

**EUROPEAN SOCIETY OF INTERNATIONAL LAW
(ESIL) RESEARCH FORUM ON:**

**SOLIDARITY. THE QUEST FOR FOUNDING
UTOPIAS OF INTERNATIONAL LAW**

23-24 April 2020

**CALL FOR PAPERS
FOR THE ESIL INTEREST GROUP EVENT ON
INTERNATIONAL ENVIRONMENTAL LAW**

***SOLIDARITY IN THE
CONTEXT OF NATURAL
RESOURCES MANAGEMENT***

23 April 2020

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ESIL Interest Group on International Environmental Law

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***IG ON INTERNATIONAL
ENVIRONMENTAL LAW***



TRACK I (SOLIDARITY IN THE CONTEXT OF NATURAL RESOURCES MANAGEMENT)

The resolution 1803 (XVII) on the "Permanent Sovereignty over Natural Resources" (PSNR), adopted by the UN General Assembly in 1962, was understood as a means of increasing the economic and technological advancement of developing states. The right to control and dispose of their own natural resources claimed by peoples under colonial rule and newly independent developing states in the era of decolonisation lies at the heart of the PSNR. However, it is worth mentioning that PSNR is not absolute and the resolution itself significantly limits its application. In particular, in cases where an authorization was granted, the capital imported and the earnings on that capital shall be governed by inter alia by international law; the profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient state; and most importantly, nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest and an appropriate compensation shall be paid.

In addition, PSNR is limited by parallel international obligations of states. Especially international obligations arising from international economic law (for instance the WTO) or international environmental law (for instance UN Framework Convention on Climate Change or the Convention on Biological Diversity) significantly limit states in exercising their sovereignty over natural resources. For instance, once a state joins the WTO it is obliged to exercise its right to regulate trade and export of natural resources according to WTO rules (Panel Report/Appellate Body Report, China – Measures Related to the Exportation of Various Raw Materials). In other words, the fulfilment of sovereignty over natural resources is subject to the WTO rights and obligations. One may claim that the net of trade-related international obligations undertaken by states undermines PSNR and implies a shift toward a global energy market making natural resources available to those who need them based on an implicit solidarity. By the same token, the Principle 21 of the Declaration of the United Nations Conference on the Human Environment implies a sense of solidarity, since states are required to ensure that the exploitation of natural resources within their jurisdiction do not cause damage to the environment of other states. To conclude, an increased global cooperation and an ever-growing number of international obligations gave rise to a need to reconceptualize our traditional understanding of PSNR.

Efforts to eliminate the widening gap between the developed and the developing countries in 70s formulated in the Declaration on the Establishment of a New International Economic Order and the Programme of Action

on the Establishment of a New International Economic Order did not have huge impact on PSNR. However, developing countries favouring a broad obligation to share the tangible benefits derived from exploration in the areas beyond national jurisdiction, succeeded in establishing legal regimes built on international cooperation, sharing of benefits and solidarity (UNCLOS, Moon Agreement). One may claim that keeping two parallel legal regimes governing exploitation of natural resources within and beyond national jurisdiction, based on completely opposite understandings of solidarity is not sustainable in the long term.

In 2015, all United Nations member states adopted The 2030 Agenda for Sustainable Development, a shared blueprint for peace and prosperity for people and the planet. SDG 7 "Affordable and clean energy" is focused on universal access to energy. Acknowledging that there are approximately 3 billion people who lack access to clean-cooking solutions and slightly less than 1 billion people are functioning without electricity, SDG 7 aims to ensure universal access to affordable, reliable and modern energy services by 2030. A global effort to ensure universal access to energy implies an unprecedented notion of solidarity in relation to energy as well as natural resources being for decades shielded by PSNR.

The IG on International Environmental Law invites contributions addressing the notion of solidarity in the context of natural resources management, contributions seeking to reconceptualize PSNR in the context of globalization and trade/environmental related international obligations, as well as contributions addressing SDG 7 goal to ensure universal access to affordable, reliable and modern energy services by 2030.

TRACK II (ENERGY SOLIDARITY IN THE CONTEXT OF THE EUROPEAN UNION)

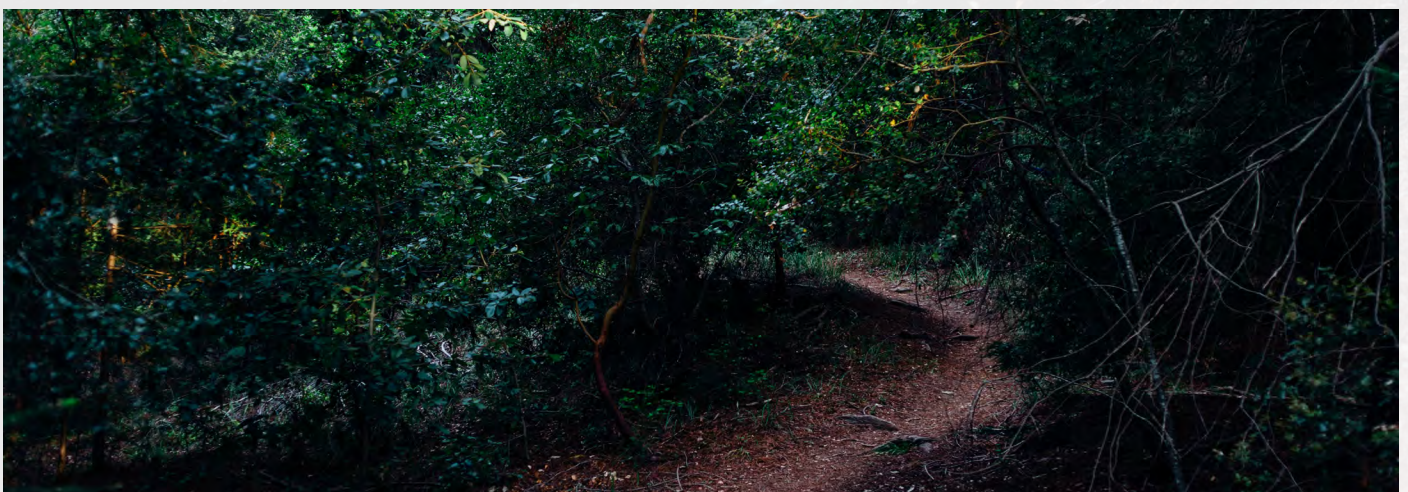
The concept of solidarity is one of the fundamental values on which the EU is founded (Article 2 of the TEU). It is referred to in various provisions of the EU treaties, particularly in Art. 222 of the TFEU (The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster) and Art. 194 of the TFEU (energy solidarity). Article 194 reads: "In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States". Until recently, no attention has been given to the interpretation of the energy solidarity clause. In 2019, the General Court of the European Union in case T-883/16 Poland v Commission (OPAL Decision) annulled the

European Commission's decision approving the modification of the exemption regime for the operation of the OPAL gas pipeline. In its decision, the court for the first time elaborated on a principle of energy solidarity enshrined in Article 194(1) of the TFEU. According to the court, the principle of energy solidarity requires EU member states and EU organs, in all their energy market decisions with a potential cross-border impact, to take into account not only their own interests but also those of other member states and also those of the European Union as a whole. There is no doubt that the interpretation of the principle of energy solidarity will have a significant impact on the development of EU energy law over the next decade.

The IG on International Environmental Law invites contributions addressing the concept of the energy solidarity established by the Lisbon Treaty, the OPAL decision as well as the potential implications of the OPAL for the Energy Union.

AREAS OF INTEREST

- *ENERGY SOLIDARITY IN THE CONTEXT OF THE UN 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT*
- *ENERGY SOLIDARITY IN THE CONTEXT OF THE EUROPEAN UNION AND ITS ENERGY AND CLIMATE POLICY*
- *SUSTAINABLE ENERGY FOR ALL*
- *THE OPAL DECISION*
- *ENERGY SOLIDARITY AT THE INTERNATIONAL LEVEL*
- *THE SHARING OF TRANSBOUNDARY NATURAL RESOURCES*
- *LEGAL REGIMES GOVERNING UTILIZATION OF NATURAL RESOURCES BEYOND NATIONAL JURISDICTIONS*
- *THE CONCEPT OF SOLIDARITY IN THE CONTEXT OF THE UNCLOS AND DEEP-SEA MINING*
- *THE CONCEPT OF SOLIDARITY IN THE CONTEXT OF THE MOON AGREEMENT*
- *PSNR IN THE CONTEXT OF INTERNATIONAL TRADE LAW*
- *PSNR IN THE CONTEXT OF INTERNATIONAL ENVIRONMENTAL LAW*



ELIGIBILITY

All **Members of the ESIL** Interest Group on International Environmental Law, the members of other ESIL IGs and also the **non-ESIL members** (ESIL membership will be required if the abstract is selected) are **invited** to submit abstracts.



ORGANIZING COMMITTEE

Paolo Davide Farah (West Virginia University, USA & gLAWcal - Global Law Initiatives for Sustainable Development, UK) - Convener ESIL Interest Group on International Environmental Law

Martin Svec (Masaryk University, Czech Republic & gLAWcal - Global Law Initiatives for Sustainable Development, UK)

APPLICATIONS

The following must be submitted to paolo.farah@glawcal.org.uk by **14 February 2020**:

- The author's **name** and **affiliation**;
- A 500-700-word **abstract** [Word file and PDF];
- The author's **CV**, including a list of relevant publications;
- The author's **contact details**, including email address and phone number;
- Whether the author is an **ESIL member**

Multiple abstracts from the same authors will be considered, but only one can be selected. Co-authored **multi-disciplinary** papers are also welcomed. The Organizers are unable to provide funding for any cost related to the participation to the conference.



PUBLICATION OPPORTUNITIES

The organizers have **publication plans** for the presented papers. The precise format of publication will be discussed during the IG event.