

International Law in the Post-Soviet Space – Approaches and Perspectives

International Workshop Leibniz Institute for East and Southeast European Studies (IOS), Regensburg 19 – 21 March 2020

Thursday, 19 March

Roundtable & Discussion: International Politics and International Law in the Post-Soviet Region (17:30 – 19:30)

*Caroline von Gall (Cologne)
Anja Mihr (Bishkek)*

Reception (19:30)

Friday, 20 March

Introduction: Between Conflict and Cooperation – The Politics of International Law in the Post-Soviet Space (09:30 – 11:00)

Cindy Wittke (Regensburg), Nargiza Kilichova (Regensburg), Elia Bescotti (Regensburg)

Coffee Break (11:00 – 11:30)

Approaches to International Law: Soviet Legacies and Contemporary Challenges in the Post-Soviet Region (11:30 – 13:00)

Chair: Robert Uerpmann-Witzack (Regensburg)

Soviet Doctrine of Law and its Influence on Modern Legal Practices (Anna Isaeva, Florence)

The Russian Politics of International Law (Vladislav Tolstykh, Moscow & Novosibirsk)

A Central Asian Perspective on International Law (Sergey Sayapin, Almaty)

Lunch Break (13:00 – 14:00)

International Law Debates in the Post-Soviet Region: Obstacles and Repercussions in Academia and Politics (14:00 – 15:30)

Chair: Alexander Graser (Regensburg)

The Role of Public International Law for Countries in Transition: The Armenian Perspective and Current Challenges (Vladimir Vardanyan, Yerevan)

International Law in Belarus: Curriculum Vitae (Ekaterina Deikalo, Minsk)

Teaching and Researching International Law in Ukraine: A Difficult Transformation (Olga Poiedynok and Mykola Gnatovsky, Kyiv)

Coffee Break (15:30 – 15:45)

Politics and Strategies of International Law in the Post-Soviet Region: Inter- and Transregional Trajectories (15:45 – 17:45)

Chair: Kateryna Busol (London)

The Politics of (Non)Compliance: When Do Eastern European Countries Execute the ECtHR Judgments and Why? (*Lusine Badalyan and Andrea Gawrich, Giessen*)

Leaving the Russian Orbit: War Challenges and Transitional Justice Perspectives
(*Oksana Senatorova, Kharkiv & Kyiv*)

Connecting Human Rights and Conflict Resolution in Eastern Ukraine (*Tetyana Malyarenko, Odesa*)

Russian Legal Response to Western Sanctions (*Vladislav Starzhenetskiy, Moscow*)

Wrapping Up the Day – How to Approach International Law in the Post-Soviet Region? (17:45 – 18:15)

Moderator: Cindy Wittke (Regensburg)

- Summarising challenges, critique, debates about research on the politics of international law in the post-Soviet region

Dinner (19:30)

Saturday, 21 March

International Law and Challenges of Secession, (Non)Recognition and *de facto* Statehood in the Post-Soviet Region (9:00 – 11:00)

Chair: Asli Ozcelik Olcay (Glasgow)

The Self-determination Principle in the XXI Century and the Challenge of Separatism in the Post-Soviet Space (*David Pataraia, Tbilisi*)

Recognition of States in International Law: Azerbaijani Discourse (*Javid Gadirov, Baku*)

Domestic Dimension of Defining Conflicts and Uncontrolled Territories and its Relationship to International Settlement Talks in Moldova, Georgia and Ukraine
(*Maryna Rabinovych, Odesa*)

Status and Human Rights Obligations of Non-Recognized States in International Law: The Case of Transnistria (*Vlada Lisenco, Tiraspol*)

Outlook Session – Next Steps and Next Events (11:00 – 12:00)

Moderator: Cindy Wittke (Regensburg)

- Regional Workshops 2020, 2021
- Visiting Professors 2020, 2021
- IOS Annual Conference 2021
- Handbook “Politics of International Law in the Post-Soviet Space”

Coffee Break & Sandwich-Lunch; Departure of Participants

Abstracts

Soviet Doctrine of Law and its Influence on Modern Legal Practices

Anna Isaeva, Faculty of Legal Sciences, Department of Theory and History of Human Rights, University of Florence

Theoretical development and historical systemic construction of law offer an insight into the important tendencies and phenomena of contemporary political and legal understanding. The most important and principled human rights concepts are formulated with high levels of abstraction. Usually, elastic and indeterminate legal concepts demand wide interpretation, as well as detailed elaboration. This elastic and open-ended character of legal concepts requires setting up a lot of special provisions which depend on the context and reality of a certain country. In post-communist societies lawyers and drafters of new laws had an absolutely different legal thought, which was developed during the Soviet rule. Post-communist legal reconstruction revealed complex risks to achieve democracy and the responsibility of lawyers when it comes to their democratic input. It is rather unrealistic to expect them to be synchronized with 'Western' leading conceptualizing jurisdictions. Post-communist Russia, for instance, experienced the come-backs of arguments on different legal issues on the features of Marxist-Leninist ideology. Hence, the main argument of the proposed paper is based on historiographical method, which claims the necessity to reconstruct the bonds between the past and the present. Such a vision of the development of civil society on the democratic transformations in post-communist countries touches deeper layers of social consciousness than measuring the establishment of democratic institutions from a technical perspective.

The Russian Politics of International Law

Vladislav Tolstykh, Professor, Moscow State Institute of International Relations, Head of the International Law Section, Novosibirsk State University

The Russian foreign policy pursues four main interests: maintaining influence on the former USSR countries; integration into globalist structures; creating an alternative; facilitating big business and sale of hydrocarbons. These interests may conflict with each other and domestic interests. Hence, there are problems of imbalance, decisions made ad hoc and inconsistent rhetoric. The first interest is realized through the CIS and EAEU; the second – through the IMF and WTO; the third – through the SCO and BRICS; the fourth – through corporate practices. Russia participates in multilateral initiatives, except for the Rome Statute; tries to build the EAEU order; supports a system of bilateral treaties. However, it does not act as the author of these initiatives and is passive in custom formation. Russia is actively involved in litigation. There are two processes in the ICJ (Georgia and Ukraine cases); five - in the ITLOS; 17 – within the WTO; three - in the PCA; 24 investment processes and many cases in the ECHR (250 judgments annually). Russia rarely acts as a plaintiff; its interests are usually represented by foreign lawyers; a part of the processes takes place in absentia. The Russian doctrine remains exclusively positivist. The level of argumentation is rather low. Scientific events do not involve any discussions. The thematic structure has a focus on European law, human rights, criminal and trade law; general issues (statehood, history, etc.) are not analyzed. Many debates are purely scholastic.

A Central Asian Perspective on International Law

Sergey Sayapin, Associate Professor, Kazakhstan Institute of Management, Economics and Strategic Research (KIMEP), Almaty

The Central Asian States (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan), as well as the region as such, are increasingly gaining in significance as international players. During the Soviet period, they were only nominally sovereign States but since 1991, they became full-fledged members of the international community, and have, ever since, been constructing their respective schools of international law. Some Central Asian international lawyers became prominent academics of an international standing, but still more has to be done, given the challenges the region is currently facing. Unresolved border disputes, regional migration, drug trafficking, human trafficking, disputes over water, the rise of terrorism are just a few challenges which require Central Asian States' cooperation among themselves, and with other States. The competing interests of especially China, Russia, the United States, and the European Union in the region are adding to the complex mosaic of regional dynamics. Central Asian States have to learn applying international law as a tool to advance their own lawful interests, and to maintain international and regional peace and security. Thus, Kazakhstan's recent membership in the UN Security Council (2017 – 2018) was an excellent occasion to promote respect for international at the regional level. Unfortunately, international law is still largely unknown among the general public, and even among some law professionals, or is regarded as "institutionalised politics", and this paradigm must shift towards a more constructive, realistic and practical understanding of the phenomenology of international law.

The Role of Public International Law for Countries in Transition: The Armenian Perspective and Current Challenges

Vladimir Vardanyan, Associate of the Chair of European and International Law, Professor, Faculty of Law, Yerevan State University

The adherence of the Republic of Armenia to international law was expressed even before it got independence. The willingness to build independent statehood in accordance with "the universally recognized principles and norms of international law" was proclaimed in the 1990 Declaration of independence. The doctrinal approach towards the international law in the early 1990s were predominantly under the influence of Soviet Doctrine of International law, which was rather focused on the international treaty obligations and the concept of universally recognized norms and principles of International law. Upon declaring independence, the newly independent states found themselves in lack of necessary expertise in the field of International Law, since the vast majority of international law experts for various reasons were concentrated in the USSR capital. It is due to mention that all editions of the Armenian Constitution have provided special provisions declaring general international law in the field of human rights as the part of the constitutional framework. The cooperation with UN, Council of Europe, the European Union, the Eurasian integration processes and the other relevant developments mapped the modern Armenian approaches towards international law.

International Law in Belarus: Curriculum Vitae

Ekaterina Deikalo, Head of the Department of International Law, Associate Professor, Faculty of International Relations, Belarusian State University, Minsk

The paper will contain a brief overview of main research fields and priorities of Belarusian international law scholars. The paper will also cover questions concerning the place of international law in the Belarusian legal system (including provisions of the Constitution, Law on International Treaties and other relevant legislation) because it affects, inter alia, scientific research in some aspects of international law, defining problems to discuss and giving rise to necessity of proper doctrinal argumentation. And it leads to the next point: discussion among Belarusian international law scholars and practitioners on the question of interrelation of national law and international obligations of the Republic of Belarus. Imperfection and sometimes contradiction of some legal norms concerning the status of international treaties in Belarusian legal system as well as incompetence and lack of understanding of international law in the law enforcement process often lead to improper enforcement of international legal obligations of Belarus. The paper will conclude with author's view on systemic problems of the «life» of international law in Belarus (and in general on the post-soviet space), their origins and perspectives in the sphere. All this, from one side, affects doctrine development, but from another side – should be affected by doctrine development.

Teaching and Researching International Law in Ukraine: A Difficult Transformation

Olga Poiedynok (PhD) Associate Professor, Institute of International Relations, Taras Shevchenko National University of Kyiv; Mykola Gnatovsky, Associate Professor, Institute of International Relations, Taras Shevchenko National University of Kyiv

The tradition of teaching and researching international law in universities situated in modern Ukraine is fairly long. It existed since the 19th century both under the Russian and Austro-Hungarian empires (in Kharkiv, Odesa, Kyiv under the former and in Lviv and Chernivtsi under the latter), and it re-emerged in the Ukrainian SSR after the Second World War thanks to Vladimir Koretsky, Igor Lukashuk and their followers as a part of the Soviet international law school. It is therefore unsurprising that many international lawyers in independent Ukraine continued to represent Soviet traditions with their firm positivism, suspicious approach to human rights and even humanitarian law to say nothing about international criminal law. Russia's occupation of Crimea and war in Ukraine's eastern regions posed little difficulty in terms of their qualification from the point of view of jus ad bellum but at the same time clearly underscored the demand for international lawyers who can deal with the related 'humanitarian issues' as well as the respective rules of jus post bellum. The discussions around the notion of 'transitional justice' in this respect could become a litmus test for the new generation of Ukrainian international law scholars.

The Politics of (Non)Compliance: When Do Eastern European Countries Execute the ECtHR Judgments and Why?

Lusine Badalyan, Research Associate, Faculty of International Integration, Institute of Political Science, Justus-Liebig-University Giessen with Professor Dr. Andrea Gawrich, Justus-Liebig-University Giessen

While the European Court of Human Rights (ECtHR) has a great deal of power to name and shame states that breach their international human rights commitments, its enforcement and punishment capacities are rather weak. Even its ultimate threat of expelling a state from the institutions of the Council of Europe is an empty gesture, which has yet to be enforced. Against this background, countries with weak democratic institutions are especially likely to take an indifferent stance towards implementing necessary structural reforms in response to adverse ECtHR judgments brought against them. By complying with the judgments, regimes risk losing power through improved human rights standards and pro-democratic policies. Yet, our study suggests that states with poor democratic practices at times exhibit high compliance rates with the ECtHR's judgments. By analyzing Russia and the EU's eastern neighboring countries' patterns of compliance with ECtHR judgments, we show that countries' international reputational concerns and related material benefits coupled with international pressures are essential driving factors behind their strong compliance record.

Leaving the Russian Orbit: War Challenges and Transitional Justice Perspectives

Oksana Senatorova, Associate Professor, Department of International Law, Yaroslav Mudryi National Law University, Kharkiv; Associate Professor, International and European Law Department, National University of Kyiv-Mohyla Academy, Kyiv

The paper outlines the character of the past, present and future tendencies of Ukrainian attitude to international law, its theoretical and practical dimensions, as well as nowadays' challenges. Being a founding member of the UN and a subject of international law since 1945 Ukraine, nevertheless, remained under the Russian ruling until the dissolution of the USSR, well-known by its Soviet-dualistic approach. Even after the declaration of independence, when Ukraine has started to build the human-centric state and proclaimed the priority of generally accepted rules of international law over the domestic law, the country still has not actually made this choice, staying in the Russian orbit: no NATO, no EU integration, no Rome Statute ratification without go-ahead from the northern neighbor. Neither the Transnistrian War nor Russian-Georgian War could sway this course. Only profound internal changes that occurred during 2004 and 2014 revolutions could produce the tectonic shift in the Ukrainian people's conscience that brought to the systemic transformations. The Russian invasion of Crimea and Donbas, occupation of Ukrainian territories, commission of gross human rights violations and international crimes have become another catalyzer of these changes. Ukraine was not ready for these tasks, because during the whole history of independence it could not develop a resilient independent Ukrainian policy. Nowadays Ukraine is facing serious challenges to its independence, unity and peaceful development and is launching the process of preparation for the Transitional Justice and reconciliation. The importance of international law standards and values cannot be overemphasized in this process.

Connecting Human Rights and Conflict Resolutions in Eastern Ukraine

Tetyana Malyarenko, Professor of International Security and Jean Monnet Professor of European Security at the National University 'Odesa Academy of Law', Odesa

How can international human rights protection mechanisms be employed in the grey zone of armed conflict in weak states? This question is particularly relevant for the war in eastern Ukraine where for five years residents have been without state aegis for their most basic human rights. The conflict continues to pose grave threats to individuals' human rights in the context of a permanent low-intensity conflict, the isolation by Kyiv of the self-proclaimed Donetsk and Luhansk People's Republics (DPR and LPR), and the non-integration of these areas by Russia. The situation has created a stabilization dilemma for international organizations like the EU, OSCE, UN, and human rights NGOs that face a stark choice between engagement or non-engagement with the "competent authorities" in the DPR and LPR. The lack of a well-institutionalized and enforced regime for the protection of individual human rights in eastern Ukraine has fundamental behavioural causes. The human rights policy (or lack thereof) of both Kyiv and Moscow toward residents of the DPR and LPR derives from incompatible conflict settlement strategies, neither of which has proven viable to date beyond maintaining the current status quo, which, for the time being, appears to be an acceptable second-best solution for both Russia and Ukraine. Yet, the kind of lawfare that Ukraine and Russia pursue in international courts – part of their status-quo oriented policies – exacerbates the negative consequences of the absence of any effective human rights protection mechanisms for Ukrainian citizens in the DPR and LPR. The reintegration of both regions into Ukraine, which would return Ukrainian state institutions and human rights protection mechanisms to Donetsk and Luhansk, seems implausible for the time being. Hence, Kyiv and its international partners should advance workable alternatives such as track-two diplomacy, the establishment of an interim UN administration, international humanitarian intervention, or the strengthening people-to-people contacts.

Russian Legal Response to Western Sanctions

Vladislav Starzhenetskiy, Associate Professor, Faculty of Law, National Research University - Higher School of Economics, Moscow

Nowadays economic sanctions represent one of the most popular and effective instruments of coercive diplomacy. Legal scholars specializing on economic sanctions usually pay a lot of attention to different elements of sanction regimes such as enforcement, challenging of sanctions, liability issues, etc. But there is surprisingly low interest to study of the reaction of targeted countries to sanctions introduced against them. In our research we will focus on Russian legal response to Western sanctions and manner of resistance Russia has developed for the past 5 years. Our research shows that strategically Russian response aims at 1) demotivation of Western countries by increasing their costs for maintaining sanctions; 2) minimizing internal effect of Western sanctions; 3) adaptation of its legal system for operating under sanctions' pressure. In order to achieve these aims Russia has introduced complex measures such as counter-sanctions, support of local companies, blocking mechanism, systemic reduction of dependency in critical economic sectors, preventive screening of foreign investments, etc. As a result, Russia has gained considerable level of immunity from sanctions. This does not only weaken effect of Western sanctions but also may have wider implications in the long run. Western sanctions and Russian response to them erode the platform on which cooperation between Russia and the West now rests on.

The Self-Determination Principle in the XXI Century and the Challenge of Separatism in the Post-Soviet Space

David Pataraiia, Associate Professor, Institute of International Law, Ivane Javakhishvili Tbilisi State University

The meaning of the self-determination of peoples is one of the most controversial issues in international practice. Self-determination reshaped from a political into a legal principle only after World War II, when it was included in the Charter of the United Nations as one of the principles relating to friendly relations among states. Although these provisions in the Charter are not intended to incentivize the right of secession abroad, the appearance of the legal principle in the Charter has proved to be a significant facilitator of the Era of Decolonization and the separatism outside the Decolonization context. The collapse of the Soviet Union stipulated certain disintegrating processes in the post-Soviet space, which were maintained by the separatist political movements with a distorted understanding of the self-determination principle and were accompanied by the particular political and military activities carried out by official Moscow both before and after the dissolution of the Soviet Union. In order to implement its geopolitical interests, the Russian Federation utilized, inter alia, a corrupted modification of the particular legal concepts of international law, including the self-determination principle. Russia has used this geopolitical vision for the annexation of Crimea, occupation of two Georgian regions and sponsoring the separatist movements in Azerbaijan, Moldova, in two eastern regions of Ukraine and partly in other post-Soviet countries as well. Through identifying and systematizing the key terms and concepts of the self-determination principle in international law, the report aims to improve understanding of this principle and to demonstrate the illegality of separatism, which is currently one of the most serious challenges to international peace and security.

Recognition of States in International Law: Azerbaijani Discourse

Javid Gadirov, Assistant Professor, School of Public and International Affairs, ADA University, Baku

One key contentious issue in international law is recognition of states. I argue that the two competing narratives underlying the issue are the duty not to recognize an unlawfully created situation, and the attitude that recognition should be more appreciating to authorities based on the rule of law and respect for human rights. Against this background, I will review the discourse on recognition of states in Azerbaijan, and specifically will survey the approach of the European Court of Human Rights (ECtHR) to recognition of states at the example of the *Chiragov v. Armenia* case, and how it is reflected in Azerbaijani discourse on international law. The ECtHR has been dealing with the issues of recognition of states in cases such as *Cyprus v. Turkey* (“TRNC”), *Ilascu v. Moldova and Russia* (“MRT”), and more recently in *Chiragov v. Armenia* (“NKR”). Whereas the ECtHR has applied the so-called “Namibia exception” in “TRNC” cases, it has not done so in “MRT” and “NKR” cases so far. In addition, I will draw a comparison with the recognition discourse in Azerbaijan, as reflected in its interventions in the ICJ advisory opinion proceedings in Kosovo case.

Domestic Dimension of Defining Conflicts and Uncontrolled Territories and its Relationship to International Settlement Talks in Moldova, Georgia and Ukraine

Maryna Rabinovych (PhD), Odesa Center for International Studies, Odesa National University

The problématique pertaining to the uncontrolled territories of Moldova (Transnistria), Georgia (Abkhazia and South Ossetia) and – since 2014 – Ukraine (Donetsk and Luhansk People's Republics) was featured in numerous international law studies. However, not much attention has been paid to the definitions of respective territories in the domestic law of “maternal” states. To fill this lacuna, the paper compares Moldova's, Georgia's and Ukraine's approaches to defining uncontrolled territories, and explores their nexus with the dynamics of international settlement talks. We find that domestic laws on uncontrolled territories perform numerous functions with regard to international settlement, such as (i) opening up the space for international talks on conflict settlement; (ii) defining “red lines” a “maternal state” may not cross in the context of international peace talks; (iii) promoting a particular qualification of uncontrolled territories under international law; and (iv) promoting settlement through cooperation.

Status and Human Rights Obligations of Non-Recognized States in International Law: The Case of Transnistria

Vlada Lisenco, Director of the Center for Legal Innovations, Professor, Transnistrian State University named after Taras Shevchenko, Tiraspol

Following its declaration of independence on August 27, 1991, and a short civil war in 1992 provoked by fears of unification with Romania, Moldova embarked on a series of political, legal and economic reforms. Some of the problems which continue to trouble its human development are linked directly to the geopolitical puzzles of its cross-roads location, seen most visibly in the “frozen” Transnistrian conflict, uncertain foreign policy (swinging between East and West neighborhood vectors) and the economic slump which is invariably interlinked with these. De facto states constitute an interesting anomaly in the international system of sovereign states. Unrecognized states do not have international treaties. This does not mean that they have no international obligations. The basic principles of international law and other peremptory norms and principles are binding on them. The aim of my presentation is to determine which legitimization strategies are applied by Transnistria. My presentation will also analyze the relationship between the EU and Transnistria and its implications on issues of sovereignty, identity and legal personality of such unrecognized subject. Another aim is to evaluate the extent to which individuals in Transnistria are enjoying the protection of the European Convention on Human Rights.