GLOBAL PUBLIC GOODS, GLOBAL COMMONS AND FUNDAMENTAL VALUES:

THE RESPONSES OF INTERNATIONAL LAW

European Society of International Law Annual Conference

7-9 September 2017

Federico II University, Naples, Italy

Draft Programme

The 13th Annual Conference of the European Society of International Law will take place in Naples, Italy, hosted by the 'Federico II' University.

In addition to the opening and closing sessions, the programme will include six *fora*, featuring invited speakers, and twelve *agora*. Speakers for ten *agora* will be selected on the basis of abstracts submitted in response to a Call for Papers; the other two *agora* will be selected from panel proposals submitted by ESIL Interest Groups.

The general conference theme and the themes of the *fora* and *agora* are described below.

The working languages of the conference are English and French. Since no translation will be provided, participants should have passive understanding of both languages and active understanding of at least one of them.

ESIL Interest Groups will be organising pre-conference events on Wednesday 6 September 2017. Details of these events will be available at a later date.

THE CONFERENCE THEME

The 2017 Annual Conference of the European Society of International Law will explore how international law has responded, or can or should respond, to the fundamental challenge of defining and regulating global public goods, global commons and fundamental values. These concepts, individually and in their interrelationship, present ongoing challenges for an international legal system that, despite all its transformations in recent decades, essentially remains a pluralistic system organised around the principle of state sovereignty.

Global public goods are goods with benefits and/or costs that affect all countries, people, and generations. They include inherently public global goods, such as a healthy climate and the fight against terrorism, and domestic public goods whose global regulation makes every one better off, such as free trade and public health.

Global commons are resources, domains or areas that lie outside the political reach, and jurisdiction, of any single nation state. Traditional examples are outer space, the high seas and Antarctica, but the concept now tends to include intangible global commons such as the human genome or immaterial cultural heritage.

Fundamental values are values that make a universal claim to be shared by all states and peoples across the world. They have a marked political and axiological connotation. Decisions about what should be considered as fundamental values of international society are never beyond controversy. The category of fundamental values certainly includes the protection and promotion of human rights and the right to self-determination, but some would also include values such as human dignity, peace, the protection of the environment, and democracy.

Global public goods, global commons and fundamental values are interlinked above all by the fact that all states have an interest in their protection and promotion. It is also the case that, to varying degrees, long-term protection or regulation of each is beyond the ability of any single state. The three concepts can also overlap conceptually and in practice: particular objectives (e.g. the conservation of fisheries) have both a global public goods and global commons dimension, others (such as the protection of the environment) are both a fundamental value and a global public good, and so on.

While international law has long responded to all three concepts, the challenges posed by their definition and effective regulation remain formidable. The very idea of the pursuit of general interests in these three domains as an aim of international law is recurrently questioned, given that traditional international regimes tend to protect the interests of individual states. This interplay between domestic principles and the general interests of the international community leads to yet further complexities and uncertainties as to where the current regime of international cooperation on these questions really stands. Moreover, what might be included within each category and in what legal form changes over time. Today's rapid flux of communications and migration of people, alongside social, political, economic and environmental interdependence, mean that, in an increasing number of situations, goods provide benefits and/or costs to all countries, are beyond the reach of any single state, and impact on fundamental values shared by all states. The responses of international law to each of the three phenomena are undergoing continuous transformation and appraisal – what was once a national public good may become a global public good; what was initially a matter of national jurisdiction may later be seen as a global commons, and what were thought of as purely national values may transcend national boundaries.

The 2017 ESIL Annual Conference will explore how international law responds to global public goods, global commons and fundamental values, examining the responses in a wide range of fields. It will discuss which general interests have or have not been deemed to deserve the protection of international law in one or more of these categories, and why; it will also explore the legal foundation of such interests in international law. In addition, the conference will focus on whether and how it is appropriate that international law intervenes to regulate such interests, taking into account the interplay between multiple actors of international law, ranging from states, international and regional organisations and non-state actors. It will explore how states and other actors have used international law to protect general interests, what lessons can be learned from these efforts, and what main challenges still need to be addressed. Looking at international law through the prism of global public goods, global commons and fundamental values also implies an in-depth examination of different substantive regimes, for example those regulating human rights, the protection of the environment, judicial cooperation in criminal matters, the use of force, terrorism, and so on.

In line with ESIL tradition, the *fora* panels will explore broader and methodological issues, while more specific issues will be discussed in the *agora* panels.

KEYNOTE SPEAKERS

Opening Keynote Lecture: Sundhya Pahuja, University of Melbourne

Closing Keynote Lecture: Riccardo Pisillo Mazzeschi, University of Siena

THE CONFERENCE FORA

Forum 1: Global Public Goods: Between International Law and Economics

Chair: Ernst-Ulrich Petersmann, European University Institute

Speakers:

- Giovanna Adinolfi, University of Milan
- Isabel Feichtner, University of Würzburg
- Gregory Shaffer, University of California, Irvine School of Law

Global public goods are potentially of interest to all states, peoples and generations (extending to both current and future generations or at least meeting the needs of current generations without foreclosing possible development for future generations). This property makes humanity as a whole the beneficiary of global public goods. The ways in which global public goods are created, designed, and managed have far-reaching implications. Today's issues of globalization are precisely those that are beyond the policy endeavours of states, reflecting a mismatch between the scope of the problem and the authority of decision-making bodies attempting to address such issues.

First, in the case of global public goods - such as climate change mitigation, financial stability, security, knowledge production, the fight against terrorism, and global public health - international or supranational legal norms and entities (both public and private) must be created to manage these goods. As different types of global public goods often require different types of legal structures to manage them, this can contribute to a proliferation of norms, regimes, and institutional actors. Such a proliferation could lead to overlap and normative inter-actions, which require careful analysis.

Secondly, goods often become private or public as a result of deliberate policy choices. New considerations can change and expand the definition so as to recognize that, in many cases, goods exist not in their original forms but as social and economic constructs, largely determined by policies and other collective human actions. International or supranational norms thus need to be flexible and reflexive in order to capture such changes appropriately in order to solve the underlying problems.

Thirdly, there are a number of global public goods that are necessary conditions for continuing global trade and transactions. Continued global economic stability is based on the economic interdependence of national-level economies. Thus, continuing global trade and transactions require global public goods such as widespread peace, international economic stability, functioning supranational trade authorities, stable financial and monetary systems, effective law enforcement, and relatively healthy populations of consumers and labourers.

Bearing these implications in mind, this forum will offer an opportunity to reflect on the international and supranational legal structures (norms, regimes, actors, institutions) in place or required to provide global public goods.

Forum 2: Common Heritage, Common Concern and Common Areas: The Changing Role of States and International Organizations

Chair: Malgosia Fitzmaurice, Queen Mary, University of London

Speakers:

- Usha Natarajan, The American University in Cairo
- Nilufer Oral, Istanbul Bilgi University
- Ana Filipa Vrdoljak, University of Technology Sydney

When the concept of the common human heritage was first conceived in the 1960s, States were mainly concerned with negative international obligations, such as refuting claims of exclusive sovereignty over certain spaces, the unilateral exploitation of common economic resources or the use of these spaces for military purposes. But things have begun to change. In particular, the more recent concept of the common concern of humanity has moved from a strict spatial dimension to include goods such as genetic resources and the human genome, cultural and natural heritage of outstanding value, and the environment. The need to protect global commons from over-exploitation or deterioration is increasingly a major factor impacting upon the traditional understanding of sovereignty as unfettered power over natural resources within the jurisdiction of states. States could be entrusted by general principles and specific treaty regimes with a right to intervene and, according to some scholars, even by the use of armed force, to protect global commons situated within the territory of other states or in areas beyond national jurisdiction. States may be obliged to safeguard resources and interests whose protection is a common concern of humanity, even though they are located in areas within their exclusive jurisdiction and control. Global or regional commons can also be managed by international regimes and international organizations. .

On the one hand, traditional international organizations are setting out specific rules and guidelines to ensure respect for global commons. On the other hand, semi-institutionalized bodies have been put in place to accomplish tasks such as monitoring compliance with international standards, imposing reparation (or compensation), and mediating between states and local populations.

The forum will address both theoretical aspects, such as the historical and political evolution of state sovereignty, the changing notion of international personality, and the definition of international justice, and practical legal questions relating to, for example, the limits of unilateral intervention by “third states” for the protection of global commons, the obligation to accept international supervision carried out by international organisations, and the international responsibility of international organisations.

Forum 3: Fundamental Values and International Law

Chair: Samantha Besson, University of Fribourg

Speakers:

- Carlos Esposito, Autónoma University of Madrid
- Mattias Kumm, Humboldt University of Berlin
- Gerry Simpson, London School of Economics and Political Science

What are the fundamental values of the international community? Where do these fundamental values come from? What function do fundamental values serve in international and domestic legal argumentation? These questions have formed part of long-standing debates in international law, which resort to a multiplicity of different traditions. Some define fundamental values with respect to their utility in maintaining orderly and peaceful international relations. Others turn to fundamental values which are said to be intrinsic or inherent, such as human rights. Yet others ask whether other values such as human dignity, democracy or the international rule of law should be counted as being

fundamental to the international legal order. The source from which fundamental values stem is also controversial. Whilst some point to the consent or export of fundamental values from constitutional systems, others highlight the importance of non-consensual forms of reasoning. Finally, the function of fundamental values is underdetermined in international law. Do fundamental values operate as constitutional principles through which all international law must be interpreted? Are all fundamental values *ius cogens* norms? What kinds of duties do fundamental values generate?

This forum will examine both the theoretical and practical dimensions of the identification and function of fundamental values in international law. Contributions can explore what count as fundamental values, the purpose served by fundamental values in the international legal order, the processes of identification of fundamental values, the interaction between national and international law in the definition and protection of fundamental values, the role of the international and national judiciary in the specification of fundamental values, or the relationship between different fundamental values in the international legal system.

Forum 4: Identifying and Implementing Erga Omnes Obligations: The Role of Procedure

Chair: Giorgio Gaja, International Court of Justice

Speakers:

- Andrea Bianchi, Graduate Institute of International and Development Studies, Geneva
- Lorenzo Gradoni, Max Planck Institute Luxembourg
- Andrea Hamann, University of Strasbourg

More than 45 years after the ICJ's judgment in the Barcelona Traction case, the discussions on the existence and consequences of *erga omnes* obligations continue to be as relevant as ever. Recent cases like the one on non-proliferation obligations brought before the ICJ by the Marshall Islands highlight the need to revisit the significance of *erga omnes* obligations and their role in the pursuit and protection of International Law's fundamental values. While the ILC has suggested that in case of a breach of an *erga omnes* obligation all states and (competent) international organizations would be entitled to invoke the responsibility of the author of the breach, the procedural articulations of such claims remain restricted to treaty contexts, with little and hardly uniform practice outside of it. International courts and tribunals have shed some light on the procedural aspects surrounding this type of international obligations, but much remains underexplored and in need of clarification.

The purpose of this forum will be to examine the role of procedure in identifying and implementing *erga omnes* obligations. More specifically, the forum will focus on whether the existing procedures foster or hinder the emergence and development of *erga omnes* obligations. The different approaches of judicial and political organs and procedures in the identification and implementation of *erga omnes* obligations, and their relative strengths and weaknesses, will play a central role in the panel's discussions. The forum will also analyse how the enforcement of *erga omnes* obligations, either centralized or de-centralized, impact upon the pursuit and protection of international law's fundamental values.

Forum 5: Global Public Goods, Global Commons and Fundamental Values: The Impact of Fragmentation

Chair: Ellen Hey, Erasmus University Rotterdam

Speakers:

- Nico Krisch, Graduate Institute of International and Development Studies, Geneva
- Surabhi Ranganathan, University of Cambridge
- Peter-Tobias Stoll, University of Göttingen

This forum will discuss and reassess the debate on the fragmentation of international law and its relationship with norms which concern global public goods, global commons and fundamental values. The phenomenon of fragmentation (whatever term is chosen to refer to it) is widely acknowledged. The question is how this phenomenon can be reconciled, if at all, with the simultaneous recognition of the universality of norms concerning global public goods, global commons and fundamental values. Is fragmentation only a phenomenon that affects legal regimes outside the category of these norms, and do such norms contain the threat of fragmentation? Or does it expose the weaknesses and shallowness of the rhetorical use of global public goods, global commons and fundamental values? Can we say that even within these categories we can identify fragmentation?

The panellists will examine whether it is possible to regard international law as a pragmatic and unifying factor in the regulation of fundamental values which are subsumed under different, professionally isolated and increasingly specialized regimes. In doing so, they will also discuss the coherence and effectiveness of various techniques for resolving conflicts of norms in international law, discussing issues such as: the status of the fragmentation debate; techniques of norm conflict avoidance and resolution,, specifically from the angle of global public goods, global commons and fundamental values; regionalism in international law; the role of the UN (through its various organs, such as the ICJ and the ILC) and other universal organizations in addressing fragmentation; divergences in professional training, identity and ideology in the practice of international law, also when it concerns global public goods, global commons and fundamental values; coherence in foundations doctrines of sources and interpretation.

Forum 6: Current Events

The topic of the forum and the invited speakers will be decided closer to the date of the conference.

THE CONFERENCE AGORA

Agora 1: The Right to Water in International Law

Among the many practical implications of the international regulation of common goods, access to a sufficient amount of clean water for personal and domestic use raises perhaps the most sensitive and debated questions. Although mention is made of it in several international instruments, the content and corresponding state obligations of the right to water are yet to be clearly defined. The status of the right to water – whether it is customary or not – as well its scope – whether it includes uses such as irrigation, the protection of livelihoods or the enjoyment of cultural and religious practices – is still open to discussion. Adding complexity to its scope of application, the right to water may also be related to the right to sanitation, the right to food or the right to public participation in environmentally-sensitive decisions. Furthermore, it remains unclear whether specific groups such as vulnerable and marginalized peoples, women, children, indigenous communities, and displaced persons should be given priority in the application of this right. An in-depth examination of the judicial and non-judicial means available to individuals or groups to enforce the right in question is also called for. The obligations of states and their duties in relation to third parties such as corporations are also to be determined and specified.

A key area of discussion for this *agora* concerns the role played by the right to water in inter-state relations, as well as in investor-state disputes. In judicial and arbitration contexts, the question of water as a human right is ever-present, although it is not always adequately addressed. In this respect, an important area of debate concerns the participation of NGOs and other entities in the settlement of international disputes. Other possible topics of discussion for this *agora* include: What is the status and extent of the right to water? How can non-state obligations in respect to the human right to water be defined? Can solidarity and equity play a role in the assessment of rights and duties? What role has the human right to water played so far in the dispute settlement context? What are possible future developments in this field?

Agora 2: Global Public Goods: Regulatory and Governance Challenges

Demand for the provision of global public goods i.e. goods, the cost and/or benefits of which affect all people and countries, remains relentless. Everyone depends on a clean environment, health, food, knowledge, property rights, peace and security, all of which have a global dimension. But the unremitting pace of globalisation means that it is increasingly difficult to make such goods available within a national framework. Nor can the demand for global public goods be met by the traditional means of international cooperation: instead, they remain underprovided, giving rise to the familiar collective action problem of free-riding. Similarly, despite the presence of global public goods on the agendas of UN agencies, the IMF, the World Bank and a plethora of NGOs, increasing reliance is being placed on commerce, the world trading system, and the contribution of private actors, to deliver them. Global public goods may, therefore, be governed by the interplay of a variety of regulatory sources (national, public and private law, international hard and soft law), institutions and actors. These factors contribute to growing doubts about the governance of global public goods, such as the ability of the international system and of sovereign states to properly appreciate the demand for such goods and to react accordingly.

This *agora* seeks to understand the current provision, regulation and governance of global public goods and the emerging challenges that exist in fulfilling the demand for such goods. Among the various issues that it seeks to address are: the interplay among the regulatory and governance factors that highlight the interlinkage between national, public and private law and international law; the question as to whether international cooperation can be improved to overcome some of the collective action failings; the emerging role of the private sector, and in particular of business and commerce, in delivering global public goods and potential governance consequences; the role of normative and administrative bodies in addressing the regulation of global public goods; and the emergence of informal or soft international law-making in the transnational and international law sphere in addressing the provision of global public goods.

Agora 3: New Challenges in the Fight against Terrorism

Since 9/11, terrorism is often considered one of the most serious threats to international peace and security. The persistent threat of terrorism continues to shape global politics. The international community has yet to agree on a generic definition of terrorism for the purposes of prohibition and/or criminalisation. A large number of agreements, international and regional, soft and hard, deal with different forms of combating terrorism, such as terrorist financing. But the effectiveness of international law's response to terrorism may be open to doubt. New challenges keep emerging, for example the rise of terrorist groups with state-like aspirations and the phenomenon of foreign terrorist fighters. Correspondingly, the need for legal certainty for states and individuals grows, especially since counter-terrorism legislation is not adopted in a legal vacuum, but must interact with other fields of international law, such as human rights law, international humanitarian law, and international criminal law.

This *agora* can discuss any topic related to the fight against terrorism. Specific topics of discussion include (but need not be limited to) the following questions and issues: Will it be possible to break the impasse on the Draft Comprehensive Convention on International Terrorism concerning the relationship between terrorism and self-determination and the (non-)applicability of the term 'terrorism' to the conduct of states in the course of an armed conflict? What are the shortcomings and ways forward of listing and delisting procedures within sanctions regimes? Can the obligations enshrined in the UN Security Council Resolution 2178 (2014) be implemented in compliance with human rights law, international humanitarian law and refugee law? Is there a right to reparation for victims of terrorism? Can international criminal law be effective in fostering accountability for terrorism? What is the interplay between rules specifically designed for countering terrorism and international humanitarian law? How does and how should international law regulate targeted killings?

Agora 4: The Climate Regime: A Post-Paris Assessment

Like the 1992 UN Framework Convention on Climate Change (FCCC), the 2015 Paris Agreement acknowledges that climate change is a common concern of humankind. The Paris Agreement declares that, to pursue the FCCC's objective to avert dangerous, human-induced climate change, it aims to hold the increase of global average temperatures to well below 2°C above pre-industrial levels and strives to keep increases to 1.5°C. The Paris Agreement, for the first time, involves all states in a regime that entails emissions-related commitments for both developed and developing countries. Within months, the Paris Agreement had garnered 180 signatures and it is on course to an unusually speedy entry into force upon ratification by 55 countries accounting for at least 55% of global emissions.

In order to accomplish the feat of providing an ambitious, universal, long-term framework for climate action, the Paris 'Outcome' has a range of innovative features. The 'Outcome' consists of the Paris Agreement and a decision of the FCCC Conference of the Parties (COP), which adopts the agreement and supplements it in many key respects. The most

experimental aspect of the Paris Agreement is that, instead of enshrining binding emission reduction commitments, it relies on non-legally binding, 'nationally determined contributions' (NDCs) by parties. However, while each party is permitted to decide upon its level of commitment, the Paris Agreement obligates all parties to maintain successive NDCs and imposes related procedural requirements, including concerning performance assessment. It also subjects parties to certain normative expectations regarding differentiation, progression and highest possible ambition.

This *agora* provides an opportunity to explore, inter alia, the hybrid character of Paris Agreement, the role of standard-setting by COPs, the role and likely efficacy of procedural obligations in guiding parties' NDCs and compelling implementation, and the newly nuanced approach to differentiation, calibrated to various aspects of the agreement.

Agora 5: The Protection of Cultural Heritage in International Law

Cultural heritage and its role in society has become the object of intense scrutiny at the international and national level. This is shown by the adoption in the past three decades of a great variety of instruments covering tangible and intangible heritage, in peacetime and in wartime. Beyond these written instruments it remains to be seen whether and how cultural heritage is protected by new rules and principles of customary international law. Certainly, the specialist instruments in force today have influenced other fields of international law and policy, such as trade, investments, maritime law, the protection of the environment, intellectual property rights, human rights and indigenous peoples' rights. Perhaps the most visible manifestation of the protection of cultural heritage as an international concern of humanity comes from the reaction of the international community in condemning the intentional destruction of archaeological treasures and other cultural objects of great importance for humanity. This has led to the criminalisation of assaults on culture under international law and to the enforcement of this new law by the International Criminal Tribunal for Yugoslavia and the International Criminal Court. Cultural heritage has undergone also a significant evolution in concept and scope with the emergence of the category of intangible cultural heritage, which is intimately linked to other common goods and values such as cultural diversity, protection of minorities, preservation of traditional knowledge and of the ancestral lands of indigenous peoples, and sustainable development in harmony with nature.

This *agora* can address all topics relating to protection of cultural heritage in international law. Specific possible topics include the protection of cultural heritage against destructive violence in times of armed conflicts, looting in peacetime, and conflicts between the protection of cultural heritage as an international common good with other common values, such as economic growth, the fight against poverty and the protection of economic and social rights, and the liberalization of trade.

Agora 6: Refugee Protection: A Test for European Fundamental Values?

In recent times, the immigration policies of Western countries have been characterized by a progressively restrictive approach, triggered by an unprecedented number of individuals trying to reach Europe's shores. Some governments and political groups warn of the presence, among people on the move, of criminals or terrorist groups threatening the security of their countries and the safety of their citizens. This restrictive approach has also been justified by socio-economic arguments (social dumping, deteriorated access to health care services) or intercultural clashes. As a consequence, some countries try to circumvent their international obligations in the field by invoking treaty-based clauses allowing limitation of human rights, i.e. the presence of a situation of emergency or the need to protect public order, suspending applicable treaties (as has happened in relation to the Schengen Agreement), or refusing to apply the emergency relocation scheme established by the EU Council. This practice leads to significant threats to an international public good: the protection owed to individuals fleeing from human rights violations.

This *agora* can address all topics relating to refugee protection in relation to European fundamental values. Among other issues, papers can address the following questions: Is regional cooperation the only practicable response to the forced movement of people? Does the EU-Turkey Action Plan for the management of migration infringe the 1951 Refugee Convention? Is the legal differentiation between migrants and refugees clear and is it applicable in practice when different humanitarian crises coincide? Is there a principle of burden-sharing in relation to refugee protection and, if so, what is that principle? How do we evaluate recent European practices from the perspective of the principle of *non-refoulement*? What will be the ramifications of the United Nations New York Declaration on Refugees and Migrants in Europe?

Agora 7: The Defence of General Interests in Cyberspace.

The inherently transnational nature of the web implies obvious difficulties in disciplining it solely by virtue of the public law of individual states or by private contracts. This makes international law a preferred instrument of regulation. Moreover, the fact that the internet has become the main means of communication globally, both on a personal and commercial level, has led to the internet being considered an international public good impinging on many aspects of internationally protected human rights, principally freedom of expression and the right to information. Beyond these concerns, the intrinsic characteristics of the internet – an inseparable and ubiquitous, but landless, fusion of hardware and software - produce notable effects on many substantive rules of international law also outside the realm of human rights (e.g. telecommunications, e-commerce and intellectual property, cloud computing, cyber-war) and has led to the introduction of *ad hoc* rules or the adaptation of pre-existing ones.

This *agora* seeks to address how international law can or should protect general interests in cyberspace. Specific topics that can be addressed by papers include: Does the internet or internet governance fit into the legal concept of common heritage of mankind? Is access to the internet a human right? How can we strike the right balance between human rights protection and security in cyberspace? What elements of the prohibition on the use of force and self-defence are applicable to the internet? Should cyberspace be publicly or privately regulated? What proposals could improve internet governance?

Agora 8: Liberalizing Trade and Investment as a Global Public Good

The qualification of liberalized international trade as a public good has often been challenged, both by authors and some countries. Although it can be argued that the WTO promotes the common good in the sense that it offers a forum to address trade conflicts stemming from the clashes of national economic interests, not all countries can benefit from this regime in a balanced way. Moreover the WTO system is formally addressed only to states, with civil society organizations playing a merely marginal role. The principle of comparative advantage has provided the theoretical grounding to consider liberalized trade and investment as welfare enhancing while other voices have denounced the regime as neo-colonialist or an instrument that mainly benefitted (capital) exporting countries. Thus the present international economic system is accused of not providing significant benefits to disadvantaged areas of the globe, failing to provide adequate protection to other important public goods and values such as the protection of the environment and endangered species, cultural heritage, human rights, and the right to health. Those values are, however, ever more included in the concept of sustainable development and have been formally embraced by the WTO Secretariat for trade and UNCTAD for investment. Nevertheless, the law-making and judicial institutions governing international economic relations are often perceived as undemocratic and dominated by economic superpowers.

The agora will critically address these problems with fresh ideas on how to accommodate these competing global public goods: Is the protection of general interests and sustainable development sufficiently recognized under WTO law? Is the right of states to legislate for the protection of public interests sufficiently safeguarded under present international investment law? Does the strength of mechanisms for the international settlement of economic disputes *de facto* create a pre-eminence of international economic law above human rights or environmental law? Is the right to development compatible with the present international economic system?

Agora 9: The Fight against Impunity: An Appraisal

The fight against impunity is a core fundamental purpose of international human rights law, international humanitarian law and international criminal law. In the past four decades, regional human rights courts, the United Nations Human Rights system and international criminal courts and tribunals have advanced the fight against impunity for serious violations of international human rights law and humanitarian law as imposing positive obligations on states to investigate, prosecute and punish perpetrators. What is more, the fight against impunity has given rise to formulations of new rights and approaches including the right to truth and victim-centred approaches to international and domestic adjudication and remedies.

Topics that can be addressed in this *agora* include the following: Has the fight against impunity attained the status of a global public good or a fundamental value in international law? What is the current state of the customary international law status of the duty to fight impunity in international law? What prohibitions attract duties to fight against the impunity of perpetrators? How has the fight against impunity across different branches of international law interacted with the law of state immunity, the principle of subsidiarity, the principle of complementarity, and national democratic decisions to grant amnesties? What has been the contribution of international criminal law to advance the fight against impunity, in particular

through the International Criminal Court? What contribution has the United Nations Security Council made to the fight against impunity? What is the current state of the extra-territorial obligations of states to fight against impunity?

Agora 10: Financial Stability as a Global Public Good?

The interconnections and porosity between the different financial markets have been fostered by the liberalization of international capital movements and the development of new technologies that facilitate cross-border financial transactions. While the emergence of global financial markets has significant advantages as regards the diversification of risks and the generation of liquidity, it also involves important dangers of contagion of financial crisis and makes the prudential supervision of capital markets more difficult. The territorial limits of state sovereignty impose constraints on public authorities' capacity to set up instruments that safeguard financial stability when they deal with financial firms that operate globally. Additionally, many authors denounce the deterioration of democracy when financial institutions take decisions that overrule national sovereignty in practice for the sake of financial stability.

The *agora* will explore the extent to which financial stability can be classified as a global public good. Topics that can be addressed in this *agora* include the following: Taking into account the multiple damages generated by the spill-over effects of financial crises (on human rights, development cooperation or democracy), should we consider financial stability as a global public good? Have we learnt from the 2008 financial crisis that there is a need to strengthen the international tools to promote financial stability and prevent beggar-thy-neighbour policies and free-riding? What are the mechanisms to organize prudent financial regulation and supervision from an international law perspective? Is the soft governance of international financial markets through non-binding texts and technical bodies such as the Financial Stability Board sufficiently democratic and accountable, or are there other better alternatives? Is there a global legal concept of financial stability that facilitates international cooperation towards this common goal or do diverging national interests make its qualification as a global common illusory?

Agora 11 and **Agora 12** will be selected from proposals submitted by ESIL Interest Groups.
