



INTERNATIONAL LAW AND UNIVERSALITY

14th Annual Conference of the European Society of International Law

13-15 September 2018

University of Manchester, Manchester, United Kingdom

Call for Papers

The 14th Annual Conference of the European Society of International Law will be held in Manchester, United Kingdom, under the auspices of the Manchester International Law Centre (MILC).

The Theme of the Conference

For at least a century, universality has been a constitutive element of international legal discourses as well as of international lawyers' identity. Universality is constantly invoked by international lawyers when they argue about the binding nature of international customary rules, reservations to multilateral conventions, the consequences for breaches of rules of customary international law, the legal interest vested in some obligations deemed to be of general interest, the membership of regulatory regimes specific to international law, etc. Universality similarly informs international lawyers' debates on particularism, cultural relativism, and regionalism which represent its flip side. Likewise, universality is often made the evaluative yardstick through which the state of global governance and expert regimes are gauged in order to diagnose what is wrong with the current state of the world.

Universality is commonly conducive to linear progress narratives whereby international law is said to have been moving from a law of autonomous sovereigns to a law of an integrated world community. Universality of modes of legal reasoning is also presumed by those engaging in legal discourses with a view to preserving

international legal argumentation and the possibility of international law allegedly serving as a common language for the continuation of “politics”. Whether they speak of the universality of international law, universality for international law, universality through and by international law, universality in the name of international law, a universalist project, the ‘universal’, and so on, international lawyers have always made universality a central part of their international legal discourses.

In recent decades, however, the virtues and the ostensible progress commonly associated with universality have been contested. As is illustrated by several generations of Third World Approaches to International Law, international lawyers have argued that universality can function as an ideology as well as an instrument of domination and exclusion. They have come to realise that the way in which universality is deployed in international legal discourses constantly creates a periphery and an otherness that suppresses memory and struggle. Just as the use of the idea of humanity fuelled skepticism in the middle of the 20th century, the invocation of universality has come to arouse suspicion among international lawyers. For many international lawyers today, “whoever invokes universality wants to cheat”. Universality is both a way to transcend particularism, a tool for domination and exclusion, and only achieved through hegemony.

The conference will take a hard and unflinching look at the multitude of roles and functions played by universality in international legal discourses as well as in its associated narratives of progress and virtues. In doing so, it will provide a critical appraisal of the mechanisms of inclusion and exclusion that comes with international law and its universalist discursive strategies. This will require that universality is not reduced to the question of the geographical outreach of international law but, instead, is understood in terms of *boundaries*. This will also entail examining how the idea of universality – which does not lend itself to a translation in all languages – was developed in some of the dominant vernaculars of international law – primarily English and French – before being generalised and imposed upon international lawyers from all traditions. This will simultaneously offer an opportunity to revisit the ideologies that constitute the identity of international lawyers today as well as the socialisation, reproduction, and education processes that they undergo to become international lawyers. Special attention will be paid to the place that Europe has secured for itself by virtue of the progress and historical narratives built around the idea of universality.

Keynote speakers and fora speakers will include leading theorists, renowned scholars as well as distinguished practitioners. The various *problématiques* and legal questions discussed during the conference will be of interest for a wide range of international lawyers including academics, researchers, students, and practitioners. In line with ESIL tradition, 4 *fora* panels will explore broader normative, theoretical and methodological issues. In addition to keynote addresses by distinguished and leading scholars, plenary sessions and *fora* featuring invited speakers, the programme includes a number of *agorae* where more specific issues will be discussed. 12 *Agorae* will be designed around eight sub-themes identified below. *Agora* speakers will be selected on the basis of abstracts submitted in response to the present call for papers. The purpose of the *agorae* is to share critical thoughts and cutting-edge research in relation to the theme of the conference with a view to stimulating debate. Papers submitted as a result of this call for papers may focus on any branch of international law and related fields which are to be discussed in the *agora* concerned. Papers should present innovative ideas, be unpublished at the time of presentation, and be at an advanced stage of completion. The general conference theme and the themes of the *agorae* are described below.

The working languages of the conference are English and French. Since no translation will be provided, it is assumed that participants have passive understanding of both languages and active understanding of at least one of them.

The Themes of the Agorae

Paper proposals for inclusion in one of the 12 agorae should relate to one of the following eight themes. The order of the following themes is without prejudice to the number of agorae on each theme as well as the order in which they will be scheduled at the conference.

Theme 1. The 'Particular' vs the 'Universal' in International Law

Universality has been privileged in international legal thought and practice as it is said to transcend all particularisms and promote the cosmopolitan project of international law. In that sense, universality has been informing international legal thought and practice as a project meant to play down the "subject". Yet the very idea of universality in international legal thought has remained ambiguous, if not intrinsically contradictory. Indeed, it can be said that the 'universal' is dependent on the 'particular' as much as the 'particular' is dependent on the 'universal'. In other words, the 'universal' in international law defines itself by the 'particular' it is meant to transcend whereas particular claims about international law are articulated by reference to an ideal universal international law. As a result, in international legal thought and practice, the 'universal' and the 'particular' are bound to appeal to one another to articulate themselves. In this context, legal pluralism may come as a way to evade this contradiction and mediate between universalism and particularism.

Issues arising within this theme may include, but are not limited to:

- The various facets of the idea of universal international law (geographical, gender, linguistic, educational, etc) and the tensions between them
- The relation between universalism, particularism, and pluralism in international legal thought and practice
- The idea that hegemony is the condition of possibility of the universality of international law
- The contemporary ways of mediating between universalism and particularism in international legal thought and practice, including the extent to which legal pluralism can mediate the opposition between universalism and particularism
- The role of religion in mediating universalism and particularism in legal thought
- Legal pluralism in international legal thought and practice (with possible emphasis on specific areas like human rights law, private international law, investment law, etc.)
- The constitution of identities through universality and/or particularism
- The association of universality with reason in international legal thought and practice
- The idea of disciplinary unity of international law and the need for cross-disciplinarity, interdisciplinarity, and counter-disciplinarity in international legal thought
- The extent to which international law has been seen as a discipline universally distinct from other social sciences and disciplines of the humanities
- The meaning of 'universality' as opposed to "particularism": a theoretical concept, a normative aspiration, a cultural dynamic, or a political condition
- Universalism versus relativism (e.g. with an emphasis on international human rights law)

Theme 2. Universality and regimes

The way in which universality is at work in international legal thought and practice may vary a great deal from one regime to the other. Universality's significance, roles, functions, impacts, and effects may not be the same, for instance, in international humanitarian law and international investment law.

Areas where the specific significance and role of universality could be explored include, but are not limited to:

- international human rights law
- international humanitarian law
- international investment law
- international trade law
- international environmental law
- the law of international organizations
- International law and (cyber) security
- the law of the sea

Theme 3. Universality and adjudication

International adjudication is traditionally viewed as the private business of the States concerned – it is very much *their* dispute and it can only become the business of an adjudicator upon their respective consent. Moreover, litigators and judges usually argue or reason on the basis of the specifics of the case at hand and only rarely venture into explicit universalisation of their claims or findings. Universality may be a rather distant concern in international adjudication. Under this theme, we will question this traditional understanding of the relationship between litigation and the quest for universality; it will revisit the tension between the two and ask what role, if any, universality may play in the future of international adjudication.

Issues arising within this theme may include, but are not limited to:

- Universality in litigation strategies and argumentation
- *Locus standi* and common interests under *erga omnes* obligations
- Advisory proceedings and public concerns
- Development of regional courts and tribunals
- Fragmentation in international adjudication
- Opening up the courtroom [to third parties through mechanisms such as]: intervention and *amicus curiae* briefs
- Diversity among the very visible college of arbitrators, judges, and counsels

Theme 4. A European tradition of Universality?

It is commonly acknowledged that international law originates from a European experience, as does the very idea of universal international law according to this discourse. In that sense, universality is said to have a very European pedigree. Yet, although universality may have European roots, the idea has played out in other (non-European) traditions. It is thus worth exploring the genealogy of the idea of Universality and the extent of its European and non-European origins (and the agendas which it has played in those distinct traditions). This also includes looking at how the universality of international law informs the current practice of the European Union (EU) and the case-law of the European Court of Justice (ECJ).

Issues arising within this theme may include, but are not limited to:

- The extent to which universality is the expression of a specific European approach to international law
- The possibility of a specific European sensibility about international law
- Universality and the Soviet approach to international law
- Relations between International Law and European Law
- Universalism in the ECJ case-law
- Universalism as a fundamental principle of EU law
- The self-declared non-universalist visions of international law (Latin-American International Law; Islamic International Law etc.)

Theme 5. Universality and the teaching of international law

This theme relates to the teaching of international law under the general rubric of universality. How people think about international law is structured by the way in which individual international lawyers are taught, frequently on the basis of views that are portrayed as being universal, rather than subjective. Such approaches though, can become structured into the 'common sense' of many international lawyers, rather than causing those involved in teaching to interrogate the intellectual influences that they have adopted. In that sense, universality raises the question (and the ideal) of universal legal education. This theme also pertains to the question of the reproduction and socialization of international lawyers. Many international lawyers simply consider their approach natural, rather than situated within a given tradition. Whilst not prejudging any answers, this theme is intended to question this assumption.

Issues arising within this theme may include, but are not limited to:

- The influence of the teaching of international law
- The syllabi which are taught on international law courses
- The extent to which teaching is (un)self consciously universal or local
- The level at which international lawyers have a 'common sense', and where it is inculcated
- The possibility of universal criteria for the socialization of international lawyers as international lawyers
- The social forces, mindsets, sensibilities, biases, and hierarchies at work in the processes of socialization of international lawyers.

Theme 6. Universality and the working languages of international law

This theme revolves around the question of the languages through which international law is thought, practiced, constructed and critiqued. It raises the question whether there can ever be a universal language for international law. This question pertains to both the literal language in which scholarship, as well as international legal practice, is written and read as well as the professional language which is practiced, which can both include and exclude. Special attention could be paid to the fact that the very idea of universality is found in certain working languages and cannot be translated in other working languages of international law.

Issues arising within this theme may include, but are not limited to:

- The possible incommensurability between how similar legal categories and concepts are understood in the dominant languages of international law
- The extent to which different vocabularies of approaches to international law can be inclusive and, as such, universal, or may be inherently exclusive
- The possibility and impossibility of a universal consensus on the meaning of international legal concepts
- The varying politics of abstraction accompanying the languages of international law
- The variety of legal techniques and mechanisms to build new legal categories and concept in the dominant languages of international law
- The rise and fall of French as the dominant language of international law (and consequences of this on legal thought and practice)
- The rise of English as the dominant language of international law (and its consequences on legal thought and practice)

Theme 7. Critique and resistance to Universality

We tend to think of universality as progress, a forward movement toward greater inclusiveness. International law, we tell ourselves, was once the preserve of a small circle of powerful European states, but it now applies across the globe to all states, irrespective of size, power, race or religion. Likewise, in much of contemporary international law scholarship, the debate about universality has been effectively reduced to conversations about participatory processes, geographical space, and international human rights law, as if these were the only contexts in which the problematic of universality seemed urgent or deserving of critical attention. For many, however, the project of 'universalizing' international law has been an experience of violent expropriation, dislocation, and cultural domination. Depending on one's perspective, universality can thus signify integration or domination, equality or hegemony, openness or intolerance. To some, universality is an accomplishment that must be cherished, acclaimed and celebrated. Yet to others, it represents a force that must be opposed, repelled, or resisted. It is not surprising, in this respect, that a great deal of recent international legal scholarship has wrestled with the question of what the idea of universal international law might mean today. This is why this conference will provide critical (Kantian, feminist, post-colonial, Marxist, etc.) perspectives on universality's place and role in international law both as a discipline and as a legal system. Papers offering to explore the less commonly discussed dimensions of international law's encounter with universality as well as those attempting to develop our understanding of this encounter outside these contexts will be particularly welcome. We will consider some of the ways in which those on the 'receiving end'

of universality, or those against which universality is defined or justified, have pushed back and resisted assertions or claims of universality. The purpose is not necessarily to denounce and condemn, but to think outside the box and to read against the grain.

Issues arising within this theme may include, but are not limited to:

- The extent to which international law is an inherently universalist and universalizing project
- The politics and biases of universalism and globalism in modern international law
- The possibility of a separation between ‘true’ and ‘false’ universalism?
- The possibility of a irreducible kernel of universalism which international law can and should never abandon
- The places and modes to speak, contest, and critique universality in, and of, international law
- Universality and anti-colonial movements (violent and non-violent)
- Universality and the resistance to international [criminal] justice (including universal jurisdiction)
- What is there to be added to current feminist critiques of international law’s alleged universality
- What is there to be added to current TWAIL critiques of international law’s alleged universality
- The resistance to economic globalization, social movements and epistemologies of the South

Theme 8. Universality over time

Under this theme, the conference will seek to provide historiographical and genealogical insights on the question of universality. Contemporary international law is universalist in character, or so it would seem in mainstream discourses. If this is indeed the case then from where did the notion of the universality of international law originate, and when? What inherent qualities distinguish it from international law in earlier periods of history? To what extent do international organisations and international legal regimes, which uphold universal membership and purport to embrace global coverage, recognise the concept? And how have the various schools of legal thought approached the question of the universality of international law over time? This theme seeks to answer these questions through an historical lens.

Issues arising within this theme may include, but are not limited to:

- the varying projects which the idea of universality of international law has been meant to realise over time
- the ways in which discourses on the history of universality are used as modes of intervention in the present and the future
- the way in which universality has played out across epochs and school of thought
- the temporal and/or spatial scope of international law’s universality
- the relation between perpetual peace and the universality of international law
- the relation between universality and the evolving cosmopolitan projects associated with international law

- the universality of international law in relation to the rise and fall of the new international economic order;
- the way in which universality has played out (or been opposed) in the development of universal international organisations and international regimes;
- the evolving tensions between global v. regional and sub-regional international laws over time

Submission of Paper Proposals

The programme committee will review the abstracts submitted for each *agora*. Joint submissions are possible, but, if selected, only one person will be eligible for a reduced registration fee at the conference. Panel proposals are not eligible and will not be considered. Only one abstract per author will be considered.

Selection criteria are:

- Originality and innovativeness of the work
- Relevance to the *agora* theme
- Geographical and gender balance

Abstracts (in word and PDF format, not exceeding 800 words) must be submitted via the conference website: esilconference2018@manchester.ac.uk.

The following information must be provided with each abstract:

- The author's name and affiliation
- The author's CV, including a list of relevant publications
- A small biography (100 words) should be included in the abstract itself
- The *agora* theme(s) (a maximum of two) for which the paper should be considered
- The author's contact details, including email address and phone number
- Whether the author is a current ESIL member
- Whether the abstract should be considered for the ESIL Young Scholar Prize (see below); if so, please give the relevant dates (of PhD defence and ESIL membership)

Submission of Panel Proposals by ESIL Interest Groups

Two *agorae* will be reserved for the ESIL Interest Groups which are invited to submit panel proposals. Panel proposals are thus only eligible if they originate from an ESIL Interest Groups.

Agorae proposals from ESIL Interest Groups must include all the required information about individual papers that are to be part of the panel, as detailed in the Call for Papers. In addition, the following information must be provided when submitting an agora proposal:

- The name of the ESIL Interest Group submitting the proposal
- The contact details of the person(s) submitting the proposal, including email address and phone number
- The title of the proposed panel
- A description of the overall theme of the panel and the insights expected from the discussion
- The format of the *agora*: panel, roundtable, or other format (please note: all *agorae* will be scheduled for 1.5 hours, there can be a maximum of 4 participants)
- A full set of abstracts of the individual papers that are to be part of the panel

Proposals must be sent to <mailto:esilconference2018@manchester.ac.uk>.

Full papers

Selected authors should submit a first draft of their paper (min. 3000 words) prior to the conference. The paper will be shared with other *agorae* speakers with a view to creating interactions during the conference. The quality of the drafts will be screened by the programme committee which may request amendments.

Timeline

- The deadline for submission of abstracts is **31 January 2018**
- Successful applicants will be informed no later than **31 March 2018**
- The deadline for submission of full papers is **15 July 2018**

- The conference begins on Thursday 13 September and ends on Saturday 15 September 2018

- The deadline for submission of final papers (to be included in the ESIL SSRN series and/ or a future conference publication) is **1 November 2018**

Finances

All selected *agora* speakers must register for the conference and, if ESIL members, will be eligible for a reduced conference registration fee. ESIL does not cover expenses for travel and accommodation.

ESIL travel grants are awarded to encourage and facilitate attendance at ESIL events. Travel grants are awarded under two different schemes: the Early Career Scheme and the Developing/Emerging Economies Scheme. Whilst travel grants are normally awarded to applicants presenting a paper, limited support may also be available to non-presenting participants. Application details will be available in early 2018.

Publication

After the conference, ESIL provides the opportunity to publish papers in the ESIL SSRN Series and also plans to publish selected high-quality papers in a volume of the ESIL Book Series (published by OUP).

ESIL Young Scholar Prize

ESIL will award the Young Scholar Prize (YSP) again in Manchester. The ESIL Young Scholar Prize is generously sponsored by the law firm WilmerHale. The winner of the YSP will be announced in the conference bro-

chure and the Prize will be awarded at the conference dinner. The winner receives 2 years' free membership of ESIL as well as conference participation expenses of up to 500 euros. In addition, the Prize-winning paper will be published in the *European Journal of International Law* (subject to review).

This prize will be awarded for the best paper submitted to the conference or to a pre-conference Interest Group event by scholars at an early stage in their academic career. Early-career scholars are either PhD candidates or those who have had their oral defence no longer than 3 years prior to the submission of the abstract. Candidates for the prize have to be ESIL members at the time of submitting their abstract. Co-authored articles will only be considered for the prize if all authors fulfil the eligibility criteria.

In order to be considered, please provide the following information when submitting the abstract:

- An expression of interest in competing for the ESIL Young Scholar Prize
- Date of enrolment in PhD programme / date of PhD defence
- Date of joining ESIL

Upon acceptance of the abstract for presentation at the conference and notification that they are eligible for the YSP, authors must submit a paper of between 8,000 and 12,000 words (including footnotes) to the ESIL Secretariat (esil.secretariat@eui.eu) by **1 July 2018** for consideration by the YSP jury.