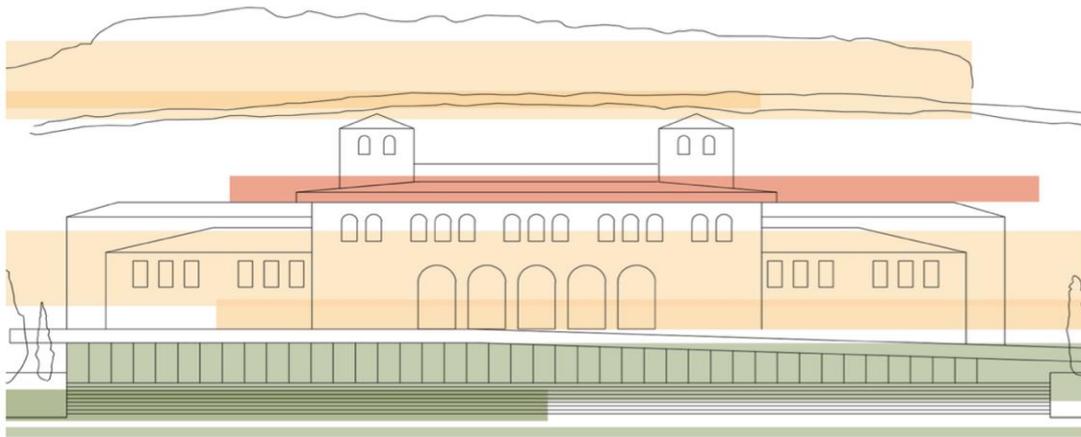


## Is international law fair ? Le droit international est-il juste ?



### *Is international law fair?*

**18th Annual Conference of the European Society of International Law  
31 August-2 September 2023  
Preceded by Interest Group workshops on 30-31 August 2023**

**Aix-Marseille University and Sciences Po Aix  
Aix-en-Provence, France**

#### **CALL FOR PAPERS**

The 18th Annual Conference of the European Society of International Law will convene in Aix-en-Provence in France from Thursday 31 August to Saturday 2 September 2023. The main conference will be preceded by various workshops organised by the Society's Interest Groups on 30 and 31 August 2023.

#### **THE GENERAL THEME OF THE CONFERENCE**

Fairness is not an unidimensional concept. The same word may have different meanings or scopes depending on what region of the world we are in. Fairness can serve to elucidate important issues pertaining to the universality of legal concepts as well as to the evolution of international law and international society. The theme of the 18th Annual Conference of the

ESIL, *Is International Law Fair?*, also raises questions as to the values inherent in international law. Are the norms that constitute international law always inspired by ideas of justice and equity? How does one define justice, fairness and equity? Who has the legitimacy to assess international law's fairness? And according to which criteria? Is the fairness of international law to be gauged based on its objectives, its contents, its consequences or the legal process? Should international law be fair? Can it even be? What lessons can be learned from past and current international crises such as the war in Ukraine, the COVID-19 pandemic, or inequality *vis-à-vis* the harmful consequences of climate change?

Asking if international law is fair also means questioning the way research in/on international law is conducted and published. The emergence of feminist approaches or the rise in the nineties of the Third World Approaches to International Law (TWAIL) renewed the theoretical reflection on fairness, equity and justice in/of international law. But how influential are contemporary theories in international law relating to the 'epistemologies of the South' (Sousa Santos)?

To address these fundamental questions raised by the fairness of international law, the conference will consist of six (6) fora panels and twelve (12) agorae. Agora speakers are selected on the basis of paper proposals submitted in response to this call for papers.

## **THE THEMES OF THE AGORAE**

The ESIL 2023 conference will convene 12 agorae, 10 based on the following 10 themes, and 2 based on Agora proposals submitted by ESIL Interest Groups. ESIL will be pleased to accommodate online participation in conference panels.

ESIL invites innovative paper proposals concerning one of the Agora themes:

### ***Agora 1: Fairness and International Criminal Law***

*While a fair trial is generally considered as 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 remains 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 compromises are considered legitimate in light of the egregiousness of the alleged crimes? However, fair trials are not the only area where fairness and international criminal law intersect. 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? Is fairness (or sheer opportunism) at play when narrowing down prosecution on certain individuals or facts? Is it fair that some perpetrators benefit from the guarantees of international courts, while others are relegated to local justice mechanisms? And how fair is international criminal justice to victims?*

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

*As the ICJ stated in 1996 " ...the Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn." Climate change, biodiversity loss, and other major environmental threats raise inherently intergenerational issues. Our choices will have wide-ranging implications on the robustness and integrity of the Earth and the well-being of future generations. Serious, complex, and to a certain extent irreversible, the threats to the environment are also, for the most part, global. As soon as the stakes become seriously transnational if not 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.*

### **Agora 3: Agora proposed by selected ESIL IG**

#### **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, either towards individuals, other States or international organisations?*

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

*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 the 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 prospects for the UN BBNJ negotiations?*

#### **Agora 6: Fairness and International Litigation**

*Is international litigation fair? How has the (long) quest for fairness impregnated the procedural rules of international litigation? Beyond the fair trial principle, what place for fairness and a rule of law based procedure? How are international tribunals and parties balancing efficiency and fairness?*

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

*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? For instance, should the possibility for developing countries to submit a request for the extension of their continental shelf be strengthened? Can equity between States be reached as an attenuator of North-South inequalities?*

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

*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 (is the unique condition of the wrongfulness of an act fair? are the circumstances precluding wrongfulness an expression of fairness?) as well as to its consequences (is restitutio in integrum really fair and are the limits raised by the 2001 ILC draft articles sufficient?) or means of implementation (are countermeasures a fair means for inducing compliance with the law?).*

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

*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? For instance, are the lack of openness of the arbitration process or the lack of a fair process for all affected parties obstacles to fairness and justice?*

## **Agora 10: Agora proposed by selected ESIL IG**

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

*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”. What role did fairness play in terms of institutional design at the inception of the UN? Does fairness transpire in the structure and functioning of international institutions and organs tasked with maintaining peace and security? 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?*

### **Agora 12: Fairness and Unfairness in International Health Law: Challenges and Perspectives**

*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 should provide perspectives on the fairness of International Health Law.*

## **INSTRUCTIONS FOR SUBMISSION**

### **Selection criteria**

The abstracts will be assessed by the programme committee, which consists of the agora chair, and representatives from the ESIL Board and the host institution, on the basis of:

- Originality and innovative nature of the work
- Relevance to one of the agora themes
- Diversity criteria, in accordance with the ESIL Statement of Principles on Diversity, Equality and Inclusion

We welcome proposals in French or English.

Only one abstract per author will be considered.

Panel proposals can only be submitted by ESIL Interest Groups (see below), not by individual members.

Joint submissions are possible, but a reduced registration fee is applicable to only one of the selected speakers.

### **Information to be included**

Paper proposals must be submitted via the online submission page of the conference website: [here](#).

The deadline for the submission of abstracts is **31 January 2023**.

The following information must be included:

- An abstract, not exceeding 500 words
- A short biography (100 words) should be included in the abstract itself
- The agora for which the paper should be considered (one agora only)
- The author’s name and affiliation
- The author’s CV, including a list of relevant publications (max. 800 words)
- The author’s contact details, including email address and phone number
- Whether the author is a current ESIL member
- Whether the abstract should be considered for the ESIL Young Scholar Prize (see below) and, if so, the relevant information (about eligibility and ESIL membership)

## Submission of Agora panel proposals by ESIL Interest Groups

Following the ESIL's previous annual conferences, two agorae will be reserved for ESIL Interest Groups, which are invited to submit panel proposals. Agora proposals can only be submitted by ESIL Interest Group conveners and must be submitted via the conference website: [here](#).

The proposal must include the following information:

- The name of the ESIL Interest Group submitting the proposal
- The contact details of the person(s) submitting the proposal, including email address and phone number
- The title of the proposed panel and a description of the overall theme of the panel and the insights expected from the discussion
- The format of the agora: panel, roundtable, or other format (please note: all agorae are scheduled for 1.5 hours and there can be a maximum of 4 participants – e.g. one chair and 3 speakers)
- A full set of abstracts of the individual papers that are to be part of the panel, with the information required for paper proposals (see above)

## Full papers

Selected speakers should submit a first draft of their paper (min. 3000 words) prior to the annual conference. The paper will be shared with other agora speakers with a view to creating interactions during the conference. The quality of the drafts will be screened by the programme committee, which may request amendments.

## Timeline

- The deadline for submission of abstracts is **31 January 2023**
- Successful applicants will be informed no later than **31 March 2023**
- The deadline for submission of full papers is **1 July 2023**
- The conference runs from **1 to 3 September 2023**
- The deadline for (optional) submission of final papers (to be included in the ESIL Paper Series and/ or a future conference publication) is **1 November 2023**

## Finances

All selected agora speakers must register for the conference and, if ESIL members, will be eligible for a reduced conference registration fee.

A limited number of [travel grants and carers' grants](#) are available to ESIL members to encourage and facilitate attendance at ESIL events. Application details for these grants can be found on the ESIL website. In order to be eligible for a grant, membership of ESIL is required by the deadline for the submission of abstracts, i.e. 31 January 2023.

## Publication

After the conference, ESIL provides the opportunity to publish papers in the [ESIL Paper Series](#) and also plans to publish selected high-quality papers in a volume of the [ESIL Book Series](#) (published by OUP). Further details about how to submit papers for publication will be provided to all speakers immediately after the conference

## ESIL Young Scholar Prize

ESIL will award the [Young Scholar Prize \(YSP\)](#) again in Aix-en-Provence. Further details about the Prize can be found on the ESIL website. The YSP will be awarded for the best paper submitted to the conference or to a pre-conference Interest Group workshop by a scholar at an early stage in her or his career. Early-career scholars are (i) candidates for a postgraduate degree in law; (ii) PhD candidates or those who have had their oral defence no longer than 3 years prior to the submission of an abstract; or (iii) those who are within the first 5 years of their career following the award of their last academic degree (other than a PhD). Candidates for the Prize have to be ESIL members at the time of submitting their abstract. Co-authored articles will only be considered for the prize if all authors fulfil the eligibility criteria.

To be considered, please provide the following information when submitting the abstract:

- An expression of interest in competing for the ESIL YSP
- Date of enrolment in PhD programme / date of PhD defence or date of award of the last academic degree (to indicate how the eligibility criteria are met)
- Date of joining ESIL

Upon acceptance of the abstract for presentation at the conference or in a preconference IG workshop and notification that they are eligible for the YSP, authors must submit a paper of between 8,000 and 12,000 words (including footnotes) to the ESIL Secretariat ([esil.secretariat@eui.eu](mailto:esil.secretariat@eui.eu)) by 1 July 2023 for consideration by the YSP jury.

## CONTACT

For further information, consult our website [esilaix2023.fr](http://esilaix2023.fr) or please write to [cfp@esilaix2023.fr](mailto:cfp@esilaix2023.fr).