ESIL Interest Group on International Law and Technology

Call for Papers – ESIL Annual Conference – Stockholm 2021

International Law in the Age of the Algorithm

For our inaugural workshop of the ESIL Interest Group on International Law and Technology, we invite papers that reflect on International Law in the Age of the Algorithm. As we envisage this opening event to be both a substantive workshop as well as a place of encounter, exchange and collaborative agenda-setting, the topic is deliberately broad and our approach to 'international law' purposively expansive. We are open to a variety of empirical, conceptual and methodological interventions around the workshop themes. Below we set out a number of possible pathways.

1.   Algorithmic Affordances and International Law

We invite papers analyzing how the application of international legal rules and doctrines is being disrupted, disabled or reshaped in the new technological landscape of algorithmic governance. This relates to arguments by Hildebrandt and Cohen, for example, who have used the language of *affordances* to point out how legal norms and safeguards are always enabled and constrained by the material environment and socio-technical infrastructure in which they are embedded.[1] In

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[1] M. Hildebrandt*, Smart Technologies and the End(s) of Law: Novel Entanglements of Law and Technology*, Edwar Elgar, 2016; M. Hildebrandt, "Law *as* an Affordance: The Devil is in the Vanishing Points", 4 *Critical Analysis of Law* (1) 2017; J. Cohen, *Between Truth and Power – The Legal Constructions of Informational Capitalism,* OUP, 2019.

this vein, scholars have pointed out how central tenets of international legal ordering are being eroded or structurally bypassed as a result of technological innovation – from non-discrimination standards in the context of algorithmic profiling to the problem of attribution in the law of war.[2] For this workshop, we welcome articles that reflect on the conceptual, institutional and political challenges posed by technological transformation in different domains of international law.

2.   Methodological Implications of Human-Nonhuman Entanglements in International Law

Some scholars have set out to redefine and reevaluate the core tenets of international law's mode of existence in contrast with the increasingly prevalent manifestations of algorithmic governance: rather than becoming the 'handmaiden of mechanization', Kalpouzos argued, we have to strive for a law 'encompassing subjectivity, emotion and imagination'.[3] Does this moment indeed call for a celebration of human agency, emotion and subjectivity? Or does it, on the contrary, demand an acknowledgment of the inevitable human-nonhuman entanglements that mark all modes of law and governance? Is a different style of scholarship needed that decenters the knowing, sentient subject – tracing the 'threads in the dark'?[4] What are, in other words, the methodological repercussions of considering the constitutive relationship between international law and its material conduits, hybrid infrastructures and socio-technical settings? The workshop invites papers that reflect on these methodological questions from a variety of vantage points.

3.   Sociotechnical Imaginaries and International Law

Contrary to those who underline the importance of human subjectivity, uncertainty or hesitation in the age of the algorithm, imaginaries of technoscientific enhancement have also connected with a long-lasting yearning among lawyers for completeness in law. This leads some lawyers to idealize science and technology as what will rescue us from experiences of uncertainty and the discomfort of difficult legal decisions. This stems from both an ideal of natural sciences as a field

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[2] M. Leese, "The New Profiling: Algorithms, Black Boxes and the Failure of Anti-Discriminatory Safeguards in the European Union", 45 *Security Dialogue* (5), 2014; G. Noll, "War by Algorithm: The End of Law", in M. Liljefors, G. Noll and D.Steuer (eds), *War and Algorithm,* Rowman and Littlefield, 2019.

[3] I. Kalpouzos, "Double Elevation: Autonomous Weapons and the Search for an Irreducible Law of Law", 33 *Leiden Journal of International Law* (2), 2020.

[4] This reference to Donna Haraways' call to 'stay with the trouble' reflects new materialist perspectives that defy modernist separations between the human and the non-human, between mind and matter, and thereby work against notions of law that place the knowing and planning human subject at its center. D. Haraway, *Staying with the Trouble – Making Kin in the Chthulucene,* Duke University Press, 2016.

where pure truth propositions can be formulated, and an overestimation of what technological tools, such as data collection tools and algorithmic systems, can tell us about the world.

This understanding of science and technology is performative: it alters international legal norms, institutional structures and lawmaking processes. It transforms and intensifies how international law actors, institutions and practices affect societies, human persons and their bodies. We invite papers that engage with such technoscientific imaginaries and their impact on international law.

Topics of interest include, but are not limited to, sociotechnical imaginaries and the state;[5] the impact on international adjudication; the prevalence of a politics of prediction; human-machine aesthetics; evolutions in international law's space-time and the problem of disruptive innovation.

4.   Algorithmic Power, Violence and Critique

Predictive analytics and automated algorithmic decision-making generate new subjects, digital territories and populations to govern, target, extract value from and surveil, whilst amplifying existing inequalities and racialised exclusions. The diverse regulatory arrangements put into play to enable this data harvesting and profiling often bring states, platforms, individuals, institutions, corporations and global bodies together into novel governance constellations that sit uneasily with existing accounts of international ordering. We invite papers reflecting on international law's imbrication in emerging forms of algorithmic power, informational capitalism and global rule and that explore both international law's techniques for embedding structural violence or its potential for enacting resistance and critique to datafication processes.

5.   Code as Law?

A final set of questions relates not to how new technological tools alter or disrupt international law as perceived in positivist terms, but to how these entail their own normativity and regulatory effects. In line with Lessig's assertion that 'code is law' or the exploration of 'computer juridisms' by Vismann and Krajewski, attention can be paid to the homologies between (international) law

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[5] The concept of sociotechnical imaginaries refers to "collectively held, institutionally stabilized, and publicly performed visions of desirable futures, animated by shared understandings of forms of social life and social order attainable through, and supportive of, advances in science and technology". S. Jasanoff, "Future Imperfect: Science, Technology, and the Imaginations of Modernity," in S. Jasanoff and S-H. Kim (eds), *Dreamscapes of Modernity: Sociotechnical Imaginaries and the Fabrication of Power,* University of Chicago Press, 2015, 4.

and the ways in which material infrastructures or algorithmic decision-making systems embed or enact specific norms, social relations or expressions of power.[6] This workshop welcomes papers that reflect on this theme of 'infrastructure as regulation' or engage with the actors, instruments and imaginaries at play in these socio-technical assemblages of global governance.

Practical Details

This ESIL Interest Group event will take place on the first day of the ESIL Annual Conference in Stockholm (Wednesday 8 September 2021). We invite abstracts of no more than **500 words** to be submitted by **15 March 2021**. You will be notified of our decision by **5 April 2021**. The deadline for submission of the final paper will be on **30 August 2021**, but please be aware that there is an earlier deadline for the ESIL conference in general, which might be relevant for some of you (for example those who wish to be considered for the ESIL Young Scholars Prize).

Abstracts are to be sent to ESILIG.Technology@gmail.com.

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[6] *Cf.* L. Lessig, *Code and Other Laws of Cyberspace,* Basic Books, 1999; C. Vismann and M. Krajewski, "Computer Juridisms", 27 *Grey Room,* Fall 2007.