

## ESIL IGITLP European Conference Series on the Theory and Philosophy of International Law



Interest Group on  
International Legal Theory & Philosophy  
IGITLP

**First ECTPIL and TRICI-Law Conference, to be held  
on 24–25 May 2019 at the University of Groningen**

# The Theory and Philosophy of Customary International Law and its Interpretation

## 1. Topic

Despite claims to the contrary, and to paraphrase Mark Twain's famous quip, the rumours of customary law's death have been greatly exaggerated – customary international law remains alive and well. Not only is it one of the formal sources of international law, but its importance is underlined by the fact that rules of customary international law cover all areas of international law, are usually binding on all states and continue to be valid law even if they are codified in treaty texts.

Nowadays, international law seems to be going through a similar process as mathematics did in the 19th century. In order for international legal scholarship to progress, we need to go back to the theoretical foundations. We need to identify, critique and discuss the axioms on which the system is based, as well as the rules under which these building-blocks of the international legal system function. In the late 20th and early 21st century there has been a resurgence in the efforts to clarify what customary international law is and how it works. The International Law Association, for instance, had a 17-year (1984–2000) project on the formation of general customary international law, and the International Law Commission has just completed a similar project.

Yet there is still much to do before we can understand customary international law in all its complexity. One reason is that most analysis tends to focus on the process of emergence and identification of a rule of customary international law, through the dichotomous requirements of state practice and *opinio iuris*, with all the shortcomings and pitfalls that it entails. Yet, customary international law as a source raises other questions, too. Can we speak of 'rules' in this context (what is the nature of customary law)? What is the foundation for the sources of international law in general and customary law, in particular? Do we conflate the determination of a rule of customary international law with the determination of its content?

The First *ECTPIL* and *TRICI-Law* Conference will draw on these and other under-researched questions, such as:

- What are the rules, if we can talk about rules, that regulate the functioning of sources of international law and of customary international law in particular?
- Is the classical paradigm of state practice and *opinio iuris* still valid today?
- Are there alternative approaches that can offer a better model describing the emergence and functioning of rules of customary international law?
- Can customary international law be interpreted? Are rules of customary international law open to interpretation in the same way as treaty rules?
- Do domestic approaches to customary law differ from those in international legal scholarship? What lessons can be learned (or tools adopted) from domestic approaches to customary law?
- Is hermeneutics relevant to customary international law?
- Is there a difference between the interpretation of state practice compared to the interpretation of a rule of customary international law?
- Where do the lines between identification, interpretation, application and modification of a rule of customary international law lie?

A more detailed explanation of these questions can be found [here](#).

## 2. Application Process

- Please submit an abstract of no more than 500 words in a text file (.docx, .odt etc. – not .pdf) to [trici-law@rug.nl](mailto:trici-law@rug.nl). Only one abstract per author (resp. team of co-authors) will be considered.
- Please include the following information in addition to the abstract:
  - The name and affiliation for the author (all co-authors);
  - contact details, including email address and phone number;
  - a CV for all co-authors, including a list of relevant publications.
- We are looking for a wide range of voices and takes on this topic from all corners of international legal scholarship and practice – both established and early career scholars, practitioners and ‘stakeholders’ – representing a wide range of views, including critical and main-stream, ‘conservative’ and ‘progressive’. In selecting the speakers, we will aim to secure a balance of views, backgrounds and approaches.
- The deadline for the submission of abstracts is **Thursday, 15 November 2018**. Applicants will be informed of the selection committee’s decision no later than Friday, 21 December 2018. Successful applicants are expected to submit a paper of 3,000–5,000 words no later than 1 April 2019 and will be expected to present their topic for no longer than 15 minutes in their respective panels.
- Speakers’ travel and accommodation costs will be partially reimbursed by the organisers.

## 3. Organisers

The Conference is co-organised by the ERC project on ‘The Rules of Interpretation of Customary International Law’ (TRICI-Law project), the ESIL Interest Group on International Legal Theory and Philosophy (ESIL IGILTP) and the University of Groningen and is sponsored by the TRICI-Law project. This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 Research and Innovation Programme (Grant Agreement No. 759728).