Newsletter

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Editorial by Catherine Kessedjian

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2023 Organization Committee President

This is the last newsletter you are receiving before the 18, 19 and 20 June 2023 Symposium. In September 2023, we will resume with a regular calendar of newsletters until the end of the year or the beginning of 2024.

We have a rich program for the June Symposium. You may access it here.
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For those of you who are not yet registered, you may still do so to attend in live stream or watch the replays. If you attend in live stream, you will be able to participate in the discussions via an equivalent of a Q&A monitored by a dedicated person.

To register, please click here.

After the Symposium, no rest! We will resume the webinars series with the following agenda:

5 July – Civil Status
12 July – Labor
24 August – Intellectual Property
4 September – Outer-Space
14 September – Human Rights
25 September – Democracy and Rule of Law
12 October – Mass Crimes and Impunity
19 October – Migrations
6 November – Finance
14 November – Taxation
21 November – Cultural Heritage

Finally, on 14 December 2023, we will discuss the conclusions of two years and a half of hard work and reflections and draw some recommendations for future work.

REPORT OF WEBINAR ON THE OCEAN

Teodolinda Fabrizi, PhD Candidate, University Paris Panthéon-Assas, representative of doctoral members of the ADI/ILA French branch

Any lawyer, even the most expert, feels a sense of vertigo when faced with the normative ocean of the international law of the sea. The complexity of this regime is the result of the fundamental and protean value of the ocean for the international society. A space governed by variable sovereign rights and duties, the ocean is, *inter alia*, an area of transit – legal or illegal, of goods or living beings – as well as a reserve of resources vital for the development of our societies and for human life.

Many issues are at stake, but it is mainly the threats posed by human activities to marine environments that were the subject of the ILA/ADI webinar of 25 April 2023. Under the yoke of overexploitation, affected by pollution and climate change, marine ecosystems are no longer able to renew themselves nor to fulfil their ecological functions and thus provide the ecosystem services necessary for human life. The depletion of resources previously considered inexhaustible and the rise in ocean levels, *inter alia*, give rise to questions as to whether existing international law, including its centerpiece, the United Nations Convention on the Law of the Sea (UNCLOS), can regulate human activity in such a way as to preserve the ocean.

While the importance of the UNCLOS was not questioned, the opinions of the panelists were far from being unanimous. Two of them considered that the problems are also structural, intrinsic to the current regime. For one, the convention is structurally inadequate, particularly because of the division of rights and obligations it establishes between states, which would not allow for effectively countering threats to the marine environment. For another, the Convention was an 'excellent' instrument back in 1982, but is now partly outdated, especially by reason of scientific and technological developments. Therefore, it should be amended.

However, most speakers agreed with the position taken by the authors of the ILA White Paper on the Ocean: the problem is neither the Convention itself, nor the other hard and soft law instruments surrounding it, but rather compliance with, the implementation and the enforcement of the regime. One of the speakers strongly defended the UNCLOS, arguing that, if it had been fully respected and enforced, much environmental damage could have been avoided, or at least limited. Another claimed that the key to success lies in the way the norms are interpreted and in the development of practices and discourses that eventually lead to the emergence of customary norms applicable to the international community as a whole.

These divergences led the participants to also have discordant positions regarding the role of soft law, and in particular the *omnibus* resolution of the United Nations General Assembly 'Oceans and the Law of the Sea' (the list of pertinent General Assembly resolutions is available here). Crucial for some, it is more or less useful but certainly not sufficient for others, and one of the speakers even affirmed the need to make the 'ecocide' an international crime, while stressing the importance of the work of conceptualization and definition of such a crime.

However, all seemed to agree on the decisive influence that jurisprudence can have on the evolution of international law relating to the protection of the ocean, whether it comes from specialized jurisdictions or not. The jurisdictional or quasi-jurisdictional bodies for the protection of human rights would, according to one speaker, have a decisive role to play in this respect.

Furthermore, international cooperation and the assistance provided by international organizations seem indispensable, notably for the development of a better understanding and of effective normative, technical and scientific capacities at the national level, and for the establishment of more rigorous and transparent accountability mechanisms.

Finally, the panelists shared the conviction that, in order to regulate human activities so that they do not harm the ocean, law should pay particular attention to two factors: science and private sector activities. Science is seen by the speakers as both an opportunity and a threat to the protection of marine environments. On the one hand, states should pay more attention to the advice and warnings coming from the scientific community; on the other hand, new ways of conducting scientific research at sea and new discoveries and technical advances allowing for the intensification of ocean exploitation may escape the normative framework currently in force and therefore legal control. As for the private sector, its impact on the ocean and the impossibility of always attributing its actions to the state make it necessary to set up due diligence mechanisms and to strengthen the control exercised over it by national institutions.

Rapport of webinar on Health

Antoine Jamet, *PhD Candidate in public Law University of Paris-Saclay (Univeristé Versailles Saint-Quentin, VIP)*

The “Health” seminar was held on April 26th, 2023, under the chairmanship of Professor José Alvarez (NYU). The panel included Lawrence O. Gostin, Nina Jamal, Wanda Markotter, Maria Neira and Chuan-Feng Wu. Prof. Hélène de Pooter, coordinator of the White Paper, introduced the discussion, highlighting the key points addressed by the white paper.

The seminar opened with an introductory round-table discussion, which immediately brought to light a number of ideas shared by all participants.

Generally speaking, all the panelists stressed the importance of the new definition of health at the heart of the “One Health” approach, which is not simply limited to responding to the risks associated with diseases. This approach also places health protection in a broader context, linking it to issues such as access to a healthy environment, food security, the fight against climate change and the contribution to sustainable development. This broader conception of health means that we need to extend the scope of the players involved in health protection, to include those competent to deal with issues that go beyond health protection in the more narrow sense of the term.

The panelists also agreed that the fundamental challenge is to implement the “One Health” approach. In this respect, the law seems destined to play a crucial role, both in establishing the principles on which to rebuild health protection, and in making the link with human rights protection regimes, particularly in the context of a revision of the International Health Regulations and the negotiation of a new treaty to fight pandemics. Lastly, participants stressed the vital importance of equity in the distribution of international health protection efforts and resources.

After this round-table discussion, the seminar went on with exchanges between participants and with the audience, which helped to deepen the thoughts raised in the introduction.

With regard to the implementation of the "One Health" approach, the question was raised as to how to guarantee compliance with the principles and rules laid down in a context of "fear of obligation" on the part of States. In the view of the panelists, the fundamental reasons why States do not respect their obligations in the field of international health law are that they are not capable of doing so – which brings us back to the requirement of equity with regard to the countries of the global South – or because respecting them ends up turning against them in terms of international trade. So, rather than imposing and controlling, what's important is to establish a framework that encourages States to do what's necessary, and to give them the means to do it. Beyond this, it is the relevance of a legalistic approach that is questioned, in the sense that the essential issue today appears to be that of trust – in the data, in the institutions, in the elites – and the acceptance of the principles guiding health protection by the populations.

Another point that emerged as crucial during the discussions was the question of what is meant by "equity". Fundamentally, the answer appears to be specific to the context in which the question is asked. Generally speaking, however, it refers to the need to rebalance the efforts and resources deployed to protect health in favor of the countries of the global South. It refers to the need to ensure a better reconciliation between public and private interests, particularly in the field of health interactions with international economic law.

A final point of particular interest was the incorporation of the "One Health" approach into the future treaty on pandemics, and what should or should not be included in it. In this respect, while the treaty certainly cannot deal with all the dimensions involved in the "One Health" approach, it seems essential that omissions should be referenced with a mention of the organization or agreements dealing with them.