The IEL Collective Symposium III: Reimagining International Economic Law for Sustainable Development

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June 8, 2020

This is the third and final instalment of the IEL Collective's online symposia, which showcases some of the ideas presented at the inaugural conference, held on 6-7 November 2019. The focus of the Conference was on 'Disrupting Narratives and Pluralising Engagement in International Economic Law Scholarship, Teaching and Practice'. To date, we have published some of the Conference presentations through two symposia, the first of which focused on 'Global South Perspectives for Pluralising and Decolonising IEL' and was hosted by AfronomicsLaw. Our second symposium on 'Disrupting Narratives on International Economic Law: Theory, Pedagogy and Practice' was hosted by the University of Bristol Law School Blog. Our symposia have explored the critical

approaches to IEL (broadly conceived) with a view to pluralising narratives on this field of scholarly inquiry.

A core objective of the IEL Collective is 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. As a collective, we aim to stimulate conversations about plurality, representation and criticality in researching, teaching and practising international economic law and spark new conversations about the future of the discipline. The IEL Collective conceives of IEL as a discipline that is constrained by an orthodoxy that structures, produces and reproduces knowledge about the law and the operation of the law without cognisance to the social, cultural, economic, political, geopolitical and historical contexts in which the law is embedded.

IEL scholarship is concerned, in one way or another, with development. However, there is often an assumption implicit to IEL scholarship that development should be understood predominantly in economic terms. In other words, economic growth is the *ends of* and not merely (one of) the *means to* development. Preeminent development scholars such as Professor Amartya Sen have irrefutably demonstrated the need to *shift the paradigm* away from economic rationality in order to capture development needs in their fullest social, cultural, political senses and yet there remains a reluctance in orthodox approaches to IEL to adopt alternative theoretical and methodological approaches to the way(s) in which IEL intersects with international development. With the 2030 Agenda for Sustainable Development, and the reframing of sustainability through the Sustainable Development Goals, the focus of the international community is on creating just, inclusive and sustainable economies. What role, then, can IEL play in attaining sustainability?

The focus of the final symposium is on IEL and (sustainable) development. In this symposium our contributors address a range of issues that reveal the complexities, challenges, and constraints of existing legal norms and principles that are designed to contribute to the attainment of (sustainable) development. Our contributors identify regulatory gaps that create disconnects between legal and other forms of governance and explore the role that IEL can play in

overcoming the extant limitations of inadequate regulatory regimes. Contested concepts such as ‘development’, ‘bioeconomy’ and ‘circular economy’ are discussed broadly in the context of IEL and specifically in the terms of international and regional trade, international development finance, and digital economy. Collectively, these contributions show how the logic of economic materialism which underpins dominant narratives of sustainable development (and which has promoted the commodification of all living things for their productive potential) results in the *deprivation of rights*, the *inequitable division of labour,* the *appropriation of property* and *unsustainable consumption* on a mass scale. In doing so, the ‘straitjacket’ of IEL can serve to reinforce and deepen pre-existing structural inequalities between countries in the global north and global south rather than creating just and equitable societies. Our contributors explore how and to what extent IEL can be reoriented in pursuit of sustainable development through a range of theoretical and methodological lenses.

The first post by Professor Donatella Alessandrini calls for a radical reconceptualization of legal norms, principles and techniques that have erased the constitutive role that social reproduction, labour, and environmental sources play in IEL. Alessandrini offers a critique of comparative advantage and profit accumulation in international trade law through the lens of social reproduction analysis (SRA) and explores the question of whether global value chains (GVCs) mark a ‘new dawn for development’. She challenges the assumption that the increasing pace of trade liberalisation through GVCs, which goes hand-in-hand with ‘technological upgrade’, will enable companies in GVCs to capture a greater share of the value added through these modes of production and result in higher levels of development. SRA, Alessandrini argues, is a tool that can reveal the ‘social downgrade’ associated with ‘technological upgrade’ in GVCs. She posits that “the way in which workers and the environment are treated and regulated (including through treaties, private and soft law mechanisms) is constitutive of what we call comparative advantage, rather than being its consequence or externality.” Only when the role of social reproduction, labour and environmental resources is properly acknowledged can the true potential for development in value chains be harnessed.

In the second post, Dr Regis Simo contemplates the significance of special and differential treatment (SDT) for the future of (sustainable) trade and development under the African Continental Free Trade Agreement (AfCFTA). It is well known that SDT under the Enabling Clause was conceived to protect the unique development needs of countries in the global south, albeit the extent to which SDT has promoted the integration of these countries into the global economy remains open to debate. Simo proposes that the AfCFTA – with its ambitious approach to liberalisation – breaks with "past paradigms" in adopting a comprehensive approach to trade liberalisation and yet, somewhat peculiarly, it remains unclear under which provision the parties intend to notify the Agreement at the WTO. In light of this, Simo explores the scope for notification of the AfCFTA under WTO rules and expresses an "(un)desirability to rely on the Enabling Clause". He shows that the Enabling Clause is a "second-best option" for African countries and advocates for an interim agreement under Article XXIV GATT, which "would ideally oblige AfCFTA to accelerate the free movement of goods among themselves should the spectres of the lack of political will come looming again." Taking advantage of the legal framework under Article XXIV will preserve the special nature of African regionalisms as 'flexible legal regimes' and provide the architecture for sustainable futures under the AfCFTA.

The third post by Lyla Latif discusses the role of IEL in regulating the digitalisation of the economy. With a focus on the taxation of digital businesses in Africa, Latif identifies the regulatory gaps that exist in many African countries, including the need for digital presence to be recognised as a permanent establishment, which prevent the collection of taxation and result in a loss of potential legitimate revenue. This powerful post demonstrates how IEL has "excessively constrained national policy space in the governance of digital tax" and created disconnects between the source of value creation and the place of taxation. To overcome the structural inequalities between global north and global south states – which are deepening as a result of digitalisation – Latif argues that greater attention must be given to the challenges facing digital taxation globally, and specifically, countries in the global south. Overcoming inequalities in the regulation of digital taxation is one step toward the realisation of sustainable economies imagined under the SDGs.

The fourth post by Dr Andria Naudé Fourie examines the intersection between

international development law and development-finance operations of multilateral development banks (MDBs) in the pursuit of sustainable development. Development projects are envisaged as important delivery vehicles of the SDGs and the role of MDBs - both in financing sustainability and overseeing the implementation of development projects – is problematised in this thought-provoking post. Naudé Fourie argues that there is "a need to develop yet deeper insights into the *development* process, particularly, how to overcome the challenges involved in designing and implementing projects that realize their development objectives as well as manage their environmental and social risks; and to expound the *rights and obligations* of all actors involved in this process, in various capacities and configurations of cooperation." She proposes that there is great promise in the role of independent accountability mechanisms which, notwithstanding their existing limitations, serve as an invaluable tool to hold MDBs to account in the financing of sustainable development.

In the fifth post, our focus shifts towards an interrogation of concepts inherent to dominant narratives and discourses of sustainability. Dr Alexander Stingl explores how the concept of 'bioeconomy' has been normatively shaped and informed by a transnational epistemic community of experts to advance new biotechnology industries in place of traditional extractive industries. However, at the heart of the concept of the Bioeconomy is the logic of extraction: all forms of life can be appropriated, transformed and owned through material processes of (re)production. Stingl argues that the Bioeconomy is "a lawyer's game, a biologist's game, and a governance game…[and] the rules of these games share and co-produce properties of the Bioeconomy across its different ecological niches." This post argues for an alternative approach to the profit-generating conceptualisation of Bioeconomy and proposes that sustainability will only be achieved when we "take bioeconomies into consideration through a pluralisation of the ontologies, normative spaces and through decolonising methodologies." To do so, requires a departure from the monocultural and materialist logic underpinning the dominant understanding of the Bioeconomy and bioeconomies.

In the final co-authored post, Dr Feja Lesniewska & Dr Katrien Steenmans offer a compelling account of the shortcomings of the dominant narrative

surrounding the concept of ‘circular economy’ in the context of rubbish laws. Their critique of the circular economy boldly claims that the ‘green circle is broken’ and calls on IEL scholars to seek out alternative visions for circular economy to promote real, equitable and sustainable economies. With the international community rallying behind the call to reuse and recycle for sustainability, Lesniewska & Steenmans identify gaps and limitations to the circular economy narrative including the failure to address the reduction and prevention of waste at source (‘the production of material goods’). This, they argue, merely preserves the *status quo* and enables the “underlying logic of the unsustainable economic growth model” to remain unchallenged and a “global green feudalism” to emerge. Moving forward, Lesniewska & Steenmans demonstrate the need for sustainable solutions to the crisis facing circular economy in order to ensure that “repackaged ‘rubbish laws’ [are] not…free to masquerade as innovative economic legal solutions.”

Currently, the world finds itself at a crisis point. The global health pandemic caused by COVID-19 has drastically changed the way we live, how we run our economies and even, how we teach and research IEL. In the post-COVID world, old rules and games may not apply any more. The scholarly interventions presented in the IEL Collective symposia offers tools for a new, pragmatic internationalism – one based on critical reflection, methodological diversity and contributes towards the development of a more holistic landscape of scholarship on law and the governance of the global economy.

Contributors

Professor Donatella Alessandrini: Value chain Trade: a new dawn for ‘development’?

Regis Simo: African Continental Economic Integration and the Multilateral Trading System: Questioning the Reliance on Differential Treatment

Lyla Latif: International Economic Law and The Challenges in Imposing the Digital Tax in Developing African Countries

Andria Naudé Fourie: Development Projects as Delivery Vehicles for Realizing the Sustainable Development Goals: A Need for Developing Deeper Insights

Alexander Stingl: A lawyer’s game, a biologist’s game, a governance game: How to conduct research on the emerging *Bioeconomy* in international and transnational law?

Feja Lesniewska & Katrien Steenmans: Circular economy: a concept to eliminate ‘rubbish law’?

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