CONFERENCE DEBACLES
Illusions and Failures in the History of International Adjudication

Luxembourg, 24 & 25 November 2016
Programme

Thursday, 24 November 2016

09:00   Registration
09:15   Introductory Remarks
09:30   I. Theory
11:00   Coffee break
11:30   II. History
13:00   Lunch break
14:30   III. Human Rights
16:45   Coffee break
17:15   IV. International Economic Law
19:00   Dinner Cocktail

Friday, 25 November 2016

09:00   V. Regional Integration Organisations
10:15   Coffee break
10:45   V. Regional Integration Organisations (2nd part)
12:15   Lunch break
13:30   VI. International Criminal Law
15:00   Coffee break
15:30   VI. International Criminal Law (2nd part)
17:00   Concluding Remarks
17:30   Closure
DEBACLES: ILLUSIONS AND FAILURES IN THE HISTORY OF INTERNATIONAL ADJUDICATION

Encouraged by the post-Cold War rise of international adjudication, most international lawyers have focused their attention on judicial ‘success stories’. They have thereby revitalised a liberal-modernist narrative that views the constant expansion and improvement of international adjudication as historically ineluctable. Against this backdrop, the DEBACLES project, inaugurated at the Max Planck Institute for Procedural Law in 2015, aims to cast an unconventional light on the history of international adjudication, bringing to the foreground its many illusions and failures, the paths not taken, and, more generally, the nonlinearity of its developments.

The present conference, which marks an important milestone, will engage with specific failed attempts to create and operate international judicial forums, as well as with broader historical and theoretical issues related to such failures. First among these is the clarification of the very concept of ‘failure’ and the identification of its subjective and objective dimensions. The conference will offer a rich inventory of cases of failure arranged in four thematic sessions on — respectively — human rights, international economic law, regional international organisations, and international criminal law. Prominent and ostensibly thriving institutions — including the International Court of Justice, the Court of Justice of the European Union and the International Centre for Settlement of Investment Disputes (ICSID) — are examined along with lesser-known or almost forgotten ones, like the International Loans Tribunal and other dead letter courts. One may see, in the choice to take a closer look at cases of failure, an attempt at drawing lessons from past setbacks with a view to the progressive advancement and further expansion of international adjudication. The analyses we offer may, of course, be put to such use, although the project’s main purpose is, rather, to develop a dispassionate critique of the practice of international adjudication itself, its ideological underpinnings, most notably as reflected in its historiography, and its structural limits.
I. Theory

Chair: Prof. Moshe Hirsch

Dr Luca Pasquet
Failure as Disappointment

Prof. Paula Wojcikiewicz Almeida and Prof. Serena Forlati
Is Non-compliance with Judgments a Failure of International Adjudication?

Dr Wim Muller
International Adjudication Against Great Powers: Destined for Failure? The Nicaragua, Arctic Sunrise, and South China Sea Cases from the Point of View of Power Asymmetry

Q&A session
II. History

Chair: Prof. Bardo Fassbender

Prof. Ingo Venzke
   An Extended Critique of International Adjudication: The Illusion of Necessity and the Failure of Imagination

Prof. Ignacio De la Rasilla y del Moral
   Why a Story of Dead Letter International Courts and Tribunals Today?

Daniel Litwin
   How the Story of International Adjudication Has Been Told: The Linear Sensibility of International Adjudication Historiography

Q&A session
III. Human Rights

Chair: Prof. Jarna Petman

Michel Erpelding
Failure by Oblivion: The Invisible Legacy of the Upper Silesian Mixed Commission

Dr Nicolas Kang-Riou
The European Social Charter Collective Complaint Mechanism: From Limited Success to Failure

Dr Olivier Barsalou
The International Court of Justice, Cold War Politics, and the Interpretation of Peace Treaties with Bulgaria, Hungary and Romania Case: A Human Rights Debacle?

Dr Athanasios Chouliaras
The Development of State Responsibility for Serious Violations of Human Rights and the Dubious Role of the International Court of Justice

Dalia Palombo
Human Rights Adjudication: Between Hope and Debacle

Q&A session
IV. International Economic Law

Chair: Prof. Hélène Ruiz Fabri
Prof. Emanuel Castellarin  
The International Loans Tribunal That Never Was

Prof. Nikitas Hatzimihail  
Of Debacles and Crises: ‘De-colonisation’ Meets Investment Arbitration in the Cold War Middle East

Ksenia Polonskaya  
Does the ICSID Suffer from a Genetic Disease?

Yuliya Chernykh  
Fold Down Umbrellas! The Debacle of the Umbrella Clause in Investment Arbitration

Q&A session
V. Regional Integration Organisations

Chair: Prof. Antoine Vauchez

Prof. Henri de Waele
Not All That Glitters is Gold: Covert Failings of the Court of Justice of the European Union

Prof. Freya Baetens
The Triumph of Hope over Experience? Illusions and Failures of Successive Central American Courts of Justice

André Nunes Chaib
Why Courts Fail in Latin America? Constitutionalist Imaginary at the Heart of Latin American Jurisdictional Projects

Mariana Peña-Pinon
The Fiasco of the Mercosur’s Advisory Opinion Mechanism

Prof. Konstantinos D. Magliveras
When Politics Prevail over the Rule of Law: The Unfortunate Story of the SADC Tribunal

Evelyn Mogere

Q&A session
VI. INTERNATIONAL CRIMINAL LAW

Chair: Prof. Ilias Bantekas

Dr Heejin Kim
Ending a Culture of Impunity: A History of the Use of International Judicial Means for the Punishment of Atrocity Crimes in Asia

Prof. Patrycja Grzebyk
Hidden in the Glare of the Nuremberg Trial: The Impunity for the ‘Butchery of Wola’ as the Greatest Debacle of Post-war Prosecution of International Crimes

Dr Luigi Prosperi
The Missed Italian Nuremberg: The History of an Internationally-sponsored Amnesty

Prof. Sergey Vasiliev
Debacles of International Criminal Adjudication: Deliberation Practices and Lessons Unlearned

Dr Di Gore Simmala
African Challenges to the Legitimacy of the International Criminal Court: Is International Criminal Justice Facing Breakdown?

Yael Vias Gvirsman
What International Criminal Justice Cannot Do: The Limited Roles of International Criminal Courts and Tribunals in Conflict Resolution

Prof. Gabriele Della Morte
The Failure of the Discourse About the Failure of International Criminal Law

Q&A session
Max Planck Institute Luxembourg for Procedural Law

Procedural law matters – this could be the leitmotif for the new Max Planck Institute Luxembourg for Procedural Law. The Institute was founded in the summer of 2012. Today, its researchers coming from all over the world investigate all types of dispute resolution and procedural law. Within the Max Planck Society, it is the fifth Max Planck Institute established outside Germany, and the first of these focusing on law.

The location in Luxembourg is ideal for a Max Planck Institute focusing on procedural law: Luxembourg is indeed the synonym for the constant development and expansion of the legal systems of the EU Member States by means of European law and of the jurisprudence of the Court of Justice of the European Union. This gives the researchers and guests of the Institute the opportunity to maintain a continuous dialogue with the members of the Court and to gain a direct insight into the workings of the European judiciary. Observing the practice of courts in different countries and at domestic and international levels is an important success factor for studying European, comparative and international procedural law.

Department of International Law and Dispute Resolution

Led by Professor Hélène Ruiz Fabri, the Department of International Law and Dispute Resolution examines and analyses various mechanisms and techniques of international dispute settlement – including traditional litigation as well as alternative methods of dispute resolution and adjudication – but also extends its research to all kinds of decision-making processes. Its research agenda focuses on the principles and processes underlying each of these mechanisms and explores various theoretical and historical schools of thought in international law in order to assess their accuracy regarding procedural issues.

Since her appointment as Director, Professor Ruiz Fabri has gathered in her department promising senior and junior research fellows with various disciplinary and cultural backgrounds. Currently, the research activities of this internationally-minded team are in particular focused on two ambitious long-term projects:

• The Max Planck Encyclopedia of International Procedural Law, which aims to bring into focus essential topics in international dispute resolution, to cover the latest developments in the field and to reflect international law from a procedural perspective;
• The Making of International Judicial and Arbitral Decisions, which combines the perspectives of law, political science, sociology, psychology and history, and aims at opening up the black box which in many respects still encrypts the decision-making processes of courts and tribunals.

Besides the two aforementioned challenging projects, the Department of International Law and Dispute Resolution is actively engaged in international research projects, scientific and professional networks, international organizations and forums. Seminars, colloquia and in-house workshops that gather leading scholars and practitioners of international law are regularly held, as well as Lecture Series organized in close collaboration with the Department of European and Comparative Procedural Law.
Upcoming Events

We would like to invite you to our upcoming events!

30 November 2016 / 16:00
Max Planck Lecture Series on Sovereign Debt
Proposals for the Reform of Sovereign Debt Restructuring - The Contractual Approach
Lecturer: Mr Philip R. Wood CBE (Allen & Overy, London)
Discussant: Professor Christoph G. Paulus (Humboldt University of Berlin)

14 December 2016 / 16:00
Max Planck Lecture Series on Sovereign Debt
Proposals for the reform of Sovereign Debt Restructuring - The Statutory Approach
Lecturer: Mr Lee C. Büchheit (Cleary Gottlieb, New York)
Discussant: Professor Luis M. Hinojosa-Martínez (University of Granada)

30 - 31 March 2017
Workshop

27 - 28 April 2017
Conference
Experts in International Adjudication
in collaboration with the University of Geneva

25 - 26 September 2017
Conference
A Bridge over Troubled Waters: Dispute Resolution in the Law of International Watercourses and the Law of the Sea

Please find more information on www.mpi.lu/news-and-events/

All etchings by Giovanni Battista Piranesi (1720-1788):
Front cover: Remains of the Temple of Minerva Medica
I. Theory: View of the Pyramid of Gaius Cestius
II. History: Ancient Intersection of the Via Appia and Via Ardeatina
III. Human Rights: Pronaos Façade of the Building Known as the College of Amphictyons (Paestum)
IV. International Economic Law: A Part of the Foundations of the Theatre of Marcellus
V. Regional Integration Organisations: Remains of a Covered Portico in a Domitian Villa
VI. International Criminal Law: Remains of the Tomb of the Metelli
Back cover: Fragments of the Marble Plan of Ancient Rome
Contact person:
Martina Winkel
Phone: (+352) 26 94 88 - 923
events@mpi.lu

Venue:
Max Planck Institute Luxembourg for Procedural Law
4, rue Alphonse Weicker
L -2721 Luxembourg