Transformative effects of Globalisation in Law

Conference

Transformative effects of Covid-19 on Globalisation & Law

16 September 2021

Tentative programme
All time indications are Central European Time (UTC+1)

Plenary
11:30-12:45 Pre-conference: covid 19 and global legal education

Stream 1 Boundaries
13:00-14:30 *The Effects of the COVID-19 Pandemic on Cross-border Regions: Security, Internal Market & Freedom of Movement*
14:45-16:15 *Transformative effects of the pandemic: the Brazilian experience under Corona*
16:30-18:00 *Zoonosis-ocene? Covid-19's disclosures of law in the Anthropocene*

Stream 2 Markets
13:00-14:30 *Resilient supply chains*
14:45-16:15 *Transformations in platform work*
16:30-18:00 *Transformative effects of COVID-19 on EU economic law: flexibility as a temporary or lasting value?*

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Stream 1 Institutions

9:00-10:30 *Compliance, liability and sanctioning*
10:45-12:15 *Transformative effects of COVID-19 for EU agencies*
12:20-13:40 *Covid-19 and courts: how to test government intervention in the midst of a global emergency?* **(TBC)**
13:45:-15:15 *The Role of the WHO in a Pandemic: The Need for a More Adaptive Form of Leadership?*

Stream 2 Global governance

9:00-10:30 *Covid and soft law*

10:45-12:15 *How COVID-19 is changing technology and digital governance*

(lunch break)

13:15-14:45 *How COVID-19 is changing market regulation*

Plenary
15:30-16:30 ***Roundtable: building back better?***

Closing

Stream 1 Boundaries

13:00-14:30 The Effects of the COVID-19 Pandemic on Cross-border Regions: Security, Internal Market & Freedom of Movement

It is uncontested that the COVID-19 crisis has severely impacted every aspect of life. Viewed from an EU perspective, the health crisis severely disrupted the freedom of movement connected to the EU internal market and EU citizenship. Whereas much scholarly attention has been given to the reinstatement of border controls in the context of the Schengen Borders Code and the consequences thereof on the freedom of movement, one aspect concerning cross-border movements has been relatively underrepresented in these discussions.

Cross-border regions (i.e. the territories at the borders of two or more Member States) often have strongly intertwined societies where work, study, leisure, and living takes place following cross-border movements. Within the EU around 40% of EU territory covers border regions which reside around 30% of the EU population.[1] Whereas these regions are already prone to experience obstacles coming from differences in legislation in "normal times",[2] the COVID-19 pandemic has exacerbated such tendencies. The health crisis therefore led to a re-nationalisation causing existing structures for cross-border cooperation to be overruled by national governments. For example, previous regular cooperation concerning the exchange of patients between hospitals located in a cross-border region was interrupted due to the distribution of COVID-19 patients being moved from the regional to the national level.

The Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM has been researching the effects of the COVID-19 crisis in cross-border regions in the context of the PANDEMRIC and EU-CITIZEN projects. Whereas the individual studies taken up in these projects are different in aim, their common denominator rests in examining what the effects of the COVID-19 crisis have been and how legislation, policy, and practice should be structured in future to ensure that life in a cross-border society may not be disrupted to the extent experienced during the COVID-19 pandemic. Within the context of the Conference "Transformative effects of COVID-19 on Globalisation & Law", this proposed panel would discuss **how the lessons learned from the present health crisis can lead to law and policy better suited to safeguarding cross-border cooperation in future crises.**

This panel would therefore cover several themes taken up in the call for panels such as coordination and multi-level pandemic governance, evidence-based law and policy in the pandemic, and will free movement ever be the same again? Proposed presentations centre on three themes related to the COVID-19 pandemic in the cross-border region, namely (1) crisis management, (2) public procurement in times of crisis, and (3) freedom of movement and the proportionality of travel restrictions.

Opening word (10 minutes)

Prof. dr. Hildegard Schneider, Professor of EU Law at Maastricht University & Founder ITEM

Presentations (45 minutes)

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[1] European Commission, Communication from the Commission to the Council and the European Parliament: Boosting growth and cohesion in EU border regions, COM(2017) 534 final.

[2] See for example, European Commission, Overcoming Obstacles in Border Regions: Summary report on the online public consultation 21 September – 21 December 2015,

- **Martin Unfried**, Senior Researcher ITEM, *Cross-border Crisis Management: Evaluating Responses to the COVID-19 Pandemic across Administrative Levels in the Netherlands, Belgium and Germany*
- **Prof. dr. Sarah Schoenmaekers**, Endowed professor of EU Law at the Open University & Assistant professor European Law at Maastricht University, *Public Procurement in Times of Crisis: The Limitations and Opportunities of Cross-border Procurement during the COVID-19 Crisis and Recommendations for the Future*
- **Dr. Lavinia Kortese**, Postdoctoral researcher at Maastricht University & ITEM, *Freedom of Movement and the COVID-19 Pandemic: Assessing the Proportionality of Travel Restrictions*

Discussion with discussants & participants (35 minutes)

Discussants:

- Dr. Hanneke van Eijken – Utrecht University
- Dr. Judith Toth – University of Szeged
- Bert-Jan Buiskool – Ockham IPS & Leiden University
- Dr. J.A. van Lakerveld – Leiden University

14:45-16:15 Transformative effects of the pandemic: the Brazilian experience under Corona

The outbreak of the COVID-19 pandemic deepened the ongoing political crisis in Brazil at the same time as it caused effects which go beyond the Brazilian borders and have meaningful institutional transformative effects which need to be addressed.
This panel aims at discussing these issues having the Brazilian experience as a starting point to offer a broader analysis on the transformative effects of the pandemic.
Firstly, public responses to the pandemic will be scrutinized within a rights framework, namely the human right to science, in order to shed some light on the possible legal parameters that right provides. Secondly, the pandemic is analysed as the circumstantial setting to the worsening of a democratic crisis through a comparative approach on the Brazilian and the Hungarian contexts. Thirdly, the challenges presented by the pandemic to a federalist structure are debated focusing on the pursuit of a simultaneously unified and collaborative response. Finally, the elections are taken as background to analyse the institutional consequences of the pandemic on democratic restrictions, returning to the rights framework and advancing a global perspective on the transformative effects of COVID-19.

- Luísa Netto (Leiden University – Catholic University of Minas Gerais)
- Emilio Peluso Neder Meyer (Federal University of Minas Gerais and the Brazilian National Council for Scientific and Technological Development)
- Manuellita Hermes (Tor Vergata University of Rome)
- Eneida Desiree Salgado (Federal University of Paraná)

16:30-18:00 Zoonosis-ocene? Covid-19's disclosures of law in the Anthropocene

The covid-19 pandemic can be situated as both precursor and exemplar of the Anthropocene experience. Global crisis, disrupted global supply chains, oppressive restrictions to fundamental liberties, confronting revelations about the precariousness of human-animal-technology co-dependencies, international competition for increasingly scarce resources,

vacuum of global leadership. These are the constitutive characteristics of both covid-19 and the Anthropocene, in their multiple expressions as events, histories and herstories, ruptures, and crises. This panel asks what we can learn from the covid-19 pandemic about the position of law in the Anthropocene, and vice versa, how the study of law and governance through the lens of the Anthropocene can help us come to terms with the ramifications of covid-19 governance. It poses the suggestion that we think two-ways through covid-19 as both a precursor of a 'new normal' that promises to be very different to the traditional recitals of liberal governance, as well as an exemplar of a reality that has already been all too real for so many.

In particular, the panel will draw on themes which penetrate both frameworks: How are both covid-19 and the Anthropocene situated as 'infodemics' and what role has the freedom of expression played in fostering the denialism that perpetuates both crises as conspiracies? What insights has covid-19 offered to the critiques of economic growth paradigms encapsulated by the de-growth movement, and how do they modify our understanding of law's role in sustaining conventional economic growth models or transitioning into a possible 'new normal' paradigm of de-growth in the Anthropocene? As technologies are increasingly presented as an essential lifeline for individual and social well-being (e.g. vaccines) as well as a tool for relentless control of quotidian aspects of life (e.g. vaccine passports; tracking apps), how does law mediate our dilemmatic relationship with technology, and does it present us with materials to build a regime that appreciates both dependency and dignity? How has covid-19 revealed the law's repugnant designations of laborers, such as seasonal migrant farm workers, as simultaneously 'essential' and second-class laborers, and how can such critiques be extended to the position of labor in the Anthropocene? Through these questions, we hope to think in two directions simultaneously, from covid-19 to the Anthropocene and back again, in order to uncover what we can carry with us forward in coming to terms with law and its transformative potential in defining the present and future conditions and experiences of an unrelenting Anthropocene.

Participating speakers:

- **Anna Berti Suman**, European Commission Joint Research Centre - Digital Economy Unit, *Balancing the perils of freedom of expression and the legitimate reporting of (environmental) crises: sensing the environment against the trend of infodemics*
- **Joris van Laarhoven**, Tilburg Law School, *"The cost of lies": climate change denialism, the COVID-19 'infodemic', and the responsibilities of democratic constitutional States*
- **Nairita Roy Chaudhuri**, Tilburg Law School, *How can the law respond to de-growth economics to tackle climate change in the Anthropocene? Some normative thought*s
- **Maximilian Lakitsch**, University of Graz, *Political Topology in the Anthropocene*
- **Tobias Arnoldussen**, Tilburg Law School, *Dividing the beds: cosmopolitan solidarity with the elderly in the covid-19 crisis*
- **Irina Velicu & Antonio Carvalho**, University of Coimbra, *Pandemic Ontologies: Immunopolitics and Care?*

Stream 2 Markets

13:00-14:30 Resilient supply chains

COVID-19 ushered in a new political, economic and logistical reality for the production of essential goods. At the height of the pandemic, the rapid distortion of medical equipment supply chains forced companies to rethink their core business models and prompted governments to restrict exports, prohibit foreign corporate acquisitions and allocate public resources to ailing sectors. Resilience and security, not freedom or efficiency, quickly formed the new guiding principles of production. A paradigm of secure supply emerged. This panel examines its legal construction, arguing that the paradigm was borne out of countless exceptions, where public and private emergency responses suspended the normal to manage crises. Importantly, the suspension of normalcy constitutes the institutional conditions and operational context for the new reality of production. By analyzing how law's exceptions shape and structure supply chain interventions before, during and after the pandemic, the project uncovers the legal levers that either empower or impede states and companies to build and maintain security of supply.

Speakers: Jaakko Salminen (CBS, U Turku); Kirsi-Maria Halonen (U Lapland); Mikko Rajavuori (U Eastern Finland); Mika Viljanen (U Turku); Klaas Eller (U Amsterdam); perhaps also Jussi Jaakkola (U Turku) and Anna Hurmerinta-Haanpää (U Turku)

14:45-16:15 Transformations in platform work

Platform workers in all areas have been highly exposed to various risks in the pandemic – from infection to economic uncertainty to increased occupational accidents. At the same time, many developments have taken place both in the strictly legal arena (important court decisions, legislation…) and in the area of organisation and worker solidarity. Have we reached a tipping point where legal discourse and practice on the gig economy is about to change, or is it going to be business as usual again?

- Dr Cinzia Carta, senior researcher, University of Genova faculty of Law
- Jill Toh, PhD researcher, University of Amsterdam Institute for Information Law
- Rida Qadri, PhD researcher Massachussets Institute of Technology Urban Information Systems

Chair: Dr Nuna Zekic, Tilburg University, Labour Law

16:30-18:00 Transformative effects of COVID-19 on EU economic law: flexibility as a temporary or lasting value?

The outbreak of the coronavirus—and relating responses of governments and businesses to combat the medical and economic crisis—have raised a number of urgent questions, many of which concern European economic law (i.e. the EU rules on competition and free movement): Can businesses cooperate to guarantee the supply of essential items, notwithstanding the cartel prohibition of Article 101 TFEU? Is the excessive pricing doctrine of Article 102 TFEU a match for price increases caused by hoarding behaviour? Can competition authorities continue to assess mergers, and might they become more lenient to certain arguments, such as the failing firm defense and industrial policy considerations? Under which conditions are Member States allowed to grant aid to undertakings that face economic and financial difficulties? Can Member States prohibit the export of medical supplies? How flexible are public procurement rules to quickly tender essential supplies? Not only will this panel address these current questions in a comprehensive manner, it also looks to the future: which developments are temporary, and what is likely to stay? The discussion situates the Commission's practices within the broader framework of EU economic law, and points out potential new evolutions: Is enforcement against excessive prices back from the dead? Is State aid enforcement turning into a simple registry? Are public procurement rules increasingly instrumental? As the panel will put the possible (side-)effects of the sanitary crisis in

a more future-oriented perspective, it will highlight potential (dis)advantages for the lasting impact of COVID-19 on EU economic law, including developments that should rather be considered "old wine in new bottles".

- **Prof. Dr. Wouter Devroe** - Full professor of Law and the dean of the law faculty at KU Leuven and full professor of competition law at Maastricht University.
- **Nina Colpaert** - Ph.D. researcher at the Institute for Consumer, Competition and Market (CCM).
- **Friso Bostoen** - Ph.D. researcher at CCM and fellow of the Research Foundation Flanders.
- **Joris Gruyters** - Ph.D. researcher at CCM.
- **Lennard Michaux** - Ph.D. researcher at CCM.
- **Richard Steppe** - Associate in the Linklaters TMT/IP practice in Brussels
- **Liesbet Van Acker** - Ph.D. researcher at CCM.
- **Bruno Van den Bosch** - Ph.D. researcher at CCM and at the University of Leiden's Law Faculty.

Day 2

Stream 1 Institutions

9:00-10:30 Compliance, liability and sanctioning

Speakers:

- Benjamin van Rooij and Chris Reijnders Folmer (UvA) - Compliance with Corona Mitigation measure
- Marc Tiernan (UvA) – Criminal accountability for spreading misinformation on the Covid 19 pandemic
- Göran Sluiter (OU/UvA) – Bad intentions? – spreading a pandemic as a crime against humanity

10:45-12:15 Transformative effects of COVID-19 for EU agencies

The panel will discuss the role that agencies have played in the COVID-19 response, but also to how COVID-19 has affected the agencies in their day-to-day work but also in terms of the general exercise of their powers. Other contributions would not neessarily need to discuss one specific agency, we could also imagine presentations about the (lack of) control exercised by the Parliament or the Ombudsman over the agencies COVID-19 response, or other more horizontal issues.

- Speakers:
- Deidre Curtin, European university Intstitute
- Davide Fernandez Rojo,
- Merijn Chamon, Maastricht University
- Sabrine Roettger-Wirtz, Maastricht University

- Discussant: Joana Mendes, University of Luxembourg

12:20-13:40 Covid-19 and courts: how to test government intervention in the midst of a global emergency?

This panel investigates the effects of new technologies and Artificial Intelligence (AI), applied in the aftermath of the Covid – 19 pandemic, within the justice systems in the EU. In particular, three distinct issues are examined. First, what is the impact of new technologies on judicial profession in the EU, specifically regarding the necessary safeguards of the standard of judicial independence and impartiality in the EU? Second, what is the future of judicial trainings in the EU and what role can AI play in this regard? Finally, the last contribution addresses the question of whether the technological transformations of alternative dispute resolution (ADR) in the Covid-19 pandemic can help increase the social legitimacy of (informal) justice systems in the EU and globally.

"Impact of New Technologies on Judicial Profession: Research agenda in European Union perspective"
Dr. Karolina Podstawa, University of Maastricht
The purpose of this presentation will be to systematically describe avenues through which new technologies have been slowly altering the performance of the job of a judge and the manner this affects the position of a judge and necessary prerequisites to maintain her judicial impartiality and independence. The emergent research agenda will be anchored in the legal and political setting of the European Union. Firstly, the reference point is offered by the evolutionary standard of judicial independence developed by European courts in the context of broadly understood rule of law crisis. Secondly, to the attention come digital initiatives at the times of Covid-19 prolonged emergency, which induced the use of new technologies in the performance of *inter alia* public administration tasks, but also pushed the decision makers to consider the regulation in the area.

"The future of Judicial training after Covid-19 : Is there a new role for AI?"
Dr. Federica Casarosa, Robert Schuman Centre for Advanced Studies, EUI
Following the COVID-19 outbreak, the justice system in the EU Member States has been suspended undermining access to justice in a whole range of cases. As trials and judicial proceedings started to be moved online, access to justice concerns were followed by issues related to the right to be heard of litigants, data protection and judicial independence, as well as reflection on the future of judicial training. All the transnational judicial training events that were supposed to take place during 2020 were cancelled or shifted to online courses. As a preliminary lesson, the need to reformulate the forms and methods to deliver training to legal practitioners was clear.

Although online training may not substitute the advantages of in person training (such as the possibility for participants to get to know each other in person, to share opinions, compare experiences and provide suggestions on equal footing, as cultural diversities may hamper the achievement of an environment of confidence and trust), technology can provide an additional set of instruments helping judicial schools to delivery effective judicial trainings.
An innovative proposal is the use of AI as training tool for judicial decisions. The use of AI for predictive justice is well known (yet heavily criticized) due to its potential impact over the independence and impartiality of judges. No efforts were instead devoted to adapting the structure and functionalities of AI in order to enhance and support the 'creative' work of judges. The contribution will try to address this issue and provide a tentative research agenda.

"Can technological transformations of alternative dispute resolution (ADR) in the Covid-19 pandemic help increase the social legitimacy of (informal) justice systems in the EU and globally?"
Dr. Barbara Warwas, The Hague University of Applied Sciences

As a result of the Covid-19 pandemic many traditional dispute resolution processes including arbitration and mediation quickly adjusted to a new reality by offering virtual hearings and meetings to accommodate social distancing rules. This had consequences for the level of trust of disputant in alternative dispute resolution. For example, some disputants who would have never met their counterparty in person prior to the pandemic turn out to be more trustful towards online mediation when the in-person meeting proved impossible. Another example concerns the discussions within the international arbitration community on the right to (and the need for) in-person hearings in arbitration. Both examples suggest that the recent technological transformations in the ADR field, adopted due to the Covid-19 pandemic, may in fact have a positive impact on the perceptions of (informal) justice by disputants.

The main goal of this contribution is to survey and critique the transformations of ADR during the Covid-19 pandemic in view of their potential role in increasing the social legitimacy of (informal) justice systems across Europe. Social legitimacy is understood as the level of trust by disputants in technological developments offered by ADR providers.

This contribution is organized as follows. In the first part, I analyze the changing concept of alternative and online dispute resolution. Second, I survey recent adaptations and trends in the field of ADR broadly to enable virtual hearings in the Covid-19 pandemic. Third, I focus on the social legitimacy of those changes as seen by ADR users. Fourth, I conclude with some normative observations regarding future trends in ADR and how they impact the social legitimacy of (informal) justice systems in the EU and globally.

13:45-15:15 The Role of the WHO in a Pandemic: The Need for a More Adaptive Form of Leadership?

During a pandemic of such scale and severity as Covid-19, there is demand for proactive and decisive political leadership (Ansell, Boin& Hart, 2014). A pandemic is a perfect example of an extreme context that also creates an ambiguous space, bundling together individuals, organizations, communities and whole societies. Leadership in such extreme contexts and ambiguous spaceshas become a pre-eminent question in political and sociological literature (Hannah &Uhl-Bien, 2009;Ospina et al., 2020). Pandemics also reveal a high degreeof interdependence among developed and developing countries in facing the associated health, economic and more broadly societal challenges. We argue in this paper that pandemics require that political and public health leadership,on the one hand,be very focussed and assertive (Boin, Stern, Sundelius, 2016; Ansell,Boin& Hart, 2014) at the international level, while on the other hand, ensurethe mobilization of leaders atthe local community and national levels (Denis, Langley, Sergi, 1992). In order to reconcile these different requirements to effectively tame the pandemic, a new form of meta-systemic leadership is needed – one that combines clarity of goals and advice, solid expertise and effective networking with national leaders – in order to ensure the legitimacy and effectiveness of global public healthinterventions, like those of international organizations.

The panel will discuss two papers

Paper 1: Catherine Régis, Full professor, Faculty of Law, University of Montreal, Canada Research Chair in Health Law and Policy; Jean-Louis Denis, Full professor, School of Public Health, University of Montreal, Canada Research Chair on Health System Design and Adaptation; Miriam Cohen, Assistant professor, Faculty of law, University of Montreal; Pierre Larouche, Full professor, Faculty of Law, University of Montreal.

Paper 2: Paula Wojcikiewicz Almeida, Full professor of International Law, Faculty of Law, Getulio Vargas Foundation Law School, Director of the Jean Monnet Centre of Excellence on EU-South America Global Governance; Giulia Romay, researcher at the Jean Monnet Centre of Excellence on EU-South America Global Governance; Mariana Gouvea, researcher at the Jean Monnet Centre of Excellence on EU-South America Global Governance.

Stream 2 Global governance

9:00-10:30 Covid and soft law

- Lilian Tsourdi (Maastricht University)
- Niovi Vavoula (Queen Mary University, London)
- Oana Stefan (King's College, London)
- Clara van Dam (Leiden University)

10:45-12:15 How COVID-19 is changing technology and digital governance

- **Rostam J. Neuwirth,** Full Professor, University of Macau, Faculty of Law, Macao SAR (China), *Information on COVID-19 between fact and fiction: on the need for a global legal regime for 'fake news'*
- **Vera Lucia Raposo**, Associate Professor, University of Macau, Faculty of Law, Macao SAR (China), *Digital governance and the pandemic: not with technology or not without technology?*
- **João Ilhão Moreira**, Assistant Professor, University of Macau, Faculty of Law, Macao SAR (China), *Presentation 3: COVID-19 and the rise of virtual hearings*

(lunch break)

13:15-14:45 How COVID-19 is changing market regulation

- **Alexandr Svetlicinii**, Associate Professor, University of Macau, Faculty of Law, Macao SAR (China), *How is COVID-19 changing competition law?*
- ***Leonila Guglya, Lawyer***, Rouiller et Associés, Geneva, Switzerland, *COVID-19 as a momentum for building cross-border e-commerce consumer engagement*
- ***Li Du***, Assistant Professor, University of Macau, Faculty of Law, Macao SAR (China), *Presentation 3: Cultured meat commercialization: legal barriers and potential trade conflicts*