
The In/Ex-clusiveness of International Law: Some Remarks on the 17th Annual Conference of the European Society of International Law by the Local Organizers

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1 Organizing the Conference: Choices and Difficulties

The 17th ESIL Annual Conference, in Utrecht, was the first conference after the beginning of the Covid-19 pandemic to be held in full capacity. It was a pleasure to see so many colleagues all together in one room. The conference attracted more than 400 participants from various parts of the world. As local organizers, we are very grateful to all of them for their interest and participation.

The Covid-19 pandemic and related uncertainties had a major influence on the organization of this event. Only a few months earlier, it was still forbidden to organize large events in the Netherlands. Thus, we had to improvise and adapt to ever-changing circumstances. Some participants had to cancel their trips because of re-instated travel restrictions. Sponsors were doubtful about the turnout of the event and less keen to support us. We are sorry for any inconvenience that the various changes of plans and of circumstances caused for the participants.

Before we introduce the theme of the conference, we would like to explain certain choices which Utrecht University made in organizing the ESIL Annual Conference.

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First, Utrecht University has committed to becoming a more sustainable institution and to reducing its environmental footprint. This is particularly true for the Law School, where many of us are engaged in conducting research and teaching regarding sustainability matters. In this spirit, we take note of a few practical aspects of the conference:

- We reduced as much as possible the use of single-use paper and plastic items. For this reason, we did not distribute paper booklets and pens, but opted instead to send the pdf programme by email and create QR codes through which the participants could download it. In case of need, we had a few printed copies of the booklet and programme at the registration desk.
- All meals, including the conference dinner, served a vegetarian menu.
- It was also our goal to make this event hybrid and encourage as much as possible remote participation. However, in the end, we had to cancel the possibility of online participation due to its high costs in relation to the number of registrations (27). As a public institution, we could not justify bearing such a cost. We really hope that future conferences will be able to guarantee a hybrid option.

Second, and in line with the conference theme and ESIL's commitment to diversity, equality and inclusion, we sought, together with the programme committee¹ and the selection committees of the agorae,² to shape an inclusive programme, with a diverse line-up of speakers. In particular, we paid attention to race, ethnicity, gender, and national origin. Invited and selected speakers came from different parts of Europe and other parts of the world, with a variety of backgrounds. We are aware that our efforts for diversity, equality and inclusion had many shortcomings. Yet the organizers and the selection committees tried their best and it is our hope that ESIL annual conferences will increasingly build best practices for making an ESIL intellectual community more open and inclusive.

2 The Theme of the Conference and What Happened

The theme of the 17th ESIL Annual Conference was 'The In/Ex-clusiveness of International Law'. When we presented the bid to the ESIL Board in 2017, what we had in mind were, among others: international law's interfaces with colonialism and decolonization; different categorizations of states under international law and institutional practices; inclusion of future generations in international law; the applicability of a variety of sub-fields of international law to new contexts; inclusiveness of the international judiciary; and the role of international scholars in adjusting the boundaries of inclusiveness. Between our ESIL bid and the annual conference, there occurred the Covid-19 pandemic, global attention to the Black Lives Matter movement and the full-scale invasion of Ukraine by Russia, to name a few. By the time we convened the 2022 conference, we felt an even stronger need to facilitate discussions about the inclusiveness and exclusiveness of international law as a discipline, as a governance apparatus, as a profession and as an epistemic community.

¹ We thank the members of the ESIL Board who assisted us in the programme committee, namely Freya Baetens, Neha Jain, Catherine Titi and Ramses Wessel.

² See below in 'Acknowledgements'.

The drafting of the title may have raised some eyebrows, as it is not the easiest to pronounce. It however reflects our attempt to offer a different lens of analysis for international law, which includes two components that we consider as two sides of the same coin. When considering the inclusion of interests or stakeholders in a specific legal framework, a decision is taken to exclude others, either to protect a more vulnerable group or specific interest, or to prevent potential conflicts of interests. What are then legal principles, values guiding the decision-making process, if any? Are the processes able to accommodate the necessary balancing exercises? Do the outcomes of the decision-making processes fulfil the objectives of the legal framework? Do the outcomes comply with the applicable legal principles and values? And what about their implementation?

Our approach does not necessarily favour inclusiveness over exclusiveness. We also do not consider the two elements to be in contraposition. This is the reason why the title does not read inclusiveness *v.* exclusiveness. The ‘In’ comes before the ‘Ex’ just as a result of common language: ‘in or out’/ ‘dedans ou dehors’.

Instead of applying this lens of analysis to various sub-fields of international law, the programme was organized around transversal themes which relate to different sub-fields of international law, such as the concepts of borders, sustainability, peace and security and justice. This structure aimed at enabling experts from different disciplines of international law to interact and get better acquainted with each other’s narratives and rationales. The panels of the conference did not only engage with substantive international law issues, however. We wanted this event to be also a moment of reflection about our profession, about international law as a discipline. How do we decide what to exclude or include in our syllabi? How do we select the literature that we assign to our students and why? Accordingly, we dedicated panels to the teaching of international law and the production of legal knowledge.

The dichotomy in/exclusion took different shapes to encompass discussions about, *inter alia*, minority and vulnerable groups, present and future generations, human and non-human interests. Many panels emphasized the positionality in time and space of these dichotomies and the somehow ‘presentist’ nature of any discussion about inclusion and exclusion. We hope that the ESIL Annual Conference, by applying the analytical lens of in/exclusion, has served as an opportunity for participants to revisit some of the underlying assumptions about international law, and its practices and theories.

The conference left a bitter-sweet taste in many. International lawyers tend to believe (more or less strongly) that international law is a good and necessary project. Also, compared to the past, when international law was conceived as a limited *Ius Publicum Europaeum* that excluded ‘non-civilized’ territories and peoples, international law appears to have become a more inclusive system in many respects. At the same time, the conference highlighted how past projects are embedded in the everyday life of international law, sometimes hidden in legal narratives, procedural details and annexes. International law is far from perfect, and the conference revealed difficulties in dissecting and overcoming its weaknesses and problematic features. Even if some of the panels reminded us of a bleak picture of international law and its underlying structural inequalities and biases, we would like to think that many conference participants still

believe in international law's potential to be reformed. In this sense, we are grateful that the conference also generated forward-looking discussions. We very much hope that the participants, whom we were privileged to host, find their own ways to continue engaging with the key takeaways from the conference.

3 Acknowledgements

The 17th ESIL Annual Conference was organized by a local team, which included, in addition to the authors of the present remarks: Róisín Burke, Jelle Honing, Angélique Neisingh, Inge Terwan and Miranda Walraven. During the days of the conference, the team was able to count on the kind assistance of Elise Kolen, Yiokasti Mouratidi, Kaan Özkonak and Samantha Robb. During the preparation of the programme, several Utrecht University colleagues kindly participated in the many agorae selection committees, namely: Natalie Dobson, Katharine Fortin, Laura Henderson, Alexandra Hofer, Brianne McGonigle Leyh, Lan Nguyen, Salvatore Nicolosi, Luca Pasquet, Rozemarijn Roland Holst and Lorena Sosa.

We would like to thank for their support the Utrecht University School of Law and its research centres: Utrecht Centre for Accountability and Liability Law (UCALL); Montaigne Centre for Rule of Law and Administration of Justice; Utrecht Centre for Water, Oceans and Sustainability Law (UCWOSL); Utrecht Centre for Regulation and Enforcement in Europe (RENFORCE). Our gratitude also goes to our sponsors: the Dutch Ministry for Foreign Affairs; Foley Hoag LLP; Max Planck Institute for Public Comparative Law and International Law; Marine Veissière Attorney at Law (MVAAL); De Brauw Blackstone Westbroek; Brill Nijhoff Publishing; Royal Netherlands Society of International Law (KNVIR).