Newsletter
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Interview with Valérie Sagant

Director of the Institut des études et de la recherche sur le droit et la justice (IERDJ)

1) *At a time when France is adopting a strategy of influence through law, how is the IERDJ contributing to this reflection?*

The IERDJ – and, previously, the Institut des hautes études sur la justice (IHEJ) and the Groupement d'intérêt public (GIP) Mission de recherche Droit et Justice, from which it originated – participates in the reflection to build a strategy of influence through law. It contributes to highlight the importance of law in international relations and to promote the rule of law. For example, the ConventionS initiative, launched by the IHEJ and the Ministry of Europe and Foreign Affairs, has for ten years, since 2009, fostered dialogue between public and private actors of the globalization. By bringing together public authorities, researchers, corporate managers and legal officers, lawyers and magistrates, this informal framework has enabled them to get to know each other better and to freely exchange views on the challenges of global regulation, to analyze new phenomena and even to formulate proposals to be addressed to public authorities or private organizations.

The report of the collective reflections that have emerged during these years will be published at the end of 2023. It will contribute, I believe, to ensure that the law is recognized for the strategic place it deserves and which is growing stronger.

The Institute is also deepening its reflection on international criminal justice. Led by Joël Hubrecht, Reasearch and Project Officer at the IERDJ, this work encompasses the analysis of international jurisdictions as restorative justice mechanisms. The Institute has also been tasked by the Ministry of European and Foreign Affairs with initiating a more detailed reflection on strategies and mechanisms for cooperation and complementarity to strengthen international criminal justice. Lastly, the Institute keeps participating in the steering committee for international legal and judicial cooperation, which presented France's first strategy for influence through law in March 2023.

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2) *Which place does international law occupy in the work of the IERDJ?*

The IERDJ has an international DNA that needs to be highlighted. It is committed to fully integrating international law into its activities and analyses. When funding research, for example, we are particularly careful to ensure that it has a place and that researchers approach their topic of study from this perspective whenever possible. Our Scientific Advisory Board pays particular attention to research projects in international law, even if the number of projects submitted is not very large. I would like to mention the study by Alain Pirotte and Aikaterini Titi on 'The impact of investment treaties on foreign direct investment flows', published in 2020, and the forthcoming study by Sarah Jamal and Marie Obidzinski on 'The participation of individuals in international law investigations through social networks'.

Other IERDJ studies and publications give pride of place to international law, such as the recent IERDJ study by a multidisciplinary working group led by Sonya Djemni-Wagner on 'The right(s) of future generations'. At the invitation of the Constitutional Council and in partnership with the Institute, this reflection is continuing and will give rise to an international conference of Supreme Court judges from different countries around the world on 7 February 2024.

3) *The IERDJ has supported the ILA's 150th anniversary project since the beginning. What do you expect from the cooperation between your Institute and the ILA?*

Our partnership has been fruitful. The co-organization of two round tables at the Symposium last June provided an opportunity to meet a large number of lawyers and experts from all over the world and to take the pulse of fundamental issues currently traversing international law. We are delighted to be able to contribute to the theoretical and practical review that the ILA has begun, and we will be present on 14 December for the day dedicated to conclusions and proposals for future work. We believe that this will provide a roadmap for lawyers and others involved in international law, to which we will be delighted to contribute.

Report on the Webinar on Intellectual Property

Randa Ben Rabah, *PhD Candidate, University Sorbonne Paris Nord*

Today, intellectual property is under attack from many fronts: health crises, geopolitical tensions, climate change, digital technology and artificial intelligence. Proceeding from the observation that the territoriality rule permeates the discipline and crystallizes the international protection of intellectual property, the steering committee of the White Paper on 'Intellectual Property', coordinated by Professor Nicolas Binctin, undertook a reflection on the future of international intellectual property law.

The White Paper adopts a forward-looking approach and highlights two aspects of intellectual property. The first one is historical, tracing the origins and the state of positive law in the international intellectual property system. The second one, which takes a global view, looks at the various technological, economic, financial, social, legal and geopolitical scenarios or 'challenges' facing intellectual property up to 2050. These two approaches were discussed during the ILA webinar of 24 August 2023, moderated by Professor Irène Calboli.

On the one hand, the delicate issue of the territoriality of intellectual property rights was addressed, and in particular the question of its relevance in a discipline pursuing the objective of converging national interests at the international level. Intellectual property is the interplay of opposing and balancing forces. In this respect, it has been pointed out that territoriality is historically a political constraint that is now confronted with a logic of systems' decompartmentalization and differentiation. The issue is not to abandon the territorial approach to intellectual property, but to rethink the attempt to find a better balance by bringing solutions closer together. Traditional tensions, linked to colonization and the economic inequality of countries, as well as new ones, all point to the need to take the path of reciprocity, acceptance and consensus.

On the other hand, mention was made of the sources and development of international intellectual property law from the point of view of the public domain and the term of protection of rights. The 140th anniversary of the Paris Union shows that the duration of rights protection has become a major issue over time. However, this varies according to the category of rights and the objects of the intellectual property. Firstly, copyright enjoys a more advantageous term of protection than industrial property rights. Secondly, the rights relating to software and other new technologies are based on the law of exceptions, in contrast to the public domain. To complement these reflections, an analysis of the 2015 model law on copyright of the African Intellectual Property Organization offered an inspiring reading grid for an adapted reconstruction of copyrights and related rights in the international ecosystem.

Lastly, the debates highlighted two issues that need to be taken into account when considering the future of intellectual property. Firstly, there has been a change, even a reversal, in the roles played by rights holders. The traditional distinction between the countries of the North and the countries of the South has become blurred: norm makers are becoming norm takers. Rights holders are also becoming users of goods and services covered by intellectual property rights, and inversely. Secondly, the need to build a normative equilibrium in the field of new technologies, artificial intelligence and major crises linked to public health and the environment by adopting a broad and holistic vision of the legislative policy to be pursued in the field of intellectual property.

In closing, the panellists suggested three avenues to explore. Firstly, that of collectivizing both the creation and exploitation of intellectual property rights – at a time when the discipline is still seen in terms of an individual approach. Secondly, the coercion of legal measures, particularly in view of the challenges that new technologies pose for the enforcement of intellectual property. Thirdly, there is the question of coherence among international sources and of the evolution of multilateral and bilateral approaches, leading to continuing efforts to seek cooperation, with the aim of achieving balance and respect for the local specificities of intellectual property systems before 2050.

REPORT ON THE WEBINAR ON THE FUTURE OF LABOUR LAW

Lisa Aerts, *PhD Candidate, University Paris 1 Panthéon-Sorbonne University, member of the ADI/ILA 2023 Communication committee*

On 12 July 2023, the ILO, the World Bank and UNESCO published a joint study indicating that vocational training must adapt to globalization. Coordination between international organizations, education and trade liberalization were also discussed on the same day in the webinar on 'The Future of Labour Law', chaired by Professor Adelle Blackett. The round table brought together university professors as well as practitioners, including trade union representatives and ILO officials.

As other ILA seminars had already emphasized, the market rapid evolution is placing an intense pressure on the law, including on labour law, to take account of new and increasingly diverse situations. The White Paper also emphasized that the consequences of this phenomenon can be summed up in one word, common thread running through the debates: fragmentation. The manifestations of fragmentation are too numerous to be listed exhaustively: territorial, between national laws, between national/international/transnational spheres. Two types of fragmentation were often mentioned during the webinar.

The first is between different employment relationships: formal and informal. Informal work, a symptomatic example of the fragmentation of work and of labour law. It crystallizes several difficulties. Although the informal employment relationship is well known, it is often set against the formal relationship in order to be dismissed, and is therefore less protected and less studied. This opposition and its consequences illustrate an initial division in thinking about work. By the very nature of this relationship, informal workers are not represented, or are insufficiently represented. There is therefore a second dichotomy between the representation and consultation of informal workers on the one hand and formal workers on the other. Secondly, it has been pointed out that informal workers in the countries of the South are not only an inherent but also a crucial part of transnational trade, since they make up a large part of global value chains. So, a third opposition is emerging: between the desire of states to be part of global trade that relies on less protected informal workers and the desire to develop protective social standards.

This brings us to the second fragmentation that has been highlighted several times: disciplinary fragmentation. Speakers called for a paradigm shift that would enable work to be studied and regulated not only by changing the way we study labour law itself, but also by taking into account other areas of law – international trade law, economic law, international human rights – and other disciplines, such as management and economics. Sustainable development was also seen as one of the major challenges to be integrated into the future of work. To enable this approach, the role of international organizations such as the ILO, but also the World Trade Organization and the Organisation for Economic Cooperation and Development, must not only help to include social clauses in the various fields, but also cooperate with each other and with governments to develop new legal concepts. A stronger alliance with non-governmental organizations and trade unions is also crucial.

The final recommendations of the speakers will also take up this need for cooperation, which would make it possible to achieve better representation of all workers in all forms of work.

REPORT ON THE WEBINAR ON DIGITAL CHALLENGES FOR INTERNATIONAL LAW

Teodolinda Fabrizi, *PhD Candidate, University Paris Panthéon Assas*

Digital technologies represent both an opportunity and a challenge for law and society as a whole. Notwithstanding their subversive potential, the law today seems to be struggling to keep pace with their rapid evolution. Regarding digital matters, the law is highly fragmented, and few binding rules exist at the international level.

As part of its 150th anniversary celebrations, on 23 May 2023, the ILA invited a panel of experts to discuss the challenges that digital technologies pose to international law as well as possible answers to these challenges.

Indeed, digital technologies are a vast and complex field, bringing together a wide variety of areas, each presenting its own particular challenges. Nevertheless, as the White Paper prepared for the occasion had already emphasized, there are issues that cut across and are common to the various digital activities.

The first issue raised by the speakers is that of the significant disparities that exist between countries, in terms of both digital capabilities and development of normative frameworks. Besides the technological gap, the inadequacy or the absence of digital regulation have multiple consequences. Firstly, they compromise state capacity to guarantee access to digital technology and to ensure effective control over it. Secondly, foreign norms tend to fill legal gaps, either because of their extraterritorial scope or because of economic pressure to comply. This can have positive repercussions, for example in combating corruption, but it also entails the risk for some regions of the world to have models imposed that are misaligned with local cultures and needs. Finally, at the international level, these imbalances consolidate the hegemony of a small group of states over the rest of the world.

However, the speakers pointed out, it would be naïve to limit the analysis simply to power relations among states: the role of tech companies in the war in Ukraine is just one among many examples that demonstrate the importance of these actors – whose activities are partly beyond the control of the state – in international relations and, more broadly, in our societies.

In response, one of the speakers called for data sovereignty to be respected and strengthened. The others, however, reminded that one of the difficulties for international law in dealing with digital technologies is that they know no national borders, whereas national borders are at the basis of international law.

Additionally, several speakers argued that adopting a logic of cooperation with private companies would be far more fruitful for states than establishing conflictual dynamics. If international law is to deal effectively with digital issues, it must be creative, broadminded and forward-thinking. Firstly, this is necessary to exploit existing international norms. Many of these can be invoked to seize the opportunities or counter the dangers of digital technologies. Human rights to health, education and information are just a few examples. However, there still remains the need to reach a consensus on how these norms should be interpreted, particularly when it comes to international peace and security. Secondly, this would enable to grasp and take advantage of the potential of the soft law, which is now abundant in this area, and especially that of standardization. Standards can lead governments to adopt national laws that comply with them and, more generally, they contribute to changing practices. It is also within the standardization mechanisms that power plays out, as one speaker repeatedly highlighted.

Nevertheless, the panellists agreed that this is not enough: if human rights and international peace are to be effectively protected in the digital society, a global governance must be established, and common and effective international principles in digital matters must be defined and adopted. These would serve as overarching principles in a complex legal system in which soft law and hard law, international, regional and national laws coexist and interact.

For such a project to see the light of day, the speakers insisted, dialogue is essential: on the one hand, dialogue between the different countries, so that a real consensus respectful of the different sensitivities and a sustainable cooperation can be developed; and, on the other hand, dialogue with experts, the private sector and civil society. The active participation of these actors in standardization processes goes a long way towards explaining the success of the latter. For international law to be able to grasp the digital world,

diplomats and legal experts must first and foremost understand and anticipate the potential, the functioning and the challenges of the new technologies. In order to make new technologies not a danger, but a tool for peace, development and the realization of human rights, the voice of those more vulnerable must also be heard within international institutions.

Report on the Webinar on Dispute Resolution

Tarek El Ghadban, *PhD International and European Law from Paris 1 Panthéon-Sorbonne University, Assistant Lecturer at the Faculty of Law, Cairo University, member of the ADI/ILA 2023 Communication committee*

On 30 May 2023, under the chairmanship of Maître Laurence Kiffer and Professor Attila M. Tanzi, eminent specialists in the field of dispute resolution met to discuss this topic in the light of the White Paper prepared under the direction of Professors Hélène Ruiz-Fabri and Jean-Baptiste Racine. In their opening remarks, Professors Ruiz-Fabri and Racine described their survey method, which was based on the diversity of the people interviewed – in terms of their backgrounds, gender and geographical origins – and on the semi-structured and confidential nature of the interviews, giving those interviewed the opportunity to express themselves freely even on sensitive matters. This approach made it possible to deal with sensitive topics, including the alleged crisis of legitimacy of international dispute resolution system. The speakers approached the existing difficulties realistically, in order to bring out proposals aimed at reforming the existing system.

The debates also focused on the influence of regional dispute settlement systems on the development of the ones that have a global reach. Without calling into question the legitimacy and effectiveness of more universal institutions, regional efforts contribute to the development of the international justice, provided that they adapt to local sensitivities, cultures and needs.

The speakers also emphasized the need to improve jurisdictional methods of dispute resolution, at both regional and international levels, through, *inter alia*, the use of experts, raising awareness among judges by providing them with specialized training, and strengthening trust and regulatory harmonization between legal orders. One guiding principle emerged from the debates: the importance of proximity to local communities and the wealth resulting from cross-pollination between legal systems and between dispute resolution methods, through greater inclusiveness, both in terms of gender and geography.

These debates led to the question of multilingualism. In this respect, opinions were more divergent. For some, recourse to a simplified form of English is a cause of impoverishment; for others, accepting its use as the lingua franca of international dispute resolution would make it possible to avoid the logistical difficulties associated with multilingualism.

With regard to international criminal justice, the potential creation of a special tribunal for Ukraine was criticized, without putting into question the success of the principle of complementarity. According to the speakers, it would be preferable to invest in raising public awareness of the role and place of international criminal law. However, if such a tribunal were to exist, it would be necessary to consider an inexpensive organizational model, similar to that of the Kosovo Special Chambers.

The issue of access to justice was also discussed. It is traditionally accepted that systemically weaker parties should be protected from overly unbalanced national, international or arbitral proceedings. In this context, the unsuitability of international arbitration for this kind of protection has been highlighted, and solutions proposed. Some arbitral institutions now provide for accelerated and less costly procedures. Nevertheless, the cost of counsel sometimes remains prohibitive. The use of third-party funders could help overcome this obstacle. However, this model is not well suited to disputes with a smaller economic dimension. The creation of more assistance funds for impecunious parties, or the creation of a system of pro bono advisers, arbitrators and funders should be considered. In addition, the development of digital technology and artificial intelligence, while not devoid of risks, already offers unprecedented possibilities, particularly for the more vulnerable parties.

Although it should not be confused with the mechanisms of representation and compensation, the amicus curiae participation in international dispute resolution mechanisms might is an interesting means of access to justice. Its introduction before the International Court of Justice was considered to be positive in substance, though some reservations were expressed about the manner in which it was undertaken.

Lastly, the speakers examined the issue of the social responsibility of those involved in dispute resolution. Some felt that injecting this responsibility into the current dispute settlement system would require a reconceptualization of the traditional framework, particularly in international investment arbitration. The system would have to take a better account of the public interest. It would be necessary to train future

adjudicators to be aware of the social issues at stake, to work towards a symbiosis of substance and procedure, and finally to develop a culture of international litigation in various developing countries.

Closing of the 150th anniversary of the ILA – 14 December 2023

On 14 December 2023, we will be drawing conclusions from two and a half years of work devoted to thinking about tomorrow's international law, on the occasion of the ILA's 150th anniversary celebrations.

The day will take place exclusively online. There will be four sessions, two in the morning, starting at 9:00 am CET, and two in the afternoon, starting at 2:00 pm CET.

The program will be published by the end of October.

All those who have already registered for the 150th anniversary online events will receive a message asking them to confirm their participation on the day.

For those who have not registered yet, there is still time to sign up.