

2020 ASIL Annual Meeting Sessions by track (for “Program by Track” tab)

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Imprisoning Schindler: Responding to the legal vulnerability of those who aid refugees

Description:

The truth is that international refugee law (Art. 31) does not protect those who assist refugees, but only refugees themselves, against penalties. Hundreds of volunteers and aid workers across a number European countries have been arrested, charged or investigated for supporting persons seeking protection in the past five years and now the United States Government is following suit. Against that backdrop, this problem-solving exercise will provide a forum for international law experts on the panel and in the audience to actively think about whether other non-refugee bodies of international law, including, for example international humanitarian law, international human rights law, law of the sea, the principle of good faith, might productively be brought to bear.

At this interactive event, you will hear from those who have been criminalized for helping refugees, and be part of dynamic and creative discussion exploring the promise of international law for those who have faced official sanction for aiding their fellow humans.

International Law: Friend or foe to the advancement of women's rights?

Description:

This session will comprehensively address whether international law has lived up to the promise of upholding and advancing the rights of women and girls. It will review the various legal instruments devised with the aim of protecting and promoting these rights, as well as ensuring accountability for violation of these rights, including the various relevant international and regional instruments, international court decisions, and political resolutions that apply. Panelists will lay out the landscape of international law and assess the extent to which these elements of the legal system have achieved or failed in their effect, the gaps that exist in the current structure, and potential solutions. The participants will also identify any common threads among these international law systems, including in terms of obstacles to women and girls' enjoyment of rights and access to justice.

The ICC and Beyond: Re-evaluating the promise of international criminal justice

Description:

While the International Criminal Court (ICC) remains a necessary and vital feature of the international criminal justice landscape, events in its recent past can be characterized as anything but smooth sailing. The Court faces challenges from threatened and actual state withdrawals from the ICC to the debate over the concept of the "interests of justice" and its role in the Afghanistan investigation to the return of U.S. antagonism to the Court. However, the ICC was never designed to bear the burden alone, and this session aims to critically and constructively discuss not only the ICC but also the other justice mechanisms for core international crimes including domestic courts, regional courts, hybrid mechanisms, and specialist chambers. The participants will address emerging and pressing questions, including whether the future of international criminal law is in domestic regimes, the promise and potential of regional courts, and the when and where hybrids or specialized mechanisms are preferable.

The Case for Self Determination in the 21st Century

Description:

Around the world, communities have failed to fully realize their right to self-determination, despite the recognition of that right by international courts and international institutions. Sub-state political entities that

have sought to assert their right to self-determination through independence referenda have faced political reprisals and charges of illegal secession. In the recent *Chagos Advisory Opinion*, the International Court of Justice shed light on the nature and right of self-determination in the context of decolonization. This session will address self-determination in the 21st Century in cases of unfinished decolonization and independent statehood movements. Using the *Chagos Advisory Opinion* (ICJ), *Kosovo Advisory Opinion* (ICJ), and *Quebec opinion* (Canada) as a legal framework, this panel will take place in an “oral argument” format, where a judge will pose questions to attorneys representing communities who are seeking to assert their right to self-determination and attorneys representing states that are opposed to those efforts. The judge will hear oral argument from litigants debating self-determination claims in two or more cases, such as the Comoros Islands vs. France over Mayotte, the Sahrawis of Western Sahara vs. Morocco, and/or the Kurdish Region vs. Iraq. After oral argument, time will be reserved for questions from the audience, acting as part of the judicial panel. Finally, the audience will have the opportunity to vote on the separate cases.

Contemporary Human Rights Research

Description:

Research in human rights requires resources and skills that enable access both to texts and to empirical data in all formats. What new issues and emerging technology tools enhance and enlarge international legal and human rights research, and how are law firm and academic information managers using, and training users, in familiarity with these emerging areas and tools? For what new advances should lawyers be prepared? Predictive, analytic, and data mining tools may promote or disrupt research human rights, climate change, and access to justice. Avoiding implicit bias in Artificial Intelligence and machine learning (a concern evidenced by The Toronto Declaration on Protecting the Right to Equality and Non-Discrimination in Machine Learning Systems) is a new issue that adds algorithms, used in search engines, to the contested spaces within which human rights must be asserted. This updated tour of potential platforms and applications for scholarship or practice will include presentation of current topics and technology-driven projects and, it is hoped, stimulate ideas for other use cases and research efficiencies that either facilitate or complicate the investigation of international norms.

Organized by the International Legal Research Interest Group.

International Law and Theories of Global Justice

Description:

International law informs, and is informed by, concerns for global justice. Yet the two fields that engage most with prescribing the normative structure of the world order – international law and the philosophy of global justice – have tended to work on parallel tracks. Many international lawyers, with their professional, methodological commitment to formal sources, regard considerations of substantive (and not merely procedural) justice as ultra vires for much of their work. Philosophers of global justice, in turn, tend to explore the moral commitments of international actors without grappling with the complexities of international legal doctrine. In recent years, however, both disciplines have begun to engage with one another more, as reflected in works such as Carmody et al, *Global Justice and International Economic Law* (CUP, 2012); Ratner, *The Thin Justice of International Law* (OUP, 2015); Haque, *Law and Morality at War* (OUP, 2017); and Linarelli et al, *The Misery of International Law* (OUP, 2018). The time is ripe, therefore, for an interdisciplinary conversation to take stock of the relationship between international law and theories of global justice.

This panel will seek to inform and enlighten Annual Meeting attendees about these new interdisciplinary developments and, in particular, the role of global justice discourse for practicing and academic international lawyers. The proposed format would ask two international lawyers and two philosophers with diverse

perspectives to address international law's relationship to global justice. How should international lawyers see their roles in terms of advancing different notions of global justice? Are certain types of international lawyering more or less amenable to using law as an instrument of global justice? How does the international lawyer's role as practical problem-solver allow for her or him to take into account considerations of justice?

Organized by the International Legal Theory Interest Group.

The Promise and Prospects of the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments

Description:

On 2 July 2019, the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the “Hague Judgments Convention”) was concluded at the Twenty-Second Diplomatic Session of the Hague Conference on Private International Law. It was designed as a “sister convention” to the 2005 Hague Convention on Choice of Court Agreements. Heralded as a true game changer for cross-border dispute resolution, its potential effects have been likened to that of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. But will this new convention fulfill the “promise of international law”?

This panel will consider: (i) the reasons behind the push for a new multilateral convention to promote mutual recognition and enforcement of foreign judgments; (ii) the objectives and scope of the Hague Judgments Convention; and (iii) its prospects in terms of likely signatories, and the magnitude of its future impact. The previous treaty on this subject – the 1971 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters – only ever garnered a handful of state parties. The panel will discuss the key differences between the two conventions, and the features of the new Hague Judgments Convention that may lead states to sign it (or not).

The Singapore Convention on Mediation and the Future of Appropriate Dispute Resolution

Description:

In August 2019, the United Nations Convention on International Settlement Agreements Resulting from Mediation became open for signature in Singapore. On the very first day, forty-six countries signed what has become known as the Singapore Convention. Part of the reason for the popularity of the Convention is the structural support it offers to provide a holistic approach to the resolution of international disputes. Rather than parties having to rely exclusively on international arbitration tribunals or courts to secure compliance with legal obligations, parties have a reliable, rule-of-law-based enforcement mechanism to buttress their private mediation efforts by promoting a streamlined enforcement mechanism that ensures mediation has meaningful—rather than aspirational—value.

This session will examine the genesis, current status, and utility of the Singapore Convention, drawing partly on the knowledge of persons involved in its development. Panelists will discuss practical implications for international dispute resolution practitioners, as well as potential limitations of the Convention, including how the Convention may intersect with existing domestic mediation practices and the lack of participation among European Union states.

The session will also use the Singapore Convention as a springboard for discussions about exploring forms of Appropriate Dispute Resolution (ADR), particularly non-adjudicative forms of international dispute resolution like mediation, negotiation, and community-based conflict management. By exploring how a range of dispute resolution options can be effective, whether non-adjudicative or more traditional forms like litigation and arbitration, the panel will consider how the Singapore Convention could impact parties’ choices and options for identifying effective dispute resolution strategies and international conflict management. The panel will provide these insights by offering commentary reflecting a range of perspectives, including government officials, practitioners, clients, and scholars.

The Duty to Litigate in Good Faith in International Dispute Settlement

Description:

What does the duty of good faith require of disputing parties engaged in litigation before international courts and tribunals? The duty of good faith is well established in international law, and parties frequently invoke it, but its scope and effect in the context international dispute settlement remain unclear. How does the duty of good faith affect the making of applications for interim relief, matters of evidence and the hearing of witnesses? What of “guerilla tactics” such as ambushes, intimidation or sabotage which present the risk of serious interference or obstructive conduct by a disputing party? What role should adjudicators play in ensuring that the parties act in good faith and do not engage in abuse of process? With the proliferation of international courts and tribunals and the massive uptake in international proceedings, the stakes are high. More than ever, parties, counsel, and adjudicators must know which conduct will be permitted and which conduct will be sanctioned.

Focusing on proceedings before the International Court of Justice and three other regimes in which States participate in international proceedings – international investment law, international trade law, and international human rights law – this panel will examine how different international courts and tribunals have given content to the duty to litigate in good faith. Is there a unified concept of procedural good faith or is it heavily context-dependent? Is there – and, critically, should there be – a difference in approach in State-State proceedings before the ICJ and the WTO versus proceedings in the investment or human rights spheres where individual claimants face respondent States? The adjudicators, counsel, and academics on this panel will identify parallels and differences among legal regimes, discuss recent trends, and critically evaluate the contours of the duty of good faith in international dispute settlement. The moderator-driven rapid response format will aim at fostering a lively discussion.

The Multilateral Investment Court

Description:

The Multilateral Investment Court (MIC) is one of the most ambitious procedural reform efforts to impact international investment law since the negotiation of the ICSID Convention. Much has been said about the alleged benefits and costs of creating a new multilateral institution to replace ad hoc arbitration as the dominant method of dispute resolution. This panel will not rehash that already robust debate. Instead, the panelists will approach the MIC through the lens of its great proponent, the European Union and its laws. In particular we will focus on the recent Opinion 1/17 of the Court of Justice of the European Union (CJEU), issued on April 30, 2019 regarding an investment court system in the Canadian-European Trade Agreement (CETA). What aspects of international investment dispute resolution are consistent with the Achmea decision? Is the CJEU approach internally consistent? What does the CJEU’s approach to international investment law mean for the harmonization of intra-EU investment law and what, if anything, should investment agreement partners of the European Union take away from these two landmark CJEU decisions or the several currently working through the system?

Protecting Human Rights through International Adjudication

Description:

As human rights considerations permeate into various areas of international law, the role of international adjudication in protecting human rights has also been growing. This area has both private and public dimensions. The International Court of Justice has been recently presented with a number of inter-State disputes related to human rights abuses, including a historic lawsuit brought by The Gambia on behalf of the States of the Organization of Islamic Cooperation, seeking to hold Myanmar accountable under international law for State-sponsored genocide against the Rohingya. An investment arbitration tribunal in *Urbaser v. Argentina* for the first time accepted jurisdiction over the State’s counterclaim based on human rights, confirming that the

“right to water” was a human right. This past year has also seen the publication of the Hague Rules on Business and Human Rights Arbitration, which are heralded as an important development for future adjudication of human rights disputes involving private parties. This panel will address the promise of international courts and tribunals in adjudication of human rights issues and suitability of international arbitration for resolving human rights disputes that arise in connection with transnational business.

Organized by the Dispute Resolution Interest Group.

The Great Transformation and the Promise of International Economic Law

Description:

The postwar international economic order, symbolized by the Bretton Woods system, has recently been questioned as the Great Divergence eclipses the Great Convergence. Brexit has challenged long-held conventional wisdom on European integration. Trade wars prompted by the Trump doctrine (“America First”) have brought an existential angst to the World Trade Organization (WTO) system. At the same time, emerging economies, at the behest of China, have recently launched competitive mega projects, such as the Asian Infrastructure Investment Bank (AIIB) and the Belt and Road Initiative (BRI). Could multilateralism survive recent massive economic nationalism? Do these developments herald the end of the conventional (Western) model of global economic governance? Is China creating a new form of international trade and economic ordering based on a web of international finance, trade, and investment initiatives? Should other actors take note and look for ways to nudge the Chinese government to play a more constructive role, and to work within the system to advance its interests? Against this captivating background, this panel seeks to revisit the conventional theme of international economic law and reflect on new ones.

Protecting Human Rights in the Digital Age: Can international law provide the necessary framework?

Description:

Digital platforms have fundamentally changed the flow of information on a global scale. The effects of the digital age on human beings are widespread, from empowering individuals and advancing society on the one hand, to emboldening the spread of disinformation and enabling the spread of hate-based radicalization. There are many initiatives on the part of the private sector, States and civil society to address the increased abuse of digital platforms, but these initiatives are largely developing as a patchwork of domestic regulation. What is still lacking is a comprehensive normative framework that addresses fundamental human rights and still enables platforms to operate cross-jurisdictionally.

International human rights law can serve as the cornerstone for such a global framework. The UN Guiding Principles on Business and Human Rights entail that human rights law applies to digital platforms, wherever they are based or operating. In turn, key elements of human rights law can serve as guiding principles for both governments and digital platforms to institute regulations or policies governing online dissemination of information. Consideration must be given to the freedom of expression as well as the rights to freedom of thought and opinion and the right to privacy, but that must be weighed alongside the need for individual and public safety and security.

The panel will be a robust discussion on how human rights law can inform a framework for protecting individuals in the digital age, including how to strike the right balance among fundamental human rights that at times may be in tension.

Reforming the WTO through the Prism of Rules- versus Power-based Trade Relations

Description:

The post-war rules-based global trading system stands at a crossroads. All three of the WTO’s main functions—monitoring member states’ trade policies, serving as a forum for trade negotiations, and providing a mechanism to settle trade disputes—are facing criticism and the pressure to reform. While this presents a much needed opportunity to modernize the current system, it is unclear whether a “rules-based” system anchored in binding adjudication in relation to multilaterally-negotiated treaty commitments is stable or even viable over the long-term. Shocks to the system lead major players such as the United States to consider opting out of or

undercutting multilateral rules, and emergent powers like China to challenge the adequacy of the established rules. Renegotiation is exceedingly difficult and has not succeeded on a large scale since the Uruguay Round, flexibility mechanisms have failed in many respects, and a reversion toward power-based trade diplomacy seems underway. This panel will address fundamental questions relating to the WTO reform process through John Jackson's conceptual framework: Is a rules-based system doomed to fail? Can it be rescued? And, more importantly, should it be rescued?

New Economic World Order Using Old Tools

Description:

The 21st Century has witnessed a number of attempts by States to change the economic world order that had been established by the end of the 20th Century. Although the outcomes sought involve change, the international law tools being used to achieve this arguably are not new. This session will address aspects of what is arguably the new economic world order and old tools, e.g., global international trade (non-trade disputes being weaponised as trade disputes using the WTO disputes procedures), regional international trade (CUSMA and the NAFTA denunciation/renegotiation), the international law of foreign investment (the World Investment Court and the capital exporting States' (read the EC's) reaction to being sued under BITs), bilateral trade (China's belt and road initiative), sanctions and trade/investment blocking (Iran, Venezuela, Huawei 5G)

Globalization and International Harmonization of Intellectual Property Laws: The roles of markets and authorities

The globalization of industry, commerce and trade has brought about two challenges to the harmonization of intellectual property (IP) laws among countries: to achieve an equivalent level of IP protection among countries in law and in practice and to find solutions to common problems in law and in theory. In this process, big companies and industries play a role more and more important in the formation and evolution of legal regimes in the market while authorities of different countries try to find their place in regulation of the market for public interests and for long term interests. The driving questions of the era are how to more closely harmonize legal practice and theories on IP among countries and how to maintain delicate balance in the regulation and in the respect of market autonomy. This is even more true in these fields as they relate to the internet.

This session will address questions such as how to further harmonize national IP laws when legislations are largely similar among countries? How to evaluate common rules and special rules in IP laws and civil law or civil procedural laws? Is it possible to harmonize regimes of works for hire and invention of mission? What is the relationship between perception of intellectual property, respect of IP and enforcement of IP? What are ISP and ecommerce platforms' liability for online IP protection? What role is there for unfair competition as a complementary tool for protection of innovation and investment? How can the international community push forward the international protection of geographical indications?

Organized by the Intellectual Property Law Interest Group.

Promise or Peril? Towards an international data protection regime

Description:

This session tackles one of the most pressing issues in transnational legal practice today: data protection and privacy rights. The EU's enactment of the General Data Protection Regulation (GDPR), which came into force in May 2018, has transformed markets around the globe as governments, multinational companies and civil society organizations with transnational activities have focused organizational resources on bringing their

international practices and their accompanying data processing into compliance with the GDPR's extensive regulatory framework. Other countries, including China, Brazil and India have followed suit with their own data protection regimes, all of which incorporate elements of extra-territorial jurisdiction similar to those within the GDPR. In addition, the International Standards Organization has recently issued a data privacy information management standard, ISO/IEC 27701. The global trend towards personal data protection is well underway. In the United States several states (notably California, with its recent CCPA), have moved forward with data protection laws, yet Congress struggles to draft federal privacy legislation, grappling with core questions of proper scope and effective enforcement.

These developments suggest a number of corollary questions: is an international data protection regime evolving? If not, should one be developed? What role do comparative and international law norms, including human rights, play in shaping existing and potential data protection and privacy regimes? This session will explore these and other questions to map the state of play with respect to data protection and privacy regulation from a transnational perspective.

Organized by the International Law and Technology Interest Group.

Jam Session on IO Accountability: One Year After *Jam v. International Finance Corp*

Description:

U.S. Supreme Court Associate Justice Stephen Breyer suggested in his dissenting opinion in *Jam v. IFC* that the majority's approach could open the flood gates to lawsuits against international organizations in domestic U.S. courts in ways that Congress did not intend and that would inhibit IOs from carrying out their essential functions. Some commentators welcomed this opening, finding promise in *Jam* as potentially leading to better accountability outcomes, in particular with respect to human rights abuses. Others predicted that the decision would encourage international organizations to improve their "alternative means" of dispute resolution, or even to take more drastic measures like amending their charters to strengthen or clarify immunity provisions. This *Jam* session will explore the promises of *Jam* one year since the landmark SCOTUS decision. What are IOs doing, if anything, to improve their internal justice systems? What are they doing to improve project management to prevent abuses or tortious conduct? Perhaps more important, what should IOs be doing? And if IOs are not taking action themselves, are there any signs that Justice Breyer's prophecy that U.S. domestic courts would become more accessible to lawsuits against IOs could become true? Does the case still hold promise for victims to achieve accountability for alleged abuses by IOs?

Between participation and capture: Non-state actor participation in international rule-making

Description:

At a moment when global governance is heavily criticized for being led by and devoted to the interests of the few, a fireside conversation with a panel of experts will examine different efforts to address the risks of capture in international rule-making and seek to draw lessons emerging from these cases. Over the past decades, non-state actors—particularly industry representatives—have been increasingly admitted to international rule-making as providers of legitimacy, expertise and funds. This trend towards inclusiveness is likely to increase, owing among other reasons to the endorsement of the Sustainable Development Goals to objectives such as "inclusive institutions at all levels", "enhancing multi-stakeholder partnerships" and promoting "public-private partnerships".

Yet, it is often overlooked that increased non-state actor participation may skew agenda-setting and ultimately international rule-making in a way that disproportionately reflects sectoral interests. Criticism has emerged in this regard in different areas of governance: UN climate change bodies have been criticized for cozying up to corporate fossil fuel lobbies, global financial governance institutions are charged with leaning towards the interests of the large banking and financial industry they are meant to regulate, and the pharmaceutical industry is accused of exerting outsized influence in health-related international standard-setting, sometimes in contradiction with public health objectives such as access to medicines. Moreover, philanthropic foundations earmark their contributions, thereby de facto steering the decision-making processes in international organizations that rely on these funds. Some organizations, such as the WHO's Framework of Engagement with Non-State Actors, have recently sought to address these concerns.

Sustainable Development and International law: Fragmentation, disconnects, and the challenge of international policy coherence in meeting the SDGs

Description:

Public international law norms are relevant to a wide range of the sustainable development goals. Yet there is a systemic failure to connect the two spheres and a dearth of literature on the interaction between public international law and the policy and political frameworks that underpin development.

There are moreover few entry points in development policy for the concrete integration of binding international law norms, and the uptake of such norms in development policy, frameworks and programming is uneven at best. The disconnect between public international law and development frameworks can be viewed as yet another example of the fragmentation of international law exemplifying the challenge of international policy coherence: the same countries are parties to core international treaties and participants in international development (whether as donors or partners) and yet engage in development activities without a systematic assessment of which international norms apply even in sectors where international treaties clearly govern. Similarly, the SDGs are often viewed in isolation and in a normative and legal vacuum. The 2030 Agenda is typically discussed in terms of its goals, targets and indicators – without any effective engagement with international law norms.

This session will debate the nexus between the SDGs and international law and will consider the emergence of sustainable development as a norm post-Rio Declaration. The panel will explore in concrete terms the fundamental role of international law in the attainment of the SDGs by 2030 and will assess the role of existing legal regimes (as they currently exist or as they may be bolstered or reformed) or whether new legal regimes need to be established. It will explore the proposition that a more systematic and coherent approach should be adopted in development policy and practice to promote the respect of international law in development activities, to mitigate human rights risk and to ensure a more cohesive and less fragmented approach to international law in development.

Does International Law Make the World More Equal?

Description:

Does international law reduce global inequality or contribute to it? This session explores the compatibility of some of the world's most prominent international organizations and legal regimes with three Sustainable Development Goals: SDG 5 (Achieve gender equality and empower all women and girls) and SDG 10 (Reduce inequality within and among countries), and SDG 16 (Promote peaceful and inclusive societies, access to justice, and accountable and inclusive institutions at all levels). Panelists will be invited to comment on whether international legal rules and organizations address or hinder these goals across three dimensions. The first dimension explores institutional design and inequality: what institutional features, such as substantive rights, advance SDG 5, SDG 10, and SDG 16? The second dimension explores participation and inequality: how does the process of creating, modifying, and evaluating these institutions advance or undermine these same SDGs? The final dimension evaluates the practice of these institutions and inequality: does the actual operation of these institutions today advance the three identified SDG goals? By exploring inequality across these three dimensions, panelists and audience members are able to diagnose the particular institutional shortcomings that may compromise the ability of international law to achieve its promise of making the world more equal.

The Promise of Multilateralism in Latin America

Description:

From Simon Bolivar's 1826 Congress of Panama to the Organization of American States and the Inter-American Court of Human Rights, multilateralism has always been front and center in the history of Latin America. But is it thriving or declining today? What can it help achieve, and what obstacles is it posing? This session will explore the past, present and future of multilateralism in the region, including an assessment of multilateral institutions and groups in resolving crises in the region. Have they been successful (e.g., in Venezuela, Haiti or Nicaragua)? How should success be measured? Are the institutions that aim to promote economic integration and trade (e.g. Mercosur, Pacific Alliance) in ascendancy or decline? What is the record and promise of specialized institutions (e.g. the SIEPAC focusing on the electricity grid in Central America, or the Inter-American Development Bank)? Do ad hoc groups, like the Lima Group, hold more power and promise than formal institutions like the OAS? Are the existing institutions suited to address challenges such as

migration, climate change, or trans-border criminal activities? Should new institutions, such as a regional criminal court, be created? What should be the role of these institutions with regard to corruption, a particularly “hot” topic in the region?

Organized by the Latin America Interest Group.

The U.S. and International Courts and Tribunals: A historical approach to the current dilemma

Description:

The United States has historically been one of the greatest advocates for, and users of, international courts and tribunals. From the re-launch of interstate arbitration in the Jay Treaty, to the Alabama Claims, the Venezuela bonds claims, the U.S.-Mexico Claims Commission, investor-state arbitration, the Iran-U.S. Claims Tribunal, and WTO dispute settlement, to name just a few, the United States has historically been at the center of the movement toward the peaceful settlement of disputes through adjudication. The United States has similarly been at the vanguard of international criminal law, from Nuremberg and Tokyo to the Yugoslav and Rwanda tribunals through to U.S. support of the current Kosovo tribunal.

There is a perception, however, that the United States has in recent decades ceded the mantle as a leader in the field of international courts and tribunals. Critics would point to, among other things, U.S. statements against the ICC; the revision of the NAFTA dispute resolution provisions in the USMCA; U.S. attempts to revise the WTO dispute resolution system; the United States’ refusal to join the UNCLOS (due at least partly to that treaty’s dispute resolution mechanism); and the U.S. withdrawal of its acceptance of the ICJ’s compulsory jurisdiction after the 1984 judgment in Nicaragua.

This session will examine the current U.S. approach to international courts and tribunals through a historical lens. Has there been a change in the U.S. approach, or is the current U.S. approach consistent with historical precedent? Assuming the U.S. approach has changed, what conditions, both domestically and internationally, led the U.S. to be more accepting of international courts and tribunals in the past, how did those conditions compare to the current domestic and international atmosphere, and might conditions change again?

Organized by the International Courts and Tribunals Interest Group.

The Conceptual Application of International Law to Cyber Power

Description:

This session will explore the international legal framework governing cyber power, and its limits. With the 2020 U.S. elections on the horizon and increasing reports of cyber effects operations ongoing worldwide, understanding the legal frameworks within which States must work as they contemplate deploying tools in cyberspace is imperative to maintaining international peace and security. To date, only a handful of nations have publicly shared their views on the application of international law to cyberspace [this may need to be updated come next April]. In this session, intelligence, defense, and foreign affairs officials from three such nations -- the United Kingdom, United States, and [France / Estonia / other?] -- will engage with cyber experts to discuss three core questions related to the applicability of international law in the cyber sphere: What cyber activities constitute unlawful interventions into the domestic affairs of another country? What activities in cyberspace constitute an armed attack against another country? And what activities are permissible for States to respond to either of these types of events?

Recent Peace Agreement Negotiations: Successes and challenges from the Eritrea-Ethiopia, US-Taliban and Hudaydah

Description:

While each peace negotiation must be assessed on its own set of unique circumstances, the focus of the panel would be on techniques commonly deployed and the experiences of individuals directly involved in the negotiations. The three peace agreements referred to above each had different dynamics and prevailing considerations. They also ranged in the extent to which the parties sought to resolve disputes through recourse to adjudication rather than political settlement. Hopefully, through the discussion, the panelists would be able to illustrate the approaches they utilized and exchange ideas on the extent to which international legal principles were (or were not) essential to the deliberations.

Responding to Atrocity Crimes and the Security Council's Veto Power: Implications, realities and the future

Description:

This session will address how the international community has sought to and could, in the future, respond to the commission of atrocity crimes and upholding the Responsibility to Protect (R2P), through other avenues under international law, despite the constraints that have been imposed as a result of the Security Council's veto power. The discussion is aimed at looking at the traditional and non-traditional / creative alternative measures that the international community has had to and could adopt in the future to prevent, stop and seek accountability for atrocity crimes.

First, the panel will discuss the implications that the veto power, which P5 Member States of the Security Council hold, has had on recent initiatives or intended measures by the international community to address ongoing atrocity crimes. By looking at contemporaneous examples, the panel will identify the consequences that the veto power may have had on the international community's responses. The panel will also be asked to discuss what adjustments and perhaps, sacrifices that the international community has had to make by ensuring an intended measure does not get defeated at the Security Council as a result of the veto power.

Correspondingly, questions will also be posed about how the Security Council's failure to act (as a result of a P5 Member State exercising their veto power) has prompted alternative creative routes to achieve action and accountability, and has inspired other organs or Member States individually / collectively to take action.

Lastly, the panel will also question what impact the Security Council's veto power, the concessions and adjustments that the international community has had to make in order to pass a measure through the Security Council, as well as the resort to other alternative routes (*i.e.*, other UN organs or individual/collective Member State action outside of the United Nations) implies for R2P. Does lack of international consensus imply the end of the concept of R2P? Are there alternatives to R2P to prevent the commission of atrocity crimes, or can Member States still seek to abide by their R2P through non-traditional measures (*i.e.*, those that do not pass through the Security Council)?

Where Next? The international arms control framework

Committee Member: Katie Horne

Description:

The international legal framework governing arms control is in a state of flux. There have been significant developments in the fabric of the arms control framework in recent months and years, such as the announced U.S. withdrawal from the Intermediate-Range Nuclear Forces (“INF”) Treaty, and the uncertainty surrounding the Joint Comprehensive Plan of Action (“Iran Nuclear Deal”). There are also major milestones looming, such as the impending expiration of the New Strategic Arms Reduction (“New Start”) Treaty. This panel will address these developments and challenges and place them in the context of the broader geopolitical forces at play. These forces include the great powers' emphasis on updating their arsenals, the increasing tensions between the United States and Russia, China's resistance to the existing legal framework, and efforts to monitor developments in Iran and North Korea.

Head of State Immunity

Description:

This panel will explore the concept of head-of-state immunity under international criminal law, in light of recent case law and other prosecutorial and investigative developments at the International Criminal Court, as well as the International Court of Justice and within other tribunals, on this topic. Head-of-state immunity remains a controversial topic within International Criminal Law: although many scholars and tribunal prosecutors argue that sitting heads of state should not be immune from international prosecutions if accused of atrocity crimes, multiple states as well as a minority of scholars assert the opposite. In practice, the work of the International Criminal Court as well as the work of other tribunals, such as the International Criminal Tribunal for Yugoslavia, have been hampered because of the assertion of head-of-state immunity. Moreover, immunity has been asserted by former and sitting heads of state within domestic contexts; such immunity claims impede the pursuit of justice and the imposition of individual criminal responsibility. This panel will explore head-of-state immunity, from its origins to its more recent applications at the International Criminal Court as well as at other tribunals. In addition, panelists will discuss whether the assertion of immunity differs in the context of atrocity crimes prosecutions from its assertion within other types of prosecutions for lesser crimes.

Organized by the International Criminal Law Interest Group.

Sea-Level Rise: What can international law do?

Description:

Sea-level rise is accelerating globally. Small island States are particularly affected by sea level rise, as are other coastal States. In light of this situation, serious legal questions arise in relation to the law of the sea. What does the UN Law of the Sea Convention (LOSC) provide or fail to provide concerning baselines from which maritime zones are measured when these are affected by sea level rise? Should they remain fixed or be changed to reflect new realities? Is there State practice, and if so what direction is it taking? What are the main legal and practical concerns about fixing or changing baselines? How does sea level rise affect the determination of islands/rocks/low tide elevations, and what is the direction of State practice? Are there legal implications of sea level rise for boundary delimitation, and differences in terms of agreed boundaries, as opposed to undelimited areas? What are the dispute settlement options under LOSC in relation to sea level rise?

ISDS and Climate Change Policies: A barrier, facilitator, or neither

Description:

As countries grapple with how best to regulate conduct within their borders to attempt to mitigate climate change and to meet the objectives of international commitments, including the Paris Agreement, policies have taken various forms – from offering “carrots” in the form green energy subsidies, to “sticks” aimed at sanctioning disfavored energy uses or sources. Such regulatory decisions have impacted a broad spectrum of investors, resulting in a spate of recent investment claims. Dozens of investment claims have been brought by renewable energy investors under the Energy Charter Treaty, asserting that states have reneged on favorable terms offered to incentivize the massive private investment in green energy during the global financial crises and in the face of budget shortfalls. Nuclear power has been steadily in decline in Europe for at least the last decade, with Germany expediting its exit from nuclear power following the Fukushima disaster, which prompted an investment claim from Vattenfall asserting the value of its nuclear assets has been stranded. And fossil fuel investors have threatened investment claims, asserting that policies impairing conventional energy production denies them their legitimate expectations of returns on their investments.

This panel will address, in the context of policies enacted by states to mitigate the effects of climate change, where the line is between compensable investment claims where investors’ legitimate expectations have been frustrated by climate policies, on the one hand, and non-compensable claims resulting from states’ climate policies? Is the threat of ISDS a barrier to government policies encouraging the shift to green energy? Or do investment treaties and free trade agreements encourage foreign investment into local green economies? And, if there is uncertainty as to where the “right to regulate” in the climate space without triggering compensable investment claims, how does that uncertainty affect new investments in green or conventional energy projects? Italy has withdrawn from the ECT in an apparent response to the number of claims it was defending following its retroactive measures relating to renewable investments, and there are threats of additional withdrawals or modifications to the ECT and other ISDS mechanisms. If states withdraw from, or agree to modify the terms of, investment treaty protections, will that discourage private investment required for renewable energy sources? Alternatively, should modifications to international agreements be embraced and what should they look like to meet states’ challenges in regulating to mitigate climate change? This panel will explore the impact ISDS has on achieving internationally agreed-upon goals and individual states’ policy objectives on climate change.

Debate: Climate Change Litigation and the Future of the Int'l Climate Change Legal Regime

Description:

2020 kick-starts the last decade in which realistically the international community can do something about climate change. This has been the stark warning from the Intergovernmental Panel on Climate Change (IPCC) back in 2018 when it released its 1.5 Report. 2020 is also the year when Parties to the Paris Agreement will release their new Nationally Determined Contributions (NDCs). These, according to the Paris Agreement, need to show progression and the highest possible ambition. At the same time, the world has experienced over the past few years a rise in climate change litigation. In particular, civil society across the world has taken to the courts to challenge both public and private sector for their alleged failure to take strong enough climate action. While not all these cases have been successful, disputes such as Urgenda in the Netherlands, Thompson in New Zealand, Leghari in Pakistan, the Juliana in the USA or the Future Generations in Colombia appear to demonstrate that civil society in most countries is pushing their countries to take stronger climate action.

This session will debate the motion: "Climate change litigation is what is going to push countries to put forward more ambitious nationally determined contributions." A first group of distinguished speakers will argue in favour of the motion suggesting that, indeed, future NDCs will be more ambitious because of perceived trends in climate change litigation. A second group will argue against the motion suggesting that climate change litigation is not responsible for more ambitious NDCs. The mock debate will unravel the relationship between domestic climate change litigation and the future of the international climate change legal regime in what will be the most important decade to the international community in its fight against climate change.

Which Way to the Stars? Challenges to regulation of "new space" activities

Description:

The imminent increase of privately-funded, commercial space flight and other operations, collectively referred to in international law literature as "New Space" activities, is often presented as a challenge to the *corpus iuris spatialis*. Truthfully, the proliferation of such "New Space" activities provides the impetus needed for a possible revamping of existing norms relating to the use, exploration and exploitation of outer space. Emphasis has been on particular space law aspects, specifically those presumed to constitute an impediment to financially profitable commercial operations. For instance, commercial endeavors regarding the exploitation of natural resources on celestial bodies are challenged by and in turn challenging the principle of non-appropriation of outer space, enshrined in Article II of the Outer Space Treaty, as well as the potential profit-sharing mechanism of Article 11 of the Moon Agreement. Efforts are already undertaken both at the governmental and non-governmental level, internationally, bilaterally or, upon occasion, unilaterally, to provide responses to such challenges.

Nonetheless, there is a broader discussion to be had on the evolution of space law beyond the conceptualization of space as simply a resource. Indeed, whereas providing responses to targeted commercial issues may facilitate the evolution of a specific aspect of space law, the discipline itself will suffer if it follows a piecemeal "New Space" approach. A holistic, centrally-coordinated approach will eventually be necessary, brought about by the multitude of operational requirements and concerns of national regulators as well as the different branches of the space industry. The incentive to reach such a centrally coordinated framework for all kinds of "New Space" activities is the one element all of them have in common: movement in, through and out of outer space, including on celestial bodies, and impacts of various space uses (such as for geostationary orbits necessary for telecommunications, proposals for space mining and space debris management, space exploration and information exchanges on science, climate change, among others). Consequently, an international, cooperative system of regulatory cooperation for "New Space" activities, operated by an appropriately mandated international body, could be the institutional clearinghouse and coordinated guarantee for the orderly development of "New Space" activities, in a way that would both satisfy commercial interests, but also safeguard the pressing jurisdictional concerns of States. Is this more functional approach a *prima facie* unprecedented erosion of State sovereignty?

From a Global Pact for the Environment & Global Environmental Constitutional to Rights for Nature

Description:

International environmental law is at a crossroads. Even as the international community struggles to cooperate and act effectively to address critical global environmental challenges, including climate change, biodiversity loss, and oceans management, efforts are afoot to consolidate and deepen the normative and institutional framework for international environmental law. We propose to hold a roundtable discussion critically exploring the degree to which ongoing efforts to develop a Global Pact for the Environment and to expand constitutional and legislative environmental rights worldwide foster efforts to develop a set of shared norms, and to advance ambitious environmental protection efforts.

Organized by the International Environmental Law Interest Group.

Transitional Justice in a Hostile Climate

Description:

Climate change is the greatest challenge of our time and it is already putting existing theories and institutions to a test. The most dramatic impact of climate change is expected to occur in marginalized communities that already have their livelihoods threatened by structural vulnerabilities and disaster. Climate change implicates issues of global justice, intergenerational ethics, distributive justice, moral, political and legal responsibility. Practices and tools from transitional justice have been used in numerous countries to address similar questions. This roundtable will explore what synergies exist between transitional justice theory and practice and climate change mitigation strategies.

Organized by the Transitional Justice and the Rule of Law Interest Group.