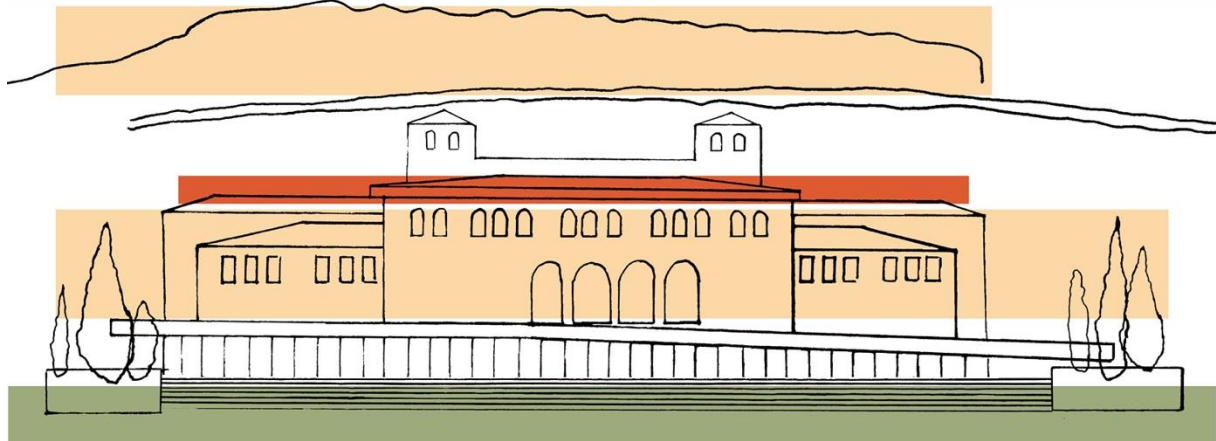


ESIL 2023 - IS INTERNATIONAL LAW FAIR ?  
AIX-EN-PROVENCE  
| 31 August - 2 september 2023 |



## PROVISIONAL PROGRAMME

*Venue: Faculty of Law and Political Sciences  
3 avenue Robert Schuman  
Aix-en-Provence*

### PRE-CONFERENCE WORKSHOPS

#### Wednesday 30 August

12.30 – 16.30: Registration (Reception hall, Pouillon building)

13.00 – 16.00: ESIL Interest Group pre-conference workshops  
*Rooms 0.25, 0.26, 0.27 & 0.28 (Building Portalis)*

16.00 – 19.00: ESIL Interest Group pre-conference workshops  
*Rooms 0.25, 0.26, 0.27 & 0.28 (Building Portalis)*

#### Thursday 31 August

08.30 – 18.30: Registration (Reception hall, Pouillon building)

08.15 – 09.15: Breakfast meeting (IG conveners with ESIL Board)  
*Room: Salle des Actes*

09.30 – 12.30: ESIL Interest Group pre-conference workshops  
*Rooms 0.25, 0.26, 0.27, 0.28, 0.29, 0.30, 0.31, 0.34, 0.35 & 0.36 (Building Portalis)*

12.30 – 14.00: Packed lunch (Reception hall, Pouillon building)

## ANNUAL CONFERENCE

Thursday 31 August

12.00 – 19.00: Registration

14.00 – 14.30: Welcome and introduction

Room Portalis

- **Jean-Baptiste Perrier**, Professor, Dean of the Faculty of Law and Political Sciences
- **Rostane Mehdi**, Professor, Director of Sciences Po Aix
- **Ève Truilhé**, Research Director CNRS and Aix-Marseille University, Director of CERIC
- **Pierre d'Argent**, Professor at UCLouvain (Belgium) & ESIL President
- **Sandrine Maljean-Dubois**, Research Director, CNRS and Aix-Marseille University, Local organizer

14.30 – 15.30: *Opening discussion – The Long Quest for Fairness*

Room Portalis

*What does fairness mean? What are the relationships between fairness, justice (commutative/distributive), equality, equity or proportionality? Which kind of justice or fairness are we talking about? Has fairness the same meaning in Europe, in North and South America, in Africa, in Asia? Is there a single or shared vision, or multiple, variable and possibly contradictory approaches regarding the fairness of international law? How has it been understood historically? How far the emergence of feminist approaches or the Third World Approaches on International Law (TWAIL) has renewed the theoretical reflection on equity and justice in international law?*

Chair: **Yves Daudet**, President of the curatorium, The Hague Academy of International Law

- **Andrea Bianchi**, Graduate Institute of International and Development Studies, Geneva (Switzerland)
- **Slim Laghmani**, Professor, University of Carthage (Tunisia)
- **Ineta Ziemele**, Judge, European Court of Justice & Professor, Riga (Latvia), former President of the Constitutional Court and former Judge of the European Court of Human Rights

15.30 – 16.00: Coffee break

16.00 – 17.30

**Forum 1: Law as a Way to Fairness or Fairness as a Way to Escape the Law?**

*For lawyers, the questions of the relations between law and justice or between law and fairness are among the most classic (and unanswered) ones. Do they come in a distinctive manner in the field of international law? Is international law used by States and international organizations as a means to achieve fair relations between actors? What part does fairness take in international law-making? Does the application of international law by courts necessarily lead to fair results? Or is fairness a means to mitigate some unfair effects of the application of law and how? This Forum will be an opportunity to highlight the complex linkages between international law's techniques and methods and the ideal of fairness.*

Room Mistral

Chair: **Ronny Abraham**, International Court of Justice, Judge and former President (France)

- **Megan Donaldson**, University College of London (UK)
- **Artur Kozłowski**, University of Wrocław (Poland)
- **Andreas von Arnald**, Professor, Kiel University (Germany)

## Forum 2: Fairness in the Practice of International Law and Organisations

### Room Dumas

*Fairness has surely been for centuries an aspiration for academics, and it has in some ways penetrated the content of positive law and the purposes of international organizations. But, apart from those theoretical and very programmatic ambitions, to what extent is fairness taken into account by international law practitioners in their day-to-day activities? What does fairness represent for a State's representative during a negotiation, for a lawyer pleading a case or for the staff members of international institutions? This Forum will give a pragmatic view of the role of fairness in the very practice of international law.*

Chair: **Evelyne Lagrange**, Professor, University Paris 1 Panthéon-Sorbonne (France)

- **Emanuel Castellarin**, Professor, University of Strasbourg (European Court of Justice)
- **Ximena Fuentes**, Ministry of Foreign Affairs and Professor, University of Chile (Chile)
- **Jörg Polakiewicz**, Public International, Law Adviser of the Council of Europe (Germany)

17.35 – 19.05

## Agora 1: Fairness in the Process of International Criminal Law

### Room Dumas

*While a fair trial is generally considered a core component of criminal law, the international dimensions of this concept invite several questions. Many criticisms have been raised about the fairness of international trials, frequently denounced as a mere expression of victor's justice. Today, questions remain open as to the rules of the International Criminal Court and other international/hybrid criminal courts: do international criminal tribunals ensure a fair trial for defendants? What is the role of UN investigative mechanisms?*

Chair: **Marko Milanovic**, Professor, University of Reading (UK)

- *The Necessity of Treating All the Participants Fairly During International Criminal Trials*, **Caleb Wheeler**, Lecturer, Cardiff University (UK)
- *"Like all proceedings before the Court": How to assess and afford fairness to convicted persons in adjudicating and administering reparations at the International Criminal Court*, **Marie O'Leary**, Counsel/Legal Adviser, Office of Public Counsel for the Defence (OPCD), International Criminal Court (Netherlands)
- *Fostering Fairness in the Collaborative Turn in International Criminal Justice and the Role of UN Investigative Mechanisms*, **Emil Wistrand Johansson**, JD Candidate, Umeå University (Sweden)

## Agora 2: International Law in the Anthropocene Era: Where is Fairness?

### Room Mistral

*As soon as environmental threats become global, international law is called upon to protect the environment. However, the impressive developments in environmental law are not always accompanied by corresponding improvements in environmental quality. It is time to deeply rethink our law, and far beyond international environmental law. This agora will specifically address the issue of fairness between generations in the Anthropocene era.*

Chair: **Harro Van Asselt**, Professor, University of Eastern Finland (Finland)

- *Le droit international au défi de l'habitabilité de la Terre, quels enjeux d'équité?*, **Anne Dienelt**, Senior Research Fellow and Lecturer, University of Hamburg (Germany), **Marion Lemoine-Schonne**, CNRS Researcher, University of Rennes (France), **Camila Perruso**, Associate Professor, Université Paul-Valéry Montpellier 3 (France)
- *Due Regard for the Future*, **Caroline Foster**, Professor, University of Auckland (New Zealand)
- *Of Hope, Anger, and the Quest for Fairness in the Anthropocene Era*, **Anne Saab**, Associate Professor, Graduate Institute of International and Development Studies (Switzerland)

### **Agora 3: The Push and Pull of Fairness: Theoretical Approaches to Fairness in International Law (ESIL Interest Group on International Legal Theory and Philosophy)**

#### *Room Mirabeau*

*If we all aspire to fairness in international law and hope to re-imagine it for the 21<sup>st</sup> century, what are the criteria and parameters for determining fairness? Agora 3 aims to explore different theoretical approaches to fairness in international law to create space for re-imagining fairness fitting for the 21<sup>st</sup> century, addressing the following key questions: what is fairness; whether international law can be fair; and what criteria should be used to determine the fairness of international law.*

Chair: **Ozlem Ulgen**, Associate Professor, University of Nottingham (UK), Chair of the ESIL Interest Group on International Legal Theory and Philosophy (IGILTP)

- *The Other State (of Mind) – Fairness through Sovereign Empathy in International Law*, **Janina Barkholdt**, Associate Legal Officer, International Court of Justice, and **Valentin Jeutner**, Associate Professor, Lund University (Sweden)
- *Sovereign Equality as a Proxy for Fairness in International Law: the Theoretical Foundations of a Foundational Myth*, **Frederick Cowell**, Senior Lecturer, Birkbeck College, University of London (UK)
- *Fairness in International Law as Obligational Balance*, **Diego Mejía-Lemos**, Distinguished Research Associate Professor, Xi'an Jiaotong University (China)

19.05 – Opening reception at the Law Faculty – University's Jazz Big Band

*Reception hall and esplanade (Pouillon building)*

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### **Friday 1st September**

08.00 – 09.00: Breakfast meeting (New members meet the ESIL Board – all new members are welcome)

*Room Salle des Actes*

08.30 – 09.00: Welcome and coffee (Reception hall, Pouillon building)

09.00 – 10.30

#### **Agora 4: Fairness and Human Rights Law**

*Is the assumption that human rights are inherently a way to achieve greater fairness warranted? Does this assumption leave any room for doubt? Can some human rights norms work against the interests of their alleged beneficiaries? Can fair human rights rules be misused to serve unfair purposes? Do human rights charge States with unfair obligations towards individuals, other states, or international organizations?*

#### *Room Mistral*

Chair: **Basak Cali**, Hertie School, Berlin (Germany)

- *Human Rights Due Diligence Legislation from a TWAIL Perspective: A Sharp Sword or a Solid Shield?*, **Zhuolun Li**, PhD candidate, Università di Urbino (Italy)
- *A Just Transition? Investigating the Role of Human Rights in the Transition Towards Net Zero Societies*, **Annalisa Savaresi**, Associate Professor, University of Eastern Finland (Finland) and Stirling University (UK) and **Margaretha Wewerinke-Singh**, Associate Professor, University of Amsterdam (Netherlands) Adjunct Senior Lecturer, University of the South Pacific
- *Fair, Fairer, Fairest: A Human Rights Approach to Statelessness*, **Clara Van Thillo**, PhD candidate, KU Leuven (Belgium)

### Agora 5: Fairness, Natural Resources, Shared Resources, and Common Spaces

#### Room Mirabeau

*From the high seas to international watercourses, not to mention migratory species or genetic resources, is there a place and role for fairness in international law when applicable to natural resources, shared resources, and common spaces? What are the meanings and implications of the principle of equitable utilization of shared resources? How does one balance equitable catch limitation, share allocation and conservation measures? Is the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits a real way to fairness? What are the implications of the UN BBNJ?*

Chair: **Petra Minnerop**, Professor, Durham University (UK)

- *The Regulation of Deep-Sea Mineral Activities: What Role for Fairness?*, **Catherine Blanchard**, Assistant Professor, Utrecht University (Netherlands)
- *From Riches to Resources – The Natural Environment of the Global South and the Prism of Development*, **Sigrid Boysen**, Professor, Helmut-Schmidt University in Hamburg (Germany), **Lys Kulamadayil**, Post-Doctoral Research Fellow, Helmut-Schmidt University in Hamburg (Germany)
- *Benefit-Sharing and Genetic Resources under the New BBNJ Treaty – a Fair Solution to the Problem of Genetic Resources of Ocean Commons?*, **Niels Krabbe**, Post-Doctoral Research Fellow with the University of Gothenburg (Sweden)

### Agora 6: Fairness and International Litigation

#### Room Dumas

*Is international litigation fair? How do international tribunals award compensation and is their approach fair? How has the (long) quest for fairness affected the procedural rules of international litigation? Beyond the fair trial principle, what place is there for fairness and a rule of law-based procedure? How are international tribunals and parties balancing efficiency and fairness?*

Chair: **Michael Waibel**, Professor, University of Vienna (Austria)

- *Fair Compensation: Reality or Aspiration in International Law?*, **Ashley Barnes**, Post-Doctoral Research Fellow, University of Ottawa (Canada)
- *Are International 'Asymmetric' Proceedings Unfair? The Importance of Lacunae in the Procedure of International Courts and Tribunals*, **Caterina Milo**, PhD candidate, University of Sannio (Italy)
- *Balancing Three Plates on the Scales of Justice: Intervention and Procedural Fairness in Inter-State Litigation*, **Brian McGarry**, Assistant Professor of Public International Law, Leiden University (Netherlands)

10.30 – 11.00: Coffee break (Reception hall, Pouillon building)

11.00 – 12.00 Closed business meeting of editors and publishers

Room: *Salle des Actes*

11.00 – 12.30

### Forum 3: Fairness and New Subjects of International Law

#### Room Mistral

*Does the evolution of international law reflect the evolution of the international society? Originally, only States qualified as subjects of international law. However, after the Second World War, more and more new actors emerged on the international scene (IOs, NGOs, multinational companies, indigenous peoples, individuals...) and have more or less acquired the capacity to become international legal persons. But international law remains profoundly and inherently state-centric, not to mention humankind, the international community, future generations, the Earth, animals, and, in short, all 'quasi-persons' (in the sense of entities to which part of the doctrine tends to attach a form of legal personality).*

Chair: **Sabino Cassese**, former Judge of the Constitutional Court (Italy)

**Astrid Kjeldgaard-Pedersen**, Professor, University of Copenhagen (Denmark)

**Paolo Palchetti**, Professor, University Paris I Panthéon Sorbonne (France)

**Sara Seck**, Associate Professor, Dalhousie University (Canada)

Forum 4: Current events (tbc)

Room Mistral

12.30 – 14:00: Lunch break (Reception hall, Pouillon building)

13.00 – 13:55: ESIL Mentoring Event: How to start a career in international law (pre-registration required)

Room Dumas

13.00 – 13:55: Meet the editors! Open meeting for all those with questions about publishing

Room Mirabeau

14:00 – 15:30

### Agora 7: Fairness in the Allocation of Maritime Spaces

Room Mirabeau

*Whether it takes the form of the principle of equidistance or by reference to the search for an “equitable solution”, equity is at the heart of issues of maritime delimitation. The contribution of the international judge has been essential in clarifying its contours and content. How has this jurisprudence been built up over time, and in which international court or tribunal? What are the options retained by the latter? The foundations and contemporary developments of this case law deserve to be questioned. Is equity called for by the law beyond the sharing of maritime spaces between States? Can equity between States be reached as an attenuator of North-South inequalities?*

Chair: **Niki Aloupi**, Professor, University of Paris II, Panthéon-Assas (France)

- The “Mushrooming” Method: Ensuring Fairness in the Delimitation of Maritime Zones around Islands, **Georgia Eleni Exarchou**, Associate, BODENHEIMER (Germany)
- Equity in Delimitation of Continental Shelves Beyond 200 Nautical Miles: Should the Three-Step Approach be Adjusted? Analysis on the Example of the Central Arctic Ocean, **Ekaterina Antsygina**, Post-Doctoral Research Fellow, University of Hamburg (Germany)
- Fairness in the Context of Sea-Level Rise: Permanent Sovereignty over Natural Resources as a Normative Framework for Changing Maritime Zones, **Selman Aksünger**, PhD candidate, Maastricht University (Netherlands) and lecturer at Istanbul Center for International Law (Turkey)

### Agora 8: Fairness and the Law of International Responsibility

Room Mistral

*Responsibility is classically coined as the necessary corollary of law. But how is responsibility related to fairness and, more specifically, does the international regime of responsibility respond to fairness standards? The question relates to the conditions of responsibility as well as to its consequences or means of implementation.*

Chair: **Natasa Nedeski**, Assistant Professor, University of Amsterdam (Netherlands)

- Are Unilateral Sanctions Fair? A Sociological Approach to the Enforcement of International Law, **Alexandra Hofer**, Assistant Professor, Utrecht University (Netherlands)
- A Standard that is Fair or beyond Repair? Equitable Considerations in the Determination of Compensation under the Factory at Chorzów Standard, **Emmanuel Giakoumakis**, DPhil candidate in Law, St. Antony’s College, University of Oxford; Associate Lawyer at Steptoe & Johnson LLP (UK)
- Is the Extrajudicial Implementation of the Law of State Responsibility Fair? Navigating Collective Countermeasures in Cyberspace, **François Delerue**, Assistant Professor, IE University Law School, Madrid (Spain)

### **Agora 9: The Law of Investments: Is this still Fairness?**

Room Dumas

*The standard of “fair and equitable treatment”, as part of the protection due to foreign direct investment by host countries, has been interpreted in various ways by governmental officials, arbitrators, and scholars. A growing number of arbitral awards examine claims for denial of fair and equitable treatment and gradually shed light on the normative content of the standard. Is the meaning of the “fair and equitable treatment” standard necessarily the same in all the treaties in which it appears? Beyond that, is “fair and equitable treatment” really fair?*

Chair: **Andrea Hamann**, Professor, University of Strasbourg (France)

- *Legal Counter-mobilization and Environmental (In-)Justice*, **Alessandra Arcuri**, Professor, Erasmus University Rotterdam (Netherlands) and **Scott Cummings**, Professor UCLA (United States)
- *Investor Misconduct, Impacted Communities, and the Fair and Equitable Treatment Standard in International Investment Law: Whose Equity?*, **Sek Lun Cheong**, PhD Candidate, Melbourne Law School (Australia)
- *Le droit des investissements et l'interdiction du déni de justice*, **Mathilde Frappier**, Professor, Université de Lorraine (France)

15.35 – 16:00: Coffee break (Reception hall, Pouillon building)

16.00 – 17.00: General Assembly

Room Portalis

17.00 – 17.15: Break

17.15 – 18.45

### **Agora 10: Conceptualizing Fairness and International Criminal Justice (ESIL Interest Group on International Criminal Justice)**

Room Dumas

*What compromises are considered legitimate in light of the egregiousness of the alleged crimes? How fair is it to impose criminal responsibility on individuals for crimes that are often collective enterprises where perpetrators act together and in concert with thousands of other people? How can international criminal justice stakeholders build on critiques to devise a more compelling and fair vision of global accountability going forward? Is fairness (or sheer opportunism) at play when narrowing down prosecution on certain individuals or facts? And how fair is international criminal justice to victims?*

Chair: **Julia Emtseva**, Research Fellow at the Max Planck Institute of Heidelberg (Germany)

- *Beyond Rhetoric: Interrogating the Eurocentric Critique of International Criminal Law's Selectivity in the Wake of the 2022 Ukraine Invasion*, **Patryk Labuda**, Swiss National Science Foundation Fellow, University of Zürich (Switzerland)
- *Acquittals as a Measure of Fairness*, **Michelle A. Coleman**, Lecturer Swansea University (UK)
- *Plus ça change, plus c'est la même chose? Impunity Discourse and Typologies of Victor's (In)Justice from WWII to Ukraine*, **Carsten Stahn**, Professor, Leiden University (Netherlands) & Queen's University Belfast (UK), former Legal Officer at the ICC

### **Agora 11: Fairness and the Guardians of Peace and Security**

#### **Room Mistral**

*According to the Preamble of the UN Charter, when establishing the UN, the “peoples of the United Nations” were notably “determined [...] to establish conditions under which justice and respect for [international law] can be maintained”. Do peace and justice institutions have to be fair? And how do institutions, like the UN Security Council, that are at the forefront of maintaining peace and security, balance competing values such as efficiency and fairness?*

Chair: **María Isabel Torres Cazorla**, Associate Professor, University of Malaga (Spain)

- *Contemporary Robust Peacekeeping Mandates at 10 and the Quest for Fair UN Intervention*, **Marco Longobardo**, Senior Lecturer, University of Westminster (UK)
- *Balancing Competing Priorities: An Evaluation of the Role of Fairness in Liberia’s Sequenced Approach to Post-conflict Peace and Justice*, **Kelsey Rhude**, PhD Candidate, Irish Centre for Human Rights, University of Galway (Ireland)
- *The Non-Native Speakers of International Law: Russia’s Four Rhetorical Moves in Relation to International Law*, **Anna Dolidze**, Professor, Rabdan Academy (UAE) & Georgian Institute for Public Affairs (Georgia)

### **Agora 12: Fairness and Unfairness in International Health Law: challenges and perspectives**

#### **Room Mirabeau**

*While it is generally acknowledged that International Health Law can be a powerful tool for fairness, gaps in scope and enforceability of existing International Health Law instruments, as well as unregulated areas of major international health concerns, also lead to unfairness, as clearly shown by the pandemic. Building on existing and future challenges, this agora will provide perspectives on the fairness of International Health Law.*

Chair: **Stefania Negri**, Professor, University of Salerno (Italy)

- *The Pursuit of Fairness in Global Health Law: Is the CBDRCs Principle a Reliable Companion?*, **Ludovica Di Lullo**, Post-Doctoral Research Fellow, University of Parma (Italy)
- *International Law, Health Security and Fairness: Balancing States’ Obligations under the International Health Regulations (2005)*, **Pedro A. Villarreal**, Research Fellow, Berlin Institute for International and Security Affairs & Max Planck Institute for Comparative Public Law and International Law (Germany)
- *La Couverture sanitaire universelle au service de l’équité en santé : quel rôle pour le droit ?*, **Stéphanie Dagron**, Professor, University of Geneva (Switzerland)

19.30: Conference dinner at the Aquabella restaurant (located in the city center) – for ticket-holders only

19.30: Welcome drink

20.15: Conference dinner and speeches

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Saturday 2 September

08.30 – 09.00: Welcome and coffee (Reception hall, Pouillon building)

09.00 – 10.30

**Forum 5: Fairness in Sources/as a Source of International Law**

Room Dumas

*Beyond general considerations on the expected fairness of law, this Forum will highlight the peculiarities of the sources of international law. Wondering if international law is fair leads rapidly to a reflection on the fairness of the sources of international law. What place for fairness in international law sources? Is their typology fair? Is soft law a means to fairness?*

Chair: **Geir Ulfstein**, Professor, University of Oslo (Norway)

**Danae Azaria**, Professor, University College London (UK)

**Roman Kwiecień**, Professor, Jagiellonian University in Krakow (Poland)

**Patrick Jacob**, Professor, University of Versailles (France)

**Forum 6: Unfairness and the Critique of International Law**

Room Mistral

*Critical Legal Studies emerges within international law with the arrival of new states in the 1960s that illuminated international law as a servant of politics and, into the 1970s, through a denouncement of formalist and state-centred approaches. Contemporary critical legal approaches draw on wider understandings of the relationship between law and politics, the indeterminacy of law, and the relationship between law and culture/society to question the repetition of legal forms in the maintenance of the status quo. This forum will examine how concepts of fairness are understood within and across Critical Legal Approaches to international law.*

Chair: **Gina Heathcote**, Professor, SOAS University, London (UK)

**Moshe Hirsch**, Professor, Hebrew University (Israel)

**Anne Orford**, Professor, Melbourne Law School (Australia)

**Akbar Rasulov**, Professor, University of Glasgow (UK)

10.30 – 11.00: Coffee Break (Reception hall, Pouillon building)

**11.00 – 12.00: Conversation with the winners of the 2023 ESIL Monograph Prize and ESIL Collaborative Book Prize**

Room Portalis

**12.00 – 13.00: Closing discussion**

Room Portalis

Moderator: **Laurence Boisson de Chazournes**, Professor, University of Geneva (Switzerland)

**Mathias Forteau**, Professor, University of Paris Nanterre, International Law Commission (France)

**Surabhi Ranganathan**, Professor, University of Cambridge (UK)

**Fuad Zarbiyev**, Associate Professor, Graduate Institute of International and Development Studies, Geneva (Switzerland)

**13.00 – 13.30: Closing of the Conference**

Room Portalis

Farewell and presentation of the 2024 Conference in Vilnius

End of conference

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