build tomorrow

ADI/ILA 150 ANS/YEARS

2023 PARIS

conclusions ADI/ILA 150th anniversary, and recommendations for future work*

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* The order in which topics appear in this book (English version) follows the order of the original list in the French version of the book.

preface

Gabrielle Kaufmann-Kohler

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This book brings to a close the celebrations of ILA's 150th anniversary. The theme of the 150th anniversary was "Build Tomorrow". Reflections focused on 23 topics linked to the major global challenges of our time. All the burning issues of international law were covered, from food to energy, health, the Anthropocene and its impact on the planet, migration, global governance, corruption, and many more. This volume is the culmination of this vast endeavor. Preceded by white papers and webinars taking stock of the situation and analyzing the resulting issues, it captures the essence of those debates in the form of recommendations.

Researchers, and those who like to delve deeper into reflection, will read these recommendations in conjunction with the white papers devoted to each of the topics. Many others will appreciate the concise, easily accessible and, in a word, effective format of this publication. Without denying the richness and diversity of the proposals, or the degree of subjectivity inherent in writing a preface, the reader is struck by a few key ideas that emerge from this huge collection of thoughts. These represent cross-cutting trends that can be discerned in many of the recommendations, whatever the type of human activity or area of international law involved.

The first key element is the oft-repeated call to de-compartmentalize, to abandon thinking and working in silos, and to integrate, or rather interpenetrate, the fields of international law. Among others, one can refer to the proposals to revisit the relationship between international trade and commerce and labor law, human rights law, environmental law. Investment law is also called upon to undergo a similar reconsideration for it to incorporate aspects of sustainable development and social responsibility. Other expressions of the trend towards de-compartmentalization include recommendations to internalize environmental considerations and fiscal transparency into international finance, or to include a competition law component into WTO law. In another vein, there is a recommendation that agriculture and food policies and regulations take into account issues related to migration flows. Finally, the suggestions relating to the concept of "one health", which goes beyond the tra-

ditional division between humans, animals and the environment and has taken on new significance with the Covid-19 pandemic, advocate not only for the integration of the various areas of international law in matters of health, but also for genuine multidisciplinarity of the professions involved.

Another recurring theme is the aspiration to strengthen the normative and institutional apparatus of States and international organizations with a view to improving the implementation of international law. We are a long way from the era of deregulation, private sector autonomy and non-binding, fuzzy ***soft law***. This development is particularly evident in the recommendations aimed at restraining the exercise of power by corporations, controlling their quasi-normative production, "de-corporatizing" the law, and introducing or expanding "social conditionalities", whereby benefits granted to corporations are subject to compliance with conditions. In other contexts, suggestions for enhancing existing means of action relate, for instance, to international criminal law with a view to increasing the powers of the International Criminal Court or to international labor law for purposes of entrusting the ILO with more extensive responsibilities.

There is also a strong trend towards greater cooperation and coordination, which is manifest in many areas. For example, there are suggestions for the creation of a world food council; for improved cooperation in finance, in the fight against corruption, money laundering and tax fraud, on health issues, in securing migratory routes, to name just these.

These key trends and many other proposals that readers will discover seem to stem from an acknowledgement that the existing global governance is inadequate to deal with global issues. Although the standard of living and well-being of the world's population have risen sharply in recent decades, the fact remains that the international order based on multilateralism established after World War II has not been able to prevent economic inequalities (or rather the increase therefof), avoid armed conflict or control climate change and the loss of biodiversity. At a time of growing geopolitical tensions, multilateralism is under attack from all sides, in democracies from nationalist, populist and anti-globalization movements, and elsewhere from autocratic regimes.

Yet, most of the suggestions contained in this book cannot be implemented without cooperation, coordination, the strengthening of existing international institutions or the creation of new ones. Does this mean that international lawyers are clinging to

an outdated model and lack imagination? Perhaps, but that is not what emerges from the works for ILA's 150th anniversary, and that is not why they emphasize cooperation. On the one hand, the authors of the recommendations who have examined the issue all insist on a multilateralism that is plural, that encompasses all the players on the planet, as opposed to the post-war model that was dominated by the West. On the other hand, in an interconnected and interdependent world, where problems inevitably transcend state borders, there is no other real option than to work together and keep going, even when the results do not live up to expectations.

In short, this book offers a formidable harvest of ideas and proposals, all of which are incentives for action, a true program for the reform and development of international law. Within this program, it will be up to the Association to set priorities, taking into account the needs, available resources and the potential impact of its contribution.

This tremendous harvest would not have seen the light of day had Catherine Kessedjian not put her vision, energy, time and expertise at the service of the 150th anniversary, which she now brings to a splendid conclusion with this book.

While it ends the project paying tribute to ILA, this book also marks a beginning. Enlightened by the reflections of this jubilee year and guided by the present roadmap, the post-150th anniversary era is beginning, and ... there is much work to be done.

introduction

Catherine Kessedjian

In 2017, the International Law Association entrusted the celebration of its 150th anniversary to the French Branch.

The original plan (a symposium in Paris) was disrupted by the Covid-19 epidemic and the uncertainty into which international society was plunged both by the epidemic itself and states' responses to it. To ensure that there would nonetheless be an in-depth reflection on international law to mark the 150-year anniversary, even though it was not possible to hold a symposium in Paris (or not in the form originally planned), the decision was taken to organize a number of exercises in collective reflection.

The first stage took the form of a call for contributions, aimed at the youngest Academics and Practitioners in the field, in an

effort to bring out new ideas[1]. Some of these contributions were included in the white papers, others have been published separately on the 150th anniversary website.

The second stage was the drafting of 23 white papers on the following topics: Food/Agriculture, Anthropocene, Corruption, Mass Crimes and Impunity, Democracy, Human Rights, Energy, Business and Human Rights, Outer Space, Civil Status, Finance, Taxation, Global Governance, Investment, Migration, Digital Challenges, Ocean, SDGs, Cultural Heritage, Intellectual Property, Dispute Resolution, Health and Labour. These topics were not chosen at random. They reflect the fields of human activity presenting the greatest challenges and upheavals, and those in which international law has been or could be called into question.

We extend our warmest thanks to the coordinators and members of the steering committee for their work. Their task was a difficult one, given that they were asked not only to present a statement of the law as it now stands (part 1), but in particular to think ahead to the questions that might arise in the future and the challenges we will have to face (part 2). The basic idea was to view parts 1 and 2 together and make a list of the questions arising from that confrontation (part 3).

The white papers are all somewhat different, with each committee having focused on one or other of the three parts around which their mission was structured. All of them give food for thought. Taken overall, their findings provide a lucid account of the state of the planet and of international law, indispensable for fashioning the international law of tomorrow, which is what we set out to do in marking 150 years of the International Law Association. Reading them together also helps us to identify the main thrust of the approaches to be taken in drawing up the conclusions and recommendations. The white papers are available on the 150th anniversary website[2].

In the third stage of the project, each white paper was the subject of critical discussion in a webinar, usually lasting three hours. The general rule laid down at the start of the exercise, subject to very few exceptions, was that no one who had served on the

Note 1 Details of this aspect of the project (text of the call for contributions, members of the jury, initial selection of drafts and the final contributions received and published) can be found on the 150th anniversary website in English https://www.ilaparis2023.org/en/ideas-lab/.

Note 2 https://www.ilaparis2023.org/en/white-paper/.

steering committee could take part in the webinar, except as a listener. To have a critical conversation it was essential for the debate not only to cover the white paper itself but to extend beyond it to include people who had not been involved in its drafting[3].

The webinars were recorded, but the recordings will remain under embargo for 2023 and the early part of 2024, accessible only to those who registered to take part. It is expected that they will be made public in the course of 2024.

The fourth stage of the project was the June Symposium, which brought together 380 people from 75 countries in Paris from 18 to 20 June 2023. At the Symposium, cross-cutting topics were discussed in 16 panels[4]. The conclusions and recommendations in this book also benefited from the discussions held during the Symposium.

The final stage took place on 14 December 2023. It was a day conducted entirely online, devoted to four overall themes: Creation of international norms – by whom and how? Creation of international norms – which norm? Effectiveness of international legal norms, and Dispute Resolution.

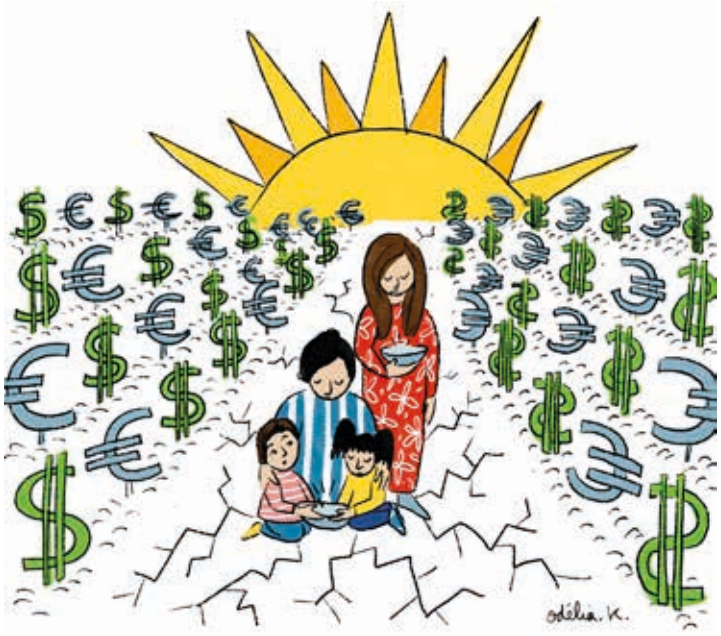
The present book, therefore, includes in a synthetical manner all the work done on the occasion of the ILA 150th anniversary.

Note 3 A list of the speakers at each webinar can be found on the 150th anniversary website https://www.ilaparis2023.org/en/webinars/. See also below Annex I.

Note 4 The program and the name of the speakers are available here https://www.ilaparis2023.org/en/paris-2023-hybrid-event/.

1.

food and agriculture



conclusions and recommendations

The need to decompartmentalize international negotiations (1) – and the resulting public policy and law – is the theme running through the recommendations, which also cover the workings of markets and international trade (2) and regulation of the power of multinational businesses (3).

1. Breaking out of the silo mentality - decompartmentalizing

The aim is international governance that reconciles trade and investment, on the one hand, with social concerns (satisfying vital needs) and environmental concerns (degradation of the climate and ecosystems) on the other. In short, international governance that allows the three pillars of sustainable development to be implemented and facilitates cooperation between states.

Proposal 1. Putting an end to the WTO Agreement on Agriculture and rooting future international agreements in both the GATT and the ICESCR. This would allow human rights to be

integrated into the corpus of international trade law. This proposal has a number of variants:

- Reviving the spirit of the Havana Charter (1948). The international trade in "primary commodities" (products of farm, forest or fishery, and minerals) must encompass objectives such as economic development, full employment, food security and preservation of natural resources.
- Moreover, international trade in farm products was originally structured around measures of this kind through the "inter-governmental commodity agreements" based on close cooperation between states, but these fell into a decline in the 1980s. Rehabilitating them is proposed as a minimal solution.
- Rebuilding the system of exception for agricultural products, currently based on the Agreement on Agriculture, along the lines of the cultural exception guaranteed by the WTO (GATT, art. III.10) and the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
- In the same way, reforming the instruments on international investment so that they take account of human rights (see *infra*).

Proposal 2. The need for institutional reform to accompany these substantive changes. Rather than setting up a new institution, the recommendation is to put a centre for cooperation in place that brings together the skills and resources of the major institutions concerned: the World Bank, WTO, IMF, the United Nations Environment Programme (UNEP), the United Nations Conference on Trade and Development (UNCTAD), FAO, the International Fund for Agricultural Development (IFAD) and the Intergovernmental Panel on Climate Change (IPCC). These competences would be grouped together in a *World Food Security Council,* attached to the United Nations Security Council, which would facilitate the emergence of cooperation and set policy priorities for the various international institutions with a view to international security. Issues of migration would require to be discussed in this forum, given the extent to which the current workings of the international trade system can endanger the farming of essential foodstuffs and result in large-scale migratory flows.

2. International trade and the working of the markets

The theory of comparative advantage, which is still the matrix of international trade law, needs to be examined afresh. Likewise, the market efficiency hypothesis is no longer widely accepted, both because of structural deficiencies (the promise that international markets would be fair and national markets stable has not been realised) and because of the numerous "externalities" they produce, both social and environmental.

Proposal 3. Adopting a new agreement to regulate imports and exports of farm products, which is in principle prohibited by the WTO and arbitral tribunals. Greater permeability of the international trade system to human rights would make it easier to move forward in this direction (See Proposal 1). Article 11 of the ICESCR binds States Parties: "Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need". The present proposal goes hand in hand with an invitation to reflect on "food sovereignty", a concept that requires a reappraisal of state sovereignty (see the dispute between India and the United States of America in Bali in 2013 concerning the building of buffer stocks).

Proposal 4. Redefining the notion of trade distortion. Faced with the failings of the markets, certain public policies should no longer be considered as "distortions". Furthermore, such policies may be necessary to put international trade back on the path to sustainable development. This presupposes:

- Allowing states to make respect for the Paris Climate Accord a condition for access to their domestic markets. Such measures would presuppose revising some of the founding principles of the WTO, those of non-discrimination and the "most-favoured nation clause", which impose stringent constraints on resort to this type of measures.
    - Caveat: a number of experts highlighted the risk of excluding from the markets farmers/peasants from the least advanced countries whose social and environmental norms are often less restrictive than those of developed countries.
- Allowing account to be taken more widely of "processes and methods of production" (PMP) in international trade. For instance, by making broader use of the exception in article XX (g) of the GATT on conservation of natural resources in order to limit the externalities generated by the international trade in water-intensive farm products. The overall condi-

tion in article XX that prohibits "arbitrary or unjustifiable discrimination between countries where the same conditions prevail" could be satisfied once it is accepted that those conditions might refer to non-economic considerations such as the hydrological and climatic conditions particular to each country. States could thus adopt trade measures regulating access to the market in products by drawing distinctions based on the hydrological footprint of their production[5].

- Observation: the DSB tends to favour the goals of open trade and non-discrimination to the detriment of environmental regulation. But there has been a perceptible turnaround in its case law, which should be taken further, especially on the condition of "similarity", where the question is whether two products arising from two different PMPs must be treated as similar, as the application of the principle of non-discrimination depends on that[6].

- Allowing stabilizing policies based on public stocks and abandoning their WTO classification as banned forms of support. This is one of the main factors responsible for the severe crisis in multilateralism in agriculture.

3. Getting to grips with the power of multinational enterprises

It has often been pointed out, including by E. Kessie (WTO) at the webinar, that there is a paradox in the WTO restricting the actions of states while it remains relatively powerless in the face of some of the practices of the multinationals. International law should be given the tools it needs to contain the market power of these enterprises, to regulate their power to set standards, and strengthen their social and environmental responsibility.

Proposal 5. Investing the legal corpus of the WTO with competition laws/antitrust legislation.

International trade in agricultural products takes place today

Note 5 For example, states could be permitted to require a product to be manufactured using a given percentage of "blue, grey or green" water, or require this information to be included on product labels.

Note 6 See DSB, Canada: Certain Measures Affecting the Renewable Energy Generation Sector (2014); DSB, United States: Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (2017): a label excluding fishing practices harmful to dolphins was justified.

on markets where competition is distorted. These markets pit small, dispersed farmers against powerful oligopolies both upstream (suppliers of fertilizer, seeds and farming technology) and downstream (processors and distributors) of farm production. Farmers are thus caught in a system of hierarchical subordination. The WTO itself has identified the lack of international competition law as one of the weaknesses in global governance, given that some restrictions on competition can be discriminatory and compromise efforts to liberalize and open up the markets.

Proposal 6. Regulating the normative powers of the dominant private sector actors.

Private norms are proliferating, to the point that there is now talk of "private transnational regulation". They amount to instruments of control of the global value chain (furthermore, they strengthen the market power of certain businesses, as only the large groups can comply with these normative requirements). Such norms are not, however, covered by the WTO rules, because of their private nature. This is one of the main challenges a future global governance system will have to face.

The texts of the Codex Alimentarius serve as a reference when a trade dispute is brought before the WTO, therefore it is proposed that the Codex Alimentarius Commission (a joint FAO/WTO intergovernmental agency) should be given the role of controlling and harmonizing these private norms, which are currently drawn up in an uncoordinated way[7].

Proposal 7. Strengthening the social and environmental responsibility of businesses ("responsible investment").

Many investment treaties protect investors by guaranteeing them a stable legal environment with investor-State arbitration mechanisms. Several states have been found liable because of policies on the environment, health, water, etc. that were held to be incompatible with the rights of investors ("indirect expropriation"). However, "non-responsible" investments are a cause both of food insecurity (forced population displacements, loss of access to land, water or productive resources, loss of livelihood) and damage to the environment (deforestation). But there is currently no instrument of international law that imposes binding obligations on investors. Regulation of their activities relies, for the most part, on soft law and a voluntary approach.

Note 7 To be noted: The Global Food Safety Initiative (GFSI), the FAO, the United Nations World Food Programme (WFP) and the Codex Alimentarius Commission met in 2021 to work on this matter.

A number of proposals have been formulated to open up investment law to considerations of the general interest and human rights:

- Recognising the right to food as a norm of "general international law" would allow the invocation of article 53 of the 1969 Vienna Convention on the Law of Treaties (a treaty is void if it "conflicts with a peremptory norm of general international law"/jus cogens). Obviously, there are no investment treaties directly conflicting with the right to food, but the potential implicit breaches are numerous (sale of land for non-agricultural purposes, restrictions on the local productive capacity, etc.).
- Rethinking the mandate of arbitrators as laid down in the rules of arbitration, by requiring them to take account of the right to food when assessing a state measure judged equivalent to an expropriation, but adopted for the protection of the population of the host state[8].
- Harnessing private law as a vehicle for achieving some of the objectives of public international law. Certain soft law texts could favour the food security of populations faced with non-responsible international investments. It is recommended that these should be made binding and made part of international public policy. This applies in particular to the UNIDROIT Legal Guide on Agricultural Land Investment Contracts and the Legal Guide on Contract Farming (UNIDROIT/FAO/IFAD): these provide solutions for improving investments in agricultural land by advocating the application of the United Nations Guiding Principles on Business and Human Rights and the Principles for Responsible Investment in Agriculture and Food Systems drawn up by the Committee on World Food Security. The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, and the Right to Food Guidelines could bring added weight to this international public policy.

Note 8 The arbitration body of the World Bank, attached to the UN, makes reference to human rights but gives priority to protection of investments. Its case law on this point needs to evolve.

2.

anthropocene

« COP 21 »

Christine ESTÈVE

Oil and collage

2021

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Œuvre réalisée pour le projet
« Dessiner le droit dans l'anthropocène »
de l'École urbaine de Lyon, 2021,
pour lequel Christine Estève,
peintre et scénographe,
et Sandrine Maljean-Dubois,
chercheuse en droit international,
ont été associées.

recommendations

1. Strengthening education on the challenges of the Anthropocene

The ILA could look into the possibility of incorporating a minimum compulsory curriculum into university courses, regardless of the discipline taught (and especially in management or business schools), and even offering face-to-face or online training (MOOC?).

The ILA could look into ways and means of introducing international arbitrators (particularly in the field of investment law) and judges to these issues, or even offer one or more training courses (MOOC?), even senior international civil servants/diplomats.

2. Further reflection on the Anthropocene and international law

The ILA could propose the creation of an international committee on the subject, with the task of pursuing the discussion and perhaps drawing up guidelines.

This could be the subject of various seminars and conferences organised by the ILA to gradually acculturate the community of international lawyers to these issues.

3. Further reflection on complexity and governance in silos

The ILA could propose the creation of an international committee on the subject, tasked with identifying and studying ways of "defragmenting" international governance and making concrete proposals.

4. Promoting the Rule of Law - right to information, citizen and local communities participation, access to justice

3.

corruption

recommendations

A. The international organizations and their member states should:

- Promote effective cooperation and coordination between:
    - The different anti-corruption instruments and their control mechanisms;
    - The instruments in i) and the instruments and institutions working on combating money laundering and/or tax evasion.
- Introduce mechanisms for control and conditions for eligibility both for state aid and for the return of assets to ensure the funds are used appropriately.
- Draw up an international framework of best practices in compensation of victims.

B. States should:

- Review the legal assistance mechanisms to improve their effectiveness in the investigation and prosecution of economic crimes and offences.
- Develop practical national anti-corruption strategies and submit them for evaluation by an independent body.
- Improve coordination and exchange of information between the administration and those agencies whose probity could be compromised.
- Develop a clear framework for conflict of interest, applicable to all public officials.

C. The private sector should:

- Promote an attitude to compliance that goes beyond mere respect for legal obligations.
- Implement a system of remuneration and career development that includes incentive and dissuasive measures to reward ethical behaviour.
- Favour the emergence of responsible investor coalitions (such as Climate Action 100+) and fuller appreciation by the ratings agencies of the risks of corruption.
- Participate in collective action initiatives to promote the fight against corruption, extortion and facilitation payments.

D. Civil society should:

- Improve transparency surrounding the funding of civil society organizations.
- Where conditions allow, develop forms of joint action with the private sector and/or the public sector.
- Play an active part in citizenship training by developing educational activities for use in schools and beyond.

4.

mass crimes and impunity

recommendations

The Committee identified the issue of effectiveness as one of the major challenges facing international criminal justice. It therefore wishes to submit operational proposals that could be adopted without requiring changes to the law:

1. Expand the powers of the Presidency of the International Criminal Court (ICC) and the Presidencies of the Chambers

- Organization of the judicial work of the Court, monitoring the progress of cases before the Chambers, supervision of the speed of decision-making, setting of time-limits.
- Organizing the election to the Presidency by consensus (modelled on the ICJ), using a Presidential/Vice-Presidential ticket to ensure a broad majority, and not holding elections in a year when new judges are appointed.
- The Presidency of a Chamber should be held by a judge with judicial experience in criminal cases.
- The Presidency of a Chamber should have powers to direct the proceedings and the conduct of hearings under its

responsibility: practical and logistical management, organization of the submission of evidence by the parties and the hearing of witnesses (order, number and duration), setting of time-limits and the speed of decision-making.

- The Presidency should be familiar with and monitor the case file so that the proceedings can be conducted efficiently.
- The Presidency should organize regular status conferences.

2. Specialization of the judges

- Judges elected should be criminal law professionals or have an in-depth knowledge of international criminal law.
- Candidates for election as judges should be given specific prior training at national level.
- Public hearings should be held of candidates for the post of judge.
- Candidates for the post of judge should be questioned on the case law and procedure of the Court and the major legal issues it faces, and on the competences of international criminal judges (the office of judge, the international criminal process, the methodology of the deliberation and judgment, etc.).
- Setting the composition of the Chambers: the members of a Chamber should be representative of the various legal cultures, with one common law and one civil law judge assigned to each Chamber. All but one judges sitting in a Chamber must have judicial experience (except for the Appeals Chamber).
- Depending on their legal culture, the judges should either be actors in the hearings (mastering the file and taking an active part in the hearings) or take on the role of referee (forming an impression of the case during the hearings and playing a neutral guiding role); a balanced composition of the Chambers between the different legal cultures should ensure roles are proportionately spread and the trial is managed efficiently.
- Developing a common legal culture: promoting the sharing of experience and the search for common practices, encouraging meetings between the ICC judges themselves and also with international judges in general.

3. Setting time limits in proceedings

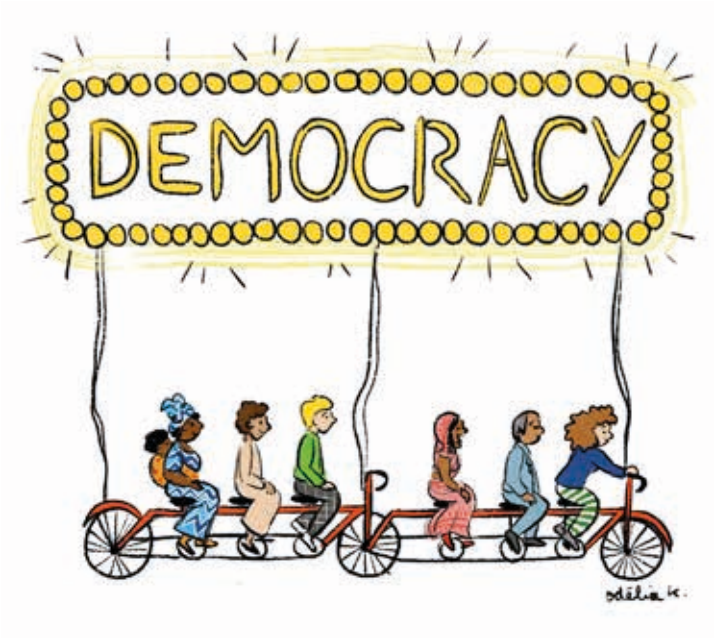
- Time for the phase of confirmation of charges should not exceed one year.
- A date should be set at the start of the confirmation of charges procedure (first appearance) for the hearing to confirm the charges and for the decision whether to confirm the charges, modelled on the Chambers for Kosovo.
- The Pre-Trial Chamber should establish a timetable and work plan showing the obligations of the parties and their time limits.
- Time for deliberation and decision on whether to confirm the charges: three to four months.
- Time from confirmation of charges to opening of the trial: four to six months.
- The Pre-Trial Chamber should submit an electronic case file to the Trial Chamber.
- Duration of hearings in the trial should not exceed two years.
- A presumptive date for the end of the trial should be set at the start of the trial phase, in the interests of a speedy and efficient procedure as well as for practical and budgetary reasons, as with the Nuremberg trials and that of Hissène Habré.
- The order, number and duration of submissions of evidence by the parties should be set, also for the hearing of witnesses.
- Time limits should be set for the various procedural steps.
- The Trial Chamber should set the time allocated to the parties at the hearings, and this should be strictly respected, modelled on the procedure before the ICJ.
- Time limit for deliberations on the judgment: three to six months.
- Judgment: its structure should be uniform (templates should be drawn up); its drafting should proceed throughout the trial, and it should be of a reasonable length.
- Time-limits for interlocutory appeals during the proceedings: one week (seven days) from the last submission of the parties, modelled on the Specialist Chambers for Kosovo. Templates should be drawn up for procedural decisions.

4. Strengthening victim participation

- Outreach to victims from the start of proceedings, to establish a link to the Court: identifying the victims, gathering their stories and testimonies, drawing up a formal application to take part in the proceedings or seek reparations, meetings in person with the victims' legal representatives.
- Increase the use of evidence by video link, to enable higher levels of participation by victims in the proceedings from their places of residence, also to reduce the practical and financial problems for the Court.
- Setting up an international radio station (broadcast on short wave as well as via the internet) to broadcast the hearings, allowing for easier and more mobile access than video streaming.
- Developing the use by victims of their right to present their "views and concerns" in particular at the reparations stage.
- Where there are massive numbers of victims, the Chambers should choose to hear the views and concerns of representatives of groups of victims, expressed on behalf of the group, to ensure greater efficiency in the procedure and broad representation of the victims. Where such depositions are given by video link from the communities affected by the crimes, the entire group of victims can thus be present at the hearing together with their representatives.
- Developing help for victims through assistance programmes: involving the Trust Fund for Victims and its assistance programmes from the start of the investigation, rather than waiting for the order for reparations at the end of the proceedings. Giving priority at this stage to collective programmes for the communities affected by the crimes, as no direct link can yet be established between victims and the crimes of the accused.
- Building assistance programmes around the four pillars of the holistic model for reparations developed by the Mukwege Foundation set up by Nobel Peace Prize laureate Dr Denis Mukwege: legal assistance, medical care, psychological support and socio-economic reintegration. A fifth pillar could be added to this holistic reparation model: reconstruction (of houses and property, public buildings, infrastructure and open spaces).

5.

democracy



conclusions and recommendations

Democracy and institutions, concepts and practices associated with it have been criticized in recent decades by different actors - but not all criticisms challenge Democracy as a means and goal for good life. Part of the confrontation derives from autocratizing discourses permeating some governments, corporations and even civil society – indicating a progressive indulgence towards the consolidation of authoritarian ideologies at the national level. However, the frustration before unsuccessful or sham initiatives undertaken on behalf of Democracy also motivates claims for the adjustment of to-day democratic repertoire due to its inability - for now - to address past injustices or to impede new ones, or even to further inspire the governance of national and international mechanisms.

Despite their different purposes, the approaches have in common the use of the legal discourse as a platform to intensify, reinforce or institutionalize their demands. Thus, regarded as a tool capable of enlarging or restricting individual and collective capabilities, the rule of law has also been affected by this dispute. This topic was discussed on ILA's 150th anniversary in accordance with two basic assumptions. First, that the democratic discourse

nurtures the minimum social conditions for an acceptable collective engagement towards a mutually respectful and inclusive form of political coexistence. Second, that the rule of law plays a significant role in framing, preserving, and promoting Democracy via national and international legal institutions.

Democracy can be associated with the permanent possibility of peacefully changing political leaders on a regular basis, without being persecuted, threatened, or punished for it, as well as with the provision of stable mechanisms to preserve the exercise of this political power from arbitrary restrictions or intimidations. However, there is neither a single concept of Democracy to perform this political alternation, nor a single manner whereby the rule of law can support it. The future work of international legal scholars, international lawyers, the ILA, and other legal associations for the ideological, conceptual, and practical re-imagination of Democratic possibilities may consider the following recommendations, which were gathered in three main axes: legal consciousness, legal education, and legal advocacy.

The critical enlargement of the legal consciousness for Democracy indicates overlapping gnoseological limits in the conception itself of the relationship between rule of law and Democracy, such as: the resistance to introduce into legal knowledge contributions from non-western legal and political traditions; the inability of surpassing institutional solutions derived from liberal political ideology; the aversion for taking seriously a transdisciplinary approach; the lack of a constant and sincere dialogue among intra-legal disciplines for a mutual fertilization of debates; and the illusion that national and international legal orders are separate fields. A recommendation for ILA would be to actively engage in close and permanent contact with other scientific associations - even those outside the legal field, to advance regular epistemic exchange between distinct traditions of knowledge and of legal knowledge.

Promoting an overarching improvement of legal education for Democracy requires the development of active citizenship in different fields of knowledge and professions beyond Law Schools. Democratic literacy and the condemnatory memory of past injustices committed by dictatorships, imperialism, colonialism, slavery, racism, armed conflicts, as well as by gender-, religious-, linguistic-, national- and ethnic-based intolerance - including genocide and apartheid, must be addressed from basic education to higher education, to fight misinformation and enhance democratic political skills. A recommendation for ILA would be to organize specific committees and study groups concerned with the production of didactic materials and curri-

cula templates on this matter. The involvement of regional branches of the ILA, the dialogue with national Bar Associations, and the regular interaction with national Ministries of Education might intensify the feasibility of the proposal.

The reform of legal regulations and political institutions by a conscious engagement in the legal advocacy for Democracy is inseparable from the reinforcement of democratic standards in national and international orders. The different degrees of public authority (local, national, regional, and international level) must be exercised by means of transparent and inclusive decision-making and -taking procedures with equal distribution of rights and duties of participation among stakeholders. A requirement for nomination to vacancies in public positions (national governments and multilateral mechanisms), in any field, including elective bodies and military forces, must be the adherence to existing national and international legal provisions concerning Democracy. The institutionalization of protective policies for human rights defenders, the provision of policies for the economic inclusion and symbolic valorization of marginalized groups, as well as the prohibition of imposing limits to the enjoyment of economic and social right to political opponents, are also regarded as crucial steps to defend democratic institutions and fight the effects of intolerance based on race, gender, religion, language, nationality and ethnicity. Corporations must also be held accountable in cases of overt support or even active contribution for autocratization processes. A recommendation for ILA would be to exercise a regular consultative role before national and international public authorities, in order to propose and discuss draft laws concerning the issues above. Once again, the involvement of regional branches of the ILA and the regular engagement with civil society and social movements concerned with defense of human rights, at local, national, regional, and international levels, could also intensify the feasibility of the proposal.

6.

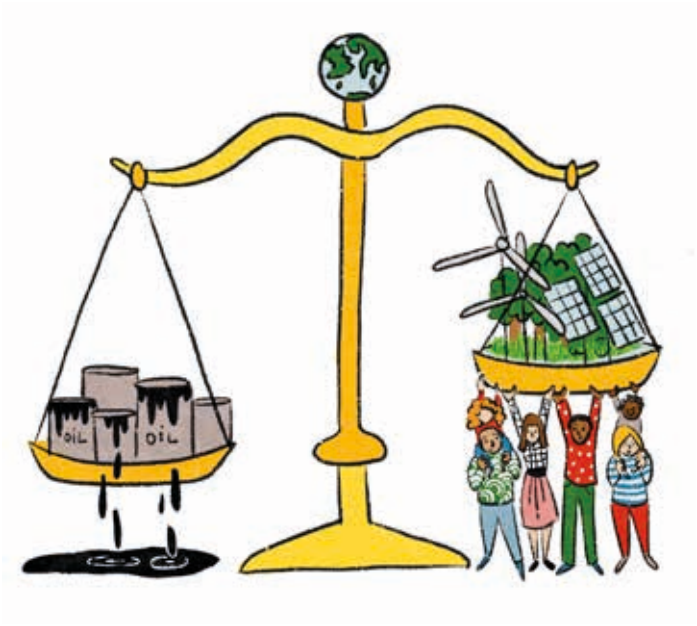
human rights

recommendations

- Defend Universalism (by trying to rally the « Global South » so that it is considered as an inclusive concept).
- Introduce drastic external control over the selection/election of international judges and experts specialized in Human Rights (e.g. via civil society), in order to put pressure on States to ensure greater independence).
- Strengthen the involvement of national and local players in the implementation of international decisions on Human Rights.
- Reflect on the concept of a "unique" Humanity (no longer compartmentalized into vulnerable "groups"), so as to be intellectually equipped to think about the challenges of notably climate change and artificial intelligence.

7.

energy



conclusions and recommendations

- There are different types of international treaties and legal instruments of global and regional nature that address the issue of energy, including in relation to the environment, international trade, the need to ensure energy access for all and development, market expansion, transit rights and obligations and investment protection.

In addition to general treaties and agreements of global coverage, there are also regional agreements that integrate energy competences and policies, with an integrating vocation and a supranational nature, such as the European Union, and other "soft law" regulations produced by relevant international actors with a diverse territorial and material scope.

- Nearly 750 million people still do not have access to electricity and more than 2.4 billion people do not have access to basic food conditions. Universal access to a secure and affordable electricity supply must therefore be a fundamental right recognized by the international community. In doing so, it also facilitates access to and availability of lighting, waste management, clean water, heating and cooling, as

well as digital networks and communications. Without energy, the right to other basic services has no material and legal basis.

- The global objectives of combating climate change, decarbonizing the economy and therefore the energy transition are also objectives shared by the international community, which must be adequately protected and safeguarded by regulation thus providing equilibrium (optimal correlation) between economic growth, energy development and climate change.

- The energy transition implies both further internationalization and decentralization of energy value chains and the internalization of environmental requirements in energy markets and systems, and the introduction of appropriate regulation. But any multi-facet transition requires regulatory frameworks in line with growing demand for legal certainty within massive financing needs of new infrastructures.

- Energy is an underlying source of geopolitical conflict, because of the continuing struggle for access to natural resources and energy reserves, due to the environmental impact or damage of current and future energy developments, or because of contractual disputes over energy infrastructure, energy assets, trade or transactions, which closely affect international law.

- The new global reality calls for reflection on global energy governance with legal instruments and organizations adapted to this new situation which is characterized by growing risks and uncertainties for all economic actors worldwide in the currently economically deglobalized and politically decoupled international environment. The chapter on energy examined the possibility of proposing, inter alia, the creation of an international organization(s) specializing in the energy sector and/or in energy and climate, in order to provide a more effective, modern and forward-looking response to these new challenges. However, there was no unanimous agreement on the desirability of such a proposal at this turbulent stage.

8.

business and human rights

recommendations

As a result of the White Paper on Business and Human Rights and the webinar held on 20 April 2023 on the topic, the coordinators, after due consideration of the comments made during the webinar and other meetings with different experts, would like to suggest the following recommendations for future work:

- Continue exploring the different forms of legalising business and human rights, including legislating on human rights and environmental due diligence at national, regional and international levels, while considering other legal means to promote greater corporate responsibility and accountability. In that context, attention should be paid to different regional and national realities to ensure that there is a body of legislation that effectively ensures that businesses integrate human rights considerations into their decision-making, activities and business relationships.

- Continue exploring the paradigm of State responsibility in international law whenever the actions or inactions of non-State actors infringe human rights. Indeed, in some situations, States may be unable to hold non-State actors (and particularly transnationally operating businesses) to account,

due to limitations linked to sovereignty and scope of jurisdiction. Any future work should consider that reality, particularly when it comes to corporate involvement in gross human rights violations amounting to international crimes.

- Continue exploring ways of promoting greater compatibility between the regimes of international investment law and international human rights law, both in terms of preventive measures that could be taken during treaty negotiations to incentivise responsible business conduct by foreign investors, as well as measures to ensure investment arbitration effectively considers the different sources of international law applicable to interpret claims.
- Promote greater integration between the areas of business and human rights (and its instruments) and the different dimensions of environmental law, including climate change, environmental protection and the fight against plastic pollution. To that end, an adequate integration of human rights due diligence, comprehensive reporting mechanisms and other tools, such as impact assessments and stakeholder engagement, coupled with government policy decisions that prioritize environmental protection, should be a priority.
- Examine the role and influence of international law in relation to development, including the need to ensure that new business models are aligned with international business and human rights standards. This includes consideration of the interactions between international law and corporate law, as well as the need to reorient the purpose of business for them to make meaningful contributions to society and the planet.
- Consider the intersection of technology and business and human rights, including the challenges relating to automation and fair work as technology reshapes the factory floor, internet and freedom of expression and privacy as well as the use of artificial intelligence without bias and discrimination in decision-making processes.

9.

outer space

conclusions

Today, the field of international space law, primarily framed by the 1967 Outer Space Treaty, stands at a critical crossroads, facing pressures and developments that challenge its foundational assumptions. This historic treaty reflects the collective will of nations to safeguard outer space from the conflicts and mistakes witnessed on Earth, emphasizing fundamental principles such as the non-appropriation of outer space, the peaceful uses of outer space, and the conduct of space activities with respect for the common interest. However, the current reality of space activities, marked by increased militarization and competition, reveals the limitations of these principles.

The militarization of space is now acknowledged as an undeniable reality. Although interactions between the space and military domains are not new, outer space is gradually becoming a potential theater of strategic confrontations. This shift poses a significant risk of arms proliferation in outer space and engagement in hostile activities, such as satellite jamming, cyberattacks against space infrastructure, and even the deployment of weapons in orbit. Faced with these threats, the international community is urgently called upon to develop a solid legal framework to prevent an arms race in space and regulate unfriendly operations in orbit.

Simultaneously, the emergence of the new space economy, characterized by the increasing involvement of private actors in the exploration and exploitation of space, creates a double-edged dynamic. On the one hand, it fosters a surge of innovation and channels substantial private investment into the space sector, promising to revolutionize access to space and open new frontiers for humanity. On the other hand, it raises concerns about the potential overexploitation of space resources, like what has already occurred on Earth. Commercial ambitions focusing on the extraction of celestial body resources, along with the deployment of mega constellations in low Earth orbits, increase the risk of saturation and pollution by debris, jeopardizing the security and sustainability of future space activities. These developments necessitate a clarification of the rules governing the exploitation of space resources. Moreover, it is vital to establish international standards for debris prevention and space traffic management. Such a regulatory framework must not only ensure the peaceful and equitable use of space but also preserve its accessibility and security for future generations. Given these major challenges, the need for enhanced

international cooperation and effective space governance has never been more pressing.

In this complex landscape, the evolution of international space law unfolds through a normative interaction at three levels.

Firstly, traditionally, international space law was formed within the United Nations, laying the groundwork for the incorporation of its principles into national legislations. However, today, the process seems to be reversing: the UN Committee on the Peaceful Uses of Outer Space draws on national practices to establish international standards. This shift particularly benefits space powers with advanced national regulatory frameworks, allowing them to significantly influence the formation of international space law.

Secondly, the role of companies in shaping international space law is intensifying. By establishing their own technical standards, these private entities are increasingly shaping the standards that are subsequently adopted by states and recognized internationally. This trend highlights the growing importance of non-state actors in developing technical space norms. However, it raises concerns about the potential dominance of private interests over the collective interest, risking diverting the development of space law from its common goals.

Finally, the shift from a multilateral to a plurilateral approach marks a significant change. In this new context, groups of states form blocs around specific normative initiatives or cooperation projects. This fragmentation could undermine the universality and unity essential to international space law, favoring particular interests at the expense of the general interest.

These dynamics highlight the current challenges of international space law, underscoring the necessity to rebalance interests and strengthen international cooperation to ensure the development of space law in a truly global and inclusive manner, serving the common interest of humanity.

recommendations

1. Preserve the founding principles of international space law

It is imperative to reaffirm and preserve the fundamental principles set forth in the 1967 Outer Space Treaty, notably the principle that the exploration and use of outer space are the province of all mankind. This involves a renewed commitment

to ensuring that space activities benefit not just a few actors but contribute to the common interest.

2. Strengthen international cooperation

Given global challenges such as space pollution and space traffic management, it is essential to maintain and enhance international cooperation. This collaboration should include the sharing of knowledge, resources, and technologies. In this regard, the creation of an international organization dedicated to space could provide a structured framework for coordinating global efforts, thus facilitating the adoption of common standards and the implementation of joint initiatives.

3. Educate decision-makers and international actors

To ensure effective and equitable space governance, it is crucial to increase awareness of space issues among political decision-makers and international actors. Training programs in space law, offered to national leaders and staff of international organizations, can play a key role in this process. These sessions should present real case studies and examples of best practices, highlighting successes in space cooperation and the mutual benefits resulting from shared respect for space law principles.

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Outer space is not only a new frontier for exploration or exploitation; it represents a crucial resource for the future of humanity. As such, the development of space law must be rooted in a perspective of sustainability and inclusivity, with a firm commitment to international cooperation, equity, and the preservation of space for the benefit of all nations and future generations. By working together to these ends, international lawyers can ensure that space remains a realm of peace, progress, and opportunity for all.

10.

civil status

recommendations

Civil status gives rise to legal problems that are sometimes invisible and sometimes misunderstood, but nonetheless omnipresent. There are multiple issues, ranging from the very concept of civil status to how it is formally documented and how people move around.

It must be remembered at the outset that without civil status there is no access to rights, or to any democratic life. Without civil status, a person is deprived of his or her fundamental rights such as the right to education and health, political rights, freedom of movement, and access to civil rights including rights of ownership. Without civil status a person is vulnerable, subject to violence, exploitation and human trafficking. A child who is invisible is at high risk of prostitution, forced begging and enslavement, and of being drawn into child trafficking.

The Bamako Declaration, adopted on 3 November 2000 by the *Organisation internationale de la Francophonie,* makes the connection between civil status and protection of human rights, and between civil status and democracy. Chapter IV (B) on free, fair and transparent elections includes a commitment by states and governments to strengthen the national capacities of all

actors and structures involved in the electoral process, in particular by means of establishing reliable civil status.

Each state must ensure it has the means to implement this commitment so that every person can have civil status. That is the aim of Target 16.9 of the United Nations Sustainable Development Goals, namely "By 2030, provide legal identity for all, including birth registration". Meeting this goal will require an increase in the aid provided under the World Bank "Identification for Development" (ID4D) programme.

Work must be pursued on the reliability of documents proving civil status. The rise of digital identity, which often goes hand in hand with the use of biometric data, gives much reason for hope. It is a way of proving identity and gaining access to various rights – social, political and educational. But there are multiple risks inherent in this development: it allows for generalized controls and the exclusion and targeting of people, denying them their social benefits and restricting their rights. Digital identity is in a sense the elephant in the room where civil status is concerned; it must be regulated to ensure that the systems put in place are inclusive, capable of standing the test of time, and offer robust guarantees with regard to cybersecurity and data protection principles.

There also needs to be a conceptual discussion about what is meant by civil status. As an element in personal identification, it is becoming increasingly subjectivized (gender self-determination, and the partial shift in filial relationship away from biological ties). The fundamental right to identity, which flows from the right to have one's privacy respected, is highlighted in order to allow the individual to assert his or her status.

Where the fundamental nature of civil status is concerned, it is essential to move ahead with discussions to enable the recognition of legal filiation, particularly in cases of surrogacy, while still providing safeguarding mechanisms to protect women's rights and acknowledge the superior interests of the child. The work of the Hague Conference needs to be pursued to find the delicate balance between the goal of continuity of status and the rejection of commodification of the gestation process.

Ways should also be found to implement the Yogyakarta Principles and convince organizations of the importance of offering a third gender option with a non-binary registration system. The right to gender identity is a fundamental, intimate aspect of private life. It is a matter of human rights. Its effectiveness presupposes the abolition of abusive conditions such as sterilization, medical intervention or divorce, and the setting up of a procedure that is speedy, transparent and available to all, ir-

respective of age. The emerging international trend to allow registration of a third non-binary or diversified gender as X, should be strengthened. The evolution in material rules must be accompanied by an evolution in the rules of private international law: the link to nationality, which represents the traditional link for purposes of personal status in many legal systems, should give way to a link based on habitual residence, and international mobility could be facilitated by using the recognition method rather than the conflict-based method.

Lastly, the vital standardization of systems of civil status to improve the issue of birth certificates and facilitate their circulation between states requires the specialized organizations, particularly the International Commission on Civil Status, to be given the necessary means to continue their work and expand their sphere of influence.

11.

international finance

conclusions and recommendations

Any vision of what a good future holds needs finance to help realise it. Such finance can be raised, channeled and deployed because of the facilitatory nature of legal rules. Law also allows for institutions to be created to ensure that rules are enforced, monetary and financial stability is pursued, and policies adopted by states and their subdivisions are implemented. Beyond a regulatory role, states and other public entities are themselves often engaged in financial markets. In addition to direct lending between sovereigns, a conspicuous example of this in public international law is the intermediation between investor and beneficiary that is enabled by international financial institutions, including multilateral development banks. These arrangements, which taken together broadly constitute what is sometimes referred to as the international financial architecture, have evolved to reflect not only the lessons of capital and financial markets but also myriad and evolving policy objectives of states. These are often contested, particularly regarding the extent to which the mechanisms of international financial law should advance certain political objectives, for example on matters as

diverse as tax avoidance, the environment, sanctions and debt sustainability.

These issues informed athewhite paper, titled 'International financial law in the next decades', and whose preparation by a steering committee of nine distinguished legal scholars and practitioners was coordinated by Professor Caroline Kleiner of the Universite Paris Cité. The white paper discussed the international financial architecture, the objectives of international financial law, the role of technology, and several international law principles. On this last point, the paper highlighted the growing influence of soft law rules in the financial law space. The white paper also identified a number of challenges, including: the promotion of financial stability; issues regarding the environment, sustainability and gender; inflation; a crisis relating to trust in national currencies; the prospects of another global financial crises or sovereign debt crises; climate change; the challenges posed by technology; and, geopolitical challenges, including a perceived trend toward greater geo-economic fragmentation.

In turn, the white paper was discussed in an extended webinar which fielded eight eminent speakers in addition to its chair, Gerard Sanders, Honorary Professor, Queen Mary, University of London. The discussion was structured around several of the challenges noted above, as well as several questions with which the white paper concluded. These focused on the international financial architecture, the risk of fragmentation, the better reconciliation of financial stability and the pursuit of non-financial objectives, and the creation of an international currency. The discussion ranged across many of these subjects and more and was enriched by speakers responding to comments and questions posted by the audience.

The final observations conveyed at the webinar included the recognition that definitive conclusions from the discussion would be elusive given the magnitude and complexity of the subject. Nonetheless, several broad themes emerged, of which four stand out.

First, the current state of the international financial architecture, while imperfect, appears more robust now than previously, partly as a result of the lessons learned from historical financial crises. In order to enhance financial stability, to acknowledge the impact of new technologies, to ward off future crises where possible and to survive them where not, policymakers need to continually strengthen the financial architecture. There is no need for a new blueprint because the current model can be built upon rather than done away. This ought to be achievable given that the current model, at least in respect of its concern

for financial stability, enjoys substantial, broad-based support from both policymakers and users.

Secondly, more is expected of international financial law than ever before. The content of financial laws now addresses subjects that were not of concern traditionally in supporting stable markets. Some of these subjects, such as those with an environmental or tax transparency dimension, are increasingly seen as having been internalised within international financial law. However, there can be disagreement about the correct contours of relevant rules, e.g., whether international financial law should impose stricter obligations on financial institutions regarding environmental matters, including whether they can or ought to be made liable for environmental damage arising out of projects they finance. Other subjects that potentially fall within the orbit of international financial law have so far garnered less support, including establishing a regulatory mechanism for restructuring sovereign debt held by non-state actors. Also notable here are sanctions imposed by states rather than by the international community through the United Nations Security Council. Policymakers of the future will continue to be faced with difficult choices on what subjects international finance should embrace, even if this amounts to mere accommodation, for instance in respecting outcome-based contracts and a relational contracting approach in managing distress.

Thirdly, one major area where there is general agreement among states is the development agenda as represented by the UN's Sustainable Development Goals. These have been internalised within the objectives of many international organisations, including those which increasingly influence international financial law through the creation of soft law, particularly that developed by the Bank for International Settlements, the Financial Stability Board and the Financial Action Task Force. The universal adoption of the SDGs has also energised the international financial institutions such as the International Monetary Fund and the multilateral development banks, not only the World Bank and major regional development banks, but also sub-regional banks including those operating in Africa. Policy makers of the future will have to decide how to respond to the likelihood that the SDGs will not be met within their initial timeline and what elements of what will be a new international development agenda are to be grafted onto the mandates of the MDBs. A balance will have to be struck regarding how much of the implementation of the international community's shared objectives on all manner of subjects can be responsibly assigned to the

MDBs without a substantial capital infusion, for which there seems little appetite, and without broadening their mandates at the expense of operational efficiency.

Fourthly, and finally, the health of the international financial system depends not only on the formal structures of the law, such as rules and institutions, but on a culture of coordination and cooperation among the ultimate guardians of those systems, namely the states that have created them. This, ultimately, is dependent not only on meeting formal obligations but on the respect and benevolence they can show to one another, an expression of which would be to find ways forward in a geo-political environment susceptible to fracture and fragmentation. Enhanced and more fully representative governance arrangements, including heightened transparency, may help to foster the needed goodwill.

12.

tax

recommendations

- Rethinking tax sovereignty in a globalized world by redefining the criteria for linking taxes to the State, for a more supportive concept of fiscal solidarity, by defining good tax governance and restore the democratic deficit whenever it is found, as well as rethinking a new and fairer tax cooperation.
- Mitigating climate change through tax policies and think about the taxation of common goods.
- Accompany taxpayers and tax authorities through technological change by thinking about how to use new techniques and how to tax data.
- -Strengthen international human rights in tax matters to better support private players (individual taxpayers, companies or the legal professions), by maintaining a high level of legal certainty and predictability of the rule of law.
- Rebalance in favor of tax equality and solidarity, not only between different types of income, but also between countries' levels of economic development, by thinking about a better balance between source countries and countries of residence, and also about better control of expenditure and

revenue.

- Rethinking corporate taxation by considering how best to guide international tax policy, and how to improve the specific elements of an international system of consolidation and apportionment.
- Better conception of the rule of law by simplifying and clarifying it, but also better application, by providing a simplified manual or similar guidance to explain the coordination and operation of the various multilateral conventions; rethinking the role of the judge in economic matters.
- Improving mechanisms of tax disputes prevention and resolution fairly, effectively and at minimal cost to taxpayers and administrations, including by considering the creation of new mechanisms and the improvement of existing ones.

13.

global governance

conclusions

The Working Group on Global Governance and Multilateralism examined the history and structure of multilateral institutions and governance, current challenges to the rules-based international order, and potential paths ahead. This short contribution outlines challenges to the current order, and identifies potential avenues for future work by the ILA in this domain.

Background: The era following the conclusion of World War II was characterized by ideas and international institutions that privileged rule of law, democracy, human rights, the free movement of goods and capital, the multilateral provision of global public goods, and collective security. This order, centered upon the United Nations system and the Bretton-Woods institutions, was characterized by rule-based multilateralism. The end of the Cold War witnessed a significant rise in the authority of international institutions, and a strengthening of its "liberal" features (such as human rights, the rule of law, democracy, and the free movement of people), as well as an extension of states joining these institutions. Many view this this order as largely responsible for the unprecedented economic growth and relative peace among economically developed states in the decades after the war.

Yet, as the ILA celebrated its 150th anniversary, this international order is under severe pressure. In part, these pressures result from frustration over rule-based multilateralism's failure to effectively address new challenges, including climate change, global economic instability and inequality, the proliferation of weapons of mass destruction, and global health threats. Other critiques suggest that the rule-based multilateral order unfairly favored Western societies and elites, advanced a neoliberal agenda with regressive distributional effects, failed to apply rules evenhandedly, and institutionalized state inequality. In liberal democracies, nationalist and populist forces on the right and antiglobalist movements on the left target international institutions, as do leaders of autocratic regimes. These critiques are accompanied by a growing rejection of political authority beyond the nation-state; as a result the legitimacy and effectiveness of multilateral institutions protecting and promoting economic freedom, security, human rights, democracy, and the rule of law is called into question.

recommendations

Looking Ahead: Since its inception, the ILA has been centrally concerned with advancing and strengthening international law and international institutions. Given the nature and scope of present challenges, it is vital that the organization continue to play a productive role on these matters. To do so, the ILA can utilize two signal strengths that it possesses. First, through its large and diverse membership, the ILA has access to unrivaled professional and technical expertise. Second, through its unique organizational structure and system of global branches, its reports and other publications reflect truly global processes. Given these comparative strengths, the ILA might consider undertaking analytic work on the following issues, all of which are central to multilateralism and global governance:

The revitalization of international institutions: While these bodies are subject to many criticisms, they are nonetheless indispensable in an interdependent world. Numerous proposals have been offered to increase representation, transparency, legitimacy, and the like. Yet few consider whether there are tradeoffs among different features of these bodies, or the values that they pursue. For example, might there be trade-offs among deeper forms of international cooperation and higher levels of

compliance? Or more stringent forms of cooperation and the number of states participating in any particular legal regime? Climate governance might provide a salient example of these sorts of tradeoffs, but they are common in other issue areas as well. A sustained study of these issues can promote a richer awareness of the existence, if not inevitability, of tradeoffs, and thereby lead to more realistic proposals for international institutional reform and renewal.

The human right to a healthy environment: In July 2022, precisely 50 years after adoption of the Stockholm Declaration, the United Nations General Assembly adopted a resolution recognizing the human right to a clean, healthy, and sustainable environment by a vote of 161-0. Advocates hope that the resolution will catalyze further international action. Yet even many of the states that voted for this resolution stated that it did not change international law. Still others complained that the content of the right was unclear. How, if at all, will UN recognition of this right change international law? What is the appropriate scope, and what are the necessary limits, to this right? How can this right best be implemented and realized? Given that the right to a healthy environment pushes international human rights law into new directions, and presents significant opportunities for norm development, this topic is ripe for focused legal dialogue and study with the ILA.

The governance of Artificial Intelligence: Artificial intelligence (AI) promises to revolutionize global economics and politics. It can help the world tackle complex problems such as climate change and new pandemics. At the same time, it poses significant risks of displacing workers, enabling new forms of surveillance, and entrenching existing forms of bias. While many states and several international organizations have begun to draft rules on AI, large questions remain as to the processes, fora, and institutions should be used to develop and apply rules in this domain. While the ILA's 150th anniversary was an appropriate time to celebrate the organization's history, the aftermath of these celebrations is an opportunity to look ahead, and the ILA could make a tremendously productive contribution by spearheading efforts to conceptualize and operationalize AI governance.

Note that these three proposed projects draw on different strengths of the ILA. Given the importance of building an effective institutional architecture to the realization of international law's substantive values, the first topic is a necessary adjunct to the ILA's traditional function of furthering the codification of

international law. The second topic plays to the ILA's traditional legal expertise. Identifying the implications of a right to a healthy environment will require understanding and analyzing an extensive body of decisions and reports by national, regional, and international tribunals and bodies. Moreover, because this right has deep roots in the Global South, and has already been interpreted by several tribunals in the Global South, this topic will be of particular interest to a broad swath of the ILA's membership. Finally, the third topic if forward looking. Despite a flurry of recent activity, international regulation of AI is in its infancy. In taking up this topic, the ILA would be well-positioned to play a catalytic and leading role in this emerging field, and to demonstrate its ability to advance the codification of international law in the 21st century.

14.

investments

conclusions

The importance of taking account of non-economic interests

International law on foreign investment, including investment arbitration, is at a turning point in its history. Constructed as a system for protecting foreign assets against attacks on private property by host states, today its legitimacy is being challenged. In order to last, it can no longer fail to take account, as part of the overarching aim of protection, of essential non-economic needs such as environmental protection, sustainable development, and respect for minority and social rights.

The essential role of the state in safeguarding these concerns must be preserved, along with its sovereign power to make laws in the general interest. Moreover, international standards emerge largely from national practices, which is why these need to be encouraged.

The need for the law to adapt to economic concerns

Both the flows and the forms of investment are undergoing change. This has implications at the legal level. For instance, the contract is making a comeback, as an instrument that parties find reassuring. There is also the development of regional international law. The resulting movement in favour of liberalization of investment has, however, been uneven. Recent unilateral practices intensifying the prior screening of incoming investments, often based on concerns about national security and relocalization or renationalization of economic activities, mark a return to certain forms of economic nationalism.

The universalization of international investment law, pursued as a goal ever since the 1960s, no longer necessarily looks so desirable. That said, it would offer a way of countering the fragmentation of international law and the scattergun approach to norms, as well as discriminatory practices. In the absence of a universal treaty, an agreement involving a more limited number of states parties but within a broader multilateral framework could open up the horizon.

Difficulties persist when it comes to balancing rights and interests

Despite the constant search for a balance between the rights and obligations of the stakeholders, international investment law has so far failed to find one. The interests of states themselves do not converge. The needs of investors and the aspirations of civil society vary too. Against such a background, the role of international courts and tribunals, subject to the requirements of independence and impartiality, must continue to be supported, while at the same time there is agreement on the need for reform. Transparency, both of law and procedure, represents another major challenge.

recommendations

- Accompanying developing countries in the development of their national law, in particular in terms of the social and environmental obligations to be imposed on investors.
- Drafting contract templates and standard clauses to encourage the factoring in of non-economic concerns.

- Involving all the actors concerned in the negotiation of international agreements on foreign investment.
- Limiting the notion of investment protected by international systems to investments that are sustainable and responsible.
- With regard to settlement of disputes, providing for mandatory recourse to accelerated dispute resolution procedures, admitting counterclaims by states and strengthening the systems for enforcing awards.

15.

migrations

conclusions

Diversity of migration situations

One of the first challenges for the regulation and governance of migration, at international, regional and national levels, is to cope with the diversity of migrant profiles, their geographical distribution, and the demographic issues this raises.

People who migrate as children have neither the same needs nor the same vulnerabilities as those who migrate for professional or family reasons as adults. Between these two extremes, there is a multiplicity of specificities - depending on age, socio-economic resources, cultural profiles, security situations etc. - that call for both fine-tuned and comprehensive global regulation of migration.

Diversity of migration factors

All studies show that it is difficult to determine precisely the factors that drive a person to migrate. Migration factors, defined as a complex set of interdependent factors that influence the migration decisions of an individual, a family or a population

group, are many and varied. Indeed, in both origin and destination areas, there are multiple push and pull factors.

However, no single push factor is clearly identified as having more weight than another in an individual's decision to migrate. Instead, all those interviewed for this study cite the same potential drivers of international migration, namely armed conflict, natural disasters, persistent human rights violations, including gender inequalities, discrimination against minorities, persons with different sexual orientation and gender identification, and violence. It is also important to take into account the motivations of the migrants themselves, in order to meet this challenge of "migration factors".

Migration routes and adequate protection

Alongside the multi-faceted aspects of migration factors and the diversity of migrants' socio-cultural and economic profiles, the concern to secure migratory journeys is among the most shared by those interviewed for the White Paper - and, more broadly, by the most authoritative observers of the strengths and weaknesses of international migration law. This challenge implies cooperation between States, respect for migrants' rights, and consideration of global phenomena such as the recent Covid-19 pandemic or the adverse impacts of climate change.

recommendations

In light of these conclusions and the remarks and comments they elicited during the webinar, the following recommendations can be made:

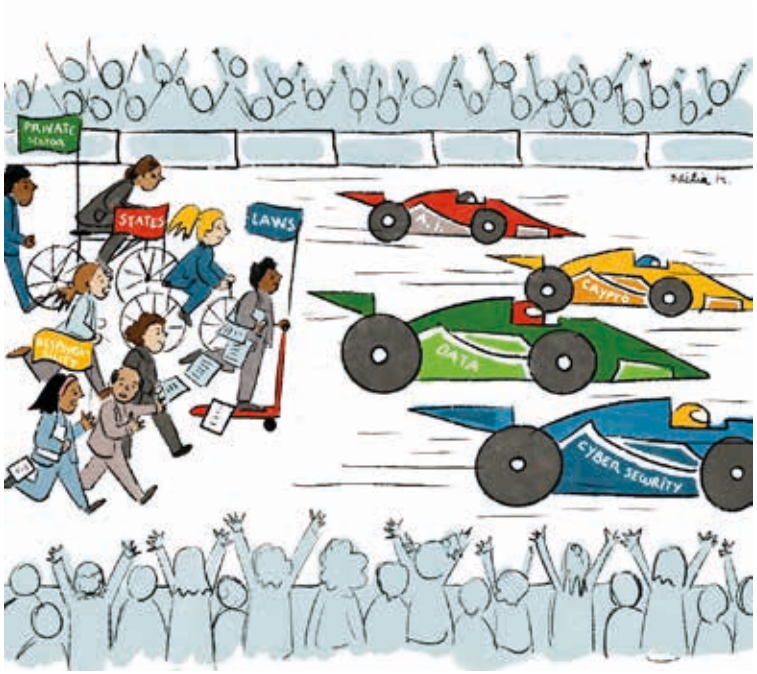
- Develop a global and comprehensive vision of migration that takes into account all the issues it raises, without focusing solely on problems in the Global North or Global South. Particular attention must also be paid to the causes of migration, in order to minimize the factors that force migrants to leave their countries of origin;
- Dealing with illegal migration in a way that respects migrants' rights, which can only happen through the development of legal migration channels (visas, resettlement, relocation, etc.);
- Quickly grasp the new challenges posed by the new causes of migration - particularly climate change - and the new ways

of regulating them - notably the use of electronic means of controlling migrants, including the use of artificial intelligence;

- Ensure the participation of migrants in decision-making on migration policies, by strengthening their involvement in the public and political life of the State in whose territory they find themselves.

16.

digital challenges



conclusions

This digital thematic has been addressed both specifically in the white paper and webinar dedicated to digital, and transversally, in other White Papers, webinars and during the June 2023 symposium and the closing webinar of December 2023. There can be no doubt, therefore, that the ILA must take up this topic in its future work. Nevertheless, the field is extremely vast, and it will be necessary to plan a program of reflection identifying the themes to be addressed, the appropriate framework within the ILA for doing so, and the appropriate timeframes.

In the short term, both the White Paper and the webinar on digital technology have brought to light a common observation: the international stalemate or immobility when it comes to meeting the challenges currently posed by digital technology. The ILA's future work on digital issues must first and foremost consider how to overcome this stalemate, due in particular to the political instrumentation of international law, both in terms of institutional and procedural governance and normativity.

Future reflections should aim to devise inclusive legal mechanisms and develop a discourse on cyber that needs to be

adapted locally. The need for inclusivity comes up again and again in the face of challenges such as the distribution of roles and responsibilities between public and private players, and the digital divide.

Inclusivity must be understood in the broadest sense of the term: taking account of regional and sub-regional levels, thinking about regulation with private players at the stage of standards formation and application, and accountability of the actors, engaging civil society and fostering dialogue between the technical, legal and power spheres.

The other line of thinking involves taking local factors into account when responding to a global challenge. Although definitions and certain principles may be common, our discussions have shown that it is not appropriate to impose a model and take advantage of its spill-over effect, as we saw with the GDPR, but rather to reflect on local specificities, ecosystems and cultures: taking into account the issues specific to each region or sub-region to gain support and federate around the issue of regulating digital activities. Local realities need to be compared so that legal solutions can be adapted to their specificities.

The bridge between inclusivity and the need to take account of local factors in the face of global risk can be built by strengthening the technological and legal capacity building of each country, in collaboration with all the stakeholders mentioned above.

recommendations

To achieve these objectives, several avenues of reflection were put forward, which could feed into future ILA's work:

- a need to map and categorize, in order to analyze and compare:
    - existing law, because there is no need to systematically produce new standards (to avoid over-regulation) and because technological evolution will always be faster than the evolution of the law: this applies to binding international instruments, as well as regional and national ones, including extraterritorial laws; to soft law applicable to the digital environment, to understand its potential legal effects;[9]

Note 9 See the ILC's work on non-legally binding international agreements, which was also the subject of a study and guidelines by the Inter-American Juridical Committee in 2020 and has been on the agenda of the Council of Europe's Committee of Legal Advisers on Public International Law since 2021. See Mathias Forteau's preliminary study.

and to international standards which, because of their technical dimension, can respond more effectively to the challenges of digital regulation, but are not necessarily included in political discussions. Given the effectiveness of the latter instruments and the inclusiveness of the corresponding processes, how can we think about alternative modes of producing and applying law and their interaction with existing law (interpretative role and contribution to the formation of new rules)? This mapping will enable us to better identify existing tensions, including at regional and sub-regional levels, so that we can overcome them. It is also a first step to then engage on some normative weighing whether the existing law is sufficient or effective for the goals that we have for the digital environment (peace and security, rights-protecting, safe, secure, etc.) versus the pros/cons of pursuing the creation of a new legal instrument.

- digital risks, to make all players aware of the stakes and challenges involved, and to better identify the mechanisms and rules needed to meet them.

- rethinking digital governance:
    - which forum for digital issues? The fora dealing with digital issues are extremely numerous, but competitive and redundant rather than complementary. Should we rethink the Global Governance Forum? Should we leave security issues to the United Nations Security Council? Should we reactivate the Pugwash Movement or create an international forum for scientific discussion, between scientists and politicians, on the political and ethical implications of new discoveries?
    - Reflect on the distribution of roles in the formation of law: States can intervene only by issuing general but binding rules, while other players, notably the private sector, would participate in the creation of regulatory law of a secondary order. Bear in mind, however, that both governments and private players can create soft law, whereas only governments create legally binding law.
    - The increasing complexity and technical modernization of our society means that we need to think

about the role of science and technology in shaping and formulating standards. Is it possible to envisage the technological neutrality of standards in the short and long term, to avoid their rapid obsolescence? It seems necessary to reflect on the roles of the scientist, the technician, the jurist and the political decision-maker in the processes of drawing up and applying international law; to make decision-makers more aware of technical issues and to ensure that experts have access to the chambers of power; to include multidisciplinarity in negotiation processes.

- Adopt global governance principles inspired by other scientific fields. The importance of sharing experience between experts in different technical and scientific fields was highlighted. Consider the interactions between ethics and law, particularly with regard to the use of AI, while preserving the place of the human being at the heart of the decision-making process and human rights at the heart of the normative framework. Maintain the balance between regulation, innovation and research, in particular by developing co-regulation mechanisms with private players.

These themes call for reflection on how to develop a common, non-discriminatory language, intelligible to scientists and jurists alike, experts and non-experts alike, in order to raise awareness and train all players, public and private, users and decision-makers alike.

In a more transversal way, the first step will be to examine the way in which information and communication technologies are modifying international law, the evolution of standards, and the processes of formation and application of international law. Studies do exist, and there are sometimes many for certain branches of law, but the analysis of positive law is usually carried out in silos. However, digital issues call for a more transversal approach in order to better understand what is at stake. Secondly, research could look at how to integrate technologies into the law, such as privacy by design? Finally, what can technology do for international law, in terms of popularization, awareness-raising, adaptation to local contexts, or evidence gathering?

The ILA could also consider more specific themes:

- The right of access to the Internet in times of peace and armed conflict;

- The international framework for data protection, with a particular focus on health data;
- Digital evidence, particularly in criminal proceedings, its collection and use;
- AI regulation.

17.

ocean

conclusions and recommendations

- The place of *soft law* in the law of the sea: effectiveness and appropriateness. Are soft law approaches effective?
- Effectiveness of implementation of the law of the sea. How can states be supported in implementing, complying with and effectively applying or enforcing international instruments on the law of the sea? [For example, through capacity-building and the transfer of marine technology.]
- Implementation, compliance, application and enforcement of obligations of the flag state, in particular on the high seas. Is there a need for a new legal framework, especially in light of the increased use in the future of maritime autonomous surface ships (MASS)? Would the flag state of a MASS be in a position to comply with its obligations under UNCLOS, in particular article 94? If there is no "captain" on board a MASS, can the flag state comply with the requirements of article 98 of UNCLOS?
- Marine Assault Vehicles (MAV). Does a MAV fulfil the UNCLOS definition of a "warship"? As such does it enjoy immunity? Can MAVs be used on the high seas and in the EEZ to exer-

cise the right of visit laid down in article 110 of UNCLOS? Conversely, what of the use of MAVs in connection with organized crime at sea?

- The role of the port state. Should the rules of inspection and detention of vessels be harmonized as between port states? Is control by the port state sufficient to guarantee sustainable navigation and fishing?
- International responsibility in the law of the sea: different actors, forms and applications.
    - Are the due diligence obligations on port states, coastal states and flag states adequate? Should there be objective liability of states, in particular in cases of serious or large-scale damage to the environment? Would more frequent recourse to international courts and tribunals to have states held liable for breaching their law of the sea obligations ultimately lead to better implementation, compliance, application and enforcement of those obligations?
    - Can the activities of private sector actors always be imputed to a state? Is it always clear which state exercises jurisdiction or control over a given activity? Who is liable in the case, for instance, of negative effects on the marine environment arising from cumulative sources or involving multiple actors, and what would be the appropriate forum for such cases? How can the private sector be encouraged to approve and sign up to the Sustainable Ocean Principles of the UN Global Compact? How can funders and regulators be encouraged to adopt and implement the Sustainable Blue Economy Finance Principles of UNEP and its associated guiding framework? What legal solutions could be found to strengthen the action taken towards effective implementation?
- Fisheries. Combating illegal, unreported or unregulated (IUU) fishing. The role of regional fisheries management organizations/arrangements (RFMO/A). Using technology to enhance the sustainability of supply chains in fisheries products without putting obstacles in the way of small-scale or artisan fisheries. How and by whom should the effects of mesopelagic fishing be assessed? How might the precautionary approach or principle and the eco-systemic approach be put into practice more effectively in fisheries management?
- Marine environment. Precautionary principle. What legal solutions could be found to strengthen the action taken

towards effective implementation of, and compliance with, protection and preservation of the marine environment? Should "ecocide" be considered as an international crime? If so, how should it be defined and what acts might constitute ecocide in the marine environment? Should the ocean or part of it benefit from rights protected by the law? Binding regulation of pollution due to undersea noise.

- Whether or not to exploit the deep seabed. The stakes, legal framework, prospects, and the future adoption by the International Seabed Authority (ISA) of the Mining Code. Detailed study of the Mining Code.
- Obligations and implementation of international responsibility with regard to rising sea levels and more broadly, climate change.
- Marine scientific research. The legal framework for marine scientific research and the implications of the use of new technologies in this field.
- Marine geoengineering and technological advances. Should a code of conduct for research into marine Carbon Dioxide Removal (CDR) (the possible elimination of CO2 from the ocean) be drawn up as a matter of urgency by an intergovernmental body? Should all marine CDR projects be prohibited pending the implementation of international regulations?
- Offshore renewable energies. Do floating offshore substations fall within the UNCLOS definition of artificial islands, installations and structures? Who would have jurisdiction over offshore wind farms and floating offshore substations on the high seas? Should activities on the high seas involving renewable energy be regulated?
- Submarine cables. Do UNCLOS or customary international law permit coastal states to extend their competence beyond the territorial sea to wrongdoers who intentionally damage submarine cables? Does article 79 of UNCLOS apply to submarine cables on the continental shelf that link fixed substations to the land-based network? Is the current legal regime governing submarine cables fit for purpose?
- Gender equality, improved treatment of women in the law of the sea. More broadly, human rights and law of the sea. What new legal measures are necessary to protect individual human rights at sea?
- Effective governance and management of the ocean: principles, tools and resources. Should there be universally accepted definitions of "sustainable use" and "precaution"?

What could be the role of collaborative research partnerships in knowledge evaluation and development? How should we respond to the need for sustainable funding to support states in the implementation of UNCLOS and its implementing agreements and to foster the transition towards sustainable ocean-based economies, as well as scaling up nature-based solutions and ecosystemic approaches??

- Management tools by zone and environmental impact assessments. MPAs, EIAs, REMPs. Should there be an assessment at global level of the extent to which individual zone management tools have achieved their objectives? How can the international community guarantee that the remaining ocean zones where there is no management tool in place will be used in a fair and sustainable manner?

18.

SDGs beyond 2030

conclusions

Nuanced results

Although the SDGs have the advantage of constituting a "common narrative" for all States in the international community, their implementation has been disappointing. The implementation of this agenda relies on a multitude of public and private, local, national and international initiatives, which attest to the good receptiveness of the SDGs. But this profusion of actions is not coordinated. Many objectives and targets are far from being achieved. Dedicated funding is far from up to scratch, and monitoring of goal achievement is underdeveloped.

An indivisible whole lacking coherence

The 17 SDGs are conceived as an indivisible whole. However, this is purely theoretical, since the Agenda does not provide the means for the goals and targets to communicate with each other, nor does it resolve any potential contradictions. The result is a dilution of the SDGs, with each stakeholder choosing to pursue its own priorities at its own level. It also results in

conflicts between objectives, which can be counterproductive in the development of sustainability policies.

An agenda without strong legal basis

The Agenda for 2030 is not a strictly legal tool. But it is part of the global normative system in which the international law of sustainability must develop. However, the legal rules that must underpin the pursuit of the SDGs are still insufficient, ill-adapted and inconsistent with each other. Too few legal indicators are used to help conceptualize sustainability policies. As for the various fields of international law, they pay too little attention to the SDGs, or do so in a piecemeal fashion, without taking into account the overall dynamic they are intended to ensure.

recommendations

Identify priorities for action

To ensure greater coherence between public policies and private initiatives, and to avoid the risk of conflicts between SDGs, priorities for action need to be identified. These could take the form of a set of main objectives, defining the main characteristics of sustainability and in which the 17 SDGs could find their place. The risks of conflicting SDGs must also be better detected and identified, and principles for resolving such conflicts should be drawn up, in consideration of the action priorities selected.

Clarifying the responsibilities of each stakeholder

To ensure better coordination of programs implementing the SDGs, the responsibilities of each stakeholder must be better defined. It is important to underline that States have primary responsibility for implementing the Agenda. However, in line with a subsidiarity approach, action can also be taken at international or local level, in the public or in the private sphere,

according to a strategy that must be defined with all stakeholders, but under the supervision of public authorities.

Strengthening monitoringand reporting mechanisms

Monitoring and reporting mechanisms need to be strengthened to ensure greater coherence in the implementation of the SDGs, and to monitor the effectiveness of sustainability policies adopted by each stakeholder. This strengthening must take place at the level of the assessment procedures defined by the Agenda 2030 (harmonization of practices, consolidation of reporting requirements, etc.). But it must also be ensured within each State, to support the implementation of the SDGs at local level. Multi-stakeholder monitoring and evaluation systems should be encouraged.

Putting Humans at the heart of the international law for sustainability

Strengthening the legal basis of the SDGs must be based primarily on the corpus of human rights, in its interactions with other branches of international law (environment, economy, culture, etc.). Placing Humans at the heart of the international law for sustainability should ensure greater coherence between sustainability policies and a better framework for sustainable development practices.

19.

cultural heritage

conclusions

A fragmented, incomplete normative approach

The international law on cultural heritage is subject to the same contemporary dynamics as international law, and shares the same problems: the emergence of new subjects and actors, the proliferation of single-issue sources, fragmentation, and the unsuitability of many older rules for current realities. There should be effective protection for all elements of cultural heritage, whatever their form (tangible or intangible) or location. The tools, actors and narrative of international law must evolve to more comprehensively encompass the huge variety of cultural and heritage phenomena and address their diversity. Some changes have taken place, and the variety of forms heritage takes is now better reflected by the multiplicity of partial sources of law and the diversity in the ways in which attachment to heritage is manifested (cultural heritage as seen in the west does not take the same forms or have the same meaning as, for example, the cultural heritage of indigenous peoples).

In such a context negotiation has an increasing role in the management of cultural heritage at international level, providing

solutions for questions that sometimes lie at the margins of law as such (for instance, return and restitution of cultural property, the role of cultural groups and in particular indigenous communities).

Multiple, diverse challenges

Built up of successive strata and covering a huge diversity of aims, international cultural heritage law will need to become more coherent in order to properly address the multitude of challenges that will sooner or later arise in every aspect of the field. These many challenges can be grouped into three categories.

First are the fundamental human challenges: cultural heritage only exists because of the meaning it holds for human beings and groups. Cultural heritage is indispensable for individuals and their identity, and is protected via several kinds of human rights. The capacity of our current legal system to preserve assets that are not individual but collective, those of minorities, indigenous peoples and cultural groups in general, will be put to the test. Heritage protection will have to face the test of migrations, including climate-driven migrations, which demand a system that accommodates them. Individual rights and authorship rights are under threat from digital developments in the field of cultural heritage.

The second category arises from changes in the environment around the elements of cultural heritage – an environment that is necessary for their existence. The degradation of the natural environment will have implications for heritage, and cultural phenomena developing in the digital space or even in outer space will also come into play.

Cultural heritage will also increasingly face a third kind of challenges: economic. Cultural heritage is subject to various types of pressures. Some have to do with its dual nature, both cultural and economic. Others arise from the interplay between the imperatives of heritage, economic growth and the aims of sustainable development.

recommendations

If the range of international cultural heritage law is to realistically encompass all situations, its sources will need to evolve. With this in mind, work should be undertaken to precisely identify the various lacunae and grey areas that are currently not covered by any protection. Another suggestion could be

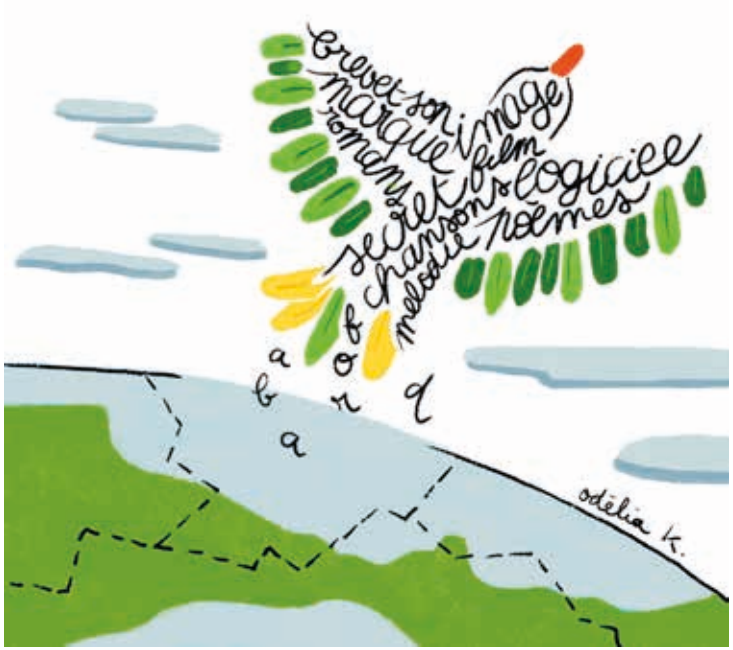
the signing of an umbrella treaty. Studying and publishing current best practices in applying the law could help bring about greater certainty and effectiveness in implementing the existing international rules.

Developing cooperation and coordination in the actions of the different institutions could enhance the effectiveness of protection of all forms of cultural heritage.

Finally, an evolving interpretation of the existing rules could serve as a useful tool for regulating situations not expressly covered by cultural heritage law.

20.

intellectual property



conclusions

Intellectual property's challenge to its original model

One of the main challenges facing intellectual property is to move beyond its origins, i.e. the spread of national solutions in European countries, the model law for intellectual property, thanks to major international conventions structuring the global reception of intellectual property without leaving any appreciable room for action to new entrants, and thus moving from acceptance or submission to joint elaboration. The main solutions to intellectual property law were thus fixed in the 19th century and were further confirmed by the TRIPS Agreement. This movement is aimed at substantial and procedural harmonization. Faced with the global evolution of creation, and of the conditions under which it is produced, financed and disseminated, all intellectual property regimes need to build a legal mechanism adapted to a plural environment. The central issue for the future certainly lies at least as much in the future of international intellectual property solutions as it does in financing and increasing the education of populations and their access to higher education. The more people are educated, the more

they can contribute to the knowledge economy. As for the financing of creation, which is closely linked to intellectual property solutions, it highlights an essential issue in the knowledge economy and the relativization of intellectual property. Indeed, intellectual property is a downstream marker of creation and innovation, and takes little account of the sharing of creative risk.

The challenge of intellectual property in the face of technology

All creative activities are doubly affected by the evolution of technology: the conditions for creating and the conditions for distributing/exploiting intellectual property have been profoundly modified over the last ten years. Networks, digital technology and artificial intelligence all call into question the territorial approach to intellectual property, both in terms of the creation of rights and their enforceability. The legal model based on current international law solutions cannot provide the right answers to these developments, as the multi-localization of creators is incompatible with the models of the 19th century. In this context, the duration of intellectual property rights and the place of the public domain also call for collective reflection, given that the software industry's economic model will never be confronted with this issue.

The challenge of intellectual property in the face of sustainable development expectations

The future of intellectual property could be called into question globally because of its virtual inability to contribute effectively to the challenges of sustainable development. This cause of general global interest could lead to a rethinking of international intellectual property solutions, with a view to enabling intellectual property to make a real contribution to this global challenge. From a passive, downstream tool, intellectual property could be transformed into a dynamic one, making access to the legal mechanism conditional on a demonstration of an effective contribution by the intellectual asset and its exploitation to the three pillars of sustainable development. It's not just a question of access to technologies and knowledge; intellectual property must also be able to make an effective contribution to the challenges of demographics, inclusiveness and social cohesion.

recommendations

In light of these conclusions and the remarks and comments they elicited during the webinar, the following recommendations can be made:

- Develop a new global and multicultural approach to intellectual property, to enable us to move from a 19th Century model to a 21th Century model.
- Rethink national and territorial solutions, as well as the duration of intellectual property rights, in light of changing conditions for the creation and exploitation of intellectual assets, and draw the full consequences of the digital revolution.
- Rapidly grasp the new challenges posed by sustainable development in order to shape an international intellectual property solution that makes an effective contribution to them.

21.

dispute resolution

conclusions

Findings

The settlement of international disputes is highly diverse. It is first a diversity of actors, involving national courts, which need to be coordinated, transnational courts, such as arbitration tribunals, and international courts strictly speaking. Secondly, there is a diversity of litigants, since it concerns relations between private parties, relations between the historical subjects of public international law, i.e. States and, since the mid-twentieth century, international organisations, as well as so-called 'mixed' relations between States and private parties (human rights, investment arbitration). Lastly, there is material diversity in terms of scope, since disputes govern a growing number of areas and go far beyond the traditional economic or some specific inter-state fields in which they originated.

However, diversity does not mean exhaustiveness or universality. Certain fields, and certain geographical areas, are still not open to judicial or institutionalised dispute settlement. Their number and the extent of their jurisdiction are largely determined by the will of the players who run them. Inter-state or

mixed "international justice" remains based on the principle of consensualism, and there is still no compulsory jurisdiction as such. Moreover, even when consent has been given, it can be withdrawn, nor does it guarantee the participation of certain parties, notably States, which are increasingly absent. International arbitral justice or the international action of national courts is also, albeit differently: the will of the parties to have recourse to arbitration, the will of States to allow recourse through an undeniable policy of liberalisation, but also the will - or lack of it - of States to coordinate both the exercise of their jurisdiction by domestic judges and the international circulation of their judgments.

Challenges

The settlement of international disputes is therefore anything but a given, and its extraordinary expansion in the latter part of the twentieth century does not mask the many challenges and uncertainties it faces today. First and foremost is the future of this creative will. The various methods of dispute settlement are subject to opposing forces, ranging from the threat of dismantling to calls to extend their scope to new issues (climate change, for example) or to improve the tools used to implement them.

Then there is the growing role of the machine, which serves, or even replaces, the independent and impartial human third party that is the cornerstone of the system. While the dematerialisation of a significant proportion of litigation is now a reality - virtual hearings, transmission of documents - it also depends on the sociology of litigation as well as the normative imperatives to which it is subject, in particular the right to a fair trial. In addition, the possibility of the advent of the 'robot-judge', with the development of artificial intelligence, raises the question of the 'third party' in greater depth.

Moreover, the settlement of disputes is subject to a growing ethical imperative, on which the legitimacy of dispute settlement methods will depend. Changes in this area relate mainly to the progress that needs to be made in terms of gender, cultural, social and linguistic diversity, or taking account of the social and environmental consequences of dispute resolution, but also to the strengthening of ethical standards.

The latter also highlights the inescapable but ambiguous role of money in the world of dispute settlement. Their funding is a necessary condition for their proper functioning and is sometimes used as a weapon to paralyse *de facto* certain judicial bodies without incurring the political cost of dismantling them *de jure*. But it is also an obstacle to access to justice, because

of the economic inequalities between certain litigants and the growing costs caused by the increasing sophistication of the judicial process. New funding practices, such as *third-party funding,* are extremely divisive, as they are seen as both a step forward by some and a threat by others.

What is more, the existence of various competing or parallel methods of dispute resolution leads litigants to choose those that they perceive to be the most favourable to them. This well-known figure of *forum shopping* underlines the final challenge facing dispute resolution: that of harmony. The harmonious development of what it is still difficult to call "a single international justice system" would require coordination of the various systems that coexist within it, of the guarantees and procedures that govern them, and a link with amicable methods such as mediation, which seem to be increasingly in demand from litigants.

recommendations

Questions & reactions

All of these challenges raise a number of questions, which crystallise around three essential points: can existing dispute resolution methods be preserved in the face of growing opposition, and if so, how? Secondly, can their content or procedures be renewed to correct their shortcomings or limitations? Finally, is it possible to envisage the resolution of new disputes, either because they would be dealt with by existing instruments or bodies, or because they would, on the contrary, lead to the emergence of new *fora*?

The debates on the White Paper also revealed divergences in analysing the current state of international dispute settlement and the different scenarios that lie ahead. The extent to which methods of dispute settlement are contested, whether in principle or on a more *ad hoc* basis, is not shared by all participants. Similarly, regionalisation is not necessarily seen as a tool for transforming dispute resolution methods. On the contrary, some see it as one of the causes of its weakening, either because regional methods compete with methods with a broader scope,

or because this proximity leads to mechanisms that no longer have the necessary distance from the community of litigants in whose service and on whose behalf they exist. Similarly, the harmonisation of procedures, particularly in matters of national justice or arbitration, is not necessarily seen as a desirable development.

On the other hand, there seems to be unanimous agreement on the need to diversify the sociology of those involved in dispute resolution. Gender, cultural and social endogamy, and increasingly so in the linguistic field, have effects on both the process and the product of dispute resolution that undermine both its legitimacy and its effectiveness.

22.

one health

A wholesome world, Solenne Lestienne, 2022

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conclusions

Some of the most pressing challenges

Among the most pressing challenges related to the "One Health" dimension are: (1) the risk of zoonotic spillover, which occurs when pathogens are transmitted from animals to humans; (2) antimicrobial resistance (AMR), which means that pathogens are no longer susceptible to antimicrobial drugs, and which is mainly caused by the excessive or inappropriate use of antibiotics, antivirals and pesticides on humans, animals and plants ; and (3) laboratory accidents, which can spread dangerous pathogens to which the human population has no immunity.

Still limited integration of the "One Health" approach into international law

From a normative point of view, given that the "One Health" approach has only recently developed, its integration into international law is still very limited. Current legal instruments reflect the traditional division between humans, animals and the environment.

Progressive implementation of the “One Health” approach by international institutions

WHO, WOAH/OIE and FAO have been collaborating on the “One Health” approach for over a decade. This cooperation took a new turn with the emergence of the COVID-19 pandemic. But despite important initiatives, institutional cooperation still comes up against obstacles and resistance, and is not always properly funded.

recommendations

In the light of these conclusions, the discussions held with the experts and the remarks and comments made during the webinar, recommendations can be made to strengthen the “One Health” approach through international law. These suggestions can be divided into five categories:

Incorporate “deep prevention” of zoonotic outbreaks into international law

“Deep prevention” addresses the factors that facilitate zoonotic disease outbreaks, such as climate change, deforestation, illegal wildlife trafficking or land-use change. It also involves mapping risks and identifying hotspots and pathogens with zoonotic potential, as well as formulating recommendations and providing technical support for national policies and measures.

Deep prevention requires extensive data collection, which could be supported by international law, through harmonized binding or non-binding legal instruments with national implementation control mechanisms.

Deep prevention should also permeate trade law (international

and national), as the exploitation and trade of wild animal and plant species is thought to be one of the main factors in zoonotic spillover.

Deep prevention should also lead to better regulation of food systems, to give greater prominence to health considerations. These regulations should make it possible to limit the expansion of certain types of production that are harmful to the environment and health through deforestation and the intensive use of pesticides and fertilizers. They could take the form of tax policies, pricing policies, better consumer information, policies on marketing food to children, nutritional labeling, trade policies, bans and public investment in sustainable food production. They should be aligned throughout the supply chain (production, distribution, demand).

Last but not least, health needs to be better integrated into the negotiation processes, provisions and implementation of treaties on climate change and the environment.

Strengthen regulation and enforcement of antimicrobial resistance

The phenomenon of antimicrobial resistance calls for a strengthening of the legal framework relating to the use of antimicrobials on humans, as this is less robust than the legal framework applicable to animals and food safety. This legal framework should be harmonized, with reinforced implementation and monitoring, and adequate funding. It should include the issue of pesticides, which play a role in the development of antimicrobial resistance.

Supervise laboratory safety

As far as laboratory safety is concerned, there is currently no binding international supervision of biosafety and biosecurity standards. Binding legal commitments might be desirable in this respect.

Bear in mind that human health is also a development issue

Multiplying regulations will have little effect if national institutions are unable to implement them. We therefore need to strengthen financing and capacity-building at national level.

Furthermore, zoonotic risk mitigation goes hand in hand with food security and access to basic public services such as local

water supply, sanitation, and electricity. Gaps in sanitation facilities must be filled, as these are factors that amplify disease.

Finally, it is essential to avoid the potential side-effects of a "blind" implementation of the "One Health" approach, which would not take into account the effectiveness of the approach or its impact on the practices, cultures and needs of local populations.

Decompartmentalizing thinking at all levels, which implies a change in mentality

Developing a multidisciplinary "One Health" approach requires a change of mindset within the professions. This will require the development of genuine interdisciplinary frameworks in which experts in one discipline – including international lawyers – are genuinely willing to engage in dialogue with those working in other fields of knowledge.

23.

labour

It is time for a fundamental debate about the very nature of international labour law. Should it be a distinct branch of the law, or simply part of a broader body of "social law" that would include, but not be limited to, labour law? For example, the concepts of "due diligence" and "duty of vigilance", which are set to become key concepts in international labour law, are also concepts widely used in international law, and international trade law in particular. Will labour law merge into a new branch of international law that could be described as the "law of sustainable development"?

In this context – and in the more immediate term – two broad paths to reform could be considered: one in terms of substance, the other institutional.

1. Rethinking the links between international trade and labour law

- Rethinking the relationship between labour law and international trade in the light of the new requirements for sustainable development and social responsibility

A reappraisal seems necessary of the links between labour law and international trade. In this regard, there should, in partic-

ular, be more widespread use in international trade law of the social clauses in some bilateral trade agreements, extending them to include compliance with environmental norms.

- Regulating the power of business at the international level

States and other public entities face challenges from the growing importance of private sector actors. A number of "social conditionality" rules, imposing conditions for access to certain kinds of aid or trading advantages, could be inserted in national public procurement contracts or international funding agreements to promote social rights at the international level and contribute to the "de-corporatization" of the law.

- Rethinking the role of soft law and private norms

The development of private norms through unilateral undertakings by employers or transnational framework agreements, as well as the growth in soft law, suggests that it is time to rethink the implementation mechanisms of social norms. The conflict of laws rule that revolves around the ***locus labori*** should be reviewed and expanded to integrate these flexible private norms.

- Rethinking the mechanisms for monitoring compliance with fundamental labour rights

The Rana Plaza affair in particular has shown that the mechanisms for monitoring implementation of fundamental legal norms and guaranteed access to justice need to be reviewed, to give a greater role to both national and international trade unions or even to international institutions like the ILO.

2. Strengthening international institutions

- Strengthening the ILO

Strengthening the ILO, which faces the concurrent risks of gradual obsolescence, low levels of ratification, poor direct enforcement capacity and the limited scope of some of its conventions (because of their focus on employment relations) should be a political priority.

The ILO could, and should, play a major part in devising new norms adapted to the *de facto* marginalization of non-salaried employees and the rise in work for online platforms. In this way it would contribute to protecting those workers and, more generally, those working in the informal economy.

The ILO could also play a decisive role in drawing up norms allowing for interaction of the rules on labour matters with other regulatory sources and instruments being drawn up for protection of human and environmental rights and promotion

of commercial activities that better respect those rights at the global level (for example, the draft international treaty on business and human rights, or draft laws and standards on due diligence).

The role played by the ILO as mediator and facilitator, as in the Rana Plaza affair, could be strengthened and given an institutional basis.

- Rethinking the role of other international organizations in drafting international labour law

Reform of the WTO could be envisaged to better integrate labour-related concerns. This would on the one hand lead to the inclusion of non-trade bodies in the governance of world trade, to make labour-related issues an integral part of the decisions of the panels and appellate body, and on the other, strengthen the mechanisms of "social conditionality".

Those mechanisms could also be promoted in turn by the international organizations operating in the public procurement field, like the World Bank, the international financing institutions, the International Finance Corporation, the regional development banks, the European Union and other regional organizations (COMESA, WAEMU, APEC, Mercosur etc.).

Within this framework, "essential" conditionality clauses requiring respect for social and environmental rights could be made mandatory in treaties on international investment, development aid and economic cooperation, and a greater role for conditionality clauses could be promoted in the activities of the IMF, the World Bank and the regional development banks.

annex I

Below is the list of persons having participated either in the preparation of the white papers or in the webinars discussing the white papers. Their titles are not indicated here, but are easily retrieved on our website www.ilaparis2023.org.

Food and Agriculture

Fabrice Riem (White Paper Coordinator), with Nicolas Pauthe (Assistant) and Sarah Berger-Richardson, Adriana Bessa, Bin Li, Pierre-Etienne Bouillot, Marie Cuq, Miguel A. Martin Lopez, Bassam Mirza, Leonardo Fabio Pastorino, Uchenna Felicia Ugwu et Sylvestre Yamthieu (Members of the Steering Committee).

Geneviève Parent, (Webinar Chair), Edwini Kessie, Tim Lambert, Gérald Larose, Fatiha Sahli, Joy Angelica P. Santos, Juanjuan Sun (Webinar Speakers).

Anthropocene

Sandrine Maljean-Dubois (White Paper Coordinator), with Alice Monicat-Delire (Assistant) and Laurence Boisson de Chazournes, Duncan French, Louis Kotzé, Sara Seck, Margaret Young, Mingzhe Zhu (Members of the Steering Committee).

Mario Oyarzabal (Webinar President), Nicolas Angelet, Winnie Chehe, Nisreen Elsaim, Carmen Gonzalez, Lamia Moshin, Nilufer Oral, Marcos Orellana, Hans van Loon, Salomon Yeo (Webinar Speakers)

Corruption

Nicola Bonucci (White Paper Coordinator), Pascale Dubois, Elisabeth Danon, Stanislas Julien-Steffens (co-rapporteurs), Laura Alonso, Jan Dunin-Wasovicz, Susan Karamanian, Lucinda Low, Babajide Ogundipe, Mark Pieth (Members of the Steering Committee).

Anne van Aaken (Webinar Chair), Pascale Dubois (Rapporteur), Nicola Allocca, Mihaly Fazekas, Delia Ferreira Rubio, John Githongo, Xolisile Khanyile,Aurore Lalucq, Jonathan Mattout, Zakhona Mvelase (Webinar Speakers)

Mass crimes and impunity

Raphaëlle Nollez-Goldbach (White Paper Coordinator, with Nadia Seqat (Assistant), and Aurélia Devos, Keiko Ko, Ivon Mingashang, Monica Pinto, François Roux (Members of the Steering Committee).

Leila Sadat (Webinar Chair), Vincent Asselineau, Olympia Bekou, Sévane Garibian, Roger Koudé, Jean-Paul Segihobe, Mari Takeuchi (Webinar Speakers).

Democracy

Pablo De Greiff (until July 2022), Papia Sengupta (à partir d'août 2022) et Arthur Giannattasio (White Paper Coordinators), Cora Chan, Claudio Grossman, Samuel Issacharoff, Tarun Khaitan, Yvonne Mokgoro, Willy Mutunga, Cheryl Saunders (Members of the Steering Committee).

Mathias Forteau (Webinar President), Jean-Michel Arrighi, Maria Isabel Cubides, Kwamou Eva Feukeu, Maurice Kamto, Lauri Mälskoo, Emilie Pradichit (Webinar Speakers).

Human Rights

Laurence Burgorgue-Larsen (White Paper Coordinator), with Lorenzo Nencini (Assistant), and Antal Berkes, Laura Clérico, Mamadou Hébié, Alioune Sall, Edoardo Stoppioni, Maria Tanyag, Françoise Tulkens (Members of the Steering Committee).

Willem van Genugten (Webinar President), Fernando Arlettaz, Christina M. Cerna, Nicola Jägers, Angelika Nußberger, Cekli Setva Pratiwi, Andras Sajo, Sergio Salinas, Jimmy Chia-Shin Hsu, Abdoulaye Soma, René Urueña (Webinar Speakers).

Energy

Urban Rusnak (White Paper Coordinator), with Yuriy Pochtovyk, Hava Yurttagul (Assistants), and Malik Dahlan, Tom Dimitroff, Andrey A. Konoplyanik, Victoria Nalule, Nobuo Tanaka (Members of the Steering Committee).

Vicente Lopez-Ibor Mayor (Webinar President), Catherine Banet, Béatrice Castellane, Alexandra Harrington, Luis Moreno, Victoria Nalule, Christophe Seraglini, Masako Takahata (Webinar Speakers).

Business and Human Rights

Humberto Cantú Rivera and Catherine Pédamon (White Paper Coordinators), with Charles-Maurice Mazuy (Assistant) and Marie-Aimée Boury, Maria Isabel Cubides, Surya Deva, Dante

L. Arredondo, Danielle Anne Pamplona, Beatriz Pessoa de Araujo, Andrea Shemberg, Tara Van Ho (Members of the Steering Committee).

Arif Havas Oegroseno and Anita Ramasastry (Webinar Chairs), Nathalie Bernasconi, Alejandro Celorio Alcántara, Esteban Mezzano, Tomás Pascual Ricke, Emmanuel Umpula, Olena Uvarova, Aditi Wanchoo, Marie-Aude Ziadé (Webinar Speakers).

Outer Space

Philippe Achilleas and Stephan Hobe (White Paper Coordinators), with Hugo Lopez (Assistant), Setsuko Aoki, Olavo Bitencourt Neto, Martha Bradley, Marco Ferrazzani, Steven Freeland, Ranjana Kaul, Sergio Marchisio, Steven Mirmina, Olga Volynskaya (Members of the Steering Committee).

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Jinyan Li (Webinar Chair), Reuven Avi-Yonah, Juliane Kokott, Michael Lennard, Annet Wanyana Oguttu, Marlene Nembhard Parker, Wolfgang Schön, Irma Mosquera Valderrama (Webinar Speakers).

Global Governance

Emanuel Castellarin, Evelyne Lagrange and Paolo Palchetti (White Paper Coordinators), with Antoine Jamet and Rodrigo Tadeu Guimarães Jales (Assistants), Congyan Cai, Natalia Castro Niño, Jeffrey L. Dunoff, Paul Heckler, Carlos R.S. Milani, Edefe Ojomo, Charles Tenenbaum, Santiago Villalpando (Members of the Steering Committee).

Nilufer Oral et Dire Tladi (Chairs du webinaire), Jeffrey L. Dunoff (Rapporteur), Anthony T. Anghie, Hajer Gueldich, Augusto Lopez-Claros, Xolisa Mabhongo, Tafadzwa Pasipanodya, Henry Puna, Lucien Rapp (Webinar Speakers).

Investments

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Manjiao (Cliff) Chi (Webinar President), Catherine Amirfar, Jaemin Lee, Kinda Mohamad Mohamadieh, Pierre-Olivier Savoie, Eduardo Silva Romero, Engela C. Schlemmer, Mairée Uran Bidegain (Webinar Speakers).

Migrations

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annex II

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