

# In/Ex-clusiveness of International Law

17<sup>th</sup> Annual Conference of the European Society of International Law

31 August – 3 September 2022

## PRE-CONFERENCE WORKSHOPS

### Wednesday 31 August 2022

All the pre-conference workshops will take place at Janskerkhof 3 in Utrecht. For the latest information regarding pre-conference workshops, please check: <https://esilutrecht2022.sites.uu.nl/the-conference/programme/pre-conference-workshops/>.

08.30 Walk in with coffee and tea

08.30-17.00 *Registration*

09.00-13.00 *Parallel Interest Group Sessions*

Interest Group	Format & Location
International Economic Law – Part 1/2	Hybrid, Room 109
Peace and Security	Hybrid, Room 110
International Law and Technology – Part 1/2	Hybrid, Room 115

09.30 Coffee Break during the Interest Group Sessions

13.00 Lunch Break

14.00-18.00 *Parallel Interest Group Sessions*

Interest Group	Format & Location
International Economic Law – Part 1/2	Hybrid, Room 109
Migration and Refugee Law	Hybrid, Room 017
International Environmental Law – Part 1/2	Hybrid, Room 022

>>

next page



>> International Economic Law – Part 2/2	Hybrid, Room 109
History of International Law – Part 1/2	Hybrid, Room 110
International Courts and Tribunals	Hybrid, Room 111
International Law and Technology – Part 2/2	Hybrid, Room 115
Law of the Sea	Hybrid, Room 116
International Criminal Justice	Hybrid, Room 117

### 15.30 Coffee Break and drinks during the Interest Group Sessions

## Thursday 1 September 2022

### 08.30 Walk in with coffee and tea

### 09.00-12.00 *Parallel Interest Group Sessions*

Interest Group	Format & Location
International Law of Culture	Hybrid, Room 017
International Environmental Law – Part 2/2	Hybrid, Room 022
International Organizations	Hybrid, Room 109
History of International Law – Part 2/2	Hybrid, Room 110
Social Sciences and International Law	Hybrid, Room 111
International Business and Human Rights	Hybrid, Room 115
European and International Rule of Law	On-site, Room 117
International Bio Law	Hybrid, Room 118

### 10.00 Coffee Break during the Interest Group Sessions

### 12.00 Lunch Break



# ANNUAL CONFERENCE

The annual conference will take place at TivoliVredenburg, except for the Thursday evening reception at University Hall (Academiegebouw): see: <https://esilutrecht2022.sites.uu.nl/venues/>. For the latest information, please check: <https://esilutrecht2022.sites.uu.nl/the-conference/programme/>.

12.00-18.00 **Registration**

13.00-13.45 **Welcome addresses and presentation of the theme by the local organisers**

Location **Ronda**

- **H. Kummeling**, Rector Magnificus of Utrecht University
- **I. Giesen**, Head of Utrecht Law School
- **L. Lijnzaad**, Judge at the International Tribunal for the Law of the Sea/ Maastricht University
- **S. Trevisanut**, (Utrecht University), *local organizer*

13.45-15.00 **Inaugural Panel - How Exclusive is International Law? The State of Affairs**

Location **Ronda**

Chair **C. Ryngaert** (Utrecht University)

- **E.T. Achiume** (UCLA)
- **J. Nijman** (University of Amsterdam/Asser Institute)
- **J.M. Thouvenin** (The Hague Academy of International Law)

15.00-15.30 **Coffee Break sponsored by Max Planck Institute Heidelberg**

15.30-16.45 **Parallel sessions**

**FORUM 1 Methodologies for the Identification and Assessment of In/ex-clusiveness**

Location **Ronda**

Dictionaries define the term 'inclusive' as 'not excluding any of the parties or groups involved in something'. Accordingly, inclusive international law includes all relevant parties in its processes of law-making, law-enforcement, and dispute-settlement. How should we identify these relevant parties, and how should their appropriate level of involvement in international law be assessed?

Chair **M. Shahabuddin** (University of Birmingham)



*Speakers:*

- **E. Hey** (Erasmus University) *Engaging with other disciplines in legal analysis*
- **G. Baars** (City, University of London) *Cruising International Law's Cruel Optimism: The 'dark past', the fake apology, reparations and the abolitionist movement*

## **FORUM 2** *In/ex-clusiveness in the Construction of the History of International Law*

Location **Pandora**

There is a resurgence of academic interest in the history of international law. There is clearly a desire to better understand the origins of the discipline. However, attention tends to focus on the European roots of international law. How can the construction of the history of international law be made more inclusive?

*Chair* **A. Peters** (Max Planck Institute, Heidelberg)

*Speakers:*

- **I. de la Rasilla** (University of Wuhan) *A Very Short History of Women in International Law*
- **H. de Waele** (University of Nijmegen) *Black holes and revelations. How in/exclusion shapes international law history discourse*
- **L. Obregon** (Universidad de los Andes) *Teaching and Writing International Legal History: A Test of the Discipline's In/ex-clusiveness*

## 17.00-18.15 *Parallel sessions*

### **AGORA 1** *In/ex-clusiveness in Personality and Actors in International Law*

Location **Ronda**

NGOs, non-state armed groups, multinational corporations, professional associations, certification and insurance companies, etc. have increasingly gained agency in international decision-making processes and in the enforcement of international law, at the international and domestic levels. Should international legal personality be more inclusive? Are there alternative approaches to personality and subjectivity?

*Chair* **N. Tzouvala** (Australian National University)

*Speakers:*

- **D. Hughes** (Canadian Forces College/University of Toronto) & **Y. Shereshevsky** (University of Haifa): *State-Academic Lawmaking*



- **G. Lythgoe** (University of Manchester): *Territory as International Law's Shibboleth or: The International Lawyer's Guide to Eradicating the Exceptional 'Sui Generis' Entity*
- **M. Shinde** (University of Cologne): *The Ecocidal Corporation as Subject to and as a Subject of International Criminal Law*

## **AGORA 2 *In/ex-clusiveness in the Interpretation of International Law***

*Location* Pandora

The dichotomy between a formalistic versus non-formalistic approach to the application and interpretation of international law still permeates international practice and scholarship. This agora engages with this dichotomy and/or considers possible 'third' approaches to interpretation.

*Chair* **F. Zarbiyev** (Graduate Institute of Geneva)

*Speakers:*

- **B. Etkin** (Université Paris II Panthéon-Assas): *In/Excluding Pragmatics: Interpretative Formalism and Its Discontents*
- **B. Pegorari** (University of New South Wales): *'Exclusionary Inclusiveness': A Critique of the Inter-American Court of Human Rights' Interpretative Approach to Indigenous Peoples' Rights*
- **V. Tzevelekos** (University of Liverpool) & **K. Istrefi** (Utrecht University): *In/Ex-clusiveness in the Interpretation of the ECHR for the Purposes of the Establishment of Common European Human Rights Standards through European Consensus*

## **AGORA 3 *Interest Group on International Law and Culture – In/ex-clusiveness of Diversity in International Law***

*Location* Pandora Foyer

This Agora reflects on the dual work of diversity in international law, and queries whether our current legal frameworks that embrace, promote, and even enforce diversity can be fully inclusionary, or if instead the exclusion of some is the inevitable price to be paid for access to rights. In reflecting on this double-movement, the panel offers pathways to reimagining what international law can be for not only those who are most vulnerable, but also for the diversity we as humanity select in narrating our own stories, successes, and failures.

*Chair* **A. Jakubowski** (University of Opole)



*Speakers:*

- **A. Alves** (University of New South Wales)
- **Y. Donders** (University of Amsterdam/Commissioner at the Netherlands Human Rights Institute)
- **E. Polymenopoulou** (Hamad Bin Khalifa University)

18.30-20.00 *Welcome reception at the University Hall (Academiegebouw) with the participation of Emeritus Prof. A.H.A. Soons (Utrecht University)*

## Friday 2 September 2022

08.30 Walk in with coffee and tea

08.00-09.00 **Breakfast Meeting: ESIL Board meets new members**

*Location* Restaurant Danel

09.00-10.15 **Parallel sessions**

**AGORA 4** *In/ex-clusiveness in International Adjudication*

*Location* **Ronda**

Legal standing in front of international courts and tribunals is still limited for non-state actors. Moreover, international benches tend to lack diversity, in terms of gender, race, national and cultural backgrounds, and class. International adjudication can also emphasise the inequalities between states and, thus, impact actual participation in judicial proceedings. This agora addresses the many facets of international adjudication, and its inclusiveness or lack thereof.

**Chair T. Pasipanodya** (Foley Hoag LLP)

*Speakers:*

- **B. Menezes Queiroz & M. Vicente** (Universidade Católica Portuguesa): *Are Women 'Offside'? Achieving Gender Parity in Sports Dispute Settlement*
- **C. Espaliu Berdud** (Universidad Antonio de Nebrija): *Ex-clusiveness in International Adjudication: The Legitimacy of Permanent Members of the Security Council at the Bench of the International Court of Justice*
- **T. Soave** (Central European University): *Cracks in the Ivory Tower: Exclusivity and Inclusivity in the International Judicial Profession*



## AGORA 5 *In/ex-clusiveness in Right-Holders and Protected Persons*

*Location* Pandora

Who has rights pursuant to international law? Should elements of nature or animal species also have rights? Is a right-based approach to protect individuals or elements of nature always the answer? This agora strives to answer these questions by discussing who/what international law protects and through which legal framing the object/subject of protection should be viewed.

*Chair* **M. Hébié** (University of Leiden)

*Speakers:*

- **M. Barletta** (University of Rome): *The Benefits and Drawbacks of a Wider Inclusion of Protected Subjects under International Law*
- **A.R. Harrington** (Lancaster University): *Future Generations as Rightsholders Advances and Uncertainties*
- **E. Jones** (University of Essex): *The Rights of Nature in International Law: Transforming the Meaning of Rights*

## AGORA 6 *Interest Group on The EU as a Global Actor – EU Exceptionalism and the In/ex-clusiveness of International Law*

*Location* Pandora Foyer

This agora panel has a two-fold aim. First, taking an outside view on the EU's exceptionalism with its both inclusionary and exclusionary tendencies, it explores how international law responds to this ambiguity and accommodates the EU as a global normative actor in its framework. Second, and more broadly, this panel also aims to bring together two academic disciplines that have increasingly drifted apart, namely EU law and international law.

*Chair* **P. Cebulak** (University of Amsterdam)

*Speakers:*

- **Prof Katja Ziegler** (University of Leicester) *EU "Exceptionalism" and the Paradox of Inclusiveness of International Law*
- **Dr Jed Odermatt** (City, University of London) *EU Exceptionalism in International Dispute Settlement*
- **Teresa Cabrita** (University of Amsterdam / KU Leuven) *EU Exceptionalism and the Codification of International Disaster Law*

10.15-10.45 **Coffee Break sponsored by Brill Nijhoff**

**Book launch by Brill Nijhoff**



**AGORA 7** *In/ex-clusiveness in Economic Ideologies and Perspectives*

Location **Pandora**

International law is not economically neutral. Capitalist and neoliberal ideologies have greatly influenced the development of international law, specifically since the end of World War II. Like any ideology, they have buttressed certain interests and protected certain actors. Who/what has been in/excluded from the developments of international law buttressed by the different economic ideologies and perspectives? Which economic ideologies are currently influencing the development of international law, and how?

Chair **M. Salomon** (London School of Economics)

*Speakers:*

- **O. Baillet** (Max Planck Institute Luxembourg): *The European Court of Human Rights and Economics: Does Political Liberalism Entail Economic Liberalism?*
- **H. Eklund** (University of Copenhagen): *Excluding People and Including Resources: Colonialism in the Treaty of Rome*
- **R. Brown** (University of Cambridge): *Neoliberalism in Global Health Law: Past, Present and Future*

**AGORA 8** *In/ex-clusiveness in the Legal Construction of Sustainable Environment*

Location **Ronda**

Sustainable development presupposed interlinkages between the protection of the environment, the protection of human rights, and international economic law. International environmental law has thus been framed as tightly connected to economic development. It remains unclear, however, what a sustainable environment is from a legal perspective and what the legal nature of sustainable development is.

Chair **S. Boysen** (Helmut Schmidt University, Hamburg)

*Speakers:*

- **C. Ceretelli** (University of Padua): *Discussing the Limits of Sustainable Development: Is the Time Ripe for the Inclusion of Indigenous Peoples?*
- **J. Bendel** (University of Copenhagen) & **G. Jokubauskaite** (University of Glasgow): *Sustainable Forests? The Exclusion of Land Rights from International Environmental Law*





- **E. Boshoff** (University of Oslo): *An Emerging Right to Sustainable Development – Where Do We Stand?*

## **AGORA 9 *In/ex-clusiveness in the Legal Construction of Violence and Security***

*Location* Pandora Foyer

International law has dealt with the security of states and the violence perpetrated by states since its very beginning. Many scholars and practitioners have highlighted the weaknesses and limitations of the international legal framework in tackling other forms of violence perpetrated by non-state actors, and threats to their security. How is international law dealing with violence targeting social groups and minorities, with violence perpetrated by non-state actors, and with guaranteeing the security of non-state actors, social groups and minorities?

*Chair* **P. Grzebyk** (University of Warsaw)

*Speakers:*

- **P. Thielbörger** (Hertie School/Ruhr-Universität Bochum): *Including or Excluding Climate Change as a Responsibility of the Security Council?*
- **C. Wittke & E. Bescotti** (Leibniz Institute for East and Southeast European Studies): *International Law's Role in Political Violence and the Destabilization of Unresolved Secessionist Conflicts in the Post-Soviet Space*

**12.00-13.30 Lunch break**

**12.15- 13.15 *Mentoring event (in cooperation with KNVIR)***

*Location* de Punt

**12.45-13.30 Business meeting editors and publishers (closed)**

*Location* Pandora Foyer

**13.30-14.45 *ESIL General Assembly, including elections for new Board members***

*Location* Ronda

**14.45-15.30 *Coffee Break sponsored by Marine Veissiere***

**14.45-15.30 *Meet the Editors and Publishers of International Law Journals!***

(open to all)

*Location* Pandora



15.30-16.45 *Parallel sessions*

**FORUM 3** *In/ex-clusiveness in International Law Making*

Location **Pandora Foyer**

In the traditional understanding of international law, states are the lawmakers, with some limited involvement of international organizations. At the same time, it is acknowledged that various non-state actors, such as corporations, non-governmental organizations, religious groups, and even armed groups, play a role in global governance. Is there a need to open up international law-making processes to these actors? How should such processes be reconceptualized so as to accommodate new actors?

Chair **N. Klein** (University of New South Wales)

*Speakers:*

- **J. Pauwelyn** (Graduate Institute of Geneva) *Taking stakeholder engagement in international lawmaking seriously: Lessons from global health, finance and trade governance*
- **M. Takeuchi** (University of Kobe) *In/Ex-clusiveness in the Governmental Networks' Involvement in the International Law Making: Financial Action ask Force as an Invisible Actor*

**FORUM 4** *In/ex-clusiveness in University Curricula on International Law*

Location **Ronda**

University curricula on international law tend to focus on the practice of a limited number of Western (and often Anglo-Saxon) states, with little attention being paid to potentially original contributions of the non-West. In addition, the dominant frame of studying international law remains positivism. How can the university curriculum be decolonized, and how can space be created for other theoretical approaches to studying international law?

Chair **P. Okawa** (Queen Mary University of London)

*Speakers:*

- **J. Fraser** (Utrecht University) *Context, Power and Positionality: International Law in the Classroom*
- **L. Mälksoo** (University of Tartu) *Teaching History of International Law and Questions of Inclusion/Exclusion*
- **M. Al Attar** (University of Warwick) *The Dialectics of Decolonisation: Between Entrapment and Rupture*



17.00-18.30 *Parallel sessions*

**FORUM 5** *In/ex-clusiveness of International Legal Knowledge*

*Location* Pandora Foyer

Judicial decisions, doctrine, and expert reports all create international legal knowledge. However, a large part of this knowledge appears to be generated by members of an in-crowd. Degrees from top law schools in certain countries, good connections with established knowledge-producers, and an almost impeccable command of academic English and/or French offer a path towards membership. What are the exclusionary practices at play here, and how could this be remedied?

*Chair* C. Schwobel-Patel (Warwick University)

*Speakers:*

- B.S. Chimni (Jindal University)
- A. Rasulov (University of Glasgow)
- K. M. Clarke (University of Toronto) *Thinking Justice and Law Otherwise*

**FORUM 6** *Military Aggression Against Ukraine: International Law's Present, Past, and Future*

*Location* Ronda

The military aggression against Ukraine is at the centre of many legal debates. It is then without much surprise that the last Forum of this conference, usually dedicated to current events, will try to discuss some of them together with legal scholars from the interested countries. Speakers have been invited to address international humanitarian law, human rights and accountability aspects of the ongoing conflict.

*Chair* A. Nollkaemper (University of Amsterdam)

*Speakers:*

- A. Korynevych (Ambassador-at-large, Ministry of Foreign Affairs of Ukraine)
- S. Golubok (legal practitioner, member of the St Petersburg Bar Association)
- G. Yudkivska (former judge at the European Court of Human Rights)

19.00-22.00 *Conference Dinner, with the participation of Prof. P. Sands.*

*Location* Pandora



08.30-09.00 Walk in with coffee and tea

09.00-10.15 *Parallel sessions*

### **AGORA 10** *In/ex-clusiveness of the Legal Construction of the Commons*

*Location* Ronda

Why are the commons common? Who participates in the decision-making processes? Who benefits from their management and exploitation? Who should address and remedy problems? This agora welcomes papers which offer answers to these and related questions on how international law has construed the concept of, and manages, the 'commons.'

*Chair* **L. Kotzé** (North-West University, South Africa)

*Speakers:*

- **G.E. Exarchou** (George Washington University): *Allocation of the Radio Spectrum and Satellite Orbits: Jurisprudential Perspectives*
- **M. Eccleston-Turner** (King's College London): *Pathogen Sequence Information as a Commons in International Law*

### **AGORA 11** *In/ex-clusiveness in the Legal Construction of Borders*

*Location* Pandora Foyer

Borders in international law are stable and objective: delimitation treaties are binding erga omnes and they are not affected by state succession. Their stability, and thus their rigidity, have however jeopardized the respect of fundamental principles, such as the principle of self-determination of people, and they are now debated due to territorial changes and forced migrations caused by climate change.

*Chair* **K.G. Lee** (Seoul National University / International Law Commission)

*Speakers:*

- **M. Saliternik** (Netanya Academic College) & **S. Shlomo Agon** (Bar-Ilan University): *Fluctuating Borders, Borderless Spaces, and International Legal Geography*
- **O. Semenova** (Maastricht University): *Fundamental Change of Circumstances and Maritime Zones and Boundaries*



## **AGORA 12 *In/ex-clusiveness of the Legal Construction of Justice***

*Location* Pandora

Which type(s) of justice is international law enabling/pursuing? Who are the beneficiaries of this justice? Which are the institutions involved in legally guaranteeing justice at the international level? Who controls the guarantor?

*Chair* **I. Venzke** (University of Amsterdam)

*Speakers:*

- **D.M. Amann** (University of Georgia): *Absent at the Creation? Women and International Criminal Justice*
- **P. Wilinski** (Erasmus University): *Is There Room for Distributive Justice under International Investment Law?*
- **A. Ferrara** (Irish Centre for Human Rights): *Evolving Conceptions of Justice and International Law*

**10.30-11.15** *Conversation with the 2022 winners of the ESIL Monograph Prize and the ESIL Collaborative Book Prize.*

*Location* Ronda

**11.15-11.45** Coffee Break

**11.45-12.45** *Closing Roundtable – The Inclusiveness of International law: The Way Forward*

*Location* Ronda

*Chair* **M. Kanetake** (Utrecht University)

*Speakers:*

- **W. Ferchichi** (Université de Carthage)
- **T. Skouteris** (American University in Cairo)
- **N.N. Negm** (African Union)

**12.45-13.30** *Conclusions*

*Location* Ronda

- **Utrecht University** (*organizers*)
- **R.A. Wessel** *Vice-President* (European Society of International Law)
- **S. Maljean-Dubois**, *Presentation of the 18th Annual Conference of ESIL in Aix-en-Provence*

**13.30-14.30** Light Lunch

~ end of conference ~

