



2023 PARIS



### Interview with Carole Malinvaud

*Member of the Paris and New York Bars*

*Partner of Gide Paris*

**1) Your experience in dispute resolution covers many areas of business. In 2023, what do you see as the greatest challenges facing professionals in this field?**

Beyond the criticism it is subject to, arbitration is, for many reasons, the most widely used dispute resolution method in international

economic disputes. It involves a broad spectrum of participants, starting with the end users, namely the companies and, more and more often, the States or institutions assimilated to a State, as well as those who are at their service: arbitrators, counsels, arbitral institutions and, of course, State courts which ensure the control or the enforcement of the awards.

It is likely that the current political and economic crises will increase the number of disputes, as it is true that in times of tension, the room for manoeuvre of companies is reduced, projects become scarce and leave room for a growing number of conflicts.

For instance, tensions over the access to raw materials and value chains are particularly sensitive and call into question many projects or long-term contracts. Similarly, the damage to, or destruction of, many investments in war zones will give rise to new disputes.

Faced with this likely increase, all arbitration players must respond effectively, particularly in terms of time and cost, if necessary by demonstrating procedural inventiveness, using available technologies and knowing how to seize or provoke opportunities for amicable resolution.

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**2) For the 150th anniversary of the ILA, we propose a collective transnational reflection in order to contribute to the development of international law and to face the challenges of the coming years. What, in your opinion, are the most important topics?**

This question is, firstly, an opportunity to salute the extraordinary work done by the working groups who elaborated bilingual white papers on all the major current issues.

The most important subject seems to me to be the maintenance, or even the search for, peace and the extent to which international law can contribute to it, “between the rich and the poor, between the master and the servant, it is freedom that oppresses and the law that sets free”<sup>1</sup>. In this respect, it is not useless to recall that the first objective of arbitration is precisely to ensure the peaceful settlement of international disputes. It is not accidental that the ILA was founded in 1873, approximately one year after the Alabama Award, which is commonly regarded as the inauguration of the contemporary era in this field.

However, beyond dispute resolution, limiting the potential for conflicts to emerge means legally addressing the ecological challenge we are facing by establishing and defending norms that change our behaviour.

**3) There is abundant literature that draws our attention to benevolence as the foundation of human activities. Do you think it is a fruitful concept for building the international society of tomorrow?**

I like to believe, in spite of the many detractors, cynical or not, in human nature.

On my scale, the success of the Pro Bono policy implemented for the past 10 years at Gide, which involves the firm’s lawyers and employees on several continents, attests to this.

It clearly meets a need and reinforces a sense of belonging, pride, meaning and cohesion that is perfectly transposable on a larger scale.

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<sup>1</sup> Henri LACORDAIRE (1802-1861), *Sermon à la chaire de Notre-Dame* (1848) [liberal translation]

## REPORT OF THE WEBINAR ON ENERGY

### *What international energy law?*

Natalia Chaeva

*Doctor at Law and in-house counsel, member of the ADI/ILA 2023 Communication committee*

Energy was the first topic to be addressed at a webinar based on one of [the ILA's 2023 white papers published on the occasion of ILA's 150<sup>th</sup> anniversary](#). This reflects the importance attached to this topic by the organisers. On 24 January 2023, a distinguished panel of speakers presided by Vicente Lopez-Ibor Mayor discussed [the White Paper Energy](#) published on 1 September 2022 under the direction of Urban Rusnak.

The White Paper presented in the introduction to the webinar rose various key questions relating to the international legal framework for energy, global energy governance, energy transition and climate change, energy access and energy-related disputes.

This paper aims at highlighting some of the key points to be retained from the exciting debates that have taken place.

The requirement for clean and affordable energy is part of the Sustainable Development Goals (SDGs) adopted by the United Nations (SDG 7). However, the scope of energy justice is complex at the global level due to the differences as to the availability of qualitative energy and appropriate energy infrastructure in some parts of the world. Fairness at the global level cannot be reached without considering these differences and providing a necessary support to developing countries.

A universal access to energy services has emerged as a fundamental human right that needs to be clearly affirmed as such. In this respect, creation of a world energy organisation could serve as a basis for cooperation between States, but the effectiveness of such cooperation will depend on the degree of willingness of different stakeholders to find common denominators.

The issue of access to energy is particularly topical in the context of energy supply crisis. Energy shortages must be addressed by long-term measures that integrate the concept of resilience into the legal framework.

At the same time, modern international energy law needs to take into account politics and regulation of climate change (SDG 13), and to develop its principles based on just transition (for instance energy efficiency first principle). Companies have a special role to play in energy transition through their investment and application of a rigorous environmental, social and governance approach.

Tensions between energy supply and energy transition could only be resolved through a long-term integrated planning which could help to avoid any possible national solutions to the lack of supply, in contradiction with climate protection goals.

Environmental issues add to the many subjects which can give rise to litigation in the highly contentious energy sector. New disputes relating to environmental activism arise before national judicial tribunals and international arbitral tribunals. In order to ensure predictability of international energy framework and set the parameters for energy transition, it has been argued that States need to revise their investment protection treaties. At the same time, we may soon be witnessing a progressive construction of a "green arbitration" by international arbitrators and a new *lex mercatoria* around energy law.

## **REPORT OF THE WEBINAR ON ANTHROPOCENE**

*International law, lever or obstacle to a greener society? 1<sup>st</sup> February 2023 Webinar.*

Marion Lemoine-Schonne

*CNRS researcher*

What challenges does international law face in dealing with the ecological crisis? Can the actors, the rules, the tools for implementing international law evolve to contribute effectively to the resolution of socio-environmental problems? In order to respond to the ambitious command of the International Law Association to the Working Groups, the group that drafted the White paper on Anthropocene, coordinated by Sandrine Maljean-Dubois, undertook a very useful exercise in anticipation. While international law has a role to play, we cannot expect everything from it. It is not so much a revolution in values as a multiplication of changes in governance practices that could lead to the timely consideration of ecological preservation through international law.

The Anthropocene period – literally the age of man – characterizes the current geological epoch, which follows the Holocene, a relatively stable period that allowed life to develop on Earth for 11 000 years. The Anthropocene marks an abrupt and rapid break in the balance of the world. Human activities, based in industrialization through the combustion of fossil fuels, are becoming an integral part of the Earth system and threaten the medium-term survival of humanity among other living species. The changes are largely irreversible, unpredictable, and marked by the interdependence between several aspects of the governance of the Earth system: climate, biodiversity, water resources, chemical pollution, ozone, etc. They have their source and the solutions to be provided, in all areas of activity: trade, investment, habitats, production, consumption, etc. The Anthropocene thus poses complex, integrated and multi-scalar challenges that disrupt a largely fragmented international law and its prospects for effectiveness, and even for existence on a universal scale, in the decades to come.

During the webinar, the co-chairs, Mario Oyaizabal and the coordinator of the book, explained how delicate the modelling exercise was for the team of lawyers unaccustomed in their discipline to putting ‘imagination to the power’ of thought. Based on the ecological scenarios, the team finally reached a consensus on a model of the content and the form of an international law for the future.

The four panel discussions were devoted successively to the ecological transformation of international law, the study of its role, the architecture of environmental law and cross-cutting issues. The contributors of the webinar: researchers, academics, diplomats, members of the International Law Commission, as well as members of the civil society (student NGOs), all highlighted the need to recast international law from within in its meaningful relationship with the world in order to for it take its rightful place in the greening of society. The shared vision of the problem is based on the following elements: the abundant normative responses in international environmental law are not sufficient to give the Earth system a clear view towards global governance, due to the lack of ambition, the focus on States and the anthropocentric values inherent to the subject. The process of ‘greening’ the law is underway, but it is not fast enough; the lever of transformation is in governance practices rather than in the change in the system’s references (notions, principles, legal categories, recognition of new actors, defragmentation). Several contributors felt that the international legal order remains essentially contractual and that remains difficult to concretely defend the general interest.

Fruitful criticisms called for overcoming the obstacles inherent to the notion of sovereignty in order to deal with a problem that is both global and transversal, following the example of international climate law, which establishes a sovereignty-responsibility principle that is capable of addressing the circular effects of international law on categories of actors beyond States.

The reservations expressed regarding the White paper's proposal to 'abolish borders, rethink sovereignty' made it clear that these injunctions are already being realized in the areas of trade and investment, which, in turn, exacerbate the factors accelerating the degradation of nature (carbon leakage and the chilling effect of investment law). Contrary to what seemed to be the consensus during the webinar, this prioritization is perhaps not only the result of history – economic concerns appeared before ecological concerns (first come, first served) – but also that of political priorities that condition the implementation of international law.

Market tools, taxes for the rewilding of activities, the limited role of human rights, the articulation of climate issues with other environmental issues thanks to the paradigm of 'planetary boundaries', the framing of the use of technology, the durability of the scientific-political interfaces, and the development of education in this area: there is no doubt that the debates on the levers for transforming international law pose the problem, not as a lack of effectiveness of environmental law, but as a necessary anthropological revolution in favour of ecosystems.

## EVENT SCHEDULE FOR THE 150TH ANNIVERSARY

The table below intends to give a synthetic view of all the events we are organising in 2023.

All webinars will be recorded and may be viewed on replay throughout 2023. To access future and past webinars, kindly follow the following [link](#).

All information concerning the webinars and the Paris event page are available on our website.

<https://www.ilaparis2023.org/webinaires/>

<https://www.ilaparis2023.org/paris-2023-evenement-hybride/>

EVENT SCHEDULE FOR THE 150TH ANNIVERSARY NB: PLEASE NOTE THAT ALL TIMES ARE CET		
JANUARY	FEBRUARY	MARCH
01/12 - 1PM - 4:30PM INCREASING THE LEGITIMACY OF INTERNATIONAL LAW THE ROLE OF PARLIAMENTS	02/01 - NOON -3PM ANTROPOCENE	03/07 - 1PM - 4PM GLOBAL GOVERNANCE/ MULTILATERALISM
01/24 - 2PM - 5PM ENERGY	02/14 - 2PM -5PM SDGS BEYOND 2030	03/16 - 2PM - 5PM FOOD/AGRICULTURE
APRIL	MAY	JUNE
04/03 - 2PM - 5PM INTERNATIONAL INVESTMENTS	05/04 - (TIME TO BE CONFIRMED) HEALTH	JUNE 18-19-20TH SYMPOSIUM (HYBRID EVENT)
04/20 - 2PM - 5PM BUSINESS AND HUMAN RIGHTS	05/16 - 2PM - 5PM THE FIGHT AGAINST CORRUPTION	
04/25 - 2PM - 5PM OCEAN	05/23 - 2PM - 5PM DIGITAL CHALLENGES FOR INTERNATIONAL LAW	
	05/31 - 2PM - 5PM DISPUTE RESOLUTION	
JULY	AUGUST	SEPTEMBER
07/05 - 2PM - 5PM CIVIL STATUS	08/24 - 2PM - 5PM INTELLECTUAL PROPERTY	09/04 - (TIME TO BE CONFIRMED) OUTER SPACE
07/12 - 2PM - 5PM THE FUTURE OF LABOUR LAW		09/12 - 2PM - 5PM MASS CRIMES AND IMPUNITY
		09/14 - 2PM - 5PM HUMAN RIGHTS
		09/25 - 2PM - 5PM LAW IN SUPPORT OF DEMOCRACY AND THE RULE OF LAW
OCTOBER	NOVEMBER	DECEMBER
10/19 - 2PM - 5PM MIGRATION	11/02 - (TIME TO BE CONFIRMED) INTERNATIONAL FINANCE	12/14 CLOSING DAY
	11/14 - 2PM - 5PM TAXATION	
	11/21 - 2PM - 5PM CULTURAL HERITAGE	

<https://www.ilaparis2023.org/>

The Newsletter ADI/ILA 2023 n°14 will be released by beginning of April.