

“The Power of International Law in Times of European Integration”

Report on the Second Biennial Research Forum of the European Society of International Law Budapest, 28-29 September, 2007.

I. The Essence and Aims of the Research Forum

“The Power of International Law in Times of European Integration” was the second research forum organised by ESIL, the first having been held in Geneva in 2005. Research forums are high level scholarly conferences aimed at promoting the exchange of views on specific, contemporary issues. By cutting across the usual dividing lines between senior professors and younger researchers, including those working on their PhD, between theorists and practitioners, between East and West, these forums offer a flexibility and innovation often not found at traditional-style meetings of international lawyers. The ESIL forum format made up of both plenary meetings with invited speakers, and agorae involving speakers chosen from submitted proposals, guarantees a vivid interaction. As this was the first event to be organised by the ESIL in Central Europe, the Society thought it appropriate to concentrate on the region which belonged to another political system during the Cold War period. The research forum intended to focus on two dominant questions: Is international law relevant in the resolution of Central- and Eastern Europe’s present regional or bilateral conflicts? Are states of the region ready to look past their immediate neighbourhood towards participating in the resolution of conflicts beyond Europe, including global threats?

II. Venue, participants

The Research Forum was hosted by the Eötvös Loránd University in Budapest and organised by certain members of the International Law Department under the leadership of Boldizsár Nagy, member of the ESIL Board. The conference took place in the ceremonial auditorium and other halls within the Faculty of Law building, in the very heart of Budapest, close to the River Danube.

In fulfilment of its aims the Forum hosted among the participants a large number of persons with background in Central and Eastern Europe, representing 39% of all participants. With respect to the speakers in particular, not only were 45 % of the accepted agora presentations written by scholars from the region, but also the majority of the plenary speakers (Ineta Ziemele, Steven Stec, Tibor Várady and János Kis) represented “homegrown” wisdom.

The diverse national backgrounds mirrored and were in direct keeping with one of the central aims of the conference, i.e. facilitating communication across borders no longer in place but often still hindering the exchange and flow of ideas among national scholarly communities. A slight majority of Western European participants (53%) was neither problematic nor unwanted despite the above, as the region still remains a hub of new scholarly ideas and research in the field. Of special interest are two more figures: 7% of all participants arrived as “Academic visitors” from non-European countries, reflecting the stature of the biennial Research Forum, and around 20% of the registered audience members came as students of a long list of respectable universities and colleges.

III. The Merits of the Research Forum

1. Structure

The Research Forum consisted of two Plenary sessions, two Fora and seven Agorae. Plenary sessions and Fora were organized with the aim of providing a platform for highly distinguished practitioners and scholars in the field to share their unique insights with the broadest audience possible. Agorae, on the other hand were treated as vehicles for presenting and discussing cutting edge scholarship, ideally bringing together several perspectives on the same subject-matter. This was reflected in the make-up of the panels, as plenary and forum speakers were carefully selected and then invited, while agorae presentations went through a detailed and competitive selection procedure. During this, the organizers followed the principles of attempting to provide opportunities both to young researchers at the beginning of their scholarly careers and to work in progress, so as to promote the completion of the various ongoing projects in the Academic community. An idea about the richness and diversity of the various panels can be gained from the next section, which presents a detailed outline of the proceedings.

2. Opening and Closing Statements

The opening ceremony included a keynote speech on the regional perception of key issues of international law delivered by dr Márta Feksz Horváth, Senior State Secretary of the Hungarian Ministry of Foreign Affairs, and welcoming words by Professor H  l  ne Ruiz Fabri, the President of ESIL, Professor Ferenc Hudecz, Rector of the E  tv  s Lor  nd University and Professor Boldizs  r Nagy, head of the organising committee.

3. Plenaries

The opening plenary bear the title *“Does international law have legitimacy ‘pull’ or has the EU pre-empted its normative space? The role of international law in regulating region- specific relations and resolving regional disputes”* and was delivered by Judge Ineta Ziemele of the European Court of Human Rights offering a tour de horizon of the situation, concentrating on the interacting system of norms in the human rights field.

The closing plenary’s speaker was professor J  nos Kis (Central European University and New York University) offering his views on the topic described as *“New capitalism and old human rights – the pains of transition and their mitigation by human rights”*. With an eye on recent Hungarian political events he gave a philosopher’s account of the still remaining shortcomings of the rule of law, not sparing criticism of the political elite.

4. Fora

Two Fora with invited speakers served to highlight burning problems affecting the region as well as its relationship to the whole of Europe.

“Bridges over troubled waters – Environmental disputes in Central and Eastern Europe and competing systems of norms contributing to or preventing their resolution”

The forum was expected to elaborate on the role of international law (and its competition with EU law) in resolving disputes among EU Member States and among Member States and third states. The ECJ judgment in the MOX case (Commission v Ireland (C-459/03 30 May 2006) was to feature in the debate.

Indeed the two excellent forum speakers, Philippe Sands (University College London) and Steve Stec (Regional Environmental Center Hungary) have offered quite challenging

perspectives. Philippe Sands essentially argued that accession to the EU entails a loss of sovereignty which was just gained back when environmental protest in times of the regime changes in Central and Eastern Europe constituted the sovereign self-expression of the individual and the sovereign claim of nations to get rid of socialist-imposed ventures or pollution. The Mox plant judgment indicates the desire of the ECJ to gain monopoly in disputes relating to treaties which are part of the community *acquis* and to centralise the right to enforce a claim in the hands of the Commission (in place of the member states). This, according to Sands deprives member states from their prerogative to sue other member states or third states in front of a tribunal or court according to their own preference and litigation strategy. Steve Stec deliberated the interesting mutual impact the new member states and the EU structures have on each other. The Aarhus Convention served as an example in which standards originally set for the non-member states become targets even for the old member states of the EU. With his wealth of regional experience he also reviewed the obstacles in way of the practical implementation of EU law and its competition with international law for the control of certain environmentally sensitive situations, like the Bystroe Canal built in the Danube delta.

“The ICJ under siege: the Balkan cases before the Court”

Nothing exceeds the importance for Europe during the past two decades than the collapse of the Berlin wall and the Balkan transformation, starting with the horrors, continuing with the pain, which is indeed still felt. The ICJ has delivered its judgement in the Bosnia/Yugoslavia case. The forum was not limited to the “Had Yugoslavia standing and when” question but also looked at the role of international law in general and the ICJ in particular in the resolution of disputes. Of the two eminent speakers Professor Tibor Várady, (Central European University and Emory University, Agent and Counsel of Serbia-Montenegro in several ICJ cases) confronted the public with the dilemma of the Court on the *Case concerning the application of the convention on the prevention and punishment of the crime of genocide* whether to condemn Serbia-Montenegro (and its democratically elected government) for major breaches of international law committed by the predecessor Milosević regime. Professor Karine Bennelier-Christakis (Institut d’Etudes Politiques de Grenoble) analysed the relationship of genocide to state (not individual) responsibility and questioned the Court’s overt reliance on the case law of the International Criminal Tribunal for the Former Yugoslavia.

5. Agorae

The parallel agorae attracted great attention. Due to the nature of the events a detailed and perfectly proportional recollection of all of them is not possible, but in the following lines their focus is reconstructed. For the names of the presenters and the chairpersons please consult the full program (see Annex I)

A) Multiethnicity in practice: minorities at home – kinfolk abroad

Treating minorities in their country of residence and extending protection to kin people in other states - there is much scope for discussion of new possibilities available in international law for protecting minorities within a country’s borders and offering (or withholding) tools to (from) states to protect their own kin people who find themselves on other states’ territories. The Baltics, Russia, former Czechoslovakia, Albania and Hungary immediately come to mind as examples, and the list can be extended.

B) The new peacekeepers: Central and Eastern Europe in UN and NATO actions beyond Europe

Becoming members of the EU and NATO and having transcended the ideological dividing line between East and West have made countries of the region a valuable source of military and other personnel in Iraq, Afghanistan etc. Have they been smoothly integrated? Have these states become more potent actors as a result? The agora provided a chance to investigate more general issues of peacekeeping, command responsibility in international units and other related issues.

C) The extended exception – territories in wider Europe under competing claims of legitimate rule (Transnistria, Osetia, Northern Cyprus etc.)

Two speakers in this agora laid out the core theoretical questions underpinning the theme of the panel. They inquired whether secession is ultimately a question of law or fact and mapped out competing contemporary approaches to the question of (non-)recognition of de facto regimes. Other speakers dealt with the question of extraterritorial human rights responsibility and questioned recent ECHR practice through the lens of (post-)colonialism. Two case studies explained the complex background and the even more complex political and legal dilemmas associated with the question of Transnistria and the role played by international law in the Greek-Cypriot rejection of the 2004 UN Plan to reunify Cyprus.

D) Don't move – don't shoot: border controls, exit and entry through dividing lines

One of the greatest (sad) ironies of history may be seen in pre/post 1989 border regulations. Prior to 1989, the communists demanded “do not move”, now it is the West which orders this, and whereas earlier the GDR border guard had orders to shoot, now the Schengen states build their barbed wire barriers. The agora took up some of these issues, especially the difficulties to get access to the European Union's territory.

E) Wilson – Lenin – Badinter: Self determination (or else) in East or West

The Agora featured three diverse speakers with different disciplinary backgrounds. The agora included an anthropologist and legal historian perspective on the tainted racist origins of the Wilson principle of self determination to be followed by a more political science and constitutional law perspective asserting a decline of the principle of self determination in recent state practice. The third view approached the theme in the perspective of general systems theory and asserted that the principle of self determination was very much alive and applied to all kinds of transnational regimes. The thesis that self determination is in decline was contradicted by various speakers. However, there was some agreement as to the extreme vagueness and subjectedness to political opportunism of the principle of self determination.

F) Tales of “civilisation”; imperialism and the transfer of values (Soviet Union – CEE, EU– CEE)

This agora addressed the argument of the self-repeating narrative of the “good” actor coming to civilise the “backward” region. Are we confronted with Aufheben in Hegel's sense or does the “political conditionality” of the EU differ from the earlier (less gentle) transfer of values by the Soviet Union (or now Russia and its neighbours).

G) International presence / state building in the Western Balkans: Kosovo, Bosnia-Herzegovina

The papers in this agora used a wide array of perspectives to analyse forms of international governance in Kosovo. Some focused on EU policies towards Kosovo, the way they have created special forms of dominance over a non-sovereign foreign entity, and the limited role international law has played in the definition of the EU approach. That in turn was taken up by those speakers who inquired into the uses of the *uti possidetis* rule for determining Kosovo's status and borders.

IV. Interest Group Meetings

Two meetings related to interest groups. One of them, a workshop organised by the Interest Group on International Legal Theory was entitled “The Orientations of European International Law”. The Workshop involved five speakers and a lively debate on a great diversity of topics varying from the international legal relevance of Hobbes’ works through issues related to the politics of international legal reasoning to such forward-looking questions as those associated with the possibilities of democratic governance in light of the current state of affairs within the domain of International Law. The other did not entail formal presentation but was an informational session, announcing the formation of the International Economic Law Interest Group.

V. Funding and Sponsors

The research forum had an impressive list of sponsors and - together with the modest registration fees and the publishing houses’ contribution - could generate enough income to meet its expenses.

VI. Follow up

Agora presentations of the research forum - if submitted on time - will be subject to peer-review and thereafter published on the Society’s website. The speakers in the plenaries were not formally asked to present their positions in writing, but in case they decide to do so, the Society will also make them available.

VII. Conclusions

The forum has accomplished three missions:

- Both as to the composition of the audience, the speakers and the themes it concentrated explicitly on the CEE Region
- It shed light on the state of affairs and new developments of international legal scholarship in this region
- Facilitated discourse and interaction between the more experienced and the younger generations of scholars