



## **ESIL Interest Group on International Criminal Justice Call for Papers**

### **Fairness and Selectivity in International Criminal Justice**

The Interest Group on International Criminal Justice is organizing a Workshop on Fairness and Selectivity in International Criminal Justice. This hybrid workshop will take place online and in-person in Aix-en-Provence on Thursday, 31 August 2023, 9:30- 12:30, immediately prior to the ESIL 2023 Annual Meeting.

#### **Theme of the Workshop**

Discussions about fairness in international criminal justice are often limited to a debate about the fair trial rights of trial participants, with particular emphasis being placed on the importance of the rights of the accused. Restricting the conversation in this way ignores the numerous other aspects of international criminal justice where it is essential that fairness be better understood. One such area in need of greater examination from a fairness perspective involves the selectivity with which international criminal justice is practiced. This includes selectivity in its activation, selectivity in the process, and selectivity in the crimes themselves. From this, two inter-related questions are raised: Does selectivity in international criminal justice demonstrate the existence of systemic and structural biases in the discipline? If so, are those biases of such significance that it is impossible for this area of law to ever actually be fair?

Several recent examples underscore the importance of evaluating the role fairness plays in selectivity in international criminal justice. First, the heightened attention paid to Russia's aggression against Ukraine highlights that states are willing to support international criminal justice mechanisms in some instances, while many other situations remain ignored, neglected, and vulnerable to budget cuts or the influence of powerful actors. Second, since Karim Khan became the ICC Prosecutor, the ICC has been proactive in emphasizing the responsibility of states to enforce their own criminal jurisdiction, promoting a fresh understanding of complementarity. However, this change has sparked worries about inequalities among various situations and participants in legal proceedings. Third, the way resources are allocated to certain situations may create unfairness, as it can appear to prioritize the better funded situations over those receiving less funding. Finally, certain crimes tend to receive the focus of international criminal justice institutions while many other types of criminality have largely been ignored. This has resulted in some behavior being characterized as criminal; i.e. genocide, war crimes, crimes against humanity and aggression, while other acts like colonial domination, economic exploitation and ecocide have not. Limiting the crimes about which international criminal justice is concerned has the tendency to suggest that those activities are particularly grave, a perception that is exacerbated by their characterization in the ICC Statute as 'the most serious crimes of international concern'. Viewing criminality in such a narrow way raises concerns about whether criminal responsibility is being properly apportioned and if it is set up

to effectively stigmatize those individuals most responsible for oppression and domination in the world.

We welcome submissions on the issue of selectivity in international criminal justice. Submissions may reflect on, but are in no way limited to, one or more of topics raised above or the following questions:

- How should fairness influence decisions about situation/case selection at the ICC?
- How should fairness influence decisions about who should be charged with international crimes and/or what crimes they should be charged with?
- To what extent should victims' interests be considered when selecting cases and suspects?
- How do existing political power structures play a role in selectivity decisions made by international criminal justice institutions?
- What can international criminal justice do to break down those structures and make decision-making more fair?
- How would expanding the number of crimes over which international criminal justice institutions have jurisdiction promote fairness?
- How would extending criminal liability to organizations, corporations and/or other entities improve fairness in international criminal justice?
- How can international criminal justice take a broader and more forward looking approach to fairness?

### **Submission of Proposals and Timeline**

Abstracts should be no more than 300 words. The deadline for submissions is **11 April 2023**. Please send your abstract to all members of the interest group at: Caleb Wheeler, (wheelerc11@cardiff.ac.uk); Alexandre Skander Galand (Alexandre.s.galand@hotmail.com); Julia Emtseva (emtseva@mpil.de); and Claudio Pala (palaclaudio@gmail.com).

The following information should be provided with each abstract:

- The author's name and affiliation;
- The author's short biography;
- The author's contact details, including email address.

Submitters will be advised of the outcome of selection procedure by end of April.

Depending on the number and quality of the submissions, the IG convenors may consider turning workshop contributions into a series of blog posts on EJIL:Talk! and/or a Special Issue in an internationally renowned journal.

The Interest Group is unable to provide funding for travel and accommodation. Selected speakers will be expected to bear the costs of their own travel and accommodation. Some [ESIL travel grants](#) and [ESIL carers' grants](#) will be available to offer partial financial support to speakers who have exhausted other potential sources of funding.

Please see the [ESIL website](#) for all relevant information about the conference.

All participants at ESIL Interest Group workshops are required to register for the Annual Conference. There will be an option to register just to attend the IG workshops; however, all participants are warmly invited to attend the entire event.

Selected speakers should indicate their interest in being considered for the ESIL Young Scholar Prize, if they meet the [eligibility conditions](#) as stated on the ESIL website. The [ESIL Secretariat](#) must be informed of all selected speakers who wish to be considered for the Prize before 30 April.