

Joint Conference
Cambridge / LUISS / EUI



CALL FOR ABSTRACTS
Distributive Justice in
International Law

3-4 October 2024
LUISS Guido Carli
Center for International and Strategic Studies
Rome (Italy)

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The Conference will convene in Rome, at LUISS Guido Carli, on Thursday 3 and Friday 4 October 2024, alongside the meetings of the 10th Commission (“Distributive Justice in International Law”) and the 16th Commission (“The Place of Social Justice in International Law”) of the *Institut de droit international*. It is co-organised by the LUISS Centre for International and Strategic Studies, the University of Cambridge, Centre for Environment, Energy and Natural Resources Governance (C-EENRG) and the European University Institute, Environmental Challenges and Climate Change Governance Research Cluster.

GENERAL THEME OF THE CONFERENCE

The Conference will focus on the overall theme “Distributive Justice in International Law”. This theme is a central tenet of moral and political philosophy from classical thinkers like Plato, Aristotle or Kant to Hannah Arendt, John Rawls, Hans Jonas, Ronald Dworkin, Michael Walzer, Onora O’Neill, Elinor Östrom, Peter Singer or Amartya Sen, among particularly influential thinkers. In broad terms, the concept alludes to the fair allocation of societal resources, costs, and benefits among the members of a community, thus involving considerations of equity and justice. Over time, distributive justice has received wide-ranging attention from scholars working in different fields of study such as moral, political, and legal theory, sociology, and economics, who have contributed valuable insights and methodologies to approach the topic.

Whether the international legal order or a subset thereof can perform a fair or equitable allocation of resources, costs and benefits or whether it entrenches structural biases leading to unfair allocations is a matter of debate, particularly in a context of transition and crisis. The very framing of the issue as the analysis of objects, actors and allocative principles or as a diagnosis of entrenched asymmetries and biases is a core aspect of the reflection. Yet, far from a purely theoretical exercise, in a context marked by international crises, rapid technological change and a profound realisation of the relations between humanity and the wider biosphere, a diagnosis of injustice and carefully considered proposals for correctives can have a lasting influence.

Such an endeavour must take as a starting point reality as it is. It is a trite observation that international law lacks a centralised authority to enforce “distributive principles” and that power disparities can become entrenched in legal and institutional asymmetries. In addition, for all the discourse about a post-national or transnational order, the international legal order remains solidly and stubbornly anchored in State sovereignty. That has important implications – whether positive or negative – for distributive justice. In theory, theory and practice may be aligned. In practice, alas, they are not. States often prioritise their national interests, perpetually replicating competition dynamics and potentially overshadowing broader considerations of equity and fairness in allocative choices. At the same time, understood as a technology of government, States have generally performed

better than their alternatives as regards the provision of peace and security, as a foundation for the allocation of other goods.

In this broad context, the Conference organisers welcome abstracts which address different dimensions of the Conference theme, including with a focus on specific objects of distribution or their very conceptualisation, actors, allocative principles, asymmetries, specific problems or case-studies, meta-analyses of these aspects, allocative situations (crisis, transition, institutional settings), etc. We encourage proposals to genuinely engage with real life, displaying sufficient knowledge of the empirical dimensions of a problem as well as of the international law relevant to it, including the specific rules, institutions, processes and practices at stake.

The proceedings of the Conference will be food for thought by the 10th Commission ('Distributive Justice in International Law') and the 16th Commission ('The Place of Social Justice in International Law') of the *Institut de droit international*, whose Rapporteur(e)s are, respectively, Samantha Besson/Jorge Viñuales and Martti Koskenniemi. Meetings of these Commissions will take place in parallel to the Conference, but the programmes of the two events (the Conference and IDI Commissions) is designed to encourage interaction among international lawyers and other scholars of different geographical, intellectual and generational contexts.

INSTRUCTIONS FOR SUBMISSION

This Call for Abstracts is open to scholars of different generations working in the field of international law, international relations, ethics, and other cognate fields of study. Abstract submissions should be limited to max. 500 words, and they should be accompanied by a short biography (max 200 words).

Proposals must be in English, they must specify the parallel session for which the abstract should be considered and must include the applicant's name, affiliation, and e-mail address.

Abstracts should be sent via e-mail to distributivejusticeconference@luiss.it. Please include "Abstract Submission: Distributive Justice Conference" in the subject line of the e-mail. Only one abstract per applicant will be considered.

The deadline for the submission of abstracts is 30 June 2024. Applicants will be informed of the acceptance of their abstracts by 15 July 2024. Successful applicants will be asked to submit a manuscript or a concept paper (in the latter case, of some 3000 words) by 10 September 2024.

Selection Criteria

Submitted abstracts will be assessed by the Scientific Committee based on originality and innovative nature of the work; relevance to one of the parallel sessions' themes; engagement with real life problems; considerations of diversity, equality and inclusion.

Scientific Committee

Professors Martti Koskenniemi, Ginevra Le Moli, Sergio Puig, Pietro Pustorino and Jorge E. Viñuales.

Funding: although the authors of successful proposals will normally need to cover their expenses using their own University/institutional funds, the Conference organisers have secured a budget to cover the expenses of some participants who

do not have such funding. Applications for such funding can be made after confirmation that an abstract has been selected.

Contact: for further information, please write to distributivejusticeconference@luiss.it.

THE THEMES OF THE PARALLEL SESSIONS

1. Intra- and inter-generational equity. The relationship between economic development and environmental protection has raised, since its crystallization in the early 1970s, many intricate problems of distributive justice. Developed countries base their advanced economies on the exploitation of natural resources to support the high standards of living of their population. However, the effects of resource exploitation and use by certain groups (why themselves require conceptualization, including in temporal terms) with respect to other human and non-human entities provide some of the most salient illustrations of distributive injustice. At the same time, the development process of a range of emerging countries, which has had important beneficial effects to lift large parts of their population out from poverty, has also compromised the ability of other populations to do so and, in some cases, even the very inhabitability of their territories. The situation of future generations is also a core issue, with the socio-economic development pathways of present generations now effectively compromising the environmental conditions in which future generations will live.

International law reflects these deep fault-lines, which are sometimes papered over in ambiguous or broad language. The narrative of a triple crisis – climate, biodiversity and pollution – is an attempt at defining the main problems, but on closer inspection the analysis of distributive justice must be much more granular to be actionable. For example, one important issue concerns the very baseline to assess the fairness of an allocative decision. Whereas the climate change regime was developed on the basis of territorial emissions (emissions arising from a territory are attributed to the territorial State), carbon accounting in the private sector – including in financial regulation – as well as in climate litigation increasingly targets so-called ‘scope 3’ emissions, which follow a non-territorial logic. As regards the actors of the allocation, the increasing resort to courts to perform allocative choices which are ordinarily the province of the political branches of government raises difficult questions of legitimacy of the allocator, which are distinct from the outcome of allocation. The very objects of the allocation are also a stake. Continuing with the example of climate change, objects as diverse as atmospheric space (or specific emissions units), finance, technologies, information about policies, exemptions from rules, time, etc., are all at stake in the global agreements governing climate change.

2. The place of social justice. While international law deals, generally speaking, with the relations between States, its rules and principles have a major effect on relationships between individuals across the globe. This is the “framing” effect of international law – the way in the powers and vulnerabilities of individuals depend on the structures of the international system of statehood, diplomacy, trade and international institutions as they are upheld and reproduced daily by international law. In addition, a plethora of mainly, though not exclusively, treaty-based rules and principles distribute many types of rights and duties to individuals everywhere. The way in which powers and vulnerabilities were distributed by the international legal system to individuals in the Global North and to the Global South was very

unequal. Such inequality was the product of historical developments to which also international law contributed. The conditions of international and domestic justice had been on the agenda of the international system, especially the United Nations, ever since decolonization, and especially the efforts to bring about a New International Economic Order in the 1970s. But there is still need to identify those legal mechanisms in different parts of the system of international governance that contribute to the persistence of international and domestic inequalities.

Still today, international legal rules continue to uphold extreme differences of power and wealth between states as well as within the domestic realm, empowering elites and providing only weak and often ineffective redress to the majority of people. Possible contributions to this session could address three types of international law that are a priori relevant for the study of its role in creating problems of social justice: “Structural laws” included for example those having to do with statehood and jurisdiction, the law-making processes in international institutions and the rules of responsibility and representation; “Substantive laws” relevant to social justice included for example those of trade law, labour law, investment law, financial and tax law, and the laws regarding the protection and exploitation of natural resources; and “Laws expressly dealing with individuals” included for example human rights law, especially the rules and practices under the International Covenant on Economic, Social and Cultural Rights (ICESCR), refugee law, and labour law as dealt with by the International Labour Organisation (ILO).

3. Access to science and technology. Disparities in access to scientific progress and its applications have proved to be detrimental for the social, economic and cultural development of individuals and society. Indeed, access and benefit-sharing mechanisms can be crucial in reducing inequalities and overcoming the knowledge and technological divide between actors (whether conceptualized through the categories of developed and developing countries or otherwise). All the more so in a context of increased challenges associated with science and technology, such as the sustainability and digital transitions, the development of weapons of mass destruction, pandemics and anti-microbial resistance, and the implications of artificial intelligence. Provisions on scientific and technological transfer and cooperation can be found in several fields of the international legal system, from human rights law to environmental law, to trade law, where they are enshrined in the ICESCR, the Rio Declaration and the TRIPs Agreement, among others. Nevertheless, whether States are effectively committed to enhancing distributive justice through science-related policies is controversial. Current negotiations on a global pandemic instrument under the auspices of the World Health Organization the latest UNESCO report on current trends on Open Science are emblematic in this regard.

4. AI Systems and distributive justice. The increasing resort to AI systems presents intricate ethical and legal dilemmas concerning distributive justice. As AI becomes more pervasive in finance, healthcare, criminal justice, and employment, concerns arise about how these systems distribute resources and burdens. However, AI systems risk exacerbating inequalities by perpetuating biases in their training data, disproportionately affecting marginalised groups. As the European Union’s Artificial Intelligence Act emphasises the need for transparency and fairness in the use of decision-making algorithms the Council of Europe Recommendation on Automated Decisions underscores specifically human oversight and accountability to ensure human rights. In the same light, both the OECD Recommendations on AI Governance and the UN initiatives on Emerging Technologies and Human Rights

work to promote transparency and respect for human rights. Against this backdrop, future international prospects will necessarily involve a greater emphasis on ethics and accountability in the use of AI, promoting innovation while mitigating risks to society. The interplay between delegation and AI decision-making unveils a frontier where innovation meets ethical scrutiny, navigating the delicate balance between progress and prudence.

5. Human mobility and distributive justice. In international law, human mobility can be conceptualized under different legal categories, including those of refugees, internally displaced persons, migrants and still others. From a distributive justice perspective, mobility is a response to disparities in safety and opportunities. With the increasing pressures placed by the adverse effects of climate change on vulnerable societies and the mobility they drive, the distributive justice issue becomes even more complex. Those societies which are the main cause of climate change – and hence of the uninhabitability of certain territories – are also those imposing strict controls on the flows of the populations affected. Different human rights treaties govern human mobility. However, implementation gaps persist, such as limited legal representation access and inadequate protection for vulnerable groups. Moreover, recent States' initiatives in international human mobility raise legal concerns. The UK-Rwanda Asylum Partnership is under scrutiny as Rwanda is deemed unsafe for asylum-seekers under the principle of *non-refoulement*. Similarly, the Italy-Albania Agreement on Migration is criticised for potential breaches of refugee law. Additionally, the Italy-Libya MoU has been the subject of many criticisms for its support of Libyan detention centres, perpetuating migrant abuse and exploitation cycles.

It appears quite evident that distributive justice plays a pivotal role in international law concerning human mobility, also considering other emerging challenges like the climate-induced migration, which necessitates innovative legal responses. The Australia-Tuvalu Falepili Union treaty exemplifies this kind of innovation by granting annual permanent residency to 280 Tuvaluans a year who are threatened by climate change, demonstrating a commitment to protecting and supporting climate-displaced individuals.

6. Privatising profits and mutualising losses? International law plays an important role in shaping the global allocation of capital. Even when an investment framework manages to successfully attract foreign direct investment, it can contribute both to increasing the wealth of a country but also to exploiting its resources and potentially causing harm to the local population. In cases where improper State conduct leads to adverse impacts on a foreign investor, the responsibility and reparation owed to it can have implications of distributional choices, e.g. cutting budgets for other State activities. More fundamentally, whereas the benefits of foreign investment fall upon a restricted circle (foreign investor, local partners, employees and possibly an expanded circle of beneficiaries), the losses arising from a potential adverse award are mutualised, i.e. borne by the entire population of a State.

Some of the issues arising in international investment law in the past years demonstrate the difficulty of achieving fairness in the field. Some of these issues include: the uncertainties associated with the protection of non-economic interests and the problem of regulatory chill; the asymmetry characterising the relationship between investors and host States on the substantive as well as procedural level; the specific treatment of certain issues such as the social license to operate; the difficulty of guaranteeing the accountability of investors on the international plane;

and States' quest for a dispute settlement system that is more mindful of their concerns. On a closer look, these issues appear to be deeply intertwined with the notion of distributive justice inasmuch as they shape the overall purpose of the international legal regime on the protection of foreign investments, and ultimately determine to what extent this framework can strike a balance among competing interests such as the profitability of investments, the interests of the affected populations, and the development of host States' economies according to equitable considerations.