

CHANGES IN INTERNATIONAL LAWMAKING: ACTORS, PROCESSES, IMPACT

16th ESIL Annual Conference

Stockholm University

10-12 September 2020

Call for Papers and Panel Proposals

The 16th Annual Conference of the European Society of International Law will be held in Stockholm from Thursday 10 September until Saturday 12 September 2020, preceded by workshops of the ESIL Interest Groups on Wednesday 9 September.

In keeping with ESIL tradition, the Conference will feature keynote speakers, a closing round table, and eight fora, exploring the general and theoretical aspects of lawmaking, namely: the deformalisation of international law; lawmaking by non-state actors; the changing local implementation of international law; international lawmaking from below; legitimacy and rationality in international lawmaking; how to study how international law works; and technology and changes in lawmaking.

In addition, twelve agorae will examine particular facets of lawmaking. The themes of the ten pre-determined agorae are outlined below, followed by instructions for the submission of paper proposals and the submission of panel proposals by ESIL Interest Groups for the two open panels. Please note that panel proposals submitted by individual members of ESIL Interest Groups will not be considered.

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 Papers should present innovative ideas, be unpublished at the moment of presentation, and be at an advanced stage of completion.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. Please note that the bullet points with questions are only indicative. Please also note that the headings of the panels are drafted for the purpose of the call for papers and may be changed after the selection of papers.

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.

Theme of the Conference

The conference will examine changes in international lawmaking and how these changes are impacted by and impact on national and private norms and processes, that is, how they eventually affect the daily lives of people.

In the ideal-type 'Westphalian system', international lawmaking took place primarily through international agreements that were initiated, negotiated and concluded by foreign services and then submitted to national legislators for legislative approval and other forms of domestication. International lawmaking, and its national implementation, was relatively easy to comprehend, overlook and control.

Today, even the sheer quantity and detail of new norms emerging from the traditional sources of treaties and international custom make any overview difficult. On top of that, international lawmaking also includes new mechanisms and new actors. A considerable number of international rules are initiated or developed in working bodies of IGOs, in inter-agency networks, by NGOs, corporations or other private entities, or through 'transgovernmental networks'. Many of these processes do not involve states, and when state consent is required, it is generally diluted.

Further, the domestic impact of international rules is a heterogeneous and diffuse process. Constitutional requirements for legislative approval do not explicitly take into account the diversification and informalisation of international lawmaking. Traditional methods, such as incorporation and/or transformation, are complemented by a plethora of mechanisms: actions by domestic agencies; informal incorporation into agency policies of international standards, IGO guidelines or private norms; joint standard-setting between private and public bodies; strategic litigation in domestic or international courts or bodies, etc.

In fact, much of what is going on beyond the national realm may not be adequately labelled 'international law' at all, as it is not covered by the traditional sources of international law, just as well as much normative regulation within states may not be legal in the traditional sense. For sure, one may refuse to call such norms 'law', but their impact is nevertheless real, and they may arguably be studied with a legal scholar's tools. While lawmaking has always been a more pluralistic affair than the Westphalian model suggests, the changes are real and force international scholars to reassess their object of study.

These questions lead to broader discussions about how these changes affect the distribution of power and resources globally and within states. They also suggest questions about how we might understand and theorise the global world of norms, about the identity of our discipline and about how we teach it.

The purpose of the conference is to assess these changes in various areas of international law and to examine their effects on international and national regulation, administration and policy, on the structure of international law as well as on our outlook on our field of study.

Agora 1: The Order of the Oceans and Changes in Lawmaking

The UN Convention on the Law of the Sea (UNCLOS) has been characterised as a ‘constitution’, addressing all issues relating to the governance of the oceans. Now after more than a quarter of a century in force, and given current challenges in the law of the sea, the question is whether it can still serve its purposes as a useful framework, or if it is an obstacle to progress.

- Is there a need for new or different approaches to lawmaking in ocean affairs? What would such an approach be; and how would it relate to the oft-acclaimed ‘unified’ character of the UNCLOS and the vital importance of preserving its integrity? What are the risks associated with ‘unpacking’ parts of the ‘package deal’ of the UNCLOS?
- What are the prospects for innovative interpretations of UNCLOS? Are there any limits to further developments of the law through the adoption of new ‘implementing agreements’?
- What role does jurisprudence (ITLOS, ICJ, arbitral tribunals) play in the development of the law of the sea?

Agora 2: Sustainable Development and Changes in Lawmaking

The concept of sustainable development has been central to the development of international law on environment-related matters since the early 1990. This broad concept has become even broader, now essentially covering most social aspects of human life, the natural environment and the use of natural resources. This is evident in Agenda 2030 and the United Nations Sustainable Development Goals (SDGs). Nevertheless, although sustainable development also includes economic and social matters (including human rights), the environmental dimension has always been key, and the scientific basis for policy- and lawmaking has given increased attention to climate change and biodiversity.

- How do the concept of sustainable development and the adoption of the SDGs affect international lawmaking? What is the current normative force of the concept of sustainable development?
- Does Agenda 2030 indicate not only a political ambition but also a possible shift in international law and international lawmaking? Can it be seen as a step towards more integration of diverse areas of international law and politics?
- Is the concept of sustainable development changing, so as to give more emphasis on environmental aspects vis-à-vis the social and economic dimensions? Will climate change, in light of the impending climate disaster, be an increasingly dominating concern in lawmaking?
- Should the regulation of numerous aspects of daily life addressed by Agenda 2030 and the concept of sustainable development be dealt with in one or a limited number of fora, or should it be mainstreamed into all fora of international law and relations?
- To what extent can the legal developments for sustainable development be driven by private initiatives or public-private partnership, including eco-auditing, eco-labelling and eco-certification schemes?

Agora 3: International Security and Changes in Lawmaking

Under the law of the UN Charter, security is to be collective, the unilateral use of force is prohibited and if it nevertheless occurs, international humanitarian law (IHL) alleviates suffering. This traditional regime persists (though under challenge), but the concepts of armed attack, armed conflict and threat against international security have been reinterpreted to create more room for states to act against threats like terrorism. Further, a range of issues have been 'securitised' to enable extraordinary measures – military or not -- to be used in the name of security. This has created an interwoven set of norms by states and other actors in fields like migration, electronic surveillance and space exploration. But there have also been processes (by the ICRC and others) to humanise IHL, and there are long-term trends to import human rights and also environmental concerns into the law of armed conflict.

- What are the normative effects of the UN Security Council's engagement in various non-traditional security issues, like climate change?
- What is the role of various non-state actors (IGOs, the ICRC, NGOs, academics) in the making and development of IHL? Are states trying to take back control, for instance through law of war manuals?
- What role do security concerns play in lawmaking outside the military field? Are dichotomies like military/civilian and war/peace upheld?
- Has human security become a law-generating concept, or are such concerns still phrased in terms like human rights?

Agora 4: The Rights of Individuals and Changes in Lawmaking

Human rights (HR) could impact virtually all other regimes, and that potentially affects lawmaking far beyond the human rights field. But there has also been push-back, grounded in a sense that the development has gone too far, as well as criticism for the failure of the human rights regime to effectively address inequality and poverty.

- Is the human rights 'acquis' asking too much? Are prescriptions by the ECtHR and other human rights bodies leaving too little room for national legislatures?
- What are the limits of the HR concept? Will soft law projects to create (or develop) human rights to peace or to a clean environment ever become hard law?
- Are HR still marching forward to the tune of soft law? What is the role of non-binding declarations of the UNGA or the UN Human Rights Council (HRC)? What about the plethora of non-binding expert statements by HR treaty bodies or by HRC experts and working groups?
- How are human rights affected by featuring prominently in broad processes on other issue areas, like the SDGs or the Global Compact for Safe, Orderly and Regular Migration?
- Are human rights still global? Do courts reward 'well-governed' states with a wider margin of appreciation? Are regional organisations, from the Council of Europe to the Shanghai Cooperation Organisation, making law under the assumption that they are codifying global or regional conceptions of rights?
- Are states prepared to regulate business and human rights, or will this remain a subject of non-state regulation? And if a Business and Human Rights Treaty is adopted, how would that affect non-state norm-making?

Agora 5: The Global Economy and Changes in Lawmaking

The regulation of the global economy is a very heterogeneous affair. For trade, WTO provides a well-developed but stymied framework; international investments are regulated in more than 3000 bilateral investment treaties; and the multilateral regulation of private financial streams is made through soft law (albeit under some supervision of the G20's Financial Stability Board) whereas public financing is managed in various forms, including through the international financial institutions (IFIs; the World Bank and the IMF).

- Bilateral, regional and 'mega-regional' trade agreements tend to cover issue-areas beyond trade, like investments, labour, intellectual property law and environment. Will this serve to provide coherence to international economic law and/or will it fragment the global economic order geographically?
- Is lawmaking in international economic law trending towards multilateralisation or bilateralisation? Is lawmaking the result of balance of power or of common goals and values? What about the ability of poor countries to affect international economic law?
- Will economic law-making, judicial as well as legislative, take increasing account of human rights, the environment and other non-economic concerns; and how will that be achieved?
- Will political considerations play an increasing role in the regulation of the economy, like in the US secondary sanctions regarding Iran or in the relations with Chinese tech companies, or has economic law always been political?

Agora 6: Trans-/international Crimes and Changes in Lawmaking

At least since the 1990s, there has been a clear distinction between core international crimes and other treaty crimes ('transnational crimes', including terrorist crimes and transnational organised crime). International crimes are subjected to universal jurisdiction and global courts, while transnational crimes are still only subjected to national prosecution, under an 'indirect' international regime, in which the international community has introduced treaty obligations for states to adopt certain legislation and measures at the domestic level and in their interaction with other states. At the same time, it is clear that on the ground, transnational and international crimes often occur in the same context and not infrequently by the same actors.

- Are there differences between the ways that these crimes are domesticated by statutory law? Are states more willing to domesticate the general criminal law principles of international criminal law (modes of participation, defences, etc) than those that may pertain to transnational crimes?
- Are there differences in how case law from international and foreign domestic jurisdictions, as well as decisions by international organisations and other international norms, influence domestic law?
- Are there any signs that the two fields may be converging? The Special Court for Sierra Leone and the Special Court in Kosovo have jurisdiction over some common crimes, and lately there have been calls to find an international jurisdiction for ISIS terrorists. Would such convergence be created, by integration regarding the substance and/or by expansion of the jurisdiction of international and hybrid courts?

Agora 7: Cyberspace and Changes in Lawmaking

Activities in cyberspace concern issues of national and human security, personal integrity, economic power, etc. While the Internet is a true public interest, the Internet and other features of cyberspace is regulated largely by private actors (owners of infrastructure, internet service providers as well as platforms like Facebook). Since a little more than a decade, states are to a certain extent taking back control, in particular as far as security issues are concerned, but apart from the Budapest Convention on Cybercrime, there is little global law-making. Instead, norm-making is done by single states or by groups of states, from the 'Five Eyes' to the Shanghai Cooperation Organisation or the EU. However, security is also a shared concern between governments and private actors, and Microsoft has even proposed a 'Digital Geneva Convention' to cover cyberspace.

- Will it be possible, or desirable, for global organisations like the UN and the International Telecommunication Union to multilateralise cyber governance?
- Is securitisation a driver or an impediment to global lawmaking in cyberspace?
- How should we think of norm-making by monopolistic or oligarchic private actors in cyberspace (like the Tech 'Big Five' – Apple, Facebook, Google, Microsoft, Amazon)? And what about the technical regulation by non-state or hybrid actors like ICANN for domain names or SWIFT for money transfer?
- In lieu of international conventions focused on cyber space, what are the effects of informal international or quasi-international codifications and normative enterprises like the Tallinn Manual, the UN Groups of Governmental Experts and the Global Commission on the Stability of Cyberspace?

Agora 8: International Institutions and Changes in Lawmaking

Many intergovernmental organisations (IGOs) have considerable secondary, delegated law-making capacity, and the same applies to meetings/conferences of parties. It is also now widely recognised that acts by IGOs can constitute subsequent practice in the terms of the law of treaties, as well as elements of the formation of customary international law. It is further well-known that IGOs create norms through soft-law declarations and other informal arrangements, and that such norms are sometimes incorporated into binding legal instruments. IGOs may also interact with non-state actors in such activities. Further, judicial and quasi-judicial bodies attached to international organisations play a large role in the clarification, development and perhaps also the creation of law. At the same time, the division of competences between international institutions may be said to contribute to the fragmentation of international law.

- What role do IGOs and their secretariats play in 'defragmentation' or 'regime contestation'? Is the Codex alimentarius, a joint WHO/FAO instrument, incorporated into the WTO's SPS agreement, an exemplary case?
- Can one expect each institution to consider issues and interests beyond its core mission/jurisdiction, or should one strive for unification beyond the issue-specific international organisations, tribunals and oversight bodies? Does the UN, with the UN Charter as a global constitution, have a primary responsibility to ensure consistency and proper balancing?
- Are international courts and tribunals integrating their case laws, and if so, on which terms: those of the stronger party or as deliberation among equals?
- Are international institutions as influential now in lawmaking as ten years ago, or has global multilateral lawmaking given way to other forms of norm-creation, against the backdrop of increasing north-south tensions and growing unilateralist assertiveness of super powers?
- Can delegated lawmaking (or law-clarification) be perceived as a short-cut to avoid parliamentary scrutiny?

Agora 9: National Parliaments and Changes in Lawmaking

The role of parliaments has both decreased and increased. Since more norms are made at the international level, the executives are today involved in lawmaking that previously often belonged to the prerogative of parliaments. However, the role of parliaments may also have increased; their loyal involvement is needed to domesticate the results of international cooperation, and this may require their involvement also at the negotiation stage. International law research has started to pay more attention to the role of domestic parliaments in international normative developments, with a focus on domestic constitutional rules on legislative approval.

- Will legislators play a more active and direct role in international lawmaking (e.g. the recent coordinated initiative of MPs in several states to ask for an UN Parliamentary Assembly, efforts by the Council of Europe or the Commonwealth Small States Office or UN human rights organs to increase the interaction with domestic MPs)?
- Is it reasonable to argue that we should strive to enhance the ability of domestic parliaments to influence international norms, or would that make international cooperation more difficult?
- Do parliaments have the capacity to oversee the creation and implementation of informal norms, including norms created in transgovernmental networks?

Agora 10: Subnational International Lawmaking

Global issues, such as migration and climate change, require local action, and sometimes local governments are not satisfied with the efforts of their central governments. Cities, municipalities, regions and other local actors increasingly consider themselves to have to apply international law, irrespective of whether the state is committed or not (eg, California's pledges to comply with the Paris Agreement, Barcelona's and Paris's call for asylum, Swedish municipalities' decisions to follow human rights conventions). In addition, the UN Human Rights Committee has stated that compliance with human rights should permeate the entire state apparatus, and the UN's climate work places increasing emphasis on the local and regional levels. Subnational entities also want to play a role in the making of law or have international relations, independent of those of states. The Global Parliament of Mayors, formed in 2015, 'promotes collective city decision-making across national borders'. Provinces and cities engage in 'paradiplomacy' sometimes to fulfil functional needs, sometimes to mark a degree of autonomy, such as Quebec or Catalonia.

- To what extent is international lawmaking directly relevant to local actors? On what legal basis are international rules localised (implemented locally)?
- Can subnational actors enter into international agreements?
- Can subnational actors contribute to the development of international customary law through expressions of state practice and / or of *opinio juris*? Under what conditions?
- Is there a potential conflict between governments' interest in avoiding undesirable legal entanglements by local actors and the interest in local self-determination?

Agorae 11 and 12 to be selected from proposals by ESIL Interest Groups

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; and geographical and gender balance.

Abstracts (in Word and PDF format, not exceeding 800 words) must be submitted according to technical instructions that will be posted on the conference [website](#) in due course. The following information shall be included:

- The agora for which the paper should be considered (Note: one agora only)
- The author's name and affiliation
- A small biography (100 words) should be included in the abstract itself
- The author's CV, including a list of relevant publications. (Maximum 800 words)
- 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 must be submitted according to technical instructions that will be posted on the conference [website](#) in due course. The proposal shall 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.

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 2020**.

Successful applicants will be informed no later than **31 March 2020**.

The deadline for submission of full papers is **1 July 2020**.

The conference begins on **Thursday 10 September** and ends on **Saturday 12 September 2020**.

The deadline for submission of final papers (for publication) is **1 November 2020**.

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](#) and [carers' grants](#) to ESIL members to encourage and facilitate attendance at ESIL events. Application details can be found on the ESIL website.

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 Stockholm. 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 workshop by a scholar at an early stage in her or his 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 or in a pre-conference IG workshop 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](#) by 1 July 2020 for consideration by the YSP jury.

Contact

For further information, please write to the Conference email: esil2020@juridicum.su.se