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## Letters to the Editors

### How Corporations Shape International Economic Law

Dear Editors,

Taylor St John wrote a fantastic review of my book, *Investment Treaties and the Legal Imagination* (EJIL, volume 33:1); I'm grateful. I don't disagree with her in the abstract. My view is rather that we need a different perspective to understand our world of gaping inequality and to create conditions of possibility to put new ideas into practice. The point is not that her perspective is wrong – and mine is right. Instead, I think we should ask ourselves which one can be more useful for our challenging times.

St John is correct that my book looks to the norm entrepreneurs for international investment protection as a 'cohesive' group. There is no doubt that these business leaders did not agree on everything. After all, the business of business is to compete. Precisely for this reason, that business leaders collaborate closely for what they perceive as common goals is a relevant finding. What is common to my norm entrepreneurs – what makes them a cohesive group – is that they worked together for 'basic and universal rules under which all business could prosper' (Henry Luce, *Peace Through Law*, 1960).

No business association represents this vision better than the International Chamber of Commerce:

Businessmen in the Free World are building an international economy, an economy that transcends old borders and old ideologies ... the international corporations and world commerce are the most effective supranational relationships the world has and they survive and flourish in a political and legal world designed in an earlier era. Much of what the International Chamber of Commerce does is to try to find palliatives for an archaic world order (Arthur K. Watson 1969, cited in Louis Turner, *Invisible empires*, 1971).

This point leads me to my second observation. I agree with St John that Hermann Abs did not get exactly what he wanted. Neither did Hartley Shawcross, to be accurate. As counsel of Royal Dutch Shell, his goal was that oil concessions could not be expropriated under international law when host states promised not to do so. But the question is how relevant these setbacks are to understanding the crisis of international economic law today. If we think that the disproportionate – and 'veiled' (Doreen Lustig, *Veiled Power*, 2020) – power of corporations is a problem, we cannot look at instrumental corporate power only. Corporate discursive power is arguably the most relevant factor because it underpins actors' interests, background beliefs, and perceptions of legitimacy.

The reasons for increasing inequality are complex and widely debated. I agree with St John that certain changes can contribute to a more inclusive and sustainable

investment treaty law. Exhaustion of local remedies is probably one of those changes because it offers a space to reconsider how ISDS works. But to be sure about these tactical moves, which are difficult in practice, we need first to understand how this and other provisions shape the law and policy agendas.

International lawyers regularly look at what other international lawyers did or said before them; it is part of our job. But those of us who have ever practised law, or written a consultancy report, know that we often work for someone else. My view is that international economic law

often misses how corporations shape ideas and put them into practice – among others, through lawyers and law firms. The legal literature has paid attention to instrumental and structural corporate power, but corporate discursive influence remains underexplored. Then again, this is beginning to change, and business historians deserve some credit for it (See, e.g., S. Pitteloud *et al.*, *Capitalism and Global Governance in Business History*, 2022).

Yours sincerely,

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