The IEL Collective Symposium I Introduction: Global South Perspectives for Pluralising and Decolonising IEL

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International Economic Law encompasses the study of both the conduct of sovereign states in international economic relations, and the conduct of private parties involved in cross-border economic and business transactions. The past three decades have seen a growing scholarship on international law addressing legal and policy discussions on investment, trade, financial services and regulation, intellectual property right, tax, energy, competition law and even the environment. Despite this growth in the teaching and scholarly research of IEL, there remains question over the plurality and diversity of methodologies, voices and viewpoints in the discipline. In particular, western-centric analyses and theories continue to underpin the intellectual instruments, epistemological foundations and output of IEL scholarship, which ignores or glazes over the

harmful impact of global capitalism, colonialism and patriarchy in the destruction, appropriation and the violation of human rights and lives in our contemporary world. In so doing, it renders universal a western understanding of international economic law research and teaching, while suppressing the lived and growing experiences of the large, marginalised minorities struggling against national or international policies of unjust world economy.

At a time when academic institutions and disciplines are challenging the lack of pluralism and representation, and where there is a growing need for non-Eurocentric conceptions of emancipation and thinking within the global economy, the IEL Collective was launched to provide a crucially important space for a critical reflection on these complex interactions in the growing field of international economic law. It aims to explore how epistemological and methodological diversity in the discipline can contribute towards the development of a more holistic landscape of scholarship on law and the governance of the global economy. In furthering this goal, IEL Collective held its inaugural Conference at the University of Warwick, UK (6-7 November, 2019). With the overarching theme of '*Disrupting Narratives and Pluralising Engagement in International Economic Law Scholarship, Teaching and Practice'*, the inaugural Conference brought together scholars, policymakers, campaigners and practitioners, to contribute towards the development of The IEL Collective and to facilitate conversations about the past, present and future of the discipline. More than 60 papers were presented in over 20 panels at the Conference. These papers brought fresh and new interdisciplinary insights on scholarship, plurality, representation and criticality in researching, teaching and practising law.

This symposium offers diverse perspectives and timely contributions to the ongoing debate on the need to decolonise and pluralize IEL research and scholarship as a counterpoint to Western-centric IEL imagination and teaching. Within this symposium are contributions on the history of IEL and origins of IEL theory alongside context specific examples marking out the intersections between IEL, business and human rights.

This symposium begins with a contribution from TWAIL scholar, Prof Michael Fahkri, who invites us to explore the origins of IEL. Professor Fahkri offers a

compelling account of why a mainstream understanding of IEL should start with the Haitian Revolution of 1791-1804. He proposes that “in order to understand how international law enables inter-imperial competition and capitalist expansion” we must “look to how race and economic value define each other.” In doing so, Professor Fahkri inverts the dominant understanding of international law as a benign and universal regulatory framework to demonstrate how it can be used to entrench and perpetuate global hierarchies and power asymmetries. However, this piece also explores the possibilities for utilising IEL as a force for good; as a tool for redistributive justice to be harnessed by those affected by international and domestic harms inflicted upon them by those who seek to weaponize IEL.

“In the second post of the symposium, Professor Jean Ho reflects on the ability of trade and investment protection agreements to redraw the fault lines in IEL. Professor Ho notes that there is an ‘all or nothing’ approach towards investment treaties, which translates into staunch preservation accompanied by incessant tweaking, or total abandonment. To free ourselves from this binary impasse, she calls for “the jettisoning of boilerplate for bespoke investment contracts for the development of investor accountability, good investment governance and establishing recourse to grievance mechanisms and other dispute de-escalation forums.”

The third contribution by Claiton Fyock interrogates the many narratives that exist within International Investment Law (IIL) concerning its role in the international legal order, particularly in development. Adopting both a Marxist methodology and a critical legal approach, specifically Third World Approaches to International Law (TWAIL), Fyock highlights how the narrative of economic development in IIL, as adopted by powerful states, is used to advance capital interests to the advantage of investors when disputes arise to the detriment of ‘third world’ or ‘developing’ states.

In the second part of this symposium, our contributors examine the interconnection(s) between corporate behavior, human rights and IEL. The fourth contribution by Flávia do Amaral Vieira examines the need for corporate accountability for human rights abuses that flow from corporate activities. With a focus on the role of transnational corporations in Latin America, Vieira argues

that it is “dynamics of the coloniality of power when there are TNCs involved” and the “imperial relations identified between States” that are “determining variables in the process of construction of international law.” Only when corporate accountability mechanisms are strengthened can social movements and civil society truly mobilise human rights discourses effectively.

In the fifth post, Federico Suárez Ricaurte discusses foreign investment in natural resources exploitation. In this piece, the author reflects on the features that characterizes the relationship between foreign investors and local communities in the Cerrejon coal mine in Colombia. Emphasizing on the treatment of the property and investment rights of the transnational actors as well as the systematic violation of the most basic human rights of local communities, he shows that the exploitation of natural resources serves to promote the capital accumulation of those transnational actors which shape the law accordingly to their interest, and in doing so enhances their share of participation in the global supply chain in which transnational companies operates.

The penultimate post by Jimena Sierra offers a historical account of natural resource extraction in Colombia as an example of ‘global coloniality’. Sierra demonstrates the real social and economic impact of investment disputes for Global South states and interrogates the legitimacy of the hierarchies reproduced through the system of ISDS. She argues that “this system, which was born to protect the interests of foreign investors settled in former colonial administrations, is not leading to a more fair and equitable society, but is reproducing situations of exclusion and inequality quite similar to those that had place in colonial times.” Reflecting on the (un)intended consequences of the ISDS regime, Sierra reinforces the need to examine new paradigms for the settlement of investment disputes that engage with both substantive and procedural aspects of the regime. On the final contribution to the symposium, Maria Jose Luque Macias calls attention to the problem with a cross-disciplinary research approach towards the IIL and human rights debate. In discussing the scholarship on IIL and human rights, she notes the problem with cross-disciplinarity in research and discourse is that IIL and human rights scholarship subsumes “the other” field of research to its own approaches and methods and in doing so “both reduce its counterpart’s receptiveness towards the IIL reforms

they consider appropriate depending on their understanding of what IIL should be.” In light of this, the author suggests adopting the “duty to regulate” paradigm as a rhetoric and normative tool that facilitates inter-disciplinarity in this debate. This is because “duty to regulate” paradigm foster inter-disciplinarity in the IIL and human rights debate, and puts IIL and HRL on the same level and promotes cross-fertilization while maintaining their corresponding normative distinctions.

Contributors

Michael Fakhri: International Law Started with the Haitian Revolution

Jean Ho: Hustling in International Economic Law

Claiton Fyock: International Investment Law and Constraining Narratives of ‘Development’: ‘Economic Development’ in the Definition of Investment

Flávia do Amaral Vieira: Corporations in Latin America: human rights in dispute

Federico Suárez Ricaurte: Public interest captured by foreign investment: the Cerrejon coal mine in Colombia

Jimena Sierra: Colombia before the ISDS and the disputes over natural resources in a coloniality context

Maria Jose Luque Macias: Using the duty to regulate paradigm as a normative instrument to foster inter-disciplinarity in the international investment law and human rights debate

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