Reflections on the 6th Afronomicslaw Academic Forum Guest Lecture delivered by Professor Mohsen al Attar

By:

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On 6th February 2021, the Afronomicslaw Academic Forum held the 6th session in its Guest Lecture series on International Economic Law (IEL). Students and scholars alike were eager to learn from the guest speaker Professor Mohsen al Attar, Dean of the University of West Indies Law School. Professor Mohsen, a Third World Approaches to International Law (TWAIL) scholar, spoke on the topic - 'Decolonisation of International Economic Law'. Professor Al Attar's elucidations indeed provided perspectives just as grand as the title imputes. This blog post summarises this outstanding lecture and highlights some practical takeaways drawn and critiqued from it.

Past guest lecture sessions have emphasised the ideological facet of international law as an analytical tool to sanitise appropriation of colonised

peoples and a current post-colonial enterprise that functions towards their exclusion from the global political order. This is a primary anchor of TWAIL scholars in their efforts to appraise the credentials of 'international law critically'. Professor Al Attar's session treads along this same path. He draws from decolonial scholarship by the likes of Frantz Fanon and W.E.B. DuBois and by marrying these works to the present, highlights a pervasive colonial influence that we still grapple with today.

Professor Al Attar's preliminary point was that 'decolonisation, as it stands today, is a mantra without praxis', i.e., Third-World perspectives universally advocate for decolonisation yet falter in postulating strategies of actualising it. Any meaningful enterprise towards shifting to praxis involves discussing the correct starting point(s) of decolonisation. Professor Mohsen proposed five starting points to foreground his analysis: capitalism, epistemology/knowledge, colonialism, international law, and political economy. He argued that each of these tenets work together to engender the past sanitisation of appropriation and the present propagation of asymmetrical global power within North and South hierarchies. These five tenets are the focal points of mu reflection in this piece.

First of these is capitalism. Capitalism is not merely an economic system - it exists as a *political order,* propagated by the regulatory system that we know as IEL. Everyone interacts with the market on a micro level, and we are all subject to its influence on a macro level. According to Professor Al-Attar, capitalism is both democratic and pluralistic. Even as the every-day individual can access capitalism, exclusivity is maintained by those who can gain power from it. Epitomised by the scramble for Global South territories by European powers searching for cheap labour and raw materials, in many ways, capitalism facilitated colonialism/slavery. (Blaut, 1989, p265 - 267) with its promise of endless accumulation (whether or not that is actually feasible).

As human beings, our epistemologies are limited to the sum of our experiences (Crotty, 1998, p.3). Hence, there can be forms of knowledge as diverse as our experiences. European epistemologies are based on their experiences; their system of capitalism. International law comes in to serve as the ideological crutch for capitalism, cloaking acts of 'Western' appropriation in legality. In this sense, the law is not rational as claimed but is tinged with colonial

epistemologies of accumulation and exploitation. Professor Mohsen's argument here echoes Professor Anthony Angie's account of the Spanish conquest of the Americas. Spain averred that international law in its *universality* applied to the Indians but simultaneously refused to extend them subject-hood. Claims of universality legitimised exploitation of colonised people's resources through the entering of unequal treaties, but the same people are 'othered' from the law's recognition via designations of barbarism, savagery and unsophistication.

This changed with the West's priorities following the devastations of the World Wars. Suddenly, as the colonial endeavour became financially burdensome, Europeans engaged possibilities for the colonised to gain subject-hood. For the 'others' to gain this subject-hood, they had to accept the civilisation enterprise after which, by the benevolence of the subjugators, they were granted statehood upon satisfactory assimilation. Independence of countries on the African continent was celebrated as new states emerged, but this 'statehood' was the only form of subject-hood accepted by the global hegemons, assimilating into the new order under international law's promise of sovereign equality.

The current political order preserves inequality along Global North-South demarcations. While the Global North countries exercise the greatest political power, the Global South's interaction with this order is one of aspiration towards achieving this power. Professor Mohsen emphasises that *in fact,* the global political economy reveals vestiges of international law's ideological contradictions in institutions such as the UN Security Council's 'veto powers' and the influence of the Bretton Woods Institutions ('the Unholy Trinity'). The West's monopoly of designating statehood exists even today, rooted in arbitrary justifications. One dare ask why would Israel, for instance, be granted statehood yet Palestine is not? The universality project also subsists through mechanisms that readily come to mind to anyone familiar with international law. We see it in human rights law's urging Global South cultures to aspire towards European conceptions of humanity. We also see it in IEL's efforts in including the Global South in a global capitalistic order (The World Trade Organization). As Professor Mohsen points out, this promise of universality/equality is hypocritical as long as it remains embedded in capitalism. As one stays atop the system (Global North), someone else will have to lose (Global South).

It is a common position within developmental fields that Global South nations will need to 'catch up' with their Global North counterparts for global equality to occur. At least, this is the narrative pedalled by neoliberal institutions such as the international Monetary Fund (IMF) and World Bank. According to Professor Mohsen, what is left out is the axiom that the Global North - capitalist and democratic socialist alike - accumulated this wealth on the backs of formerly colonised peoples. Thus, he asks, does this mean the Global South can only dream of achieving wealth if it appropriates resources from elsewhere? Yet reasons abound as to why capitalism might be beneficial to Global South. There are more choices/options production-wise in a so-called free market; choices that might be restricted if we were to abandon it. Capitalism is said to encourage creativity as owners of capital compete for consumers. But are the benefits worth the upholding of various facets of economic inequalities? In the capitalist order, it seems so, which is why capitalism must be 'decolonised' favouring more equitable economic systems.

There exists a global inequality perpetuated in part by international law, that is intuitive to TWAIL scholars. Professor Mohsen challenges us instead to tackle *how* we endeavour to reduce this inequality. Law and development practitioners propose 'development', but it is disputed how this must be assessed. Law and development practitioners propose 'development', but it is disputed how this must be assessed: is it *via* Gross Domestic Product per capita, Gross National Income or is it non-monetary and instead a sum of the freedoms that people can enjoy? This brings to mind Sundhva Pahuja's article *Postcoloniality of International Law*. Pahuja details how the 'other' is made to feel different because they are inferior to Western ideals but, at the same time, strives to act differently from what the West characterises them as. During the session, Professor Olabisi Akinkugbe mused over the question, revealing that we as Africans should be cautious in aligning development with Western metrics. He mused: 'Who is to say that rural communities are not content residing in huts?' The gist of the earlier questions is the recognition that in pursuing global equality, African nations must chart a course to raise living standards while elevating their unique circumstances.

Such considerations become all more immediate as Africa pursues continental socio-economic integration. As the African Continental Free Trade Area (AfCFTA) became effective on 30th May 2019, conversations on chartering a

beneficial course are being brought to practice. As Professor Al Attar emphasizes, this also presents opportunities for Africa to forge alliances with the broader Global South. For instance, Africa has a lot to learn from the Caribbean Community (CARICOM) and the Southern Common Market (MERCOSUR) on strategies to achieve regional cooperation.

I believe that Africa must be prudent in remaining undistracted in its commitment by refusing to court side-alliances that might prejudice cooperation. The negotiations preceding the United States-Kenya Free Trade Area (FTA) might be potential distractions. If successful, this FTA is intended to be a model for other bilateral trade agreements in the region. It potentially stifles efforts towards string regionalism and acts as a reminder of the West's divide-and-rule-tactics. Professor Al-Attar questioned severally whether regional cooperation was indeed an autonomous choice by Africans or the influence of Western ideals of success. There is weight to the thought that we might simply be following the capitalist political economy's success-blueprint. Although I agree that continental cooperation is generally laudable, it should bot be employed as our means to join a global capitalist project. Africans should not proceed with the AfCFTA simply because Europe solidified its power through the European Union (EU). I believe in charting a path away from the approach of copy-paste neoliberalism which has only failed us so far.

However, if we are to pursue this autonomous path of regionalism, we must contend with the political challenges that plague our reality. Africa is trapped by the predator that is the debt cycle. As Dambisa Moyo's *Dead Aid* details, this trap impedes Africa's abilities to determine our policies as we are under the influence of the 'Unholy Trinity'. The implementation of Structural Adjustment Programs (SAPs) has become the IMF and World Bank's condition of financial assistance for Global South nations. This continues to date despite their dubious effectiveness. Their detrimental efforts span the deterioration of social welfare but crucially, the quality of the education system.

Universities as the source of rising critical minds are where the efforts of SAPs have git the hardest. Educators now prefer to align their teachings and research with neoliberal or Western principles. This could be because higher institutions so not wish to offend wealthy donors or simply because they find it less challenging to maintain the status quo. I argue that the

uncritical/Eurocentric approach of education hampers efforts to decolonise our epistemologies.

Many of my colleagues, past and present students in Global South universities, will attest that Public International Law is taught from a predominantly Western lens. Contributions of Global South countries to the international legal order were glossed over. Economics courses are framed by the capitalist ethos, relegating alternate theories to a couple of PowerPoint slides. The 'banking model of education' is uninspiring both education-wise *and* intellectually. There is a shaky intellectual foundation for future scholars and policymakers to decolonise present epistemologies and develop beneficial alternative paths. Therefore, I propose that a reform of the education system is needed before we can ho9pe to make progress. For decolonisation to be realised, we must know our beginning and chart our path to the goal.

Professor Mohsen's salient point is that, as we interact critically with the current system and its tenets, our approach should not focus on the endpoint by asking 'Then what is the answer?' We cannot claim to know the answer(s) yet because we do not have experience in a post - 'other' world. Jayan Nayar in his piece *Some Thoughts on the '(Extra)Ordinary': Philosophy, Coloniality, and Being Otherwise* emphasises the *continuous* anti-colonial orientation or 'asking-we-walk' (see also, Nandy, 2012, p. 225-30). In this light, Professor Mohsen stressed that perhaps our regional priority should be a journey of sampling various possibilities and building on preferable ones along the way.

In assessing if we are indeed advancing well in the journey of defining our developmental state, I think Ali Abdilatif, a regional representative who was also present at the session, made a pertinent recommendation. He suggested 'social justice' is a valuable metric of development, i.e. socio-economic equity that raises the standard of living to the greatest extent relative to each of our circumstances.

This lecture articulates the starting points in organising decolonial strategies. It is a message that is fitting for current and up0coming TWAIL scholars. Just as there are numerous ways through which colonial ideologies permeates the present order, there is also a world of possible avenues to decolonise them. I hope that the up-coming TWAIL scholars will continue on the path created by our predecessors in reclaiming our spaces and our 'subject-hood'. Indeed, we

must redefine our interactions with the global hegemony to create an equitable order that benefits *all of us.*

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