The Sources of International Law

Applicant: Prof. Samantha Besson, University of Fribourg

The research project The Sources of International Law pertains to how international law is made today, i.e. by which processes its rules (provided they are rules) become rules of international law (provided it is law), and thereby acquire legal validity. Sources are a central question in international law, both in practice and theory. Not only is it important for practitioners to be able to identify valid international legal norms and hence the specific duties that stem from international law, but also the topic has great theoretical significance. Clarifying it helps understanding the nature of international law itself, i.e. the legality of international law. Furthermore, accounting for the sources of international law means explaining some of the origins of its normativity, as well as discussing potential justifications for its authority and the exclusionary “reasons to obey” which it places on its subjects, and hence its legitimacy.

Although and, probably, because it is one of the key questions in international law, the identification of the sources of international law also remains one of the most controversial ones in international legal scholarship. Moreover, law-making is one of the areas of the practice of international law that has changed most radically over the last 50 years, and since the list of sources of international law of Article 38 Statute of the International Court of Justice (ICJ) was last revised in 1945. It is not surprising therefore that international lawyers feel the need every so often, and even more often recently, to revert to it, to take stock and to provide an in-depth and general assessment of contemporary international law-making.

This project aims at doing exactly that. Qua umbrella-project, it proposes to do so in two-ways: first, and foremost, through organizing the edition and publication of the Oxford Handbook on the Sources of International Law that has been commissioned by Oxford University Press to the applicant and her co-editor, Prof. Jean d’Aspremont (Universities of Manchester & Amsterdam) and, secondly, and more generally, through launching companion-research on specific aspects of the question by a post-doctoral researcher.

The Oxford Handbook on the Sources of International Law will be the very first comprehensive edited reference work devoted to the question of the sources of international law. It aims to provide an accessible and systematic overview of key issues and debates about the sources of international law. It also purports to offer an authoritative theoretical guide for anyone studying or working within, but also outside international law wishing to understand one of its foundational questions. The Oxford Handbook will feature 48 original essays by leading international law scholars and theorists from a range of traditions, nationalities and perspectives, in order to reflect the richness and diversity of scholarship in this area. Its specificity and novelty will lie not only in the broad range of theories represented, but also in its dialectical approach between the two chapters addressing each topic and in its strong jurisprudential or philosophical emphasis.

Besides its general scientific impact in international legal scholarship, both doctrinal and jurisprudential, and its importance for the practice of international lawyers, the project will also contribute to the consolidation of post-doctoral research in international law and, in particular in international legal theory, in Swiss law schools.