



2023 PARIS



Interview with Béatrice Castellane

Independent Arbitrator, Former Member of the Paris Bar Council, President of the Arbitration and ADR Commission of the Comparative Law Association)

1) You were one of the first to support the collective reflection project on international law proposed for the ILA 150th anniversary. Why is this project important for your own practice as an

arbitrator?

From the beginning, I was convinced by the ILA's 150th anniversary project of collective reflection on international law. The webinars on topical issues, the white papers prepared in advance by international teams and the richness of the debates that followed were very motivating. As an international arbitrator, one of the most important things for me is to have a global vision on all the subjects of international law that are the subject of disputes to be judged. Building the future means working today on the legal foundations for the best possible solutions in the collective interest of nations and their citizens. Reconciling legal rules from countries with different cultures is a limitless opportunity to be imaginative and find the best solution. Participating in a global reflection is therefore a reference, a training to reach the objectives of my daily professional life.

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2) You were a speaker for the energy webinar and you have attended several other webinars. What were the first highlights that stood out for you?

Speaking at the energy webinar was a stimulating experience because the subject matter is so crucial at the moment. The white paper had been remarkably well done by knowledgeable people, and the speakers during the webinar were from a variety of backgrounds, so the exchanges were fruitful. In the other seminars I was able to attend, particularly those on the SDGs and agriculture, a recurring thought emerged: the importance of concretising the superiority of human rights in the implementation of decisions taken in the national and international framework. In my opinion, it could be useful to set up, as a first step, an intermediate path between soft law and rules subject to sanctions. It is a question of respecting the objectives of sustainable development as best as possible.

3) If you were to give a recommendation for future action or work, what would it be and why?

It seems to me that there is a need to create an institution that is not a possible "world energy organisation", modelled on governmental organisations such as the WTO, nor an NGO. In my opinion, a multi-party negotiation system would be effective, inspired by the way the ILO operates, where this institution has a tripartite composition (governments, employers, employees). This would involve the main stakeholders, i.e. energy companies at all levels and consumers in all their forms, in government. Arbitrating conflicting currents and interests in line with the objectives of the SDGs would become the purpose of this norm-setting negotiating forum.

In my mind, through conviction and analysis of a lot of research, effectiveness means linking environmental, social and governance issues. This also concerns, and this is essential, the world of finance where changes are taking place, particularly with the development of impact funds. Determined ESG behaviour will increasingly condition the economic development and financial results of companies.

At the regional level, new standards are already being defined (for example, in the European Union with the taxonomy). At the national level, France has legislated on the "principle of vigilance", which makes an ordering company responsible by requiring it to verify, for example, the conditions of the subcontracting it uses. The ESG is thus destined to become an object susceptible to legal developments and multiple appeals. The more companies comply with ESG criteria, the more likely it is that the SDGs will be achieved.

REPORT OF WEBINAR ON FOOD/AGRICULTURE

Lise Etienne, *PhD Candidate at the University of Pau*

On 16 March 2023, six prestigious speakers from different backgrounds, academics, members of associations, of the World Trade Organisation (WTO), lawyers and non-lawyers, met to discuss the White Paper on Food and Agriculture produced in July 2022 under the coordination of Fabrice Riem.

The White Paper, which was synthesized in lieu of an introduction to the seminar, aimed to question international law as it deals with food and agricultural issues. It raised three main issues in international law that set the pace for the debates: firstly, the fact that international law operates in silos; secondly, the shortcomings of international trade rules in responding to agricultural and food issues; and thirdly, the normative power of multinational companies.

The debates were rich and fascinating. This contribution will attempt to highlight the main points.

Starting from the observation, as set out unambiguously in the White Paper, that there is a proliferation of texts, some participants wondered whether, in view of the rapid changes in the international situation, we should not consider the need to “root” international law on agricultural and food issues differently.

Everyone agreed on the need to decompartmentalize international law, while stressing that this could not be achieved by setting up a new institution, which would be too complex and counterproductive. The main debate centered on the question of "how to do it". In order to strengthen the necessary coherence between existing institutions, some suggested drawing inspiration from the operation of the World Food Summit or the United Nations Inter-Agency Working Group on the Social Solidarity Economy.

Several speakers underlined the limits, even the absurdity, of assimilating agricultural products to ordinary goods. While all agreed on the relevance of rethinking international trade rules for these products, opinions differed on the elements to be prioritized for a reorganization of this trade. For some, the central point must be to ensure real food autonomy, while a fairly large number of countries are deprived of this. For others, since this trade is often dependent on fragile political relations, food security should be the primary objective. All agreed that there is a need for a balance between the local and the global, which is not specific to food but even more crucial in this area.

The last shared observation addressed the very significant and seemingly ever-growing power of multinational companies, which needs to be controlled. This led to several proposals. International standards are sometimes ineffective or forgotten. For this reason, several speakers suggested the need to ensure better monitoring of these standards, including, speaking from a more militant point of view, to take hold of these texts to implement them in practice, while being vigilant, in particular, about who really benefits, for example, from the

fight against discrimination. Emphasis was placed on the texts relating to human rights, which are too often ignored. Then, it was stressed by several people that international competition policies, which are often flawed, should be rediscussed so that competition does not take precedence over food security or autonomy. It was also proposed the use of certificates to promote corporate responsibility, to go back to codes of conduct for multinationals, or to add ethical clauses in investment agreements.

Throughout the event, the work of the United Nations Conference on Trade and Development (UNCTAD), which addresses these issues and seeks to rethink international trade, was recalled, but was judged as no longer sufficiently in the spotlight.

Finally, the speakers made various recommendations to conclude the webinar. These included the need to strengthen existing texts by using them, including through the mobilization of civil society at the international level, but also by formulating obligations towards states themselves. Speakers also argued that agricultural and food issues could only be addressed by adopting a systemic approach, which could be achieved in practice by involving producers and consumers throughout the international negotiation process. But finally, it was suggested that perhaps the work should continue by looking for a realistic overview of what can be done in practice, including by the WTO.

REPORT OF WEBINAR ON GLOBAL GOVERNANCE

« The Effectiveness of Multilateralism as a Form of Global Governance » by Tarek El Ghadban, *PhD Candidate at the University of Paris 1 Panthéon-Sorbonne, member of the ADI/ILA 2023 Communication committee*

Doing justice to the White paper on global governance and multilateralism required a multidisciplinary discussion between people from all corners of the world. On 27 March 2023, Professors Nilufer Oral and Dire Tladi, co-chairs of the webinar, took up this challenge. The discussion began with a presentation of the white paper, highlighting its most important contributions, including the state of global governance and multilateralism, the challenges they will face in the coming years, and the three prospective scenarios for their evolution.

Based on this presentation, the co-chairs invited the oralists to comment on the very meaning of global governance and multilateralism. The discussion revealed that global governance is the sum of values and norms that aim to address and resolve challenges that go beyond State borders. Multilateralism, however, is a method of cooperation that focuses on, but is not limited to, inter-state relations. Since the genesis of the modern concept of international law, transnational corporations have played a role in its development, and international courts have served as a tool for balancing these international relations. Considering multilateralism as a prerequisite to global governance is the result of the cooperative spirit of the post-war period combined with the balance of power at that time.

However, as soon as the characteristic elements of multilateralism are identified, its weaknesses come to the surface. The oralists agreed that it is necessary to distinguish between the ideal of multilateralism, namely to give an equal voice to all states in order to achieve justice, on the one hand, and the reality of this method that does not eliminate *de facto* inequalities be they societal, economic or military. While global challenges ignore state borders, multilateralism does not circumvent the conflict of interests and suffers from limitations that affect the international community's ability to overcome the global dangers it faces.

The debates identified two major limitations to global governance through multilateralism. The first and most frequently cited of these limitations is the inequity of the global system of governance, reinforced by the economic inequalities. The most obvious symbol of this inequity is the veto power in the UN Security Council. The second limitation, closely related to the first, is the need to exist in two simultaneous but diametrically opposed worlds: on the one hand, the Westphalian world in which the individual interests of states take precedence, and on the other hand, the world of flows in which exchanges and interconnections impose collective interests whose protections sometimes require individual sacrifices. Recognizing these limitations is not denying the merits of multilateralism and its contributions to global governance. However, these identified limitations are not compatible with a general solution applicable to all areas of international law.

The webinar focused on two areas where the international community must stand together: peace, security and human rights, and environmental governance. Discussions on the place of multilateralism in these two areas highlighted, once again, the interdisciplinary nature of the notion of global governance. For peace, security and human rights, the need for an institutional update of the UN model, through the removal of the veto or the weighting of

votes in the General Assembly, or the possibility of bypassing the system as a whole, were mentioned as potential solutions and will be the subject of further discussion at the June Symposium. With respect to the environmental crisis, the inclusion of non-state actors, such as a civil society or multinational corporations, was proposed as a solution to the international normative paralysis. That solution was also discussed during the webinar on the Anthropocene.

Multilateralism has thus proven to be a useful method, but still insufficient. This method must adapt or give way to other modes of governance, some of which probably remain to be created, in order to combat the existential risks of our era.

REPORT OF WEBINAR ON THE SDGs

Leads on "leaving no one behind": the SDGs after 2030, by Lisa Aerts

PhD Candidate at the University of Paris 1 Panthéon-Sorbonne, member of the ADI/ILA 2023 Communication Committee

"The Sustainable Development Goals give us a roadmap to a better and more sustainable future for all. With these words, the United Nations website presents and summarises the 17 goals that make up the Sustainable Development Goals (SDGs) adopted in 2015 under the aegis of the UN. While the results achieved since their creation have not necessarily lived up to expectations, the webinar on 14 February 2023, which discussed the White Paper entitled "The SDGs beyond 2030", provided an opportunity to start thinking about the future of this political document on the eve of the start of the work to be launched by the United Nations in autumn 2023.

The speakers praised the immense work carried out by the steering committee of the white paper and its coordinator Sabrina Robert-Cuendet, many points of which were taken up, developed and exemplified.

First of all, the representation of all and by all in the implementation of the SDGs was addressed. All actors, both public and private, must be included in the response to the global challenges that the SDGs aim to bring. While the natural representative of all seems to be the state, its action may leave something to be desired. This is the case with autocratic states or situations where diplomatic representation is gradually being replaced by privatised technical representation. This last trend has also spread to international organisations and is amplified by the imbalances in power granted to each member, and in particular to the states. As was mentioned at the inaugural seminar, the citizen is often little or not consulted and some communities remain without a spokesperson. It is true that civil society is sometimes represented by non-governmental organisations. However, these organisations, in the name of their purpose, will defend their own interests and exclude certain other stakeholders. Jurisdictions and cities are also emerging as key players in this civil representation.

As highlighted in the White Paper, inclusiveness is central to the successful implementation of the SDGs. The use of alternative mechanisms such as the OECD Contact Points, mediation and social dialogue should be fully integrated into the debate.

In addition to the actors involved in the implementation of these objectives, which have yet to be clearly identified, crucial questions also arise concerning the instruments for their implementation, whose scope and nature must be defined. Thus, the debates reflected the importance of not opposing universal and local solutions. While both have no effect in isolation, they should not be understood as mutually exclusive. On the contrary, they reinforce each other. Thus, while the SDGs are naturally linked to instruments of public international law, private international law and, more broadly, private law should not be dismissed. The nature of this law perpetuating exploitation must be rethought and used wisely to allow for better coordination and consideration of contractual externalities in order to govern relations between actors.

The concrete implementation of the SDGs also attracted the attention of the speakers. These soft law objectives can be linked to binding international law tools, which must be enforced. Similarly, there is a need for developing countries to be better assisted and recognised. Solutions can also come from decentralised sources, including private actors. However, the actions of the latter need to be monitored to avoid contraventions of the SDGs. Even though the various private actors have already shown goodwill, notably through the creation of the EcoBeautyScore Consortium, too much hypocrisy remains, as can be seen in the multiple greenwashing manoeuvres, or the excess of arbitration disputes that are detrimental to the objectives of sustainable development.

EVENT SCHEDULE FOR THE 150TH ANNIVERSARY

Please note that registration for the June 2023 Symposium has started.
Also you may still register for the webinars

The table below intends to give a synthetic view of all the events we are organising in 2023. The best thing to do is to visit the webinars and the Paris event page 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°15 will be released by the end of April or beginning of May.