedies and micro-macro solutions to bridge domestic legal innovation and evolving international law. Specialized courts and tribunals have also emerged here that provide important bottom-up models for international law and its implementation. These include REC courts like the COMESA Court of Justice and East African Court of Justice, which have extended reach beyond economic issue that includes human rights, and expanded remedies for individuals under international law.[222]

Building upon all of these models to include more diversity in stakeholder and nation-state engagement and input could help address the crisis of confidence in international law caused by the lack of representative voices in shaping the international legal system, where dominant economies and stakeholders have tended to drive international law to the detriment of those with less power and voice.[223] Not only does this raise important questions of international governance, it also highlights how legal solutions tend to be tailored to a certain set of interests, largely overlooking others. Traditional knowledge, discussed above, is a good example of this dynamic, as is farmers' rights, which is noted in the context of micro mapping. Both traditional knowledge and farmers' rights are incorporated into international law, but these rules are weak, vague, and incomplete, in sharp contrast to stronger, more precise protection for other forms of intellectual property rights.

Good legal design for economically powerful economies may not be good legal design for economies facing different challenges and opportunities. Advanced economy rules with extraterritorial reach can also have significant implications for developing countries that are often overlooked. For example, the domestic legislation that is currently proliferating in the area of environmental, social, and governance (ESG) standards, such as laws on deforestation, carbon measurement, and supply chain regulation, does not adequately take into account the interests of developing economies and small producers. In order to meet the important

---

[222] *See* Adaeze Okoye, *Promoting Access to Justice for Corporate Human Rights Violations in Africa: The Role of African Regional and Sub-regional Courts*, in BUS. AND HUM. RTS. LAW AND PRACTICE IN AFRICA 231 (Damilola S. Olawuyi & Oyeniui Abe eds., 2022).

[223] *See* Okafor & Miyawa, *supra* note 29. Gathii 2003, *supra* note 25, highlights the "façade of neutrality regarding how the rules of the international trading regime are crafted, applied, and adjudicated." *See also,* Dani Rodrik, *The Globalization Paradox* (2011); Sonia E. Rolland and David M. Trubek, *Emerging Powers in the International Economic Order: Cooperation, Competition, and Transformation* (2021); Akinkugbe 2021, *supra* note 25; and Anghie 2000, *supra* note 9.

sustainability and social objectives of these new laws, micro methods, including the mapping approach described above, could be used to assess how they would affect stakeholders in practice and identify possible local approaches to achieving shared goals. As international law continues to evolve in areas like business and human rights, approaching the macro level through the meso (regional) and national levels will be instrumental in addressing blank spaces in international law that fail to take into account the contextual experiences of individual rightsholders. For example, applying the subsidiarity principle and using micro, bottom-up approaches to business and human rights could address gaps arising from a textualist approach to international economic law in areas like remedies in order to integrate the "contextual, practical experiences of communities attempting to seek out remedy after suffering corporate wrongs."[224]

At a high level, more incremental models and institutions, such as flexible treaty approaches that allow for the evolution of international law over time, could better support micro international law tenets. Gathii has emphasized the benefits of these models, which are more common on the African continent and focus less on rigorous formal and enforceable commitments.[225] When coupled with micro-level analysis, more flexible treaty models could incorporate diverse stakeholder priorities, including "economic and non-economic objectives,"[226] and cooperative structures.[227] Although these models can create helpful flexibility for state parties, they can still cause challenges for individuals and smaller enterprises, which lack legal capacity and voice, without addressing procedures and processes for input and engagement.

Rebalancing power dynamics will require empowering the voices of individuals and the smallest nations within institutions and providing a channel for individuals to provide input in the rulemaking process. Empirical, contextual, and comparative methods could gather information on stakeholder priorities and legal innovations across economies, aggregating data to help bolster the ability to design

---

[224] Nicolas Anthony Friedlich, *Accra's Rejoinder: The AfCFTA Protocol on Investment as Host State Remedy Catalyst in Business and Human Rights Law*, (2024) at 6 forthcoming in INNOVATIONS IN INTERNATIONAL TRADE LAW TO ADVANCE SUSTAINABLE AND INCLUSIVE DEVELOPMENT, Katrin Kuhlmann, ed. Forthcoming Center on Inclusive Trade and Development, Georgetown University Law Center.

[225] Gathii 2010, *supra* note 219 at 589 "Inflexibility can only contribute to entrenching resistance to the legitimacy of cooperative frameworks along any of these lines of difference and asymmetry. Flexibility by contrast enmeshes very well within this context of heterogeneity and diversity."

[226] Akinkugbe 2020, *supra* note 21, at 293.

[227] Katrin Kuhlmann, *Flexibility and Innovation in International Economic Law: Enhancing Rule of Law, Inclusivity, and Resilience in the Time of COVID-19*, AFRONOMICSLAW (African International Economic Law Network), August 27, 2020.

regional and international rules that are more inclusive and sustainable.[228] By applying micro international law methods, global rules and institutions could be strengthened to better address shared values or concerns, especially for the weakest.[229] The approach discussed in this section would combine macro, meso (regional), and micro approaches in a form of mixed-level governance, which is emerging in different areas of international law.

VI. Conclusion

Micro international law is needed to give a name and a structure to a trend in international law that needs to be more deeply studied and more systemically applied. While local solutions and domestic legal innovations abound, they are often overlooked or dismissed as isolated examples without exploring their broader implications and impact on international law. Conceptually, micro international law provides a framework for valuing, identifying, and cataloging "micro" experiences and interventions, establishing a channel for recognizing the contributions of individuals, communities, and domestic legal systems to international law. Future work should expand this catalogue and draw lessons from a broad range of stakeholder needs and domestic legal innovation, strengthening connections between domestic and international legal systems and informing future international law from the ground up.

Methodologically, micro international law brings an important empirical dimension to the study of international law. Every country serves as a legal and regulatory laboratory, offering unique insights that could better serve vulnerable communities and individuals. By studying and mapping domestic legal systems and their integration of marginalized stakeholders, micro international law has the potential to effect significant change on the ground. Individual studies could be expanded to incorporate comparative and longitudinal dimensions to expand their application and allow for learning across location and time. Deeper lessons could also be drawn from other disciplines – such as economics and political science – that have more experience with micro methods, and some of the methods used elsewhere could be adapted to the empirical study of international law.

Several aspects of micro international law warrant further research, and these will be the basis of additional scholarship based on this article. First, further research is needed on implementation, accountability, and engagement mechanisms at different levels of governance, a centerpiece of micro international law. In particular, international legal scholarship would benefit from deeper study of how

[228] Kuhlmann 2021, *supra* note 13.
[229] On shared value, see Gathii 2005, *supra* note 22, at 1408.

domestic implementation of international law through specialized laws and regulations impacts stakeholders and how this aspect of implementation interacts with accountability and engagement mechanisms. This dimension of micro international law is critical for linking the micro and macro levels (and international and domestic law) and mainstreaming micro legal study. Second, future research should focus on how to catalog and compare different micro interventions and the lessons that stem from individuals, communities, and domestic legal systems. This stream of work should also incorporate mechanisms to assess impact. Finally, additional research is warranted on relevant empirical methods and models. This body of research could integrate and perhaps adapt empirical research approaches more commonly used in other disciplines, such as RCTs, as well as approaches beyond those discussed in this paper. This paper is intended to be the first in a series of works that explores these additional dimensions.

A micro approach to international law would strengthen international law's ability to incorporate the needs of the economically and politically marginalized, learning from the many smaller pieces that make up international law to bring innovative and differential approaches into its design and reframe how international law is produced and implemented. By combining comprehensive empirical analysis to catalog micro-level lessons (stemming from individuals, communities, and national legal systems) with robust accountability, engagement, and implementation mechanisms, micro international law could drive meaningful change from both the bottom up and the top down. This would come at a moment when international rules and institutions are faltering and could help address the crisis of confidence in international law that is undermining the potential for collective action.

Micro international law's focus on smaller-scale, micro interventions to study the role of individuals, enterprises, and domestic legal systems and link these lessons to macro-level, systemic change attempts to bridge gaps in the design, aspiration, and application of international law. As international law evolves, a shift away from a predominantly top-down, power-centric approach to one that incorporates smaller-scale interventions and priorities could enhance international law's social impact and draw attention to the needs of those who are not often at the table as international law is developed – small and vulnerable states, minorities, women, Indigenous communities, and impoverished regions – fostering more inclusive and sustainable international law. By highlighting diverse legal innovations and amplifying the voices of historically excluded countries and communities in rulemaking processes, micro international law could also lead to more tailored, fit-for-purpose solutions to global challenges like inequality, climate change, conflict, food insecurity, and economic and social development. Imagine

what international law might look like if domestic laws of developing economies were studied with the same interest as those of Europe or China, leading to an understanding that there must be recognition of a "Banjul Effect" or "Bridgetown Effect" alongside the "Brussels Effect" or "Beijing Effect" that currently drive the international status quo. If the methods underpinning micro international law are applied more systemically, this question could become more than just aspirational.