
REPORT ON THE ACTIVITIES OF THE ESIL IG ON INTERNATIONAL ENVI- RONMENTAL LAW (2019-2020)

The logo for the European Society of International Law (ESIL) features the words "esil" and "sedi" in a large, light blue, lowercase, sans-serif font. The letters are closely spaced, with the "i" in "esil" and the "i" in "sedi" being particularly tall and thin. The logo is set against a dark green rectangular background.

**EUROPEAN
SOCIETY OF
INTERNATIONAL
LAW**

INTRODUCTION

The ESIL Interest Group on International Environmental Law was formally **launched** after approval of the Executive Committee on the **2nd October 2009**, before the opening of the **ESIL-ASI Research Forum held in Helsinki** (Finland). The IG on International Environmental Law is one of the 16 Interest Groups of the ESIL and its **Coordinating Committee** is composed by the following Members: **Paolo Davide Farah, Josephine van Zeben, Martin Švec, Chamu Kuppuswamy, Daria S. Boklan**.

The Interest Group focuses on the **application of international law, public and private, to the resolution of environmental problems**. The ESIL Interest Group on International Environmental Law is an intergenerational and open forum where authoritative academics, young scholars, experienced practitioners, interested students as well as researchers concerned with the development of environmental protection at an international level can jointly discuss both its challenges and progress.

The International Environmental Law Interest Group may also explore the **interferences of environmental rules** in the spheres of **trade law** and international **peace and security**, as well as consider them within the general debate on the fragmentation of international law.

The establishment of an Interest Group on International Environmental Law is most relevant at this moment as a result of the paradox between the heightened concern of the international community on the impact of environmental change and the general assumption that legal endeavour is not being matched by either the

necessary political will or industrial progress.

Lately, the **signature** of the **Paris Agreement** the **UN SDGs** and other successful outcomes at international level have given the international community the certainty that the momentum for the **protection of the environment** and the fight against climate change had finally come.

The recent events at domestic and international level reveal a **significant risk of a step-back of the objectives and goals towards sustainable development** and this is making evident that the necessity to keep high attention on these

“ The Interest Group focuses on the application of international law, public and private, to the resolution of environmental problems ”

very important societal values should never be underestimated. For all these reasons, the role of the ESIL IG on international environmental law can be very important to **raise awareness** through **conferences, workshops, research, publications** and **policy advise** on such relevant topics constantly on the spotlight. Moreover, the complexity of the world requires to shape our scholarly and academic mission beyond the borders of international law and even beyond the borders of the legal field to bring **multidisciplinary responses to multilevel and multiscalar problems**.

The ESIL IG on international environmental law is ready to face this challenge and to move forward in the light of the principles of **interna-**

tional law on sustainable development.

The Interest Group on International Environmental Law have exponentially increased its membership. Different Activities are already planned for the Period 2021-2022 in the areas of **International Environmental Law, Climate change, Energy** and **Global Governance**.

The following report presents the **results achieved** in the covered period and anticipate some of the **activities foreseen** for the near future.



COORDINATING COMMITTEE

Members of the **Coordinating Committee** are elected for **four-year terms** and may be re-elected.



PAOLO D. FARAH

West Virginia University, USA and gLAWcal - Global Law Initiatives for Sustainable Development, UK



JOSEPHINE VAN ZEBEN

University of Oxford, UK



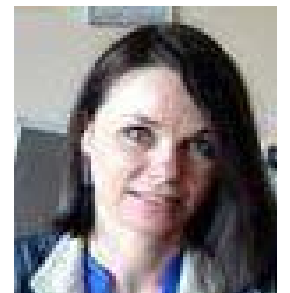
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CHAMU KUPPUSWAMY

University of Hertfordshire, UK



DARIA S. BOKLAN

National Research University Higher School of Economics, Russian Federation

2019 - 2020 ACTIVITIES

The Interest Group on International Environmental Law of the European Society of International Law organized the following activities:

THE REALITY AND RHETORIC OF SOVEREIGNTY IN RELATION TO NATURAL RESOURCES, ENVIRONMENT, TRADE AND DEVELOPMENT

12 SEPTEMBER 2019, NATIONAL & KAPODISTRIAN UNIVERSITY OF ATHENS, ATHENS, GREECE

SOLIDARITY IN THE CONTEXT OF NATURAL RESOURCES MANAGEMENT

23 APRIL 2020, IG PRE-CONFERENCE WORKSHOP, ESIL RESEARCH FORUM, UNIVERSITY OF CATANIA, ITALY (CANCELLED DUE TO THE PANDEMIC)

SDGS, BIODIVERSITY AND PLANT HEALTH: INTERNATIONAL LEGAL ASPECTS

RUDN UNIVERSITY MOSCOW, RUSSIAN FEDERATION (POSTPONED – NEW DATES TBD)

ESIL IG INT ENV LAW BUSINESS MEETING

13 NOVEMBER 2020, 3 - 4 PM, ONLINE

2018 - 2019 ACTIVITIES

INTERNATIONAL LAW IN TIMES OF TRADE WARS AND GLOBAL ENVIRONMENTAL PROBLEMS: PROTECTION OR PROTECTIONISM?

31 MAY - 1 JUNE 2019, NATIONAL RESEARCH UNIVERSITY HIGHER SCHOOL OF ECONOMICS, MOSCOW, RUSSIA

GLOBALISATION OF ENVIRONMENTAL LAW AND THE ROLE OF DEVELOPING COUNTRIES TOWARDS SUSTAINABLE DEVELOPMENT

6 APRIL 2019, UNIVERSITY OF COLOGNE, GERMANY

SOUND SCIENCE-BASED REGULATION IN THE POST-TRUTH ERA: DOMESTIC AND INTERNATIONAL RULE OF LAW UNDER FIRE

3 APRIL 2019, UNIVERSITY OF GÖTTINGEN, INSTITUTE FOR INTERNATIONAL AND EUROPEAN LAW, GERMANY

HEALTH AND THE ENVIRONMENT IN INTERNATIONAL LAW: ACTORS, NORMS AND RESPONSIBILITIES.

17-18 OCTOBER 2018, MAX PLANCK INSTITUTE FOR COMPARATIVE PUBLIC LAW AND INTERNATIONAL LAW IN HEIDELBERG, GERMANY

UNIVERSALITY OF CLIMATE ACTION

13 SEPTEMBER 2018, UNIVERSITY OF MANCHESTER, MANCHESTER, UNITED KINGDOM

THE REALITY AND RHETORIC OF SOVEREIGNTY IN RELATION TO NATURAL RESOURCES, ENVI- RONMENT, TRADE AND DEVELOPMENT

ON THE OCCASION OF THE 13TH ESIL ANNUAL CONFERENCE ON “GLOBAL PUBLIC GOODS, GLOBAL COMMONS AND FUNDAMENTAL VALUES: THE RESPONSES OF INTERNATIONAL LAW”

12-14 SEPTEMBER, NATIONAL & KAPODISTRIAN UNIVERSITY OF ATHENS, ATHENS, GREECE

Since the 1970s, states have come together to shape rules, practices and aspirations regarding our natural environment. International cooperation, treaty making, partnerships, and goal setting in the area of natural resources, the environment, trade and development have shaped and affected the sovereignty of nation states. The IG on International Environmental Law invites analyses from various viewpoints and perspectives on the reality and rhetoric of sovereignty in international environmental law. This ranges from the view that sovereignty is a waning phenomenon in a globalised, digitised and decentralised world to the position that sovereignty privileges states over non-state actors and is the determining factor in the regulation of the environment, trade and development.

We invite you to explore, in the environmental context, the nature of compromises made by states in their negotiation to retain legitimacy, be they with international institutions or non-governmental organisations, thereby helping us understand the reality of the overall

nature of sovereignty in the 21st century. Attendant issues would be how state prerogatives and interests have been reshaped by global initiatives on the environment. In the area of the environment, technical sovereignty through science-based approaches and how this impacts on politically bargained sovereignty is bringing in new actors and methods into the sovereignty bargain.

Is sovereignty ‘organised hypocrisy’ or a sacred privilege tough to keep? Are states in full control of their sovereignty or do they really rely on bargaining with other states and non-state actors for propping up their sovereignty? This meeting focussing on innovative and fresh perspectives on approaching regulation, governance of natural resources and the environment in the light of competing interests in trade and development, within precept of sovereignty, encouraging multidisciplinary approaches and cross sectoral analyses, adopting social sciences, legal, and other methodologies.

LIST OF SPEAKERS AND TOPICS

- **Daria Boklan and Elena Cirkovic**(National Research University Higher School of Economics, Moscow, Russia; National Researcher University Higher School of Economics, St Petersburg, Russia): *State’s Right to Rely On Permanent Sovereignty Over Natural Resources: An Incentive or Impediment for Sustainable Development?*
- **Winfried Huck** (Brunswick European Law School, Germany and Lauterpacht Centre for International Law at the University of Cambridge, UK & Tongji University, Shanghai, China): *ASEAN: Trust, Consensus and Informality as a Way to Deal With Global Issues Without Trespassing on Sovereignty*
- **Imad Antoine Ibrahim** (Sant’Anna School of Advanced Studies, Italy): *Technology Transfer and International trade Towards Sustainable Development*
- **Gabrielle Marceau** (Professor at University of Geneva, Switzerland and Senior Counsellor, Legal Affairs Division of the WTO & Former Member of the Cabinet of the WTO Director General Pascal Lamy): *Sovereignty in Relation to Natural Resources, Environment, Trade and Development: The WTO Case Law and Contribution*
- **Charlotte Steinorth** (Human Rights Centre of the University of Potsdam, Germany): *Reading the UN Global Pact on the Environment: International law, Global Justice, and the Abandonment of the Sovereignty-Rights Paradigm*
- **Ilaria Espa** (USI Lugano and World Trade Institute, University of Bern, Switzerland): *Beyond the Rethoric of Trade Liberalization at any Cost: Natural Resources Conservation and Extraterritoriality in the WTO after US – Tuna II (Article 21.5)*
- **Paolo Davide Farah** (West Virginia University, USA and gLAWcal- Global Law Initiatives for Sustainable Development, UK): *The Belt and Road Initiative: Between National Interests and Environmental Protection*

SOLIDARITY IN THE CONTEXT OF NATURAL RESOURCES MANAGEMENT

23 APRIL 2020, IG PRE-CONFERENCE WORKSHOP, ESIL RESEARCH FORUM, UNIVERSITY OF CATANIA, ITALY (CANCELLED DUE TO THE PANDEMIC)

THE ESIL INTEREST GROUP ON INTERNATIONAL ENVIRONMENTAL LAW HOST A PRE-CONFERENCE WORKSHOP ON “SOLIDARITY IN THE CONTEXT OF NATURAL RESOURCES MANAGEMENT” AT THE 2020 ESIL RESEARCH FORUM, UNIVERSITY OF CATANIA, ITALY

CFP: TRACK I (SOLIDARITY IN THE CONTEXT OF NATURAL RESOURCES MANAGEMENT)

The resolution 1803 (XVII) on the "Permanent Sovereignty over Natural Resources" (PSNR), adopted by the UN General Assembly in 1962, was understood as a means of increasing the economic and technological advancement of developing states. The right to control and dispose of their own natural resources claimed by peoples under colonial rule and newly independent developing states in the era of decolonisation lies at the heart of the PSNR. However, it is worth mentioning that PSNR is not absolute and the resolution itself significantly limits its application. In particular, in cases where an authorization was granted, the capital imported and the earnings on that capital shall be governed by inter alia by international law; the profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient state; and most importantly, nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest and an appropriate compensation shall be paid.

In addition, PSNR is limited by parallel international obligations of states. Especially international obligations arising from international economic law (for instance the WTO) or international environmental law (for instance UN Framework Convention on Climate Change or the Convention on Biological Diversity) significantly limit states in exercising their sovereignty over natural resources. For instance, once a state joins the WTO it is obliged to exercise its right to regulate trade and export of natural resources according to WTO rules (Panel Report/Appellate Body Report, China – Measures Related to the Exportation of Various Raw Materials). In other words, the fulfilment of sovereignty over natural resources is subject to the WTO rights and obligations. One may claim that the net of trade-related international obligations undertaken by states undermines PSNR and implies a shift toward a global energy market making natural resources available to those who need them based on an implicit solidarity. By the same token, the Principle 21 of the Declaration of the United Nations Conference on the Human Environment implies a sense of solidarity, since states are required to ensure that the exploitation of natural resources within their jurisdiction do not cause damage to the environment of other states. To conclude, an increased global cooperation and an ever-growing number of international obligations gave rise to a need to reconceptualize our traditional understanding of PSNR.

Efforts to eliminate the widening gap between the developed and the developing countries in 70s formulated in the Declaration on the Establishment of a New International Economic Order and the Programme of Action

on the Establishment of a New International Economic Order did not have huge impact on PSNR. However, developing countries favouring a broad obligation to share the tangible benefits derived from exploration in the areas beyond national jurisdiction, succeeded in establishing legal regimes built on international cooperation, sharing of benefits and solidarity (UNCLOS, Moon Agreement). One may claim that keeping two parallel legal regimes governing exploitation of natural resources within and beyond national jurisdiction, based on completely opposite understandings of solidarity is not sustainable in the long term.

In 2015, all United Nations member states adopted The 2030 Agenda for Sustainable Development, a shared blueprint for peace and prosperity for people and the planet. SDG 7 "Affordable and clean energy" is focused on universal access to energy. Acknowledging that there are approximately 3 billion people who lack access to clean-cooking solutions and slightly less than 1 billion people are functioning without electricity, SDG 7 aims to ensure universal access to affordable, reliable and modern energy services by 2030. A global effort to ensure universal access to energy implies an unprecedented notion of solidarity in relation to energy as well as natural resources being for decades shielded by PSNR.

The IG on International Environmental Law invites contributions addressing the notion of solidarity in the context of natural resources management, contributions seeking to reconceptualize PSNR in the context of globalization and trade/environmental related international obligations, as well as contributions addressing SDG 7 goal to ensure universal access to affordable, reliable and modern energy services by 2030.

TRACK II (ENERGY SOLIDARITY IN THE CONTEXT OF THE EUROPEAN UNION)

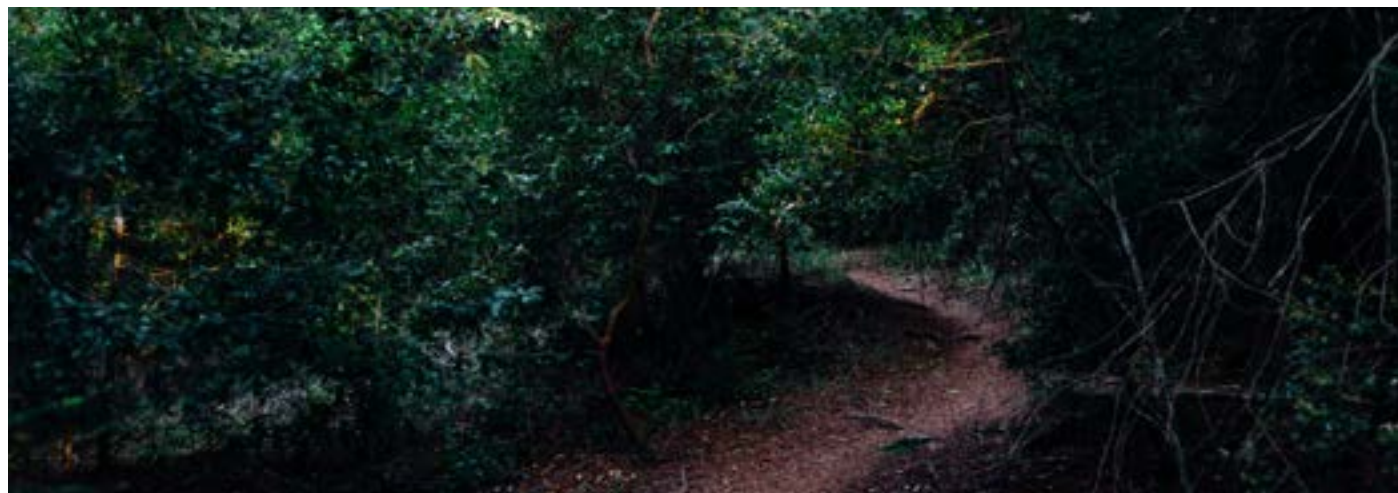
The concept of solidarity is one of the fundamental values on which the EU is founded (Article 2 of the TEU). It is referred to in various provisions of the EU treaties, particularly in Art. 222 of the TFEU (The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster) and Art. 194 of the TFEU (energy solidarity). Article 194 reads: "In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States". Until recently, no attention has been given to the interpretation of the energy solidarity clause. In 2019, the General Court of the European Union in case T-883/16 Poland v Commission (OPAL Decision) annulled the

European Commission's decision approving the modification of the exemption regime for the operation of the OPAL gas pipeline. In its decision, the court for the first time elaborated on a principle of energy solidarity enshrined in Article 194(1) of the TFEU. According to the court, the principle of energy solidarity requires EU member states and EU organs, in all their energy market decisions with a potential cross-border impact, to take into account not only their own interests but also those of other member states and also those of the European Union as a whole. There is no doubt that the interpretation of the principle of energy solidarity will have a significant impact on the development of EU energy law over the next decade.

The IG on International Environmental Law invites contributions addressing the concept of the energy solidarity established by the Lisbon Treaty, the OPAL decision as well as the potential implications of the OPAL for the Energy Union.

AREAS OF INTEREST

- ENERGY SOLIDARITY IN THE CONTEXT OF THE UN 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT
- ENERGY SOLIDARITY IN THE CONTEXT OF THE EUROPEAN UNION AND ITS ENERGY AND CLIMATE POLICY
- SUSTAINABLE ENERGY FOR ALL
- THE OPAL DECISION
- ENERGY SOLIDARITY AT THE INTERNATIONAL LEVEL
- THE SHARING OF TRANSBOUNDARY NATURAL RESOURCES
- LEGAL REGIMES GOVERNING UTILIZATION OF NATURAL RESOURCES BEYOND NATIONAL JURISDICTIONS
- THE CONCEPT OF SOLIDARITY IN THE CONTEXT OF THE UNCLOS AND DEEP-SEA MINING
- THE CONCEPT OF SOLIDARITY IN THE CONTEXT OF THE MOON AGREEMENT
- PSNR IN THE CONTEXT OF INTERNATIONAL TRADE LAW
- PSNR IN THE CONTEXT OF INTERNATIONAL ENVIRONMENTAL LAW



PROGRAM ESIL INTEREST GROUP EVENT ON INTERNATIONAL ENVIRONMENTAL LAW

Department of Law, University of Catania, Italy

(CANCELLED DUE TO THE PANDEMIC)

9.00 - 9.15

Welcoming Remarks by **Paolo Davide Farah** (West Virginia University, USA & gLAWcal - Global Law Initiatives for Sustainable Development, UK) –ESIL Board Member & Convener of the ESIL Interest Group on International Environmental Law

9.15 – 11.00

1ST PANEL:

SOLIDARITY IN THE CONTEXT OF ENVIRONMENTAL PROTECTION, ENERGY SECURITY AND NATURAL RESOURCES MANAGEMENT

Chair and Discussant:

Paolo D. Farah

• “Solidarity and fundamental duties in International Environmental Law” **Luisa Cortat Simonetti Goncalves** (Maastricht University, the Netherlands & Faculdade de Direito de Vitória, FDV, Brazil) and **Adriano Sant’Ana Pedra** (Faculdade de Direito de Vitória, FDV, Brazil)

• “Challenging International Solidarity in the Context of Natural Resources Management” **Tikumporn Rodkhunmunag** (Guanghua Law School, Zhejiang University, China & Chulalongkorn University, Thailand)

• “Protecting Cultural Heritage by Recourse to International Environmental Law: Chinese Stances on State Liability” **Riccardo Vecellio Segate** (University of Macau and Tsinghua Law School, China)

- “Energy Independence as a Key to Sovereignty in Post-Conflict Societies” **Attila Nagy** (Yerevan State University, Republic of Armenia)

11.00 – 11.30

Coffee Break

11.30 – 12.45

2ND PANEL:

NEW FRONTIERS IN INTERNATIONAL ENVIRONMENTAL LAW

Chair and Discussant:
TBC

- “Legal Implications of the Use of Big Data in the Transboundary Water Context” **Imad Antoine Ibrahim** (Sant’Anna School of Advanced Studies, Italy)

- “Information Technologies and International Law of the Sea” **Elena E. Guliaeva** (Diplomatic Academy of the Ministry of Foreign Affairs of the Russian Federation, Russia)

12.10 – 12:45

Discussion

12.45– 13:00

ESIL IG on International Environmental Law business meeting and report of IG past and future activities

ORGANIZING COMMITTEE

Paolo Davide Farah (West Virginia University, USA & gLAWcal - Global Law Initiatives for Sustainable Development, UK) - Convener ESIL Interest Group on International Environmental Law

Martin Svec (Masaryk University, Czech Republic & gLAWcal – Global Law Initiatives for Sustainable Development, UK)

SDGS, BIODIVERSITY AND PLANT HEALTH: INTERNATIONAL LEGAL ASPECTS

RUDN UNIVERSITY MOSCOW, RUSSIAN FEDERATION (NEW DATES TBD)

JOINT ESIL IG ON INTERNATIONAL ENVIRONMENTAL LAW/RUDN UNIVERSITY CONFERENCE

The 2030 Agenda for Sustainable Development, agreed by all States Members of the United Nations, sets out an ambitious framework of universal and indivisible goals (SDGs) and targets to address a range of global societal challenges. Biodiversity and ecosystems feature prominently across many of the Sustainable Development Goals (SDGs) and associated targets. They contribute directly to human well-being and development priorities. Biodiversity is at the centre of many economic activities, particularly those related to crop and livestock agriculture, forestry, and fisheries. Globally, nearly half of the human population is directly dependent on natural resources for its livelihood, and many of the most vulnerable people depend directly on biodiversity to fulfil their daily subsistence needs. **The Strategic Plan for Biodiversity 2011-2020** and its **Aichi Biodiversity Targets** adopted under the **Convention on Biological Diversity 1992** have been recognized as setting the global framework for priority actions on biodiversity. The 2030 Agenda is consistent with other existing international commitments, including the Strategic Plan for Biodiversity. The SDGs and the Strategic Plan are mutually supportive and reinforcing, and therefore the implementation of one contributes to the achievement of the other.

The United Nations has declared 2020 as the **International Year of Plant Health**. The year is a once in a lifetime opportunity to raise global awareness on how protecting **plant health** can help **end hunger, re-**



IN DECEMBER 2018, THE UN GENERAL ASSEMBLY ADOPTED THE RESOLUTION A/RES/73/252 DECLARING 2020 AS THE INTERNATIONAL YEAR OF PLANT HEALTH (IYPH). IN OCTOBER 2019 THE XVIII BLISCHENKO CONGRESS WAS INCLUDED IN THE INTERNATIONAL YEAR OF PLANT HEALTH [OFFICIAL EVENTS LIST](#).

duce poverty, protect the environment, and boost economic development.

Plants are the source of the air we breathe and most of the food we eat, yet we often don't think about keeping them healthy. This can have devastating results. FAO estimates that up to 40% of food crops are lost due to plant pests and diseases annually. This leaves millions of people without enough food to eat and seriously damages agriculture - the primary source of income for rural poor communities.

“Plants provide the core basis for life on Earth and they are the single most important pillar of human nutrition. But healthy plants are not something that we can take for granted” said FAO Director-General

Qu Dongyu who launched the Year on the sidelines of the UN agency's Council meeting.

Plant health is increasingly **under threat**. **Climate change**, and **human activities**, have **altered ecosystems**, reducing **biodiversity** and creating new niches where pests can thrive. At the same time, international travel and trade has tripled in volume in the last decade and can quickly spread pests and diseases around the world causing great damage to native plants and the environment.

Protecting plants from pests and diseases is far more cost effective than dealing with full-blown plant health emergencies. Plant pests and diseases are often impossible to eradicate once they have established themselves and managing them is time consuming and expensive. Prevention is critical to avoiding the devastating impact of pests and diseases on agriculture, livelihoods and food security and many of us have a role to play in that process.

The organizers are particularly interested in presentations that address one or more of the following questions (although any paper proposal relevant to the subject of the Roundtable will be considered)

KEY TOPICS

- **SUSTAINABLE DEVELOPMENT GOALS AND BIODIVERSITY: INTERNATIONAL LEGAL ASPECTS**
- **POSSIBLY INTERACTIONS BETWEEN CONVENTION ON BIOLOGICAL DIVERSITY (CBD) AND INTERNATIONAL PLANT PROTECTION CONVENTION (IPPC)**
- **PLANT HEALTH AND FOOD SECURITY: INTERNATIONAL LEGAL ASPECTS**
- **PLANT HEALTH AND ECOSYSTEMS: INTERNATIONAL LEGAL ASPECTS**
- **PLANT HEALTH AND CLIMATE CHANGE: INTERNATIONAL LEGAL ASPECTS**
- **THE WTO AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES SETS AND RULES FOR FOOD SAFETY AND PLANT HEALTH STANDARDS**
- **PLANT HEALTH AND INVASIVE ALIEN SPECIES: INTERNATIONAL LEGAL ASPECTS**



ESIL IG INT ENV LAW BUSINESS MEETING

13 NOVEMBER 2020, 3 - 4 PM, (ONLINE)

PAOLO FARAH , CHAMU KUPPUSWAMY, DARIA S. BOKLAN, JOSEPHINE VAN ZEBEN, MARTIN SVEC

Due to the postponing of the ESIL Annual Conference due to the pandemic, the ESIL IG Coordinating Committee on International Environmental Law organized an online business meeting. During this meeting, the coordinating committee summarized the activities organized in 2018-2019 and invited ESIL IG members to propose new ideas for 2021.
