

CALL FOR PAPERS

The Netherlands Yearbook of International Law (NYIL) 2014 (volume 45)

Between Pragmatism and Predictability: Temporariness in International Law

One of the key-functions of international law is to provide long term stability and legal certainty. When adopting conventions, drafting treaties, making regulations generally the idea is not that those rules will elapse. Think, for instance, of human rights conventions the endurance of which is ensured by general and abstract formulations. Yet, international legal rules may also function as tools to deal with non-permanent or constantly changing issues, and rather than stable, international may have to be flexible or adaptive. One could think of two main types of temporary subjects under international law.

First, the *nature of the subject* may be inherently temporary. While the subject itself does not cease to exist, its features are bound to change throughout time. These changes are generally unknown or difficult to predict. In these cases regulations aim to address moving targets. Examples of this type of temporariness are abundant: climate change, migration, developing countries, belligerent occupations and so on. (Subjects that are inherently temporary in nature.) Oftentimes this type of temporariness is studied through concepts that are aimed to deal with changes and uncertainty, such as risk management and regulation, precaution or resilience.

Second, the *subject may be created* for a specific period of time, after the elapse of which this entity ceases to exist. These subjects mainly concern the establishment of institutions or certain entities. Examples of such temporary subjects are also ample in international law: territorial administrations, states in transition, the International Criminal Tribunal for Rwanda and for the former Yugoslavia and so on. (Institutions that are created for a certain period of time because the purpose of regulation is temporary.) The mainstream discussion with regard to this type of temporariness seems to focus on questions of justice/fairness and accountability.

In addition to the above-mentioned approaches, these types of temporariness raise several questions from the perspective of international law, which are hardly addressed from a more conceptual perspective. This volume of the *Netherlands Yearbook of International Law* aims to do exactly that. The questions include the following:

- How does international law deal with matters that are non-permanent?
Are there specific legal/institutional techniques? Is there a difference between the two main forms of temporariness in this regard?
Is there a preference in these fields for specific sources of international law?
- Is international law able to address temporariness of subject matters?
- What happens to international law if the originally temporary creatures become permanent?
- How is international law affected when the temporary creature does not achieve its purpose? What are the consequences?

- What can ensure in international law that it remains flexible to adapt to changing circumstances, if such guarantees exist at all?
- What is the effect of temporary regulations on matters that are permanent?
- How does temporariness affect legal certainty?
- How do international and domestic courts incorporate temporariness-based arguments in their decisions?

These questions deserve to be addressed as such, but also in relation to concrete examples of temporary subjects. This would lead to the following tentative list of possible contributions:

- Rule of law and temporariness: how is the international rule of law affected by the existence and creation of temporary legal subjects.
- Statehood, state responsibility and temporariness: how is the concept of statehood and state responsibility influenced by temporariness both theoretically and in practice.
- International institutional law and temporariness: how does temporariness influence institutional law.
- ICTY and ICTR and international (criminal) law: how are the advance planning, closure or referrals made, how do they affect international law.
- Fight against terrorism and/or state of emergency and international (human rights) law: how does this temporary phenomenon affect international law in terms of law-making, implementation/interpretation on the short and long term.
- Climate change and international law: what is the effect of climate change as a temporary and changing phenomenon on general international law and on specific fields of international law (e.g. human rights, criminal law, trade law, environmental law).
- Belligerent groups and temporariness in international law: what happens to laws that are adopted – possibly illegally – by an occupant, how it affects international law.

Abstract submissions must be between 300-500 words in length and should be accompanied by a short resume. Please, submit your documents to nyil@asser.nl. Any queries may be directed to the managing editor of the NYIL, Monika Ambrus at ambrus@law.eur.nl.

The closing date for submissions is **August 15, 2013**. We will notify successful applicants by late August, who must submit their papers by March 31, 2014. The final papers should be around 8,000 words.