



National and Kapodistrian
University of Athens



15th ESIL CONFERENCE @ ATHENS 2019

12-14 September 2019

Sovereignty: A Concept in a State of Flux? | Souveraineté: Un concept en mouvement?

CALL FOR PAPERS

The 15th Annual Conference of the European Society of International Law will be held in Athens on Thursday 12 September until Saturday 14 September 2019.

In addition to the plenary sessions and fora featuring invited speakers, the programme includes a number of agorae. Agora speakers will be selected on the basis of abstracts submitted in response to this call for papers. The purpose of the agorae is to share cutting-edge research in specific areas of international law and to stimulate debate. Papers presented may focus on any branch of international law and related fields discussed in the agora. Papers should present innovative ideas, be unpublished at the moment of presentation, and be at an advanced stage of completion. The general conference theme and the themes of the agorae are described below.

The working languages of the conference are English and French. Since no translation will be provided, participants should have passive understanding of both languages and active understanding of at least one of them.

The Theme of the Conference

State sovereignty, both one of the fundamental principles as well as an underpinning of public international law, faces numerous challenges that call into question its basic contours. In recent years we have witnessed an increasing number of territorial disputes in many corners of the world, including disputes over territorial and maritime boundaries: several are subject to third-party adjudication; others have sought resolution through secession and annexation, methods that have generated further discussion on recognition of States and issues pertaining to State succession. Failed States and States fragilized as a result of civil strife or protracted unrest also raise questions of recognition, immunity or succession. Of particular concern and therefore interest is the territorial impact of military action by (thus far) non-State actors, such as the DAESH/ISIS or insurgents, including minority ethnic groups.

However, as already apparent from the examples above, it is not only the territory of the State that is challenged in traditional or less traditional forms. The fundamental tenets of statehood, namely population and independence, also appear to be in a state of flux: territories are vanishing due to climate change; independence is heavily questioned in today's globalized economic world. The Member States of the European Union have surrendered significant aspects of their economic sovereignty, including their budget-deciding powers to the international organization; and some of them have contracted out decision-making powers to international and European financial institutions and organs. Of particular interest is the matrix of bilateral and multilateral agreements, creating a veritable cornucopia of judicial or arbitral fora, to which the States entrust the resolution of investment and trade disputes, thus further challenging the traditional image of the sovereign State as the master of its own fate. Moreover, the so-called "backlash against globalization" may appear as a sequel to the recent sovereignty debate, affecting not only the United States but also Europe and other parts of the world.

The time is ripe to revisit sovereignty, a concept so broad and yet instrumental to the current structure of the international legal order. The aim of the Conference is to encourage a vigorous and fruitful exchange of ideas that will appeal to academics, researchers, students, and practitioners.

In keeping with ESIL tradition, the Conference will feature keynote speakers, a closing discussion round table, and six fora, exploring the normative, theoretical and practical aspects of sovereignty. In this vein, distinguished and leading scholars will decipher the primordial code of the Montevideo criteria of statehood, shed light on the various aspects of contestation of statehood, attempt to paint the picture of modern, diluted but yet effective, sovereignty of States in financial matters, examine whether the judicialization of international dispute resolution is today threatened by new and/or traditional sovereignty conceptions, address the conceptual problems posed by cyberspace, and discuss current events and future challenges that relate to State sovereignty.

In addition, twelve agorae will examine particular facets of sovereignty. The themes of the agorae are outlined below, followed by instructions for the submission of paper proposals and the submission of panel proposals by ESIL Interest Groups. Please note that panel proposals submitted by individuals will not be considered.

Agora I. Beyond Sovereignty: ABNJ and the Law of the Sea

Negotiations for a new implementing agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (ABNJ) are currently underway. States, and indeed all other interested users of the sea, need to evaluate how the regulatory powers of States operate beyond borders in the governance of ABNJ and how to strike a balance between sustainable oceans and economic growth, especially in view of Sustainable Development Goal 14 as well as between existing institutions and the need for a comprehensive management scheme for oceans.

Possible questions to be discussed in this agora include, but are not limited to:

- How would the new agreement ‘not undermine the existing relevant legal instruments and frameworks and relevant global, regional and sectorial bodies’? Will this jeopardise the efficiency of the new instrument?
- How should the discovery of commercially valuable genetic and biochemical resources, referred to as marine genetic resources (MGR), be regulated under the new agreement? Is there a ‘third way’ to approach the issue rather than through the lens of high seas freedom or common heritage of mankind?
- Will the increasing use of the Area Based Management Tools (ABMT), including Marine Protected Areas (MPAs), erode the *mare liberum* and what concerns does the new instrument have to take into account?

Agora II. Exercising Sovereignty: Managing Migratory Flows

In many respects, the movement of people is, if not predictable, then at least foreseeable as a very likely consequence of demographic pressure, turmoil, civil strife and long-standing conflicts. To all of today’s challenges, we must add the challenge of mobility itself in a globalized world that is prone to steadily increase as profound inequalities still persist. The sovereign State has indeed reacted, with ‘securitisation’ being at the forefront of its policy. The predilection of European States and institutions for reactive measures has manifested itself in a shift of the traditional sovereignty paradigm: while the system of awarding international protection to refugees and migrants is founded on the premise of a physical border, at the gates of which an individual may request international protection, the receiving States are currently seeking means and ways to extend the notion of boundary, keeping both the migratory flows and the legal determination on the status of asylum seekers further away from their territory – an exercise of sovereignty beyond territory. On the other hand, the sovereign State is facing the serious challenge of the integration of the thousands of beneficiaries of international protection within its borders. At the same time, calls for a more equitable, fair and just system of allocation of burdens in managing the migratory flows are becoming more and more pressing.

Issues arising within this theme may include, but are not limited to, the following questions:

- What does international law have to say about these extraterritorial immigration control practices? Are non-entrée policies the most prudent approach?
- What remedies exist for violations of international refugee and human rights law in an extraterritorial setting? Is the current system adequate to afford the necessary protection?
- What gaps could be identified in the management of migratory flows in the post-refugee crisis Europe? Is the integration of refugees on the right track?
- How much solidarity do Europe and its Member States display? What alternatives to the Dublin system are there?

Agora III. Expanding Sovereignty: Extraterritoriality as a Tool

For a long time, extraterritoriality was conceived mainly through the territorial scope of application of human rights treaties. States increasingly seek to move beyond borders their sovereign functions and powers, including control over persons, for example, for migration control purposes; or jurisdiction over areas beyond national jurisdiction (outer space, high seas, seabed); or indeed obligations pertaining to environmental protection. Extraterritoriality thus becomes a tool in the hands of the sovereign State to expand its powers –and, at the same time, a very challenging concept for international law.

Questions arising within this agora may include, but are not limited to:

- Is extraterritoriality a contemporary and real challenge to the traditional paradigm of State sovereignty or an inherent feature in the change and progress of international law?
- What is the ambit of this extraterritorial reach of States and what limits does or should international law pose?
- How does extraterritoriality operate within different areas of international law, e.g. human rights law, the governance of global commons, like the high seas, or the protection of general interests, such as the environment?

Agora IV. Apportioning Sovereignty: Delimitation as a Sovereignty Exercise

Delimiting State boundaries has always been one of the most significant sovereignty exercises, and this has been a contentious issue, particularly as regards the extended zones of maritime jurisdiction—the continental shelf and the exclusive economic zone (EEZ). The question of the outer limit of such zones has also become increasingly important as the interests of the international community as a whole have begun to be defined through the submissions made to the Commission on the Limits of the Continental Shelf. In the air the allocation between national airspace and international airspace was effectively facilitated through the systematic and efficient work of the International Civil Aviation Organization (ICAO) since the 1950s. However, there are still many questions, including those about Air Defence Identification Zones (ADIZ), whose acceptance in international and air law is highly problematic.

Possible topics of discussion for this agora include, but are not limited to:

- Does one size fit all? Is the law applicable to the delimitation of territorial seas identical to that governing the delimitation of the continental shelf/EEZ or even the outer continental shelf? Is the three-stage approach, coined by the ICJ in the *Black Sea* case, the definitive test?
- What obligations, if any, do States have with respect to resources in overlapping claims pending final delimitation?
- How is effectivity playing out in territorial disputes?
- How does international law react to creeping jurisdictional claims over airspace, which heavily affect the administration of the airspace over the high seas according to the legal regimes established by ICAO?

Agora V. Questing Sovereignty: The Role of Non-State Actors

References to non-State actors nowadays routinely include multinational corporations, armed rebel groups, NGOs, private sustainability initiatives, to name a few. Non-State actors find themselves in a position to exercise power, which States have bestowed upon them, or which they have wrestled from States. Consequently, international practice has turned to the creation of mechanisms/processes through which such non-State actors may be held responsible/accountable. The essence of that debate may be encapsulated in the status and role of the corporation in international law. In parallel to the operation of the UN Global Compact and the on-going road-testing of the UN Guiding Principles on Businesses and Human Rights, States have been trying to conclude an international treaty on the question of multinational corporations and human rights. In sum, non-State actors invite the adoption of multiform regulatory strategies but also prompt reflection on the role of international law in this context.

Against this background, potential topics of discussion for this agora include, but not limited to:

- Does international law recognize the personality of non-State actors, and if so, to what extent and on the basis of which criteria? What would the consequences be?
- The impact of non-State actors' emergence on the international plane on the concept of sovereignty. Do non-State actors have the capacity to exercise (quasi) sovereign power, and how does this affect international law?
- How does the emergence of non-State actors challenge our understanding of key concepts of international law, such as territory, responsibility and consent?
- Is public international law the optimal regulatory tool in order to guarantee the accountability of non-State actors for human rights abuses and environmental degradation? Or is the turn to soft law justified?

Agora VI: Extending Sovereignty: Space Activities and New Frontiers

The domination of the State in space matters has taken place in a no-sovereignty context. The fundamental principle of the freedom of exploration and use of the outer space, enshrined in Article I (2) of the Outer Space Treaty (OST), is necessarily completed by the principle of non-appropriation, provided in Article II OST, according to which 'outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means'. However, in recent years, the rise of a real private sector 'invasion' in space-based activities, characterized as 'NewSpace' activities, has already led some States to rethink the issue of sovereignty in outer space, including a possible review of its fundamental principles.

Questions arising within this theme may include, but are not limited to:

- What is the legal significance of recent unilateral legislative acts that granted property rights on resources collected in outer space? Are these acts compliant with international space law? Do these initiatives entail a reconfiguration of the relationship between State sovereignty and private property?
- How should space resources be exploited and distributed? Could space law draw examples from other fields of international law, such as the law of the sea, in order to fill the gaps in the existing legal framework?
- Under which regulatory regime – national or international – should the exploitation of celestial bodies take place?

Agora VII: Enforcing Sovereignty: The Rapidly Expanding International Tax Law

Taxation is perhaps the core manifestation of sovereignty since it provides the State with the necessary financial resources to discharge its sovereign functions. However, we are currently witnessing a shift from bilateralism to a multilateral approach, through the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS), a novel treaty-making exercise, which purports to amend tax treaties already in force between its parties in implementation of the results from the OECD/G20 BEPS project.

Issues arising within this theme may include, but are not limited to:

- Has international tax law indeed emerged as a distinct international regime? Does it display novel actors and/or processes? How does it relate to general international law and other specialized regimes, such as international trade and investment?
- Have principles enunciated in international tax treaties, such as the prohibition of discrimination against non-residents, the “arm’s length standard”, double taxation avoidance, and so on, attained customary status?
- How does the Convention to Implement Tax Treaty Related Measures to Prevent BEPS interact with existing tax treaties? What are the risks and the dangers?
- Added to tax arbitrage and the resolution of international tax disputes in the context of other international regimes, are we witnessing a shift to multilateralization of international tax regulation?

Agora VIII: Defending Sovereignty: Protectionism in International Trade and Investment

The ‘backlash against globalization’ has resulted in new discourses about protectionism in international trade and investment. In that context, the role international law plays is to strike a balance between legitimate national interests and compliance with international undertakings regarding free trade and investment liberalization. Inevitably, this balancing act necessitates the identification of the limits and scope of legal and legitimate protectionist policies regarding international trade and investment, in effect recalibrating the exercise of State sovereignty in these areas.

Questions arising within this theme may include, but are not limited to:

- What are the challenges posed to the international legal order by the adoption of protectionist policies? Is international trade and investment law adequately equipped to accommodate legitimate national interests? What are the limits that international law imposes on the scope of protectionist policies?
- Do new conceptions of sovereignty also necessitate new understandings of protectionism in international trade and investment?
- How should protectionist policies be reviewed by international judicial bodies? What is the standard of review the latter employ to this end? What should the standard of review be?

Agora IX: Attacking Sovereignty: Security, Terrorism and the Use of Force

The challenge of terrorism suffered by contemporary societies has generated a response involving the use of force – and a wider debate on the means and ways such force may be employed outside the traditional State-centred context but in defence of State security concerns. Is this a trend in international law or a temporary aberration - or even a derogation from the full application of human rights norms?

In this light, possible topics of discussion for this agora include, but are not limited to:

- To what extent has the extraterritorial use of force for counter-terrorism purposes been normalized after 9/11? How has the expanding institutionalization and bureaucratization of these practices affected the relevant international legal framework?
- How has the exercise of State power against terrorist threats impacted upon the relations between the State and the individual?
- Is there a human right to security developing in international law?

Agora X: Circumventing Sovereignty: The Challenges of Environmental Regulation

Environmental concerns are notoriously difficult to tackle, not only in real life but also in terms of international regulation. Simmering on the backburner in the era of climate change, international environmental obligations still present formidable challenges to the present system of international law. Environmental law rules seem to emerge as customary rules out of soft law principles, in fact bypassing the express consent of States. State responsibility for breaches of environmental obligations is circumvented by non-compliance arrangements, largely dependent upon the will of the State concerned. On the other hand, the idea that each State may set its own goals unilaterally, even in a conventional context, and be evaluated on them would indicate the outer limits of sovereign action while still operating within the constraints of the international community. Adding to the mix the current increase in environmental litigation, the tug-of-war between unfettered sovereign action, best exemplified in the concept of permanent sovereignty over natural resources, and common global concerns appears inescapable. Is that the way to the future?

Questions arising within this theme may include, but are not limited to:

- What are the promises and the perils of the Paris Agreement? What are the lessons learned from its application so far?
- Does the Global Pact for the Environment provide the coveted level of environmental regulation? Could it be seen as the all-encompassing international environmental law instrument?
- Should a human rights approach to environmental protection be approached as the optimum way forward? How has recent environmental litigation, especially before the Inter-American Court of Human Rights, reshuffled the relationship between the sovereign space and the protection of collective environmental interests?

Instructions for Submission

Submission of Paper Proposals

The Selection Committee will review the abstracts submitted for each agora. Joint submissions are possible but, if selected, only one person will be eligible for a reduced registration fee at the conference. Only one abstract per author will be considered. Each abstract must be submitted to only one agora.

The selection criteria are: originality and innovativeness of the work; relevance to the agora theme; geographical and gender balance.

Abstracts (in Word and PDF format, not exceeding 800 words) must be submitted by e-mail to: esilathens2019@law.uoa.gr. (Important: indicate in the subject line the agora for which the abstract is to be considered e.g. Athens 2019: submission for agora VII).

Please include the following information with each abstract:

- The agora for which the paper should be considered (Note: one agora only)
- The author's name and affiliation
- The author's CV, including a list of relevant publications
- A small biography (100 words) should be included in the abstract itself
- The author's contact details, including email address and phone number
- Whether the author is a current ESIL member
- Whether the abstract should be considered for the ESIL Young Scholar Prize (see below); if so, give the relevant information (about eligibility and ESIL membership)

Submission of Panel Proposals by ESIL Interest Groups

As in previous annual conferences, two agorae will be reserved for ESIL Interest Groups, which are invited to submit panel proposals. Panel proposals are thus only eligible if they originate from an ESIL Interest Group.

Agora proposals from ESIL Interest Groups must include all the required information about individual papers that are to be part of the panel, as detailed in the Call for Papers. In addition, the following information is required:

- The name of the ESIL Interest Group submitting the proposal
- The contact details of the person(s) submitting the proposal, including email address and phone number
- The title of the proposed panel, and a description of the overall theme of the panel and the insights expected from the discussion
- The format of the agora: panel, roundtable, or other format (please note: all agorae are scheduled for 1.5 hours and there can be a maximum of 4 participants – e.g. one chair and 3 speakers)
- A full set of abstracts of the individual papers that are to be part of the panel

Proposals must be submitted by e-mail to: esilathens2019@law.uoa.gr

Full papers

Selected authors should submit a first draft of their paper (min. 3,000 words) prior to the conference. The paper will be shared with other agora speakers with a view to creating interactions during the conference. The quality of the drafts will be screened by the Programme Committee, which may request amendments.

Timeline

The deadline for submission of abstracts and Interest Group panel proposals is **31 January 2019**

Successful applicants will be informed no later than **31 March 2019**

The deadline for submission of full papers is **1 July 2019**

The conference begins on Thursday **12 September** and ends on Saturday **14 September 2019**

The deadline for submission of final papers (to be included in the ESIL SSRN series and/or a future conference publication) is **1 November 2019**

Finances

All selected agora speakers must register for the conference and, if ESIL members, will be eligible for a reduced conference registration fee. ESIL does not cover expenses for travel and accommodation.

ESIL awards travel grants to ESIL members to encourage and facilitate attendance at ESIL events. These grants are awarded under two different schemes: the Early Career Scheme and the Developing/ Emerging Economies Scheme. Whilst travel grants are normally awarded to applicants presenting a paper, limited support may also be available to non-presenting participants. Application details will be available in early 2019.

Publication

After the conference, ESIL provides the opportunity to publish papers in the ESIL SSRN Series and also plans to publish selected high-quality papers in a volume of the ESIL Book Series (published by OUP). Further details about how to submit papers for publication will be provided to all speakers immediately after the conference.

ESIL Young Scholar Prize

ESIL will award the Young Scholar Prize (YSP) again in Athens. Further details about the Prize can be found on the [ESIL website](#). The YSP will be awarded for the best paper submitted to the conference or to a pre-conference Interest Group event by a scholar at an early stage in their career.

Early-career scholars are (i) candidates for a postgraduate degree in law; (ii) PhD candidates or those who have had their oral defence no longer than 3 years prior to the submission of an abstract; or (iii) those who are within the first 5 years of their career following the award of their last academic degree and who can provide evidence of their contribution to legal scholarship through academic publication.

Candidates for the Prize have to be ESIL members at the time of submitting their abstract. Co-authored articles will only be considered for the prize if all authors fulfil the eligibility criteria. To be considered, please provide the following information when submitting the abstract:

- An expression of interest in competing for the ESIL Young Scholar Prize
- Details of academic background, which indicate how the eligibility criteria are met e.g. date of PhD defence, etc.
- Date of joining ESIL

Upon acceptance of the abstract for presentation at the conference and notification that they are eligible for the YSP, authors must submit a paper of between 8,000 and 12,000 words (including footnotes) to the ESIL Secretariat (esil.secretariat@eui.eu) by 1 July 2019 for consideration by the YSP jury.