

## ESIL Vienna 2014 Conference Programme

### Wednesday, 3 September 2014

Entire day Esil Interest Group meetings

15:00 – 18:00	Registration of ESIL Conference Participants	Juridicum Lobby
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### Thursday, 4 September 2014

08:00 – 14:00	Registration of participants	Juridicum Lobby
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08:00 – 09:00	Breakfast Meeting Interest Group Conveners' Meeting	Juridicum Top Floor
09:00 – 18:00	Book Exhibitor's Space	Juridicum Top Floor
09:00 – 10:30	Parallel Agorae	U18

#### **Agora: International Law as a Generator of National Law**

Conveners: David Caron (King's College London) and André Nollkaemper (University of Amsterdam)

International law has greatly expanded. Today, almost all spheres of life regulated by law are to some extent predetermined by international law. Often international law even inspires national legislation that would otherwise possibly not exist at all. In some areas international law may substitute for domestic law. Global Law, Global Governance, Global Administrative Law and International Public Authority discourses debate whether international law or some modification of international law is likely to make domestic law superfluous in some areas or whether it may rather generate more domestic law. This agora is intended to focus on the role of international law in the domestic sphere. What are the quantitative and qualitative features of the influence of international at the national level? Are the traditional concepts of incorporation/application still adequate? Are states still able to mediate and control the impact of international law? Is domestic social change through international legislation possible? Is it desirable?

#### Speakers:

Mavluda Sattorova (University of Liverpool), 'International Investment Treaties and the Promise of Good Governance: Norm and Institutional Design, Bargaining Strategies, and Domestic Social Change'  
David Kosař (Masaryk University, Brno), 'Domestic Judicial Design by International Human Rights Courts'  
Sharon Weill (University of Geneva), 'The Role of Domestic Courts During Armed Conflicts: Generating Respect for IHL'

Conveners: István Pogány (University of Warwick) and Boldizsár Nagy (Eötvös Loránd University, Budapest)

Law and literature has become an established research interest and has found its way into a number of law school curricula. Obviously both academic fields are primarily about the interpretation of texts. But there are many other overlaps between the two fields, from lawyers turning novelists to novelists pushing legal change. However, international law seems to have been rather on the fringe of these developments. Even so, issues central to international law have been reflected in literature (e.g. terrorism, from Joseph Conrad's 1907 novel 'The Secret Agent' to the 2006 book 'Terrorist' by John Updike). Though more rarely, international lawyers have even become protagonists in literature like Frederic Martens in Jan Kross' 1984 novel 'Professor Martens' Departure', depicting the 19th century international lawyer already torn between apology and utopia. Conversely, international lawyers have taken a closer look at literature and studied the reflection of international law in Shakespeare's plays like Theodor Meron in his 1994 study on 'Henry's Wars and Shakespeare's Laws' followed by his 1998 book 'Bloody Constraint: War and Chivalry in Shakespeare'. Building on this interest of international lawyers in literature, this agora will address general issues: Is there anything that law and literature can learn from each other? Is there a deeper overlap in the methodology? How would a lawyer cope with the prevailing subjectivist approach to art? Can writers adapt to the stringent interpretative canons of (international) lawyers? To what extent should lawyers draw on the methodology developed in the context of literary studies, e.g. as regards text analysis or interpretation?

**Speakers:**

Ekaterina Yahyaoui (NUI Galway, Irish Center for Human Rights), 'Engaging International Law and Literature with Kafka, Deleuze and Guattari'

Joshua Paine (Melbourne Law School), 'Stanley Fish's "Interpretive Communities" as a Conceptual Tool for Understanding the Development of International Legal Meaning in a World of Regimes'

Ralph R A Janik (University of Vienna), 'Travaux préparatoires and the writer's biography - undervalued tools of interpretation?'

**Agora: International Law and Linguistics**

Conveners: Maksymilian Del Mar (Queen Mary University of London) and Nico Krisch (Institut Barcelona D'Estudis Internacionals)

Philology and linguistics matter per definitionem for the analysis of legal texts, for instance, as regards techniques/canons of interpretation and text analysis. They are of even greater importance to international law as a multilingual discipline. The necessary translation and subsequent interpretation of treaty texts authenticated in

different language versions is only one example. Questions of philology or linguistics gain increased significance since treaties are often deliberately imprecise, reflecting the inability or unwillingness of the negotiating parties to agree upon clear standards. This agora will expand on these issues, addressing questions such as: To what extent can international law draw on the disciplines of philology/linguistics? Should it make increasing use of their methods? Is there a need for more interaction between the disciplines with regard to the education and training of experts/professionals?

Speakers:

Benedikt Pirker (University of Fribourg) and Jennifer Smolka (University of Geneva), 'The Interpretation of International Law and Pragmatics'

Alexandros X.M. Ntovas (University of Southampton School of Law), 'Structural Semantics and the International Court of Justice – the Interpretative Concept of Textual Structures as a Supplementary Means in Ascertaining the "Ordinary Meaning" of Treaty Provisions'

Alessandra Asteriti (University of Glasgow), "'Three Grades of Evil": Nabokov and the Perils of Treaty Interpretation'

U16

### **Agora: International Law and Theology**

Conveners: Massimo Iovane (University of Naples)

This is not an agora on international law and religion, focusing on freedom of religion or other human rights aspects of religious beliefs and practices. Rather, this panel will focus on the similarities and differences concerning international law and the academic 'discipline' of religion, theology. Questions addressed could be: How are texts becoming part of the 'canon'? Who decides on the teaching/preaching of the gospel? How is the 'invisible clergy of international lawyers' and the 'visible college of priests' formed? How do we deal with heretics and schisms? Did the fact that most founding fathers of international law from Vitoria to Grotius were theologians have an impact on the early formation of the *ius gentium*? Papers should also address the different or similar ways in which lawyers and theologians deal with custom or with the demands of conscience and morality in their normative orders.

Speakers:

Aleš Weingerl (University of Oxford), 'The International Community in the Social Doctrine of the Catholic Church'  
Maurizio Ragazzi (Independent Researcher, former Senior Counsel International Law, World Bank, Washington, D.C.), 'International Wrongful Acts, Cooperation in Evil, and the Social Dimension of Sin'

Demetrius Kourtis (Attorney & Barrister of Law, Greece), 'The Notion of Hierarchy in Classical International Law, under the Light of the Founding Fathers' Magna Opera and the Interplay between the early "Civitas Maxima Gentium" and the Ideals of the European "Civitas Christiana"..."'

11:00 – Parallel  
12:30 Agorae

**Agora: International Law and Sports: Competing for Governance?**

U12

Conveners: Christian Tams (University of Glasgow) and Laurence Boisson de Chazournes (University of Geneva)

International sports associations, like the International Olympic Committee, the Fédération Internationale de Football Association, the International Cricket Council or the Fédération Internationale de l'Automobile, are examples of self-governing transnational institutions managing sports issues in a highly efficient and often rather secretive manner. Allegations of corruption, mismanagement, the lack of sufficient measures against doping and bribery suspicions have raised serious concerns over their self-regulatory governance structures. Furthermore, general questions of due process and fair trial have been raised in recent highly publicized cases of sanctions against athletes or sports clubs. Another question that continuously surfaces in the context of major sporting events, such as the Olympic Games, is to what extent sport has to get involved in politics. In particular, might sport be a means of inducing compliance with rules of international law? This agora will address complex issues regarding the tension between self-regulation and state control, the reach of national criminal and tort law, and the role of sports arbitration and other dispute settlement mechanisms in securing the accountability of international sports associations.

Speakers:

Carmen Pérez González (University Carlos III of Madrid), 'Public International Law and the Fight Against Doping in Sports: Developments and Challenges'

Lars Schönwald (University of Passau), "'For the Game. For the World.'" – and also for Human Rights? Analyzing Human Rights Obligations of International Sports Associations'

Jernej Letnar Černej (Graduate School of Government and European Studies, Kranj), 'Fair Trial Guarantees before the Court of Arbitration for Sport'

**Agora: International Law and Film: The Power of Pictures**

U18

Conveners: Andreas von Arnould (Kiel University) and Carlos Esposito (Autónoma University of Madrid)

This agora proposes a discussion on international law as portrayed in films. What can we learn from the popular representation of our discipline in fiction and documentary movies dealing with issues of general international law or its specific fields? A major area of conversation may, of course, be criminal international law, an area with such classics as 'Judgment at Nuremberg' (1961). However, more recent movies could considerably expand the discussion, e.g. 'Argo' (2012) on the Iran hostage crisis, 'Zero Dark Thirty' (2012) on the manhunt for Osama Bin Laden, or 'The

Whistleblower' (2010) on the responsibility of the UN for covering up a sex scandal in post-war Bosnia. Moreover, documentary films may also lead us to discuss the capacity of films to show a more accurate description of international law and its institutions or even to transform it. Examples include 'Granito: How to Nail a Dictator' (2011) on the Mayan genocide or 'U.N. Me' (2009) drawing an obscure picture of the organization. The discussion may also include specific advocacy projects on films and human rights, e.g. dealing with the abolition of the death penalty.

Speakers:

Ruti Teitel (New York Law School) and Aeyal Gross (Tel-Aviv University, Faculty of Law), 'Transitional Justice on Film: Telling a Story with a Good Ending?'

Daniel Joyce (University of New South Wales, Sydney) and Gabrielle Simm (Macquarie University, Sydney), 'Zero Dark Thirty: International Law, Torture and Representation'

Olivier Corten (Université Libre de Bruxelles), 'A la maison blanche en 24 heures chrono: le Président des Etats-Unis se soucie-t-il du droit international lorsqu'il décide d'une intervention militaire?'

### **Agora: International Law and New Technologies**

U11

Conveners: Daniele Amoroso (University of Naples) and Massimo Iovane (University of Naples)

Rapidly developing new information technologies impact international law in various ways. On the one hand, they offer incredible potential, such as the use of evidence gathering in the field of international criminal law, and they open up new approaches, such as emission checks/controls in international environmental law. On the other hand, new information technologies pose various challenges to international law; for example, cross-boundary data protection/data transfers challenge human rights/privacy rights, while espionage, drone attacks/cyber war/armed robots challenge international humanitarian law and defy basic concepts of international law, such as attribution, state/individual responsibility, etc. This agora will focus on questions including: What are the challenges posed to international law by new technologies? Is there a need for additional regulation? Do new technologies require the development of new standards? To what extent do new technologies imply a necessary re-conceptualization of traditional international law approaches (e.g. as regards attribution/responsibility)? What is the potential of new technologies to usefully contribute to international law?

Speakers:

Lucas Lixinski (University of New South Wales) and Mario Viola de Azevedo Cunha (Rio de Janeiro State University), 'The Internet and International Law: Sovereignty, Global Commons and the Blurring of the Public/Private Distinction'

Jamie Trinidad (Wolfson College, Cambridge), 'Culturomics' and International Law Research'

Irene Couzigou (University of Aberdeen), 'The Challenge Posed by Cyber Attacks to the Law on Self-Defense'

12:30 – 13:30	Break		
13:30 – 14:00	Opening Ceremony at the Main Building	Heinz Engl (Rector, University of Vienna), Heinz Mayer (Dean, Vienna Law School), Helmut Tichy (Legal Adviser, Austrian Foreign Ministry), Laurence Boisson de Chazournes (ESIL President), August Reinisch (ESIL Conference Organizer)	Great Ceremonial Hall
14:00 – 15:00	Keynote Lecture	Joseph H. H. Weiler (European University Institute, Florence), 'Sleepwalking Again, the End of the Pax Americana 1914-2014'	
15:00 – 16:00	"10 Years of ESIL"	Panel Discussion with Hanspeter Neuhold (University of Vienna), Bruno Simma (former Judge ICJ), H��l��ne Ruiz Fabri (Universit�� de Paris I – Sorbonne), Anne van Aaken (University of Sankt Gallen) and Marko Milanovi�� (University of Nottingham)	
16:00 – 16:30	Coffee break sponsored by Oxford University Press in celebration of the first year of Oxford Public International Law		Vestibule
16:30 – 18:30	Parallel Fora	<p><b>Forum: International Law and Domestic Courts</b></p> <p>Convener: Yuval Shany (Hebrew University of Jerusalem)</p> <p>The role of national courts as interpreters and enforcers of international law has been debated for ages. If they are permitted to apply international law as a matter of domestic (constitutional) law, the question arises whether they are sufficiently equipped to apply and develop it adequately. What are the criteria for such adequacy? Who decides whether they get it right? This forum is meant to address general conceptual issues concerning the role of domestic courts as 'agents' of international law creation, application and modification.</p> <p>Speakers: Samantha Besson (University of Fribourg), 'Human Rights' Adjudication as Transnational Adjudication' Antonios Tzanakopoulos (University of Oxford), 'Engagement of Domestic Courts with International Law: Some Basic Principles' Basak Cali (Koc University Law School), 'Towards a "Responsible Courts" Doctrine? The European Court of Human Rights and the Variable Standard of Judicial Review of Domestic Court Judgments' Osnat Grady Schwartz (Hebrew University of Jerusalem), 'The Engagement of Israel's Supreme Court with International Law'</p> <p><b>Forum: International Law, Cultural Heritage and the Arts</b></p> <p>Conveners: Kerstin Odendahl (Kiel University) and Mary Footer (University of Nottingham)</p> <p>The topic of international law, cultural heritage and the arts</p>	Great Ceremonial Hall
			Small Ceremonial Hall

has typically been concerned with artistic objects and cultural property. Yet, in a broader sense, the law of cultural heritage may also be conceived of as a public good and in the sense of natural heritage and cultural landscape. Equally, the term may be applied to all forms of tangible and intangible aspects of culture that involve the customs and practices of traditional and indigenous cultures. This panel is deliberately broad in its scope as it seeks to link substantive and enforcement elements of private and public international law with a wide range of interests and themes in cultural heritage and the arts. The focus of this panel may include: the restitution of cultural assets arising from theft or illicit excavations, including stolen works of art and looted antiquities; the illicit traffic and trade of cultural property from land and/or underwater sites; litigation and arbitration of disputes over ownership of works of art and antiquities, including issues of state immunity; the preservation of historic and world heritage sites; the protection of cultural property in armed conflict and its restitution following looting during armed conflict; museum law; and underwater archaeology and cultural heritage more generally. It could also focus on the protection of the built and natural heritage (including cultural landscapes).

Speakers:

Sarah Dromgoole (University of Nottingham), 'International Law and Underwater Cultural Heritage: The Challenge of Meeting Heritage Preservation Objectives Within the Framework of the Law of the Sea'

Roger O'Keefe (University College London), 'The Protection of Cultural Property in Armed Conflict: Beyond IHL'

Ana Vrdoljak (Sydney University of Technology), 'International Law, Human Rights and the Illicit Traffic of Cultural Objects'

Janet Blake (University of Shahid Beheshti Teheran), 'Safeguarding Intangible Cultural Heritage – New Paradigm or Unfinished Business? An Example of How International Law Responds to Inter-disciplinary Topics and New Challenges'

19:00	Bus transfer	
19:30 – 22:00	"Heuriger Fuhrgassl Huber" Dinner Reception sponsored by the Mayor of Vienna and EJIL  Dinner Reception sponsored by the Mayor of Vienna and the European Journal of International Law	Neustift am Walde 68 1190 Vienna

**Friday, 5 September 2014**

08:00 – 09:00	Breakfast Meeting ESIL Board meets new ESIL members	Juridicum Top Floor
09:00 – 18:00	Book Exhibitor's Space	Juridicum Top Floor

Conveners: Bardo Fassbender (University of Sankt Gallen) and Anne Peters (Max Planck Institute for Comparative Public Law and International Law, Heidelberg)

International law has developed a distinctively historical and historiographic turn in the last 15 years, rediscovering a historical approach to the study of international law and international lawyers which had largely faded from view since 1945. In part it has been revitalized by a renewed preoccupation with understanding the political and normative foundations of international law, its relationship with empire and colonialism, and as part of the search for clues about the origins of the present. But it has also been revitalized by the resurgence of intellectual history, postcolonial history and international history, which are reinvigorating the study of 'classical' figures in international political and legal thought, and trying to understand the origins of the political, social and economic foundations of the contemporary international legal order. Along with groundbreaking work in the history of international law in general, recent years have seen new studies in the history of the laws of war, renovations of the legal thought of classical figures such as Gentili and Vattel, and new histories of international institutions such as the League of Nations. This agora will bring together intellectual historians, historians of law and historians of international thought to consider the ways in which new research into the history of international law is changing our understanding of past and present.

Speakers:

Benjamin Brockman-Hawe (University of North Dakota) and R. John Pritchard (CATS College Canterbury), 'International Criminal Law in the Age of Late Imperialism and Early Humanitarian Interventionism'

Wui Ling Cheah (National University of Singapore), 'A Critical Assessment of the "Historical Turn" in International Criminal Law'

W.A.M. (Mieke) van der Linden (Tilburg University), 'The Inextricable Connection between Historical Consciousness and International Law: New Imperialism, the International Court of Justice and Its Interpretation of the Inter-temporal Rule'

Commentator: Ruth Wedgwood (Johns Hopkins University, Washington D.C)

**Agora: International Law and Political Science: The Need to Learn from Each Other**

Conveners: Barbara Delcourt (Université Libre de Bruxelles) and Lauri Mälksoo (University of Tartu)

Political science has rediscovered international law – either through the constructivist turn in international relations thought, rational choice modeling, or more recently through

the attempt to develop data-driven empirical inquiries into the ways in which international law 'works' in shaping state and non-state behaviour. The result has been a scholarly agenda preoccupied with understanding whether international law rules 'matter', whether and why states comply, and how various kinds of legalization of political decisions impact upon those decisions. These studies, both in the methodologies and in their outcome, raise important questions about how we think about the impact of law on international politics, what qualifies as an impact, and whether we can use this knowledge to better design international legal regimes and institutions. It also challenges some important self-understandings of international lawyers as to the significance and relevance of norms and their interpretation. This agora will bring together political scientists and lawyers to consider both how this discipline understands international law, and how legal science might shape the methods of political science.

Speakers:

Timothy Meyer (University of Georgia School of Law), 'Shifting Sands: Global Power and the Shape of International Legal Cooperation'

Joris Larik (The Hague Institute for Global Justice/KU Leuven, Centre for Global Governance Studies), 'The Constitutional Temptation of the Constructivist: Entrenched "World Views", the International (Legal) Order and IR Theory'

Emmanuel De Groof (European University Institute, Florence and NYU Visiting doctoral researcher), 'Diplomatic coalitions indirectly imposing regime change: any law in this jungle?'

**Agora: International Law and the Human Sciences: Anthropology and Sociology**

U14

Convener: Carlos Esposito (Autónoma University of Madrid)

The last decade has seen anthropologists and sociologists turn their attention to the study of international law and international institutions, mostly in the field of human rights, but increasingly in the areas of international criminal law, international humanitarian law and international investment. The results have been varied, but are sometimes startling and illuminating. Turning international law and international lawyers into objects of sociological and anthropological analysis promises a new lens through which to address some perennial questions about international law: how do global legal norms develop legitimacy? How do they travel between national and international realms? How do international legal institutions socialize global actors and generate structures of social action at the international level? How does the normativity generated by international legal norms in human rights and international criminal law interact with national and local contexts? What forms of social power does it generate, and what kinds of power and knowledge does it marginalize? These are the questions that anthropological and sociological studies of international law can help address. They can also help to better understand the multiple ways in which international law is being transformed in this epoch

of 'Global Law', a development that systematically challenges many of the key distinctions and categories upon which our concept of international law and its identity are premised. This agora will bring together anthropologists and sociologists whose work centres on the study of international law and international institutions and place them in discussion with international lawyers.

**Speakers:**

Jessie Hohmann (Queen Mary University of London), 'The Material Culture of International Law: An Investigation of International Law's Preoccupations through Objects'  
 Alessandra Arcuri (Erasmus School of Law, Erasmus University Rotterdam), 'The Sound of Science and the Codex Alimentarius Commission: Understanding Exclusion, Imaging Inclusion'  
 Emma Nyhan (European University Institute), 'The Globalization of International Law'

**Agora: International Law and the Aesthetic**

U16

Conveners: Sophie Vigneron (University of Kent) and Mary Footer (University of Nottingham)

In contemporary society it is axiomatic that the world of the arts is infinitely international in nature. Yet, the relationship between international law and the various manifestations of art, which range from the visual arts such as painting, sculpture, video, sound and installation art, photography and printmaking, to performing arts such as music, dance and theatre, is rarely explored. The aim of this agora is to examine some aspects of the relationship between international law and the arts from a public and private international law perspective. Topics for the panel may cover any form or representation of the visual arts, including the legal or illicit sale, distribution and exhibition of works of art or other cultural objects. It may further include issues relating to the loan (or bailment) of works of art for exhibition, recovery of lost or stolen or looted art, and intellectual property rights such as copyright and digital rights that may attach to works of art. Similarly, the performing arts may give rise to issues of representation and performance in the public or private international law sphere.

**Speakers:**

Eva Brems (Ghent University) and Hilde Van Gelder (University of Leuven), 'Engaged Visual Art as a Tool for Normative Renewal in International Human Rights: the Case of Ariella Azoulay's Potential History'  
 Raphaël Maurel (Université d'Auvergne, Clermont- Ferrand), 'Les rapports entre musique et droit international: The Dark Side of the Moon'

10:30 – 11:00	Poster Sessions	Lower Ground Floor
10:30 – 11:00	Coffee break	Juridicum Top Floor

(Conveners: Anne van Aaken (University of Sankt Gallen)  
and Jutta Brunnée (University of Toronto))

The notions of stability and change encapsulate important dimensions of what actors value in law, and expect from law. Law is commonly associated with order, predictability, certainty and, hence, stability. But since law operates within society, it must change, even promote change, as social values evolve or new social, economic, technological or environmental challenges and opportunities arise. The theme of stability and change marks out productive terrain for exchange between international law and international relations (IR) scholars because it invites engagement with many of the persistent doubts and assumptions about international law, in particular as it relates to international politics. Many observers, especially international lawyers, assume (or hope) that international law can be stabilized through emphasis on formal sources, codification in treaties, constructs like *jus cogens*, or projects like constitutionalization. And yet, since it rarely operates as hierarchical imposition of authority, many observers, including both lawyers and IR scholars, also perceive international law as unstable, fragile or fluid. The underlying assumption often is that it is contingent on dominant values, interests, and power; international law is stable so long as those forces are stable, and it will change as they do. This forum will primarily focus on questions concerning stability and change in international law itself, bearing in mind their implications for inquiries into law's role in promoting stability or change in international society. For example, does international law have inherent stability and, if so, what accounts for that stability? Are legal norms more or less open to change than other norms in international society? What are the salient differences between customary and treaty law in this context? What are the devices through which stability is provided or change promoted in international law? The forum will address these questions from different methodological and theoretical standpoints, including constructivist and rational-choice approaches in IR. The goal is to not only to illuminate the theme of 'stability and change' but also to illustrate differences and complements, as well as strengths and weaknesses of the respective approaches.

**Speakers:**

Larry Helfer (Duke University), 'Custom in the Age of Soft Law'

Georg Nolte (Humboldt Universität zu Berlin), 'Treaty Practice – The Work of the ILC'

Stephen Toope (University of British Columbia), 'An Interactional Account of Stability and Change in International Law'

Jeff Dunoff (Temple University Philadelphia), 'Changing Conceptions of Regime Interaction – and of Interdisciplinarity'

**Forum: Investment Law at the Crossroads of Public and Private International Law**

U18

Convener: Christoph Schreuer (University of Vienna)

This panel will address the tension between public and private law aspects in international investment law in the following terms: How meaningful is the classification of public and private in this context? What are the public interests that arise in this context? Who are the appropriate guardians of the public interest (states, international organizations, NGOs)? Who should decide about the protection of public interests (tribunals, host states, home states, arbitration institutions)? What are the methodological consequences of the distinction between public and private matters (one-off dispute settlement on the basis of party submissions v. investment arbitration as governance)?

Speakers:

Georgios Petrochilos (Three Crowns LLP), 'Who are the Appropriate Guardians of the Public Interest (States, International Organizations, NGOs)?'

Andrea Bjorklund (McGill University, Montreal), 'What are the Public Interests that Arise in this Context?'

Diane Desierto (University of Hawaii), 'What are the Methodological Consequences of the Distinction between Public and Private Matters (One-off Dispute Settlement on the Basis of Party Submissions v. Investment Arbitration as Governance)?'

Stephan Schill (Max Planck Institute for Comparative Public Law and International Law, Heidelberg), 'Who Should Decide about the Protection of Public Interests (Tribunals, Host States, Home States, Arbitration Institutions)?'

13:00 – 14:00	Poster Sessions		Lower Ground Floor
13:00 – 14:00	Lunch break		Lower Ground Floor
13:00 – 14:00	International Law Journal Editors' Meeting		SEM 64
14:00 – 15:30	Parallel Agorae	<b>Agora: National Law as a Generator of International Law</b>	U11

Convener: Marko Milanović (University of Nottingham)

National law, both statutory and case-law, can influence international law in many ways. National law may serve as a template for treaties or lead to the development of customary law and, most importantly, national law may evidence general principles of law. Classic examples are the impact of the US Foreign Corrupt Practices Act on the OECD Anti-Bribery Convention or the Truman Proclamation's influence on the customary international law of the continental shelf. A particularly fascinating role is played by domestic courts; their jurisprudence may take on a special law-making role as relevant state practice and, often at the same time, as *opinio iuris evident* in many immunity and

extraterritorial jurisdiction cases. This agora will address the various ways that national law and jurisprudence influence international law. What is the particular role of domestic courts? Does this role depend on national traditions? Is it shaped by transnational judicial dialogue or are courts in different states acting as isolated agents? How have international courts incorporated national law or national law concepts in their reasoning? How do international courts and tribunals 'select' the domestic case law on a particular matter?

Speakers:

Gregory Messenger (The Queen's College, University of Oxford), 'National Law as an Unpredictable Generator of International Law: the Case of Norm Export at the WTO'  
Hege Elisabeth Kjos (University of Amsterdam), 'International Law Through the National Prism: The Role of Domestic Courts in Shaping International Investment Law'  
Cecilia M. Bailliet (PluriCourts, University of Oslo), 'National Case Law as a Generator of International Refugee Law: Rectifying an Imbalance'

### **Agora: Trade & Investment between International Law and EU Law**

U18

Conveners: Hélène Ruiz Fabri (Université de Paris I – Panthéon Sorbonne) and Luis Hinojosa (University of Granada)

Trade and investment are core issues at the crossroads of international and European law. The EU has gradually expanded its trade competences and succeeded into its member states' position in global trade arrangements like the GATT and other WTO agreements. Most recently, the take-over of member state powers in the field of concluding investment treaties with third parties has led to contested new external powers of the EU. Trade and investment issues are meanwhile litigated before a multiplicity of fora, such as the WTO dispute settlement system, regional trade agreements, the Court of Justice of the EU, investment arbitration tribunals as well as national courts. Host states invoke EU law as a defence in investment cases and traders try to rely on international law before regional and national courts. This agora will analyze the frictions and bridges between the global and the regional, between international and European law, in regulating common problems at different levels. It will also focus on the role of international law in the European legal order addressing trade and investment disputes and vice versa.

Speakers:

Anastasios G.ourgourinis (National and Kapodistrian University of Athens), 'The Shared Responsibility of the EU for Member States' Financial Crisis Measures as a Defence in International Investment Claims'

Catharine Titi (Université Paris II – Panthéon-Assas), 'The Forced Co-existence of Trade and Investment Provisions in Preferential Trade and Investment Agreements and the Regulatory Architecture of the Trade and Investment Law Systems'

Ole Kristian Fauchald, Christina Voigt, and Daniel Behn

(PluriCourts, University of Oslo), 'Renewable Energy and International Tribunals: Frictions and Bridges between the Bilateral, Regional, and Global'

### **Agora: International Law and Economics**

U16

Conveners: Joel Trachtman (Tufts Fletcher School) and Anne van Aaken (University of Sankt Gallen)

'Law and economics' has become an established branch of interdisciplinary research. Many fields of the law have been analyzed from a 'law and economics' perspective (assuming rational behaviour and using economic tools) and also from a 'behavioural law and economics' perspective (a joint enterprise between economists and psychologists). However, international law appears to have been analyzed to a lesser extent although it is an especially interesting topic due to the missing centralized enforcement power. It thus appears worthwhile to investigate whether '(behavioural) law and economics' approaches could be applied more widely to core issues of international law ranging from treaty negotiation to treaty compliance, the development of customary law, the design of international institutions, international dispute settlement, and so on. This agora welcomes all contributions on international law using a (behavioural) economics approach, including empirical studies on international law.

#### Speakers:

Katarzyna Śledziewska (University of Warsaw, Faculty of Economic Sciences) and Magdalena Słok-Wódkowska (University of Warsaw, Faculty of Law and Administration), 'European Bilateral Investment Treaties – Is there a Real Added Value?'

Jaime Tijmes (Universidad de La Frontera, Chile), 'Final Offer Arbitration in the World Trade Organization'

Maxi Scherer (Queen Mary University of London) and Tobias Lehman (University of Sankt Gallen), 'The Implications of Third Party Funding on International Arbitration: An Economic Analysis'

### **Agora: International Law and Feminism**

U14

Conveners: Ralph Wilde (University College London)

In the 1990s an intense debate on feminism and international law started to permeate journals and learned societies. Core concepts of international law were critiqued and de-constructed from a feminist perspective. Most recently, the ILA re-established a committee on 'Feminism and International Law' in 2010 focusing on the economic empowerment of women and the possible contribution of international law. Other initiatives, like the journal 'Feminist Legal Studies', continue; others were recently revived, such as the 'IntLawGrrls' blog. Feminist methodological approaches to international law include the detection of silences in the law and the question of how to respond to the many (cultural, linguistic, religious, ethnic, economic) differences among women. Feminist international lawyers have added to the understanding of international law in

various ways, e.g. through a feminist perspective on international criminal law and on women in armed conflicts. These issues will be discussed in this agora, including questions such as: What is the current status of the debate? Is there still momentum in international law and feminism? What are the fields where international law and feminism might best contribute to the development of international law?

Speakers:

Heidi Matthews (Institute for Global Law and Policy, Harvard Law School), 'Redeeming Rape: Berlin 1945 and the Making of Modern International Criminal Law'

Gina Heathcote (SOAS, University of London), 'Fragmented Feminisms: Critical Feminist Thinking in the Post-millennium Era'

Fulvia Staiano (European University Institute, Florence), 'New Subjects of Exclusion: Critical Race Feminism and Immigrant Women in the European Legal Space'

15:30 – 16:00	Poster Sessions	Lower Ground Floor
15:30 – 16:00	Coffee break sponsored by the Max Planck Institute for Comparative Public Law and International Law	Juridicum Top Floor
16:00 – 18:00	Parallel Fora Forum: International Judicial Dialogues: Opportunities and Challenges	U18

Convener: André Nollkaemper (University of Amsterdam)

In the last decade much scholarly attention has been paid to the phenomenon of international judicial dialogues. It has been claimed that international courts do and should refer to judgments of other courts, whether national or international, and take them into account in their own interpretations and decisions. But despite a sizeable number of publications, fundamental questions remain, both of an empirical and a normative nature. To what extent are international courts indeed informed by particular decisions of other courts? More fundamentally, the question is whether and why courts should engage in such dialogues. Is it enable them to arrive at better decisions in individual cases? Or is it helpful and perhaps even necessary in order to secure the coherence of international law? But is that a proper task of international courts? And on what grounds do international courts determine to which other decisions of which courts they refer, and which not? Does the practice of judicial dialogue legitimize judicial decision-making, or do they rather highlight arbitrariness and biases in judicial decision-making?

Speakers:

Photini Pazartzis (Faculty of Law, University of Athens), 'Revisiting the International Judicial Function: The Dynamics of Judicial Dialogues'

Anja Seibert-Fohr (Georg August Universität Göttingen and member of the Human Rights Committee), 'The Human Rights Committee in Dialogue'

Magnus Killander (University of Pretoria), 'Comparative Jurisprudence in Supranational Human Rights Litigation in Africa'

Anton Burkov (University of Cambridge), 'Engaging National Courts into Dialogue with the ECtHR'

### **Forum: International Law and Philosophy: The Legitimacy Deficits of International Law**

U11

Conveners: Geir Ulfstein (University of Oslo) and Andreas Follesdal (University of Oslo)

International law broadens its domains, increases in specificity and bolsters its effectiveness. Such increased impact spurs challenges: with what right does such law and its bodies claim authority, that other actors on international arenas should defer, on issues ranging from human rights and criminal law to investment, trade and the environment? The history of international law is replete with calls and responses to such challenges, from Grotius, Pufendorf, Vattel and Kant onwards. The forum draws on the tradition and recent contributions to explore three clusters of contested normative standards for international law as its impact expands, not least with the recent growth of international courts and tribunals. Such standards and how to institutionalize them have received much but not sufficient attention in recent contributions (Wolfrum and Roben 2008, Besson and Tasioulas 2010). Regarding origins: the normative significance of consent by sovereign states and other bases of legitimacy; Concerning function of international institutions: what sort of accountability – democratic, professional and otherwise – is required whilst compatible with the requisite independence? And concerning effects: how does actual compliance and lack thereof affect the legitimacy of international law?

#### Speakers:

Daniel Bodansky (Arizona State University), 'Disaggregating the Legitimacy Deficits of International Law: Who Does What to Whom?'

Armin von Bogdandy (Max Planck Institute for Comparative Public Law and International Law, Heidelberg), 'On the collaboration of Philosophy and Legal Scholarship in Addressing the Democratic Legitimacy of International Courts'

Mattias Kumm (NYU and Wissenschaftszentrum Berlin), 'State Sovereignty and the Legitimacy Deficit of International Law'

19:30 – 22:00	Conference Dinner at the Main Building	Gala Dinner sponsored by the Austrian Foreign Ministry; ESIL Book Prize Awarded	Great Ceremonial Hall
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09:00 - 12:00	Book Exhibitor's Space	Juridicum Top Floor
09:00 - 10:00	ESIL General Assembly	Juridicum Top Floor

10:00 - 10:30	Coffee break	Juridicum Top Floor
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10:30 - 12:30	Parallel Fora <b>Forum: International Law and Psychology</b> Conveners: Anne van Aaken (University of Sankt Gallen) and Sergio Puig (Stanford Law School)	U11
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Whereas the rational choice approach to international law has been widely accepted in legal scholarship and international relations theory, challenges to the rational choice paradigm in economic analysis of international law by cognitive psychology has hitherto not been systematically explored. Nevertheless, behavioral law and economics/cognitive psychology have been successfully applied to national law constellations. Those insights have furthermore been used by international relations scholarship under the heading of political psychology but here, international norms play no role. This Forum explores the potential and challenges of psychological approaches to international law and thus aims to start filling a research gap currently existing.

**Speakers:**

Susan Franck (Washington and Lee University, Virginia), 'Inside the Arbitral Mind: Experimenting on the Invisible College of International Arbitration'  
Tomer Broude (Hebrew University of Jerusalem), 'Cognitive Biases and International Humanitarian Law'  
John R. Morss (Deakin Law School), 'Crowds, Psychology and International Law: The Demonizing of the Collective'

**Forum: International and EU Law**

U18

Conveners: Allan Rosas (Judge, European Court of Justice) and Luis Hinojosa (University of Granada)

European law has started as 'a new legal order of international law' (Case 26/62 Van Gend). Since then tendencies to emancipate and even isolate EU law from the wider body of international law have been undeniable. This panel will address not only the specifics of EU law. It will also deal with the still unsettled relationship between EU law and international law. Is the EU system 'monist' or 'dualist'? Is EU law akin to national law from an international law perspective or should it be regarded as a treaty-based subset of regional norms? What are the legal implications of treaties concluded by all or some member states for the EU? Is the Union held to respect customary international law? Are there other grounds leading to the international responsibility of the EU? Seemingly theoretical questions can have highly practical implications. Recent EU litigation such as the Kadi saga has provided ample

illustration of this development. The panel on international law and EU law will go beyond Kadi in exploring the relationship.

Speakers:

Piet Eeckhout (University College London), 'EU Constitutional Values, Normative Power Europe, and Openness Towards International Law'

Marise Cremona (European University Institute, Florence), 'EU Law and Treaties between Member States and Third Countries'

Christina Eckes (University of Amsterdam), 'The EU as an International Actor: How much Adaptation is Required?'

12:30 – 13:30	Lecture	INTERNATIONAL LAW AND .... VARIATIONS ON A THEME Vera Gowlland-Debbas (Graduate Institute Geneva)	U10
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13:30 – 14:00	Farewell Address	Laurence Boisson de Chazournes (ESIL President), August Reinisch (ESIL Conference Organizer)	U10
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