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International Law and Justice



A joint ESIL-SCILJ event

Covid-19 and international law: science and disinformation, exceptions and emergencies

While the 16th ESIL Conference in Stockholm has been postponed until 2021, the traditional “current events” discussion will be held online on **10 September 2020 at 15-17.00 (CEST)**, as a joint event between ESIL and the Stockholm Center for International Law and Justice (SCILJ).

Links will be sent to all who have **registered by sending an email to scilj@juridicum.su.se** (please write “Covid-19 and IL” in the subject line).

The event will include two panels:

Covid-19 and International Law: Science, Tech, Trolls and the Role of Information

During the Covid-19 crisis, we have all relied on scientific information, individuals as well as decision-makers. Yet, science has been uncertain: there have been contending theories and hypotheses; knowledge has developed over the course of the pandemic; and, all the while, there have been misunderstandings, rumours and deliberate misinformation. The WHO has been a global provider of advice and information on the pandemic, however provisional, but governments have made their own decisions, based on the WHO’s advice, on advice from other sources, or based on their whims.

In order to make their decisions work, governments need knowledge not only from medicine but also from the social sciences. Information technology (IT) has been used to trace contagion, to monitor compliance, and to provide social information about movements on which authorities can base their decisions.

While governments take decisions, it is ultimately up to each individual to comply with compulsory measures as well as to act voluntarily on advice and information. In the face of this mysterious virus, people have been turning to social media to try to stay informed, to share potentially useful information and, more insidiously, to spread rumours and lies.

Questions that will be addressed on this panel will include:

- What has been the role of science in political and administrative decision-making? How have choices between different hypotheses been made and which science has not been used?
- How has IT been used to provide information about individual and social behaviour to authorities and governments? How does that impact on privacy rights?
- How have governments countered misinformation and suppressed information, and what role has international law played in that?
- What is the responsibility – legal or otherwise – of social media platforms in removing and preventing misinformation?

Panelists

- Gloria González Fuster (Vrije Universiteit Brussels)
- Marko Milanovic (Nottingham)
- Jiří Přibáň (Cardiff)
- Philippa Webb (moderator; King's College, London)

Covid-19 and International Law: Emergencies, Exceptions and Regime Contestation

Governments around the world have been invoking all sorts of exceptions to regular domestic and international regimes, be they with respect to freedom of movement, international trade and investment agreements, or agreements on air transport or border controls. The WHO's International Health Regulations (IHR) aim to "prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade" (Article 2; emphasis added) and to have the regulations implemented "with full respect for the dignity, human rights and fundamental freedoms of persons" (Article 3). Hence, while the IHR impose hard and soft obligations on states to fight diseases (including through WHO recommendations), the regulations were clearly intended to take other rules of international law into account.

Nevertheless, it is inevitable that measures taken for the purpose of controlling pandemics -- under the IHR or otherwise -- may be in prima facie conflict with other legal norms. What is more, some of these measures may go beyond what the WHO

and the IHR will hold to be required. This holds true for trade law, investment law, human rights law and other regimes, multilateral and bilateral.

Questions to be covered in this panel include:

- How have such potential prima facie conflicts between health concerns and these other regimes been managed? As “regime contestation” or through mutual accommodation via established exceptions in the various agreements?
- Have such conflicts been conceptualised as “regular exceptions” (such as those handled routinely by human rights bodies, WTO panels and others) or as “emergency exceptions” (like derogations) or necessity (Article 25 of the Articles on State Responsibility)? In other words, have they been thought of as being already covered by the telos of the respective instruments, or as new, extraordinary events?
- Are such exceptions, whether “regular” or “exceptional”, subject to review by a competent international body? If so, will that body be able to consider all aspects of the issue? What will be the place of scientific knowledge in such review processes?

Panelists

Anne van Aaken (moderator; University of Hamburg)

Gian Luca Burci (Geneva Academy)

Jürgen Kurtz (European University Institute)

Federica Paddeu (Cambridge)

The event is prepared by a committee consisting of Anne van Aaken (Hamburg), Gleider Hernández (KU Leuven), Philippa Webb (King’s College) and Pål Wrange (Stockholm), assisted by Mark Klamberg (Stockholm) and Jarna Petman (Stockholm).