ESIL INTEREST GROUP ON INTERNATIONAL ORGANISATIONS

CASE STUDIES ON INTERNATIONAL ORGANISATIONS AND UNIVERSALITY

WORKSHOP AT THE OCCASION OF 2018 ESIL ANNUAL CONFERENCE

MANCHESTER 13 SEPTEMBER 2018

9:00AM – 10:30AM

The ESIL Interest Group on International Organisations – IG-IO will organize a pre-conference event at the occasion of the 2018 ESIL Annual Conference. The event will consist of a workshop on the topic "Case Studies on International Organisations and Universality", when IG-IO members will present and discuss two papers as explained below; as well as of the IG-IO annual meeting, when the Coordinating Committee will provide an update on its work and present the plans for the next year.

JUSTIFICATION

As previously informed, the Coordinating Committee of the IG-IO is organizing a panel on the topic of "International Organisations and the Dream of Universality" at the 2018 European Society of International Law Conference. In response to the call for papers we had put forward in respect to the referred panel, we have received excellent abstracts, which justified the realization of a workshop at the occasion of our pre-conference event to address "Case Studies on International Organisations and Universality". Exclusively on the criterion of excellence, we decided on two abstracts, whose authors kindly accepted to develop into full papers to be discussed at the workshop. The first paper, by Dimitri Van Der Meerssche (European University Institute), will discuss the role of legal interventions in entrenching and safeguarding the autonomy of the World Bank and its operative closure to the outside world. The second paper, by Arnaud Louwette (Université Libre de Bruxelles) will explore the reasons why international organisations, having unquestionably contributed to promoting human rights, apparently see these human rights as a burden unduly imposed on their own action. Each paper will have a discussant – Nicolas Kang-Riou (University of Salford) and David Rossati (University of Salford) kindly accepted to act as discussants. A round of questions and answers will follow the presentations and discussions.

The second part of the event will serve as the IG-IO annual meeting, when the Coordinating Committee will provide an update on its work and discuss plans for the next year.

IMPORTANT DATES & INFORMATION

- Deadline for authors to submit full papers: 1st August 2018. Submission to the IG-IO e-mail.
- Papers will be shared with discussants and members of the IG-IO by: 5 August 2018.
- Workshop: 13 September 2018 from 9:00 to 10:30 (venue to be confirmed).

PROGRAMME

09:00 **WELCOME & INTRODUCTION**

SUFYAN DROUBI

09:10 **FIRST PAPER**

POLICING PARTICULARISM - PERFORMING THE RULE OF LAW IN THE WORLD BANK

BY DIMITRI VAN DEN MEERSSCHE

NICOLAS KANG-RIOU AS DISCUSSANT

09:30 **SECOND PAPER**

EXPLORING INTERNATIONAL ORGANISATIONS' IDIOSYNCRATIC RELUCTANCE TO HUMAN RIGHTS

BY ARNAUD LOUWETTE

DAVID ROSSATI AS DISCUSSANT

09:50 **QUESTIONS & ANSWERS**

10:10 **UPDATE ON THE IG-IO WORK & PLANS FOR THE NEXT YEAR**

RICHARD COLLINS

10:30 **CONCLUSION**

SUFYAN DROUBI

EXTENDED ABSTRACTS

POLICING PARTICULARISM - PERFORMING THE RULE OF LAW IN THE WORLD BANK

DIMITRI VAN DEN MEERSSCHE

The 'move to institutions' in global politics has been celebrated for both its lofty promise to trade politics for rational cooperation (depoliticization) and its potency to transcend the intermediate stage of sovereignty in a historical trajectory towards cosmopolitan order (universality). The World Bank's legal struggle to remain firmly outside the ambit of the UN system and international (human rights) law – the empirical focus of this article – indicates, however, that this dream of universality might always have been more a personal disposition of influential post-War jurists than an institutional or political reality. While a large part of contemporary scholarship focuses on problems of accountability in cases of IOs' operational failure (as the misconduct of UN Peacekeepers), more challenging is the Luhmannian observation that IOs sustain autonomous and self-referential regimes that are both highly political (pursuing internally validated values and ends) and highly particular (affirming their autonomy from the international order through legal, operative and epistemic closure). In light of this altered perspective, a crucial question arises: how does (international) law function in constituting or constraining the praxis of these regimes? Addressing this question, international institutional law (IIL) has amplified its normative ambition: there is now a widely perceived need for reinvigorated legal imaginaries to safeguard constitutional ideals and constrain managerial hegemony in an era of global functional regimes (global constitutionalism, global administrative law or international public law). The concept of law underlying this constitutional turn enacts a vision of

republican restraint: in reaction to new modes of politics, the call for a universal 'rule of law' is renewed. This article explores alternative methodological avenues, aiming both to enrich our understanding of law's performativity within IOs and to provide a sociologically informed critique on the image of the 'rule of law' as antonym to power. I argue that orthodox IIL accounts have been looking for law in the wrong places: in the norm, rather than the legal act. While many doctrinal accounts seek to subdue the authority of IOs to a widening range of universal principles, analyses of how law obtains potency and meaning in their operational and political lives remain largely absent. To grasp what it means for 'law to rule', I argue, we need to expand our archives to the everyday praxis of legality: the actors that embody it; the consciousness that drives it; the spaces that contain it; the modes of politics that rely on it and the fragile institutional balances that grant it traction. In exploring concrete legal performances, this article avoids new dreams of universality, and, contrarily, asks how (international) law is employed by specific actors for specific purposes in concrete social settings. By foregrounding historically-, institutionally- and cognitively situated legal 'actants' (Latour) – *in casu* the World Bank's General Counsel – intractable debates can be traded for an inquiry into the performativity of legal praxis that is descriptively enriching and normatively potent. Employing this pragmatist perspective, this article retraces the role of legal interventions in entrenching and safeguarding the autonomy of the World Bank and its operative closure to the outside world. The argument unfolds in four parts. First, on a theoretical level, I elaborate on the shift from norms to praxis as object of inquiry and sketch the contours of a 'turn to praxis' that opens new archives and seeks to evaluate law's fragility and performativity with more precision. Secondly, drawing on oral archives, three months of participant observation and interviews with former General Counsels Roberto Dañino and Anne-Marie Leroy, the article inquires into both the evolving 'mindset' of the World Bank's supreme legal authority and the institutional ecology that determines the boundaries of 'competent legal praxis' (Kratochwil). This analysis accounts for the remarkable consistency of legal decisions despite the structural legal indeterminacy regarding the legal autonomy of IOs (Brölmann). In the third part, the article dissects four moments where legal expertise was called upon to mediate the tensions between the World Bank and the international legal order: (i) Ibrahim Shihata's assertion of the World Bank's autonomy under international law in rejecting the Group of 77's call to integrate its practice within the universal teleology of the UN system; (ii) Dañino's failed attempt to mainstream universal human rights law into the World Bank; (iii) Leroy's recourse to legal expertise in insulating the World Bank from international law during the negotiation of its 2016 Environmental and Social Framework; and (iv) Leroy's policing of the World Bank's Inspection Panel when the latter reached out to legal norms beyond its institutional boundaries. While this analysis paints a rather grim picture of law's potential to guide 'hegemonic regimes' (Koskenniemi) towards a Kantian 'universal history', the final part explores which narratives for contestation become available when the dream of universality ends. Rather than seeking to (re)integrate IOs into everwidening projections of the public sphere; into the *longue durée* temporality of global order or the cosmopolitan *telos* of humanity, the article reflects on both Klabbers' turn to virtue ethics and Teubner's notion of societal constitutionalism as paths to new forms of political imagination.

EXPLORING INTERNATIONAL ORGANISATIONS' IDIOSYNCRATIC RELUCTANCE TO HUMAN RIGHTS

ARNAUD LOUWETTE

As international organisations have increasingly been tasked with missions traditionally fulfilled by States, the move towards institutions has carried with it hopes of a truly universal international law. Over the past years however, this vision has become increasingly disenchanted as International organisations, once seen a symbol of neutrality and legality, have committed human rights violations in the course of fulfilling their mandates. In practice, though, repeated calls for accountability and respect for human rights have been met with limited success in international organisations. Advocating that human rights had to be tailored to their constitutive instruments, international organisations have tried to adjust human rights to their needs. The Security Council for instance, has consistently argued that the notion of "fair process" had to be adapted in the context of its sanctions and was not necessarily the same as when it was applied to States. Similarly, UNHCR has argued that its refugee status determination procedural standards could be lower than those applicable to equivalent national procedures. The World Bank as well, has constantly maintained that the prohibition of interfering in the political affairs of its member states prevented it from fully integrating human rights in its operational policies. Even the United Nations Mission in Kosovo, arguably the subsidiary organ of an international organisation bearing the most resemblance to a State, has constantly argued that it constituted a *sui generis* institution, and that it was up to itself to define which human rights norms were binding it. Drawing on those examples explored in depth in my doctoral dissertation, this paper suggests that while international organisations have undoubtedly contributed to promoting human rights, as far as their own actions are concerned, they see these human rights as a burden unduly imposed on their action. Arguing that the realization of the function for which they have been created must take precedence over all other considerations, international organisations have tended to present the realization of that function as essential to protecting universal interests. In doing so, they have however contributed to weakening human rights standards. This contribution explores the reasons of that idiosyncratic reluctance to human rights. It argues that two main reasons can be submitted to explain it. On the one hand, the realisation of the primary function of each organisation has become a *doxa* for their respective bureaucracies, the cornerstone of set of deeply embedded sociological preferences, which make these unwilling to integrate human rights in a way that would make them depart from those preferences. On the other hand, States taking part in the governing bodies of international organisations have been increasingly unwilling to see these integrate human rights further, as the costs they would incur from such integration offset the benefits of human rights compliance.

BIOGRAPHIES

Arnaud Louwette is a Lecturer in international law at Université Libre de Bruxelles. He holds a PhD (as of the 1st of February 2018), a Master of Laws in Globalization and Law from University of Maastricht and a Master of Laws from University of Liège. His research focuses on the law of international organisations, including interactions between the normative framework of international organisations and human rights law, the law of immunities, critical legal theory and constructivist approaches to norm emergence within international organisations. Arnaud's teachings include lectures on international responsibility, seminars

on methodology of international law, introduction to law and coaching of moot court students. Arnaud is a member of ESIL and of the Interest Group on International Organisations.

David Rossati is an international jurist and Lecturer in Law at the Business School, University of Salford. His research and practice stands at the interface between international environmental, economic and institutional law, with a seven year professional experience in international legal research, consulting and advanced training particularly in the field of climate change law and policy. He is a published author in peer-reviewed journals and edited books and he engages actively in policy analysis and advocacy in climate change. He holds a doctoral degree from the University of Edinburgh (December 2015) after defending a PhD thesis on the international law of climate finance. David is a member of ESIL and of the Interest Group on International Organisations.

Dimitri Van Den Meerssche is a PhD researcher at the European University Institute (EUI) under the supervision of Nehal Bhuta. In his dissertation project, to be submitted in the summer of 2018, Dimitri provides a Latourian account of how legality is produced and operates within the World Bank. In the context of this PhD project, he has worked at the World Bank Legal Vice Presidency (Fall 2016) and spent one semester as doctoral researcher at the LSE (Spring 2017). He holds master degrees from NYU (LL.M. in international legal studies), Ghent University (Master of Laws, summa cum laude) and the EUI. He has published on the law of IOs, transnational and constitutional law, the accountability of IFIs, and law and development. He serves as Rapporteur for the OXIO database. Dimitri is a member of ESIL and of the Interest Group on International Organisations.

Nicolas Kang-Riou is Lecturer in Law at the University of Salford. Nicolas joined the Law School in January 2008 from the University of Strasbourg (France) where he started his PhD. In Strasbourg, he has also worked for the International Institute of Human Rights (Institut Cassin) to deliver human rights training sessions. He is one of the editors of *Confronting the Human Rights Act – Contemporary Themes and Perspectives* (Routledge, 2012) which followed on the successful Salford Human Rights Conference in 2010, questioning 10 years of operation of the Human Rights Act 1998. Nicolas is a member of ESIL and of the Interest Group on International Organisations.