



ESIL-ELTE Law School Joint Workshop

Budapest, 16-17 May 2019

Call for Papers

'Attribution, causality and evidentiary rules: Mere technicalities or the heart of the matter? Secondary rules of primary importance'

The European Society of International Law and ELTE Law School will convene a joint workshop on Thursday 16 and Friday 17 May 2019 at ELTE Law School in Budapest.

The aim of this workshop is to discuss the often-overlooked importance of secondary rules of international law. The joint workshop will bring together invited experts and scholars selected through this call for papers.

The keynote address will be delivered by Eyal Benvenisti, Whewell Professor of International Law, University of Cambridge and the conference will be closed with the endnote address by André Nollkaemper, Professor of International Law, University of Amsterdam.

The organizers aim to include the papers discussed at the workshop in an edited volume and plan to submit a book proposal to ESIL's book series with Oxford University Press. The workshop will serve to discuss draft contributions with experts from academia and practice, thereby helping speakers to finalize their papers.

1. Research topic: Secondary Rules of Primary Importance

Secondary rules of international law, such as attribution tests, causality concepts, evidentiary rules, the burden of proof, standard of proof, and the standard of review have somewhat been treated as stepchildren in scholarly literature and have seen fragmented application in international adjudication. Yet the systemic nature of international law entails that coherent and consistent application of such norms is a key element in reinforcing the legitimacy of decisions of international courts and tribunals. Accelerated development of international law and inter-state litigation, coupled with the fragmented nature of the adjudicatory terrain calls for theoretical scrutiny and systemic analysis of developments in the judicial practice of secondary rules. The workshop will identify and discuss these technical norms that have primary importance for shaping international adjudication.



This call for papers invites contributions reflecting on any of the following topics:

a) Attribution

Attribution standards play a decisive role in various fields ranging from state responsibility, shared responsibility, use of force, human rights, international humanitarian law to investment protection. Contributions may discuss, among others, one or more of the following questions:

- Is attribution only a concept of the law in state responsibility or in other fields of IL as well?
- Are attribution tests properly distinguished among various fields of IL? Are these tests interchangeable?
- Does international adjudication pay enough attention to the concept of attribution?
- How should attribution be distinguished from other related concepts?
- What are the theoretical justifications and practical implications of diverging or converging standards?

b) Causality

It has long been recognized that causal requirements are not necessarily the same in relation to every breach but may vary in different fields of international law. However, international adjudication often handles causal concepts and tests in an opaque and sometimes inconsistent manner. This raises doubts as to the coherence of causality in international law. Contributions may discuss, among others, one or more of the following questions:

- Is causality in international law a strictly normative concept, which is supposed to be applied consistently, or is it a more flexible tool in the hands of adjudicators reflecting certain policy choices?
- Is there a fragmentation of causal standards in international litigation? If so, what are the theoretical justifications and the practical implications thereof?
- What causal tests are at work in international law? Is there a trend towards a more consistent application of causal tests across international adjudicatory fora?

c) Evidentiary rules

Evidentiary rules, such as those regarding the burden and standard of proof, are normally regarded as technical rules of procedure, but they have a central role in shaping prospects for success of substantive claims. Therefore, the theoretical well-foundedness of these rules as well as their convergence or divergence merit closer examination. Contributions may discuss, among others, one or more of the following questions:

- What are the current trends of setting the standard of proof in international adjudication?
- Based on what justifications can the burden of proof be reversed?
- Is there convergence or divergence between the practices of international adjudicatory bodies?
- Can different standards accommodate the challenges of contemporary adjudication which has become increasingly specialized (e.g. WTO dispute resolution, environmental disputes, human rights litigation, international criminal law, etc.)?



d) Standard of review

The standard of review stands for the extent to which international adjudicators are willing to scrutinize the factual claims of sovereign parties. The degree of deference afforded to States varies over time and across international courts and tribunals. The intensity of judicial scrutiny may range from total deference to States and to conducting a de novo review. With the proliferation of international adjudicatory bodies, the variation in the application of such standards merits further investigation and theoretical justification. Contributions may discuss, among others, one or more of the following questions:

- What are the contemporary trends regarding the standard of review?
- Can deferential reviews be adequately justified by the specificities of adjudicating claims of sovereign States?
- Are deferential standards in fact a judicial tool for avoiding highly technical or sensitive issues?
- Is a unified standard of deference across different jurisdictions or fields of IL warranted? Or is the fragmentation of such standards justifiable on theoretical or pragmatic grounds?

2. Deadlines

Applicants are requested to submit a CV and a **500-word abstract** relating to one of the above four topics by **2 December 2018** to the following email address: esil.elte.workshop@gmail.com. Selected speakers will be notified by **21 December 2018**. Selected speakers should send their draft papers to the above email address by **1 May 2019** and the final papers are to be submitted by **1 August 2019** so that the editing process of the conference volume can be started.

3. Logistical information

All those who take part in the workshop are expected to be ESIL members at the time of their participation.

Selected speakers are expected to cover their costs of travel and accommodation. However, some ESIL travel grants will be available to offer partial financial support to speakers who are ESIL members and have exhausted other potential sources of funding. Further information on financial support will be sent to speakers in due course.

The conference dinner will be hosted by ELTE Law School and lunches and coffee breaks will also be provided to participants.

In case of any further questions, please do not hesitate to contact the Organizing Committee at the following email address: esil.elte.workshop@gmail.com.

The Organizing Committee is composed of the following members:

On behalf of ESIL:

Başak Çali, Hertie School of Governance
Marko Milanovic, University of Nottingham

On behalf of ELTE Law School:

Gábor Kajtár, ELTE Law School
Katalin Sulyok, ELTE Law School
Pál Sonnevend, ELTE Law School