



ANZSIL 25th Annual Conference

Sustaining the international legal
order in an era of rising nationalism

Hotel QT Canberra, Australia

Thursday 29 June – Saturday 1 July 2017

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**Welcome to the 25th Annual
Conference of the Australian and
New Zealand Society of International
Law, hosted by the Centre for
International and Public Law,
ANU College of Law, The Australian
National University.**

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ANZSIL gratefully acknowledges the financial and other support for the 25th Annual Conference and the ANZSIL Postgraduate Workshop provided by:

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About the conference

This is the Society's 25th Annual conference, and its theme of 'Sustaining the International Legal Order in an Era of Rising Nationalism' has been selected in order to explore the implications of resurgent nationalist sentiment for the content and operation of international law.

This Silver Jubilee ANZSIL Conference takes place amidst a resurgence of nationalism around the world. In Europe, political parties with anti-immigration platforms have gained popularity and Britain has voted to leave the European Union. In the United States, antiglobalisation and protectionist rhetoric fell on fertile electoral ground during the 2016 presidential election campaign. A wave of nationalist sentiment has also swept through Asia, leading to new arms races and strategic contests over Asia's seas.

These developments lend some support to the notion, mistakenly attributed to Mark Twain, that while history does not always repeat itself, it does rhyme. Indeed, the first ANZSIL Conference in 1993 was held at a time when the euphoria of the fall of the Berlin Wall was becoming a nationalist 'hangover': ethnic conflicts had engulfed parts of Europe and Samuel Huntington predicted a clash of civilisations.

In those immediate post-Cold War years, however, the international legal order was called upon to ensure stability through increased regionalism and multilateralism. Faced with today's challenges, the role of international law seems less clear. States can certainly rely on international law processes – say, withdrawal from treaties and international organisations – in an attempt to turn back the clock on globalisation and multilateralism. But can this succeed? What are the alternatives? What role for international law? What future for global governance?

Conference featured speakers

- > Natasha Affolder, University of British Columbia
- > Tim McCormack, University of Melbourne
- > Balakrishnan Rajagopal, Massachusetts Institute of Technology
- > Kerrie Sadiq, Queensland University of Technology

2017 ANZSIL CONFERENCE ORGANISING COMMITTEE

- > Rain Liivoja, ANZSIL Council, University of Melbourne (co-chair)
- > Imogen Saunders, Australian National University (co-chair)
- > Amelia Telec, ANZSIL Secretary, Attorney-General's Department (co-chair)
- > Monique Cormier, University of Melbourne
- > Mark Jennings
- > Marnie Elspeth Lloyd, University of Melbourne
- > Andrew D Mitchell, University of Melbourne
- > Alison Pert, University of Sydney
- > Diwaka Prakash, Department of Foreign Affairs and Trade
- > Penelope Ridings
- > James Stellios, Centre for International & Public Law, Australian National University
- > Tim Stephens, ANZSIL President, University of Sydney

Postgraduate Workshop convenors

- > Daniel Joyce, UNSW Australia
- > Guy Fiti Sinclair, Victoria University of Wellington

ANZSIL Secretariat

- > Sarah Parker
- > Claire Atteia
- > Nicole Harman

ANZSIL membership

ANZSIL was established in 1992 with the aims of:

- > Developing and promoting the discipline of international law
- > Supporting the teaching of international law
- > Providing a forum for academics, government lawyers, NGOs, students and practitioners of international law to discuss research and issues of practice in international law
- > Increasing public awareness and understanding of international law
- > Liaising with other bodies in promoting any of these objects

New members are always welcome. The annual membership fee for 2017/18 is \$100 AUD, payable on a calendar year basis. To become a member, or renew your membership, please visit: **anzsil.org.au/membership**

The advantages of annual membership of ANZSIL include:

- > A special subscription rate for the Australian Year Book of International Law
- > Copies of the ANZSIL newsletter
- > Concession price for registration to the ANZSIL annual conference
- > Membership of ANZSIL's Interest Groups
- > Invitations to special ANZSIL seminars and events

GENERAL INFORMATION

Wi-Fi access

Free Wi-Fi access will be available for the duration of the conference.

- > Login: QTEvent
- > Password: GreatEvent

Catering

Morning and afternoon tea, and lunch (Thursday and Friday) are included in the registration fee.

Conference dinner

The conference dinner will be held at QT Hotel at 7.15 pm on Friday 30 June. Please note that it is necessary to register and pay for the dinner in addition to paying the registration fee for the conference.

OVERVIEW OF SESSIONS

DAY 1: THURSDAY 29 JUNE 2017

TIME	SESSION	LOCATION
9–9.20am	Welcome to Country and Conference Opening	Ballroom 1
9.20–10.30am	Plenary: Keynote Speaker – Balakrishnan Rajagopal	Ballroom 1
11 am–12.30pm	Panel 1: The Life and Contribution of Sir Elihu Lauterpacht QC to International Law and Australia	Ballroom 1
11 am–12.30pm	Panel 2: Global Governance I	Ballroom 3
11 am–12.30pm	Panel 3: Criminal Justice	Ballroom 2
1.30–2pm	Book launch	Ballroom 1
2–3.30pm	Panel 4: Displacement	Ballroom 1
2–3.30pm	Panel 5: Global Governance II	Ballroom 3
2–3.30pm	Panel 6: Peace and Security I	Ballroom 2
4–5.15pm	Plenary: Keynote Speaker – Kerrie Sadiq	Ballroom 1
5.30–6.30pm	Plenary: Panel Discussion – Readers meet Authors	Ballroom 3

DAY 2: FRIDAY 30 JUNE 2017

TIME	SESSION	LOCATION
8–9am	Humanity at Sea	Ballroom 2
9.15–10.30am	Plenary: Keynote Speaker – Tim McCormack	Ballroom 1
11 am–12.30pm	Panel 7: Nuclear Weapons	Ballroom 3
11 am–12.30pm	Panel 8: The Future of Antarctic Regionalism in an Age of Rising Nationalism	Ballroom 1
11 am–12.30pm	Panel 9: Trade and Investment I	Ballroom 2
12.30–1.30pm	ANZSIL Annual General Meeting	Ballroom 1
1.30–3pm	Panel 10: Peace and Security II	Ballroom 3
1.30–3pm	Panel 11: Can the Centre Hold? Nationalist (and Other) Challenges to the Paris Agreement on Climate Change	Ballroom 1
1.30–3pm	Panel 12: Trade and Investment II	Ballroom 2
3.30–5pm	Panel 13: Forty Years of the 1977 Additional Protocols	Ballroom 3
3.30–5pm	Panel 14: Environment	Ballroom 1
3.30–5pm	Panel 15: Transnational Cooperation and Enforcement	Ballroom 2
5.15–6.30pm	Plenary: Keynote Speaker – Natasha Affolder	Ballroom 3
7.15pm	Conference dinner	Ballroom 1

DAY 3: SATURDAY 1 JULY 2017

TIME	SESSION	LOCATION
9.15–11 am	Panel 16: Human Rights	Ballroom 1
9.15–11 am	Panel 17: The South China Sea Arbitration: Implications One Year On	Ballroom 3
9.15–11 am	Panel 18: History and Ideology	Ballroom 2
11.30am–1 pm	Plenary: International Law Year in Review	Ballroom 1
1 pm	Close	Ballroom 1

PROGRAM

THURSDAY 29 JUNE 2017

TIME	SESSION
8.30 am	REGISTRATION
	WELCOME TEA/COFFEE
9 am	WELCOME TO COUNTRY <i>Location: Ballroom 1</i> Agnes Shea , Ngunnawal elder
	CONFERENCE OPENING <i>Location: Ballroom 1</i> > Tim Stephens , ANZSIL President > Sarah Heathcote , CIPL Deputy Director, ANU College of Law
9.20–10.30 am	PLENARY – KEYNOTE ADDRESS <i>Location: Ballroom 1</i> Chair: Anne Orford, University of Melbourne Keynote speaker: Balakrishnan Rajagopal , Massachusetts Institute of Technology
10.30–11 am	MORNING TEA
11 am–12.30 pm	<div> PANEL 1 The Life and Contribution of Sir Elihu Lauterpacht QC to International Law and Australia <i>Location: Ballroom 1</i> Chair: Hilary Charlesworth, University of Melbourne > Richard Rowe > Henry Burmester, Australian Government Solicitor > Bill Campbell, Attorney-General's Department > Chester Brown, University of Sydney </div> <div> PANEL 2 Global Governance I <i>Location: Ballroom 3</i> Chair: Donald Rothwell, Australian National University Alison Pert, University of Sydney > Foreign sovereign (and diplomatic) immunity in the age of Trump: Is he immune from suit in foreign courts? Andrea Carcano, University of Milano-Bicocca > Should states thrive? Reflections on the vulnerability of the (democratic) state in the 21st century Maria Varaki, University of Helsinki > The end of an era or a new era for territorial sovereignty and citizenship? Re-reading 1943 Hannah Arendt for a 'new' cosmopolitan order in 2017? Michael Douglas, University of Sydney > The commercial exceptions to foreign state immunity </div>

11 am–12.30pm	<p>PANEL 3</p> <p>Criminal Justice</p> <p><i>Location: Ballroom 2</i></p> <p>Chair: Tim McCormack, University of Melbourne</p> <p>Cassandra Mudgway, Auckland University of Technology</p> <ul style="list-style-type: none"> > United Nations peacekeepers and sexual crimes: Towards a hybrid solution <p>Shireen Daft, Macquarie University</p> <ul style="list-style-type: none"> > Whither justice for former child soldiers? Complex perpetrators and the International Criminal Court <p>Simon McKenzie, University of Melbourne</p> <ul style="list-style-type: none"> > IHL, the law of occupation, and international criminal law: Problems in translation <p>Shahram Dana, Griffith University</p> <ul style="list-style-type: none"> > Enabler responsibility: Towards a new understanding of atrocity crimes in the extant international legal order 	
12.30–1.30pm	<p>LUNCH</p>	
1.30–2pm	<p>BOOK LAUNCH</p> <p><i>Location: Ballroom 1</i></p> <p>Holly Cullen, Joanna Harrington and Catherine Renshaw (eds), <i>Experts, Networks and International Law</i>, Cambridge University Press, 2017</p>	
2–3.30pm	<p>PANEL 4</p> <p>Displacement</p> <p><i>Location: Ballroom 1</i></p> <p>Chair: Imogen Saunders, Australian National University</p> <p>Isaiah Okorie, University of Tasmania</p> <ul style="list-style-type: none"> > The refugee as a pariah: Navigating an international legal path to avoid the perilous waves of resurgent nationalism <p>Md. Jobair Alam, Macquarie University</p> <ul style="list-style-type: none"> > Is EU diminishing the spirit of the principle of non-refoulement?: A study of the EU legal regime and recent practice for the refugees <p>Amy Maguire and Samuel Berhanu Woldemariam, University of Newcastle</p> <ul style="list-style-type: none"> > The United Nations and forced human displacement: An assessment of the multilateral promises of the UN charter 	<p>PANEL 5</p> <p>Global Governance II</p> <p><i>Location: Ballroom 3</i></p> <p>Chair: John Reid, Attorney-General's Department</p> <p>Amy Benjamin, Auckland University of Technology</p> <ul style="list-style-type: none"> > Globalisation: Goodbye and good riddance <p>An Hertogen, University of Auckland</p> <ul style="list-style-type: none"> > Can an international law of nuisance curb the excesses of rising nationalism? <p>Uzma Sherieff, NSW Crown Solicitor's Office</p> <ul style="list-style-type: none"> > Bridging the local and the global: The city as an international legal person <p>Ntina Tzouvala, University of Melbourne</p> <ul style="list-style-type: none"> > Talking about international economic law: Lawyers, neoliberals and the undoing of economic democracy

PROGRAM

2–3.30 pm	<p>PANEL 6</p> <p>Peace and Security I</p> <p><i>Location: Ballroom 2</i></p> <p>Chair: Netta Goussac, International Committee of the Red Cross</p> <p>Angeline Lewis, Department of Defence</p> <ul style="list-style-type: none">> Multilateralism in international law: Are reports of its demise by resurgent nationalism greatly exaggerated? <p>Susan Harris-Rimmer, Griffith University</p> <ul style="list-style-type: none">> Sexing impunity: Farkhunda's case and the fragility of women's rights in transitions <p>Etienne Henry, Australian National University</p> <ul style="list-style-type: none">> Parliamentary control over the decision to use force in the case of the intervention against ISIL in Syria <p>Alicia Lewis, Attorney-General's Department</p> <ul style="list-style-type: none">> Environmental considerations in the law of armed conflict
3.30–4 pm	<p>AFTERNOON TEA & ANZSIL INTEREST GROUP MEETINGS</p> <ul style="list-style-type: none">> International Economic Law Interest Group, <i>Ballroom 1</i>> International Peace and Security Interest Group, <i>Ballroom 2</i>> Oceans and International Environmental Law Interest Group, <i>Ballroom 3</i>
4–5.15 pm	<p>PLENARY – KEYNOTE ADDRESS</p> <p><i>Location: Ballroom 1</i></p> <p>Chair: Penelope Mathew, Griffith University</p> <p>Keynote speaker: Kerrie Sadiq, Queensland University of Technology</p>
5.30–6.30 pm	<p>Q&A: READERS MEET AUTHORS</p> <p><i>Location: Ballroom 3</i></p> <p>Chair: Madelaine Chiam, La Trobe University</p> <p>Cynthia Banham, University of Queensland</p> <ul style="list-style-type: none">> <i>Liberal Democracies and the Torture of their Citizens</i> (Hart 2017) <p>Daniel Joyce, University of New South Wales</p> <ul style="list-style-type: none">> <i>Objects of International Law</i> (co-editor with Jessie Hohmann, Oxford University Press, forthcoming 2017) <p>Emma Larking, Australian National University</p> <ul style="list-style-type: none">> <i>Refugees and the Myth of Human Rights</i> (Ashgate 2014)

FRIDAY 30 JUNE 2017

TIME	SESSION
8 am	HUMANITY AT SEA <i>Location: Ballroom 2</i> Bruno Demeyere , International Committee of the Red Cross > The updated commentary on the Second Geneva Convention <i>A light breakfast will be served.</i> <i>Separate registration for this ICRC-organised session is essential</i>
9 am	REGISTRATION WELCOME TEA/COFFEE
9.15 – 10.30 am	KEYNOTE CONVERSATION The International Criminal Court: Major Achievements and Contemporary Challenges <i>Location: Ballroom 1</i> Tim McCormack , University of Melbourne, in conversation with ... > Richard Rowe > Michael Bliss , Department of Foreign Affairs and Trade > Sue Robertson , Attorney-General's Department
10.30 – 11 am	MORNING TEA
11 am – 12.30 pm	<div> <div> PANEL 7 Nuclear Weapons <i>Location: Ballroom 3</i> Chair: Alison Duxbury, University of Melbourne Monique Cormier, University of Melbourne > Pursuing negotiations in good faith? Australia's reliance on extended nuclear deterrence, its obligations under the NPT and its opposition to a ban treaty Alberto Alvarez-Jimenez, University of Waikato > Marshall Islands v. United Kingdom: The ICJ's irrelevance on nuclear disarmament Yvette Zegenhagen, Australian Red Cross > The role of the International Red Cross Red Crescent Movement in eliminating nuclear weapons </div> <div> PANEL 8 The Future of Antarctic Regionalism in an Age of Rising Nationalism <i>Location: Ballroom 1</i> Chair: Karen Scott, University of Canterbury Tim Stephens, University of Sydney Alan Hemmings, University of Canterbury Tony Press, University of Tasmania </div> </div>

PROGRAM

11 am–12.30pm	<p>PANEL 9</p> <p>Trade and Investment I</p> <p><i>Location: Ballroom 2</i></p> <p>Chair: Mark Jennings</p> <p>Patricia Holmes, Department of Foreign Affairs & Trade</p> <ul style="list-style-type: none"> > The WTO dispute settlement system: Keeping the sparkle in the crown <p>Ashlee Uren, Attorney-General's Department</p> <ul style="list-style-type: none"> > Change and continuity in international investment law: Trump as a variable <p>Eugenio Gomez-Chico, Yale University</p> <ul style="list-style-type: none"> > Towards an International Investment Court: Challenges of reform <p>Christian Riffel, University of Canterbury</p> <ul style="list-style-type: none"> > The chapeau reconsidered 	
12.30–1.30pm	<p>LUNCH & ANNUAL GENERAL MEETING OF ANZSIL (<i>Ballroom 1</i>)</p>	
1.30–3pm	<p>PANEL 10</p> <p>Peace and Security II</p> <p><i>Location: Ballroom 3</i></p> <p>Chair: David Letts, Australian National University</p> <p>Emily Camins, University of Western Australia</p> <ul style="list-style-type: none"> > Reparations and the foundations of IHL: Majority might or individual right? <p>Simon Levett, Western Sydney University</p> <ul style="list-style-type: none"> > International human rights law and journalists in war zones <p>Fabia Veçoso and Sebastián Machado, University of Melbourne</p> <ul style="list-style-type: none"> > Risky rhetoric: How not to talk about humanitarianism 	<p>PANEL 11</p> <p>Can the Centre Hold? Nationalist (and Other) Challenges to the Paris Agreement on Climate Change</p> <p><i>Location: Ballroom 1</i></p> <p>Chair: Natasha Affolder, University of British Columbia</p> <p>Jacqueline Peel, University of Melbourne</p> <p>Luke Kemp, Australian National University</p> <p>Christian Downie, Australian National University</p> <p>Jonathan Pickering, University of Canberra</p>
1.30–3pm	<p>PANEL 12</p> <p>Trade and Investment II</p> <p><i>Location: Ballroom 2</i></p> <p>Chair: Paul Schofield, Department of Foreign Affairs and Trade</p> <p>Vivienne Bath, University of Sydney</p> <ul style="list-style-type: none"> > Treaty obligations in investment agreements: Liberalization and the national interest <p>Genevieve Wilkinson, University of Technology Sydney</p> <ul style="list-style-type: none"> > Intellectual property, domestic regulatory autonomy and tobacco plain packaging <p>Amokura Kawharu, University of Auckland, Luke Nottage, University of Sydney</p> <ul style="list-style-type: none"> > The influence of Australia and New Zealand on Asia-Pacific investment treaty negotiations as a collective middle power 	
3–3.30pm	<p>AFTERNOON TEA</p>	

3.30–5 pm	<p>PANEL 13</p> <p>Forty Years of the 1977 Additional Protocols</p> <p><i>Location: Ballroom 3</i></p> <p>Chair: Bruno Demeyere, International Committee of the Red Cross</p> <ul style="list-style-type: none"> > Dominique De Stoop > Lisa Ferris, New Zealand Defence Force > Jai Galliot, University of New South Wales > Sir Kenneth Keith > Angeline Lewis, Australian Defence Force 	<p>PANEL 14</p> <p>Environment</p> <p><i>Location: Ballroom 1</i></p> <p>Chair: Michael Googan, Department of Foreign Affairs and Trade</p> <p>Caroline Foster, University of Auckland</p> <ul style="list-style-type: none"> > Resetting the global? Obligations of conduct and our shared environmental concerns <p>Jeffrey McGee, University of Tasmania</p> <ul style="list-style-type: none"> > Climate intervention: A necessary element of international climate change law <p>Alberto Costi and Nathan Ross, Victoria University of Wellington</p> <ul style="list-style-type: none"> > Climate change and low-lying states <p>Ed Couzens, University of Sydney</p> <ul style="list-style-type: none"> > Be careful of what you want: You might just get it!
3.30–5 pm	<p>PANEL 15</p> <p>Transnational Cooperation and Enforcement</p> <p><i>Location: Ballroom 2</i></p> <p>Chair: Amelia Telec, Attorney-General's Department</p> <p>Stephen Bouwhuis, Attorney-General's Department</p> <ul style="list-style-type: none"> > International law enforcement cooperation <p>David Matas</p> <ul style="list-style-type: none"> > The development of international law on organ transplant abuse in an era of rising nationalism <p>Andrew Byrnes, University of New South Wales</p> <ul style="list-style-type: none"> > The Australia-China extradition treaty: Interpretation, obfuscation and politics 	
5.15–6.30 pm	<p>KEYNOTE ADDRESS</p> <p><i>Location: Ballroom 3</i></p> <p>Chair: Tim Stephens, University of Sydney</p> <ul style="list-style-type: none"> > Natasha Affolder, University of British Columbia 	
7.15 pm	<p>CONFERENCE DINNER</p> <p><i>Location: Ballroom 1</i></p> <p>International Law Trivia Competition</p>	

SATURDAY 1 JULY 2017

TIME	SESSION
9 am	WELCOME TEA/COFFEE
9.15–11 am	<div> PANEL 16 Human Rights <i>Location: Ballroom 1</i> Chair: Bridget Lewis, Queensland University of Technology Ben Keith, Office of the Inspector-General of Intelligence and Security, New Zealand <ul style="list-style-type: none"> > International human rights law together or apart: Engagement between national courts and United Nations treaty bodies Annemarie Devereux <ul style="list-style-type: none"> > Promoting international human rights law: Going behind the statist veil Sarah Joseph, Monash University <ul style="list-style-type: none"> > Sport, globalisation and human rights Aruna Sathanapally, 12 Wentworth Selbourne Chambers <ul style="list-style-type: none"> > International law in the hands of others: Human rights in legislative and business decision-making </div> <div> PANEL 17 The South China Sea Arbitration: Implications One Year On <i>Location: Ballroom 3</i> Chair: Alison Pert, University of Sydney Katrina Cooper, Department of Foreign Affairs and Trade <ul style="list-style-type: none"> > Beyond the parties: Wider implications of the South China Sea Arbitration Natalie Klein, Macquarie University <ul style="list-style-type: none"> > The arbitrators' role in the South China Sea Arbitration and beyond Rob McLaughlin, Australian National University <ul style="list-style-type: none"> > On the water: Operational implications of the South China Sea Arbitration </div>
9.15–11 am	PANEL 18 History and Ideology <i>Location: Ballroom 2</i> Chair: Anne Orford, University of Melbourne Holly Cullen , University of Western Australia <ul style="list-style-type: none"> > Wars of words: Freedom of expression and the battle for history Madelaine Chiam , La Trobe University <ul style="list-style-type: none"> > Ways to imagine the world: Radical socialist internationalism in First World War Australia Marco Duranti , University of Sydney <ul style="list-style-type: none"> > The origins of the European human rights system between nationalism and transnationalism Rose Parfitt , University of Melbourne <ul style="list-style-type: none"> > The fascist doctrine of international law
11–11.30 am	MORNING TEA
11.30 am–1 pm	INTERNATIONAL LAW YEAR IN REVIEW <i>Location: Ballroom 1</i> Chair: Rain Liivoja, University of Melbourne <ul style="list-style-type: none"> > Katrina Cooper, Department of Foreign Affairs and Trade, Australia > John Reid, Attorney-General's Department, Australia > Victoria Hallum, Ministry of Foreign Affairs and Trade, New Zealand > Alison Todd, Crown Law Office, New Zealand
1 pm	Close

SPEAKER ABSTRACTS & BIOGRAPHIES

Natasha Affolder

University of British Columbia

Unseen law

In an era when nationalist 'projects' grab the spotlight international law is selectively visible. This keynote session provides an opportunity to interrogate the visible and less visible dimensions of international law and the wider significance of obscured practices, spaces, methodologies and subjects.

There have been many recent attempts to capture, frame and name this 'unseen law': through raising awareness of informal international law-making, in identifying the turn to 'stealthier means of transnational legal ordering', by revealing the 'hidden world' of WTO governance and the 'hidden tools' that populate international investment law, and by unveiling the obscured interactions between private international law and public international law.

This interactive session seeks to provoke a collective conversation about blind spots, inaccessible sources, and the invisible choices that international legal scholars and practitioners routinely make.

Natasha Affolder is Associate Dean Research International and an Associate Professor at the Peter A. Allard School of Law, University of British Columbia. Natasha publishes and lectures widely on diverse aspects of transnational environmental law. Her current research projects involve elucidating the 'unseen' in the practice of transnational environmental contracting and exploring the dangers endemic in the uncritical transplantation of environmental law norms and processes.

Before joining the University of British Columbia, Natasha spent several years in private practice and has worked in various capacities for international non-governmental organization and inter-governmental organizations including Oxfam and the United Nations Environment Program. She is currently a member of the IUCN/Asian Development Bank's team of international trainers developing environmental law capacity in the Asia-Pacific Region.

Natasha's research appears in leading law reviews including the *American Journal of International Law*, the *Leiden Journal of International Law*, the *Chicago Journal of International Law*, and the *McGill Law Journal*. Her academic background includes a doctorate in law from Oxford University where she also completed her BCL and a LLB from the University of Alberta.

Md. Jobair Alam

University of Dhaka

Is EU diminishing the spirit of the principle of non-refoulement?: A study of the EU legal regime and recent practice for the refugees

In this paper a case study of EU legal regime and their practices to the refugees is undertaken to see whether these practices are compatible with international law in the spirit of the principle of non-refoulement.

This paper argues that: (i) the current practices of EU with regard to refugees are contributing to diminish the spirit of the principle as they seem to go against the general principles of protection of human rights, including the refugees; and (ii) the practices are less than satisfactory, even if strictly they are not against international law.

The principles of human rights ought to be given priority as the consequences otherwise could create an unsafe global society where the dignity and moral claims of refugees are subordinated to legalisms. This study takes two examples to establish this argument: (i) the EU practice of extra-territorial border control; and (ii) the engagement of a diametrically opposed move by the EU, where it purports to act as a single zone of protection. In this regard at first sources of international law and EU law are scrutinised and the EU and its Member states obligation under them is explored. This is followed by a discussion of the responses of EU, including the legislation related to Frontex's joint operations to prevent refoulement.

The study concludes that the current practices of the EU have the effect of diminishing the spirit of this principle. Finally a few recommendations are suggested so that the EU practices are better aligned with international law.

Md. Jobair Alam is an Assistant Professor of Law, University of Dhaka, Bangladesh and currently pursuing Ph.D at Macquarie Law School, Macquarie University, Sydney, Australia under the International Macquarie University Research Excellence Scholarship. He obtained LLM in 2010 and LLB (Hons) in 2009 from the Department of Law, University of Dhaka and he has the distinction of being first in both of the examinations. In recognition of these outstanding academic achievements he has been awarded with prestigious gold medals from the Prime Minister, the President and the Chief Justice of Bangladesh.

Mr Alam has also completed his Master in Bioethics and Global Public Health (MBGPH) from the American University of Sovereign Nations (AUSN), Arizona, USA in 2015. Twelve of his research articles have been published in peer reviewed Bangladeshi and international journals. He has also presented at seminars and conferences both

in Bangladesh and abroad including India, Thailand, the Philippines, Malaysia and Australia. His primary areas of interest are international law of refugee; migrants and stateless persons; international human rights law, international criminal law and poverty and development studies in a South Asian context.

Alberto Alvarez-Jimenez

University of Waikato

The ICJ's *Marshall Islands* (mis)judgments on nuclear disarmament

This paper shows how the International Court of Justice bowed to nuclear weapons States in its *Marshall Islands* decisions. There, the Court declared that it lacked jurisdiction, since there was no dispute between the parties in connection with the respondents' alleged reluctance to carry out negotiations aimed at nuclear disarmament, as mandated by Article VI of the Non Proliferation Treaty.

Although there is no question that the interests of nuclear weapons States and their populations must be taken into account, the *Marshall Islands* decisions are a heavy price for small non-nuclear weapons States, whose rights have repeatedly been disregarded by the principal judicial organ of the UN. Worse still, in the *Marshall Islands* judgments the Court sought ways to limit even further its availability to settle controversies related to nuclear disarmament.

The paper illustrates that some judges in the minority rose to the occasion and produced significant dissenting opinions that could lead to a change in jurisprudence in the future. Finally, the paper suggests ways in which non-nuclear weapons States could respond to the *Marshall Islands* decisions in order to induce a change in the Court's approach to nuclear disarmament.

Alberto Alvarez-Jimenez has a transnational identity. He is a national of Colombia and Canada, and lives in New Zealand. He is a senior lecturer at the Faculty of Law of the University of Waikato. Alberto has published widely on public international law, international trade law, and foreign investment law.

His articles have appeared, among others, in *AJIL Unbound*, the *International and Comparative Law Quarterly*, the *European Journal of International Law*, the *Journal of International Economic Law*, the *Journal of World Trade*, the *World Trade Review*, the *Journal of International Dispute Settlement*, and the *Yearbook on International Investment Law and Policy*.

Cynthia Banham

University of Queensland

Q&A: Readers Meet Authors

Dr Cynthia Banham is a UQ Post Doctoral Fellow at the School of Political Science and International Studies, the University of Queensland. She is also a Visitor at the School of Regulation and Global Governance (RegNet) at the Australian National University. She was previously a Post Doctoral Fellow at RegNet's Centre for International Governance and Justice. Her book, *Liberal Democracies and the Torture of Their Citizens*, based on her doctoral thesis, was published by Hart Publishing in 2017.

Cynthia is a lawyer and practised as a solicitor in Sydney, and is a former journalist and was the foreign affairs and defence correspondent for the Sydney Morning Herald. Her current research is on civil society resistance in liberal democracies in a time of rising non-accountability, and focuses on Australia's offshore immigration detention policy.

Vivienne Bath

University of Sydney

Treaty obligations in investment agreements: liberalization and the national interest

A succession of Australian governments have committed to the growth of trade and the encouragement of investment in free trade agreements from 2003 (Singapore) through to 2017.

As part of these agreements, Australia has agreed to investment chapters in which the parties effectively agree to liberalize investment access by listing and delimiting existing restrictions (the non-conforming), and limiting the imposition of future restrictions on investments by the treaty partner, at both a central and regional level. Do these restrictions lead, however, to a more open investment environment? What happens when inbound investment patterns change, domestic politics put additional pressure on decision-makers or other circumstances (such as the privatization of state government assets) arise which were not contemplated or adequately dealt with in the treaties? Does the addition of the concept of 'essential security interests' in relation to foreign investment, for example, allow policy-makers to retreat from earlier commitments and concessions? Certainly an increased emphasis on national security is not distinctive to Australia – it plays an ever greater role in Chinese investment policy, as well as the United States and other states.

This paper looks at Australia's free trade agreements and the pattern of its exceptions to liberalization set out in its non-conforming measures. It will focus on recent policy issues and changes designed to increase regulatory space, with particular emphasis on developments in Australia and abroad in relation to national security and foreign investment.

Vivienne Bath is Professor of Chinese and International Business Law at Sydney Law School, Director of the Centre for Asian and Pacific Law and Director of Research of the China Studies Centre Research Committee at the University of Sydney. Her teaching and research interests are in international business and economic law, private international law and Chinese law.

She has first class honours in Chinese and in law from the Australian National University, and an LLM from Harvard Law School. She has also studied in China and Germany and has extensive professional experience in Sydney, New York and Hong Kong, specializing in international commercial law, foreign investment and commercial transactions in China and the Asian region.

Professor Bath publishes widely in the areas of Chinese law, investment law and international business law. She speaks Chinese (mandarin) and German.

Recent publications include: 'One Belt One Road' and Chinese Investment,' Chapter 8 in Chao, Xi and Wolff, Lutz-Christian (eds), *Legal Dimensions of China's One Belt One Road* (Wolters Kluwer Hong Kong Limited, 2016), pp. 165-217 and 'Overlapping Jurisdiction and the Resolution of Disputes before Chinese and Foreign Courts,' (2015-2016) 17 *Yearbook of International Private Law* 111-150 (November 2016).

Amy Benjamin

Auckland University of Technology Law School

Globalisation: Goodbye and good riddance

Rising nationalist sentiment is indeed threatening the globalisation project, but I would argue that this development is more to be welcomed than regretted.

A candid assessment of globalisation reveals that it has not served humanity well these last thirty years. It has given rise to supra-national political institutions and processes that are marred by democracy and transparency deficits. It has also undermined human security across the board: geo-politically, culturally and economically.

R2P and its first cousin, Democracy Promotion, have been deployed as justifications for disastrous interventions in Ukraine and the Middle East. An 'Open Borders' philosophy that belittles the importance of preserving national cultures and the core values that underlie them has resulted in the imposition of mass immigration on societies ill-prepared to manage it.

A neo-liberal economics philosophy that applauds the mobility of capital whilst ignoring the relative immobility of labour has resulted in de-industrialisation, the financialisation of the global economy, and astronomical levels of world-wide income inequality. It is a cruel irony that a movement that purports to

diminish national sovereignty in the name of protecting and enhancing the lives of individuals treats human beings in key respects like cattle. Nor should we delude ourselves that globalisation has been a force for genuine multilateralism. The BRICS bloc plainly would not have emerged with the vehemence it did had its members been convinced of globalisation's ecumenical intent. In the name of our common humanity it is time to 'turn the clock forward' and revert back to national sovereignty.

Amy was born, raised and educated in the United States (Princeton BA/Yale JD). Following a one-year clerkship with Justice Stephen Breyer, I began my career as a trial lawyer for the US Department of Justice in New York City.

At AUT Amy lectures in public international law and legal philosophy. Her research interests tend to focus on contemporary issues in international law relating to inter-state violence and the status of national sovereignty. Her most recent work – a lengthy study of the state of political secrecy in the United States to be published by William and Mary this year – spans four very distinct disciplines (national security policy, governmental outsourcing, economic technocracy, and international politics) in a bid to uncover heretofore unrecognized connections and parallels. In general her approach is to look for areas where scholarly consensus is broad but shallow and to add depth to the conversation by considering factual claims and narratives that contradict official government accounts.

Samuel Berhanu Woldemariam

University of Newcastle

The United Nations and forced human displacement: An assessment of the multilateral promises of the UN charter

It took the First World War to prompt States to affirm the importance of multilateralism and establish the League of Nations. It then took the Second World War to spur the development of the United Nations (UN), remedy the defects of its predecessor, and strengthen multilateralism. At the heart of the UN's creation are the boldly proclaimed purposes and principles of the UN Charter; saving succeeding generations from the scourge of war, reaffirming faith in fundamental human rights, maintaining international peace and security, achieving international cooperation in solving international problems, and preserving the sovereign equality of States and non-interference in the domestic affairs of States.

However, more than 70 years after its creation, the UN still struggles to keep its promise to 'the peoples of the United Nations.' What is required to reform the modus operandi of the UN and the multilateral response to global problems, including forced human displacement?

In this paper, we explore the past and present engagements of the UN with the issue of forced human displacement. We identify the prevention of forced human displacement as one of the underlying justifications for the UN's establishment and highlight the nexus between the rules of international law, human rights and conflict/disaster prevention within the context of the UN. In this context, we question the adequacy of current international normative frameworks to regulate forced human displacement.

Samuel Berhanu is an Ethiopian lawyer and currently a PhD Candidate at the University of Newcastle, Australia. He graduated with a Bachelor of Laws degree from Adama University in Ethiopia and with a Master of Laws degree from the University of St. Thomas School of Law in Minneapolis, USA. Samuel worked as a legal officer at the International Legal Affairs Department of the Ethiopian Foreign Ministry for three years.

His research focuses on areas of public international law and human rights, particularly diplomatic and consular privileges and immunities, the framework of human rights protection in Africa, peace and security, the African Union, the United Nations, and the relationship between domestic and international law. Samuel is currently conducting PhD research on *Human Displacement: An International Law, Human Rights and Risk Reduction Nexus*.

Michael Bliss

Department of Foreign Affairs & Trade

The International Criminal Court: Major Achievements and Contemporary Challenges

As Legal Adviser (International) and Assistant Secretary, International Law Branch at the Department of Foreign Affairs and Trade, Michael leads Australia's delegation to the ICC Assembly of States Parties.

He has served in a variety of legal and multilateral roles, including as the Political Coordinator of Australia's Security Council team during Australia's 2013–14 term, Director of DFAT's International Law section, and as Legal Adviser at the Australian Permanent Mission to the UN from 2001–2004. He has also served in Jakarta, heading the Embassy's Political and Economic Branch from 2008–12. He has a bachelor's degree in law from UNSW and an LLM from Columbia University, which he attended as a Fulbright Scholar. He has taught as an adjunct lecturer at Columbia University School of Law, and is currently a Visiting Fellow at the Australian National University's Asia-Pacific College of Diplomacy.

Stephen Bouwhuis

Attorney-General's Department

International law enforcement cooperation

At a time when others are writing of the 'Trumpocalypse', post truth politics and 'a crisis of international law' it is useful to take a deep breath and reflect. Whilst the post war order is indeed shifting, part of that shifting involves greater international cooperation between governments and other actors in many areas.

International law enforcement cooperation is one such growth area. Greater cooperation reflects deeper levels of integration between the enforcement agencies of different nations and addresses an ever growing internationalisation of criminal activity. In particular, the number of mutual assistance and extradition requests received by countries grows exponentially and countries routinely engage in transnational and multi-governmental operations designed to combat international crime.

This paper explores law enforcement cooperation as a counterpoint to those who currently angst over the future of international law. It explores the growth in requests for assistance, joint law enforcement operations and the treaty regimes in place to enhance such assistance.

Stephen Bouwhuis jointly leads International Law Enforcement Cooperation in the Attorney-General's Department. The Unit encompasses extradition, international mutual assistance, the international transfer of prisoners, federal parole, and firearms administration and policy.

His previous roles include: Counsel in the WTO Tobacco Plain Packaging dispute; Assistant Secretary of the International Law, Trade and Security Branch in the Attorney-General's Department; Legal Counsel of the Commonwealth Secretariat in London; and Trade Measures Review Officer for Australia. Stephen holds a Masters of Public Administration from the John F. Kennedy School of Government at Harvard and a Masters of International Law from the Australian National University.

Stephen jointly teaches a course on International Law and Australian Government at the Australian National University with Richard Rowe, a former Senior Legal Adviser of the Department of Foreign Affairs and Trade.

Chester Brown

University of Sydney

The Life and Contribution of Sir Elihu Lauterpacht QC to International Law and Australia

In the year 2000 Sir Elihu Lauterpacht QC appeared as counsel for Japan in the very first Annex VII arbitration under the 1982 United Nations Convention on the Law of the Sea, the *Southern Bluefin Tuna Cases*. Australia and New Zealand were the Applicants in those matters. Some fifteen years later he made his last appearance before the ICJ as counsel for Timor-Leste in the *Questions Relating to the Seizure and the Detention of Certain Documents and Data Case*, a case in which Australia was the Respondent. These cases raised novel issues, both jurisdictional and substantive. This presentation will canvass aspects of Sir Elihu's contributions to those cases.

Chester Brown is Professor of International Law and International Arbitration at the University of Sydney Law School, and the Co-Director of the Sydney Centre for International Law. He is also a Barrister at 7 Wentworth Selborne Chambers, Sydney, and an Overseas Associate of Essex Court Chambers, London, and Maxwell Chambers, Singapore. He teaches and researches in the fields of public international law, international dispute settlement, international arbitration, international investment law, and private international law. He also maintains a practice in these fields, and has been involved as counsel in proceedings before the International Court of Justice, the Iran-United States Claims Tribunal, inter-State and investor-State arbitral tribunals, as well as in inter-State conciliation proceedings and international commercial arbitrations. He was educated at the Universities of Melbourne, Oxford, and Cambridge

Henry Burmester AO QC

Australian National University

The Life and Contribution of Sir Elihu Lauterpacht QC to International Law and Australia

Henry Burmester AO QC is an Honorary Professor at the ANU College of Law. He is a former Chief General counsel in AGS, and former head of the Office of International Law in the Australian Attorney-General's Department.

Andrew Byrnes

University of New South Wales

The Australia-China extradition treaty: Interpretation, obfuscation and politics

In 2007 Australia and China signed a bilateral extradition treaty, which significantly expanded the range of offences for which extradition between the two countries was possible. In early 2016. The government submitted the Treaty to JSCOT for its consideration. In December 2016 JSCOT recommended that the government take binding treaty action, despite its concerns about the adequacy of treaty's human rights protections. Implementing regulations were laid before the House of Representatives on 2 March 2017; unless they are disallowed, the Treaty is likely to enter into force in mid-2017.

This paper examines a number of issues to which the Treaty gives rise, in particular whether:

- > Australia is obliged under international law to refuse to return a fugitive to a country where there are substantial grounds for believing they would be subjected to a fundamental denial of fair trial rights because of systemic flaws in the criminal justice system;
- > the Treaty permits Australia to refuse to return fugitives to China if there is a substantial risk that they will suffer such a denial; and, if not,
- > a reliance on the discretion in the *Extradition Act* 1988 to refuse extradition in such a case would be consistent with Australia's obligations under the Treaty.

The paper will also reflect on Australia's inconsistent practice in relation to the inclusion of an 'unjust or oppressive' clause in its extradition arrangements and on JSCOT's role in the review of this treaty in the light of the Committee's record over the last twenty years.

Andrew Byrnes is Professor of Law at the University of New South Wales, Australia, where he is also Chair of the Steering Committee of the Australian Human Rights Centre based in the UNSW Law School, and serves on the Board of the Diplomacy Training Program.

He teaches and writes in the fields of public international law, human rights, and international criminal/humanitarian law. His work includes publications on gender and human rights, national human rights institutions, economic and social rights, peoples' tribunals, and the incorporation of human rights in domestic law. He served as President of the Australian and New Zealand Society of International Law from 2009–13. From November 2012 until September 2014 he was external legal adviser to the Australian Parliamentary Joint Committee on Human Rights.

Bill Campbell PSM QC

Attorney-General's Department

The Life and Contribution of Sir Elihu Lauterpacht QC to International Law and Australia

Bill Campbell PSM QC is General Counsel (International Law), Office of International Law, Attorney-General's Department. He has been an adviser to successive Australian Governments on international law. He graduated in law at the University of Sydney and completed an LLM at University College, London focusing on international law. He was Agent and Counsel for Australia in the *Southern Bluefin Tuna*, *Volga* and *Sub-Regional Fisheries Commission Advisory Opinion Cases* before the International Tribunal for the Law of the Sea, in the Whaling in the Antarctic Case before the International Court of Justice (ICJ) and Counsel in the *Questions Relating to the Seizure and the Detention of Certain Documents and Data Case* before the ICJ and in the Tobacco Plain Packaging Arbitration (*Philip Morris (Asia) v. Australia*). He was, for a period, Vice-President of the Australian and New Zealand Society of International Law.

Emily Camins

University of Western Australia

Reparations and the foundations of IHL: Majority might or individual right?

In 2006 Theodor Meron observed that 'the humanisation of public international law under the impact of human rights has shifted its focus above all from State-centred to individual-centred'. This trend is evident in arguments advocating an emerging right of individuals to obtain reparations for violations of international humanitarian law (IHL). These arguments frequently draw analogies between IHL and human rights law (HRL) to justify 'individualistic' modes of reasoning. In an effort to obtain recompense for victims of violations of IHL, fundamental differences between these bodies of law are often overlooked.

One key distinction between IHL and HRL is the theoretical relationship between the individual and the state. While it is now accepted that HRL continues to apply during armed conflict, it is essentially geared to apply during peace. The *raison d'être* of IHL, by contrast, is to regulate the conduct of armed conflict. In light of this, this paper will argue that the theoretical relationship between the individual and the State under IHL is fundamentally different. This renders analogy with HRL problematic in some situations, including in respect of individual reparations. It may, however, also mean that IHL is well adapted to weather the storm of rising nationalism.

Taking into account assumptions and forces underpinning IHL, this paper considers how we should seek to interpret and implement IHL in today's world in order to protect victims of war, maintain relevance and limit the law's 'credibility gap'.

Emily Camins (BA LLB (Hons)) is a PhD candidate at the University of Western Australia (UWA), where she is also a sessional lecturer and unit coordinator in international humanitarian law (IHL). Her PhD project examines the potential right of individuals to obtain reparations for violations of IHL. Emily has previously worked as a solicitor at the State Solicitor's Office in WA, and as the IHL Officer at Australian Red Cross (WA). She is currently Chair of the Australian Red Cross IHL Committee in WA. Emily has published several articles on IHL-related topics, the most recent of which (entitled 'Needs or Rights? Exploring the limitations of individual reparations for violations of international humanitarian law' (2016) 10 *International Journal of Transitional Justice* 126–145), won the UWA Best Publication Prize 2016 in the field of Social Science. Emily holds an Australian Postgraduate Award.

Andrea Carcano

University of Milano-Bicocca

Reflections on the vulnerability of the (democratic) state in the twenty-first century

Unlike international organisations, the state is not only a legal person, it is also a *patria* (homeland). In several States, there has been a symbiosis between the nation and the State resulting in a 'sense of communal identity'. And yet, to many citizens in the Western world the State is a disappointing institution and the perception of loss of 'democratic governance' is growing. Where I see a chink in the armour's of the State is in its difficulty to function as a democratic governance institution. Developed States may fail their citizens and loose legitimacy. Globalization has weakened States increasing wealth disparities. Huge (and increasing) public debts paralyze States and the malfunctioning of institutions alienate citizens and make public resources prey to special interests.

This paper seeks to understand the role (if any) international law could play in the context of these processes. It defends the role of the State and makes three claims. First, that the State, as conceived in the Western world, albeit militarily powerful, is vulnerable. Second that, in the absence of better alternatives, the State should be strengthened through good governance. Third, that international law provides justifications and constraints to shape positively the domestic conduct of States. Embracing a cosmopolitan view of international law recasting States as trustees of humanity—as Professor Benvenisti has recently attempted—may not help, however. It would risk overburdening an already frail institution. A

parochial yet enlightened mindset could better contribute to mend the growing rift between the State and the nation.

Andrea Carcano is an Associate Professor of International Law and an Adjunct Professor at the Faculty of Law of the University of Milano-Bicocca (Italy). Previously, he was an Associate and a Legal Officer with the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia. He holds a doctorate in international law from the University of Milan and advanced degrees from New York University School of Law and from the Graduate Institute of International Studies and Development in Geneva. He is the author of several publications in the field of public international law, including *The Transformation of Occupied Territory in International Law* (Brill, Nijhoff 2015).

Madelaine Chiam

La Trobe Law School

Ways to imagine the world: Radical socialist internationalism in First World War Australia

This paper argues that we can use this moment of crisis in the international legal order – one captured by the ANZSIL Call for Papers – as a provocation to re-imagine the world; to remember some of the multiple forms of internationalism that proliferated before the dominance of modern liberal international law. This paper presents a story of one of those ways of imagining the world – the radical socialist internationalism of the Australian Industrial Workers of the World (IWW).

One of the few groups in Australia to oppose the War from its inception, IWW members were cast by Billy Hughes' government as enemies of Australia and of the Empire, embodying all that was wrong with those opposed to the War. And yet, the IWW's radical socialist internationalism – one that rejected ties of nation and of race – was a potent enough force that the Hughes government responded by banning the organisation. This paper tells the story of the IWW's internationalism and resistance through a reading of an anti-war poster – the 'To Arms!' poster – created by Tom Barker, a leader of the Australian IWW. Together, the creation of and response to the poster point to some of the ideas and languages that have been lost from the current international legal order. This paper suggests that now may be a time in which to recognise ourselves in other forms of internationalism.

Madelaine Chiam is a lecturer in the La Trobe Law School. She researches primarily in public international law and is particularly interested in the histories of international law, the relationships between the global and the local, and the role of international law in Australian life. Madelaine's most recent project – her PhD – examined the use of

international legal language in the Australian public debates over Australia's participation in the 2003 Iraq War, the Vietnam War and the First World War.

Madelaine is a regular member of the faculty of the Harvard Law School Institute for Global Law and Policy Workshop, where she has taught courses in comparative international law and human rights. Prior to joining La Trobe, Madelaine was a Senior Fellow and PhD candidate at the Melbourne Law School. She has been a Research Fellow and Lecturer at the Australian National University College of Law and a lawyer in commercial practice in Melbourne.

Katrina Cooper

Department of Foreign Affairs and Trade

Beyond the parties: Wider implications of the South China Sea Arbitration

The South China Sea Arbitration ruling is binding only on the parties, China and the Philippines. However, it arguably has wider relevance as a decision of an international arbitral body. The decision challenges key aspects of China's long-standing justification for its South China Sea claims. The ruling therefore has the potential to influence the key relationships of the region, with particular ramifications for claimant states. For example, the Award arguably closes loopholes for States to make maritime claims that fall outside the scope of UNCLOS. However, the behaviour of the parties following the decision cannot be ignored in this calculus. The Philippines' approach to the decision has been muted while China has consistently and publically rejected the validity of the ruling. The decision's utility as a political tool may be diminished by the parties' responses to the award.

In this context, it is important to look beyond the issue of mere enforceability of the Award against the parties to it. This paper argues that the Award may yet provide a useful basis for negotiations between the parties and claimant states more broadly. The paper will also examine new jurisprudence in the Award on the obligations of States with respect to the protection and preservation of the marine environment including the necessary level of 'due diligence'. These aspects could have significant ramifications for international law and UNCLOS implementation.

Katrina Cooper is the Senior Legal Adviser at the Department of Foreign Affairs and Trade. She leads a team of 80 to provide advice ministers and government agencies and ministers on a diverse range of matters including international law, treaties, sanctions, consular law and passports law. Her team includes Australia's sanctions regulator and Treaties Secretariat.

Ms Cooper regularly leads Australian delegations overseas, including to the annual meeting of the parties to

the Antarctic Treaty and to International Law Week at the UN in New York. She also led the Australian delegation to the 2015 International Conference of the Red Cross and Red Crescent.

From 2008–12 she was Australia's Ambassador to Mexico, with non-resident accreditation to Costa Rica, Cuba, Guatemala, Honduras, Nicaragua, the Dominican Republic, El Salvador and Panama.

Prior to her appointment as Ambassador, Ms Cooper was the Legal Adviser for both international and domestic law.

From 1999–2000, she was the Director of the Chemical and Biological Weapons Section and Head of the Biological Disarmament Unit. In the latter role she led the Australian team at negotiations on an ad hoc protocol to the Biological Weapons Convention in Geneva.

Ms Cooper is an Australian legal practitioner, admitted to the Supreme Court of the ACT.

Monique Cormier

University of Melbourne

Pursuing negotiations in good faith? Australia's reliance on extended nuclear deterrence, its obligations under the NPT and its opposition to a ban treaty.

Over the last few years, as part of the international efforts to achieve nuclear disarmament, civil society organizations have put pressure on the Australian government to abandon its policy of relying on US extended nuclear deterrence and suggested that Australia may be legally obliged to give up this policy pursuant to the nuclear disarmament obligations in the Nuclear Non-Proliferation Treaty ('NPT'). To date the Australian government has refused to entertain the idea of abandoning its reliance on US nuclear protection. Australia has claimed that its extended nuclear deterrence policy is not in conflict with its obligation under Article VI of the NPT to 'pursue negotiations in good faith on effective measures relating to ... nuclear disarmament'. Although the policy of extended nuclear deterrence is *prima facie* not necessarily incompatible with disarmament, there are ways in which the policy could come into conflict with the Article VI obligation.

In March 2017, the UN will convene negotiations for a treaty to prohibit nuclear weapons. Australia has continually opposed a ban treaty and justifies its position by arguing that a blanket prohibition on nuclear weapons is not an effective mechanism for disarmament. Given that Australia has taken the unprecedented step of boycotting the upcoming UN conference, my paper will explore whether Australia has reached a point where it can no longer claim that it is pursuing disarmament negotiations in good faith.

Monique is a PhD candidate and Research Fellow at Melbourne Law School, where her primary research interests include jurisdiction, defences and immunities in international criminal law. Monique is also Co-Director of the non-profit public international law consulting partnership *Lex Specialis* which provides research and advice on contemporary issues of public international law.

Monique has a Bachelor of International Studies and a Bachelor of Laws (Hons I) from the University of Adelaide, and a Master of Laws from Columbia University.

Alberto Costi

Victoria University of Wellington

Maintaining sovereignty and self-determination in the age of climate change

Sea level rise, plus a range of compounding environmental changes, may lead to the entire territories of certain low-lying States becoming uninhabitable. This is markedly different from the situations in other countries where areas may become uninhabitable, but only a relatively small portion of the population is forced to relocate domestically or across borders.

Amongst other things, at stake is the legal personality of the States themselves; a subject currently being examined by the International Law Association. Some of the extant literature suggests that the extinguishment of statehood is *a fait accompli* at the loss of any Montevideo criterion of statehood. However, as other authors have pointed out, there is a presumption that the State persists even in the face of the very extensive diminishment of any of the Montevideo criteria. Additionally, there are creative ways of ensuring that those criteria endure *ex situ*, which have thus far not been explored.

This paper will examine the Montevideo criteria and how they and the legal personality of statehood might be maintained without the drastic and probably unrealistic step of requiring another State to cede territory.

Alberto Costi is an Associate Professor of Law at Victoria University of Wellington. His teaching and research interests include international law, EU law and comparative law, with a particular focus on the law of armed conflict, human rights, national security issues, and climate change, areas in which he has published, spoken at international conferences, commented in the media and before parliamentary committees, and provided legal advice to governments and other organisations.

He is a member of the New Zealand International Humanitarian Law Committee and the Executive Council of ANZSIL, serves as Secretary-General of the International Law Association New Zealand Branch and Vice-President of the New Zealand Association for Comparative Law, and sits on the editorial board of seven academic journals.

He currently works with Nathan Ross on a book project on climate change impacts on statehood for atoll nations and the role of New Zealand, funded by a generous grant from the New Zealand Law Foundation.

Ed Couzens

University of Sydney

Be careful of what you want: You might just get it!

Between 2010 and 2014 Australia litigated against Japan in the International Court of Justice (ICJ) on the issue of whaling in the Antarctic, with New Zealand intervening in support of Australia, and at the end of March 2014 judgment was given in Australia and New Zealand's favour. In many ways, this was an important victory for those states which oppose commercial whaling. However, it can be said that while Australia won 'on fact', Japan won 'in law'; and the victory is turning out to be a 'double-edged sword'. While Japan has been 'chastened', and numbers of whales taken by Japan in the Antarctic in the last two whaling seasons (under its new program) have been considerably below those regularly taken under the previous program, in many ways the judgment has been a 'boon' to Japan as it is now operating its research whaling programs on a far firmer legal basis than before.

This arguably shows that the real 'winner' of litigation might be not the party in whose favour judgment is given, but the party which best subsequently turns the judgment to its advantage. At the last two meetings of the International Whaling Commission (2014 and 2016) Australia and New Zealand have made efforts to try to bring scientific permit whaling under greater control by that body, but these efforts have so far failed and will almost certainly continue to fail in the years to come. Implications for the future will be considered in the paper.

Ed Couzens has been an Associate Professor in the University of Sydney Law School since early 2015; before that he lectured for 14 years at the University of KwaZulu-Natal, in Durban, South Africa. He currently lectures in international law and environmental law, and has particular research interests in wildlife law and the protection of biodiversity generally.

He is the author of *Whales and Elephants in International Conservation Law and Politics* (Earthscan/Routledge, 2014) and has attended five meetings of the International Whaling Commission (between 2007–16) as a member of the South Africa delegation.

Holly Cullen

University of Western Australia

Wars of words: Freedom of expression and the battle for history

International human rights law is now a battleground where groups fight for their version of history, often based on competing nationalisms. Increasingly, human rights treaty bodies and courts are called on to rule on how states regulate the discussion of historical events. Disputes challenge treaty bodies and courts to draw the line between protection of freedom of expression, including the freedom for academics, journalists and artists to pursue their professions, and protection of marginalised groups from racial hatred. Particularly in Europe, the question of how far states may go in regulating or prohibiting 'denial' speech has come up with increasing frequency, often reflecting nationalist tensions.

Some governments, notably Russia and Turkey, have used the language of protecting against racial hatred or denial of historical facts in legislation which has the effect of insulating the government or the state from criticism. In such cases, freedom of expression is likely to be disproportionately hindered. Other European governments have adopted legislation banning the denial of various genocides, often where the legislating state was not involved in the relevant conflicts.

This paper will analyse how international human rights law has interpreted the scope of the internationally guaranteed right to freedom of expression in the context of disputes over history. It will consider whether treaty bodies and courts are able to draw appropriate distinctions between attempts to restrict free debate about historical events and measures to protect groups who are the objects of race-hate 'denial' speech.

Holly Cullen is an Adjunct Professor of Law at the University of Western Australia, having been Professor of Law from 2010–2016. Previously, she was Reader in Law at Durham University and Deputy Director of the Durham European Law Institute from 1998–06, also serving as Acting Director in 2003–04. She is the author of *The Role of International Law in the Elimination of Child Labor* (Brill, 2007) and numerous articles on international human rights law, international organizations and theory of international law.

Her research on child labor and on legal reasoning in economic and social rights cases was funded by the United Kingdom Arts and Humanities Research Council. She was a member of the International Law Association's research committee on Non-State Actors in International Law and of the Advisory Group for Child Labor Research Initiative at the University of Iowa Human Rights Center. She is co-editor, with Joanna Harrington and Catherine Renshaw, of the conference proceedings of the 2014 Four Societies Conference, published by Cambridge University Press in 2017 as *Experts, Networks and International Law*.

Shireen Daft

Macquarie University

Whither justice for former child soldiers? Complex perpetrators and the International Criminal Court

The International Criminal Court (ICC) was introduced to provide global leadership and rise above nationalistic concerns when it came to the pursuit of justice in highly complex situations and investigations. However, with its selective prosecutorial policies and the focus on the 'worst of the worst' of alleged perpetrators, the Court may not have anticipated, and may not be prepared, to deal with instances of complex perpetrators.

Dominic Ongwen, whose trial is currently underway before the court is one such example. Dominic Ongwen is charged with a host of crimes against humanity and war crimes, focusing on acts of brutality against civilian populations in Uganda, and his role as a Commander within the Lord's Resistance Army (LRA). Indeed some of the worst violence committed by the LRA has been attributed to Ongwen's leadership. Yet this is not the whole picture. Dominic Ongwen has been part of the LRA for 25 years, having been abducted and forcibly recruited at a young age and having spent much of his childhood as a child soldier. He thus presents a complex case of a victim-perpetrator and confronting questions about what, precisely, the role of international criminal justice is in such cases.

This paper will explore some of the confronting questions that this case poses for the ICC, in terms of framing criminal responsibility, moral culpability, notions of justice and indeed, the very purpose of the Court.

Dr Shireen Daft is an Associate Lecturer at Macquarie Law School, and the Deputy Director for the Centre of Environmental Law. She received her BA LLB (Hons) from Macquarie University, and her LLM specialising in Human Rights and Social Justice from the University of New South Wales. She has taught in areas of international law, criminal justice and foundations of law. Her research interests are international law, non-state actors and international law; international peace and security; human security; children and armed conflict; international humanitarian law; criminal justice (domestic, comparative and international); human rights and social justice, including environmental justice.

Her forthcoming book, entitled *The Relationship between Human Security Discourse and International Law* (Routledge, 2017) explores the ways in which human security discourse challenges, and is challenged by, the traditional structuring of public international law. She is currently examining the intersection of international humanitarian law, human rights law and criminal justice in the international community's response to child soldiers.

Shahram Dana

Griffith University

Enabler responsibility: Towards a new understanding of atrocity crimes in the extant international legal order

This paper advances an original theory for conceptualizing responsibility for atrocity crimes that redirects the debate regarding the politicalisation of international criminal justice. For now, I call this theory 'enabler responsibility'. The theory speaks to the role of international criminal justice mechanisms within an international legal order that is experiencing necessary upheavals in order to free itself of its Westphalian nationalist orientation.

The theory also bridges the gap between social narratives and judicial narratives about war, justice, and responsibility for mass atrocities. Here, I engage with the cases and jurisprudence of the Special Court for Sierra Leone (SCSL) as a case study to illustrate the operation and application of the 'enabler responsibility' theory and to develop an innovative sentencing framework for atrocity crimes.

Shahram Dana is a public intellectual, academic, trial lawyer, and advisor engaged a broad range of scholarly and professional activities in the areas of atrocity crimes, international criminal justice, international law, and transitional justice. Shahram's research focuses on the law and politics of international criminal justice mechanisms in protecting human rights and shaping world order and international law. He is an internationally recognized expert for his scholarship on international criminal justice and international criminal courts. His article *Beyond Retroactivity to Realizing Justice* received wide acclaim for advancing the normative foundation of fundamental principles of criminal law in international law. He has published articles on the International Criminal Court, the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia, and the Special Court for Sierra Leone.

His op-ed 'Why Donald is the first of many Trumps' was published a few days before the 2016 US Presidential Election. Shahram is a regular commentator in Australian news media on matters and events concerning national security, international law, criminal law, US Constitutional Law and Presidential powers. Shahram's scholarship is informed by his work as an Associate Legal Officer at the United Nations; as a Commissioner investigating torture by police; and as a trial lawyer for indigent persons. He has held academic posts in North America, Europe, and Australia. The Hague Academy for Judicial Expertise invited Shahram to conduct training courses for high-level government officials, lawmakers, judges, and prosecutors from countries in Asia and Europe and the International

Law Initiative invited him to be the lead facilitator in a training program for legal professionals from more than twenty African countries at the African Center for Legal Excellence in Uganda.

Dominique De Stoop

Forty Years of the 1977 Additional Protocols

Dr Dominique De Stoop was Senior Assistant Secretary in charge of the International and General Legal Branch of the Department of Foreign Affairs and Trade (DFAT). He was appointed Counsellor in London and Ambassador in Latin America. He represented Australia at a number of international treaty negotiating conferences, including as Deputy Leader of the Australian Delegation to the 1976/77 negotiations of the Additional Protocols to the Geneva Conventions. He has chaired international meetings in London and in the Sixth Committee of the UN, and has held part-time academic positions at the Law Schools of the ANU and Melbourne University. Since his retirement from DFAT, Dr De Stoop has been Team Leader in various EU, UNDP and AusAID trade and law reform assignments in a number of countries.

Annemarie Devereux

Promoting international human rights law: Going behind the statist veil.

Implicit in the title of the 2017 Conference Agenda, Sustaining the International Legal Order in an Era of Rising Nationalism, appears to be a fear of international law being portrayed as foreign/damaging, irrelevant or immaterial in the pursuit of national objectives.

In responding to this Agenda, this paper will explore how attitudes to international human rights law norms develop within a State. Using examples drawn from practice, particularly in advising and training government officials on international human rights law in a variety of national contexts, this paper will highlight the range of actors, processes, pressures and interactions within States that impact on attitudes towards IHRL and whether actors abide by or act inconsistently with international law norms.

It will explore common areas of resistance and receptiveness encountered in the international/national dialogue, and highlight some of the individual and institutional factors which appear to be of particular importance in shaping behaviour. Drawing on insights from the 'compliance' and 'accountability' discourses within international law, this paper suggests that further reflection on dynamics 'behind the Statist veil' is vital to assist international lawyers develop practical and well-tailored strategies to encourage action consistent with international law.

Dr Annemarie Devereux is an international lawyer and constitutional lawyer whose practice has included working as an Assistant Secretary with the Office of International Law, federal Attorney-General's Department and working with the United Nations. Her roles have included working as a legal advisor in 3 peacekeeping missions in Timor Leste (UNTAET, UNMISSET, UNOTIL), with the Security Council's Counter-Terrorism Committee Executive Directorate (CTED), heading up the Legal Unit for OHCHR-Nepal, working on global rule of law issues with the Office of the High Commissioner for Human Rights (OHCHR) in Geneva, and working on several United Nations International Commissions of Inquiry/Fact-finding missions, including most recently as the Coordinator for the OHCHR Investigation on Libya. Alongside her legal practice, she has continued to research and lecture in the fields of international law, constitutional law and human rights.

Michael Douglas

University of Sydney

The commercial exceptions to foreign state immunity

There is a general principle that foreign States are immune to the jurisdiction of domestic courts. This foreign State immunity exists at the intersection of public international law and private international law: it is a doctrine of international law which is applied in accordance with Australian domestic law in Australian courts. The general principle is not absolute. For example, a foreign State is not immune in a proceeding in so far as the proceeding concerns a commercial transaction.

Further, foreign States are not immune from execution in respect of commercial property. In an environment where sovereign States often engage in commercial dealings with private actors, these 'commercial exceptions' are important. However, the distinction between the commercial and the non-commercial may be difficult to pin down. This paper will articulate that distinction, and evaluate the ongoing utility of the commercial transactions exceptions in light of the High Court's decision in *Firebird Global Master Fund II Ltd v Republic of Nauru* (2015) 90 ALJR 228; [2015] HCA 43.

Michael Douglas is a Lecturer at the University of Sydney Law School, where he teaches and researches private international law. He is pursuing a PhD under the supervision of Professor David Rolph and Professor William Gummow. Michael began his career as a litigation lawyer. He is a UWA Fogarty Foundation Scholar, and holds degrees in law, philosophy and business administration from the University of Western Australia. He is a director of the UNCITRAL National Coordination Committee for Australia.

Christian Downie

University of New South Wales

Can the Centre Hold? Nationalist (and Other) Challenges to the Paris Agreement on Climate Change

The Paris Agreement on Climate Change entered into force on 4 November 2016, less than a year after it was concluded. The Paris Agreement's rapid entry into force and its extensive ratification signals a new global commitment to addressing climate change. However, even at the very earliest stages of its operation, the Paris Agreement faces several major challenges. These include nationalist government policies which would significantly undermine a collective response to climate change. This is exemplified by possible United States withdrawal from the Paris Agreement (and the United Nations Framework Convention on Climate Change) under the Trump Administration. Bringing together experts in international climate change law and climate diplomacy, this panel will identify and consider the main challenges to the Paris Agreement in the formative stage of its implementation, and assess the legal and policy implications of possible United States exit from the climate regime.

Dr Christian Downie is a Vice Chancellor's Postdoctoral Research Fellow at the University of New South Wales and a Visiting Fellow at the Australian National University. His research focusses on global energy and climate policy and the role different state and non-state actors play at different levels to shape global outcomes. He works at the intersection of environmental politics, global governance, regulation and negotiation studies.

Christian's research aims to improve international outcomes on two of the most critical challenges facing the world; climate change and energy security, and in doing so provide strategies for policymakers and diplomats to influence global outcomes. Christian is the author of *The Politics of Climate Change Negotiations*, which was published in 2014.

Marco Duranti

University of Sydney

The origins of the European human rights system between nationalism and transnationalism

It is widely assumed that the European Convention on Human Rights was conceived as no more than a straightforward application of the standards enshrined in the Universal Declaration of Human Rights to the space of Western Europe. This paper argues that the European human rights system

was not a simple byproduct of intergovernmental activity at the global level. It traces the development of parallel, often conflicting postwar human rights initiatives. Whereas the UDHR was largely the creation of government-appointed UN delegates operating under the supervision of foreign ministries, the outlines of the ECHR were determined before the start of diplomatic negotiations by conservative nationalists operating through transnational movements independent of governments.

On the one hand, these conservatives mapped the language of liberal and romantic nationalism onto their internationalism, casting human rights as historical European values, the birthright of a delimited cultural community of Christian European peoples that derived from their nationalist imagination.

On the other, a transnational perspective reveals a more complex picture of the ECHR's origins than an intergovernmental one, suggesting that anti-communism and anti-fascism were not the sole motives behind the creation of the European human rights system. Existing scholarship has overlooked that, while the UDHR was a social democratic text with an unprecedented universal application that emerged from the revolutionary rights tradition, the ECHR was a product of a distinctly conservative nationalist worldview. The UDHR and ECHR should be understood as counter projects as much as sister projects.

Marco Duranti is Lecturer in Modern European and International History at the University of Sydney. His work approaches Western European history from an imperial, transatlantic, and transnational perspective. He has published on the history of human rights and the European project, as well as the history of internationalism, international law and international organizations more broadly.

He has recently published his first monograph, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (New York: Oxford University Press, 2017). The book explores the cultural, intellectual, and political foundations of the European Court of Human Rights and European Union over the first six decades of the twentieth century.

Colonel Lisa Ferris

New Zealand Defence Forces

Forty Years of the 1977 Additional Protocols

Forty years ago, on 11 June 1977, the plenipotentiaries of over a hundred States and several national liberation movements signed the Final Act of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. The adoption of the

Protocols is a milestone in the long history of efforts to ensure better protection for the individual in armed conflict and represent a considerable advance in the codification of principles of humanitarian law recognised by all peoples.

Both Protocols spell out fundamental guarantees for all persons in the power of a party to an armed conflict. The Additional Protocols also codify and develop rules on the conduct of hostilities, striking a careful balance between what is militarily necessary to overcome the adversary and limitations on warfare for humanitarian reasons. The Protocols reaffirm the respect due to a disarmed enemy and to persons taking no part in hostilities. They also give those who come to the assistance of victims more effective basis for their action, which is so vitally necessary.

The Additional Protocols developed as a response to changes in warfare, most notably the proliferation of internal armed conflicts and the increased suffering of civilians in armed conflict due in part to developments in weapon technology. Both trends continue to be observed in contemporary armed conflict. Yet the question still arises frequently: are the Additional Protocols relevant in contemporary wars?

A 2016 survey conducted by the ICRC of 17,000 people from conflict-affected areas, P5 countries and Switzerland shows overwhelming support for the belief that wars should have limits, but also reveals worrying views on torture and civilian casualties and suffering. These findings are both encouraging and disconcerting, and demonstrate the need for continued debate about IHL, involving government authorities, humanitarians and the general public.

Anniversaries are an opportunity to reflect on continuity and change. On the occasion of the 40th anniversary of the Additional Protocols, this panel will ask a selection of experts to look back on the conflicts of the last past four decades and reflect on the relevance of these instruments in a much-changed international legal order. Participants will adopt a long-term perspective with the aim of bringing attention to the continued significance of the Additional Protocols to the challenges of contemporary conflicts.

Colonel Ferris has held many legal roles within the New Zealand Defence Forces, including Legal Staff Officer Army Training Group, Deputy Chief Legal Advisor Joint Forces New Zealand, Assistant Director Legal Services – North Region Legal Office and Deputy Director Personnel Law. In 2013 Colonel Ferris was promoted to Lieutenant Colonel and appointed as the Deputy Director Operations Law and the Chief of Staff for Defence Legal Services.

Colonel Ferris also has extensive operational experience, including in the Arabian Gulf, Afghanistan and Iraq. Colonel Ferris holds a Master of Laws and a Bachelor of Commerce and Administration from Victoria University. She completed United States Marine Corps Staff College in 2014.

Caroline Foster

University of Auckland

Resetting the global? Obligations of conduct and our shared environmental concerns

This paper evaluates developments in international environmental law cases in light of Bruno Latour's perspectives on the global, the local, and the Earth. The paper considers recent remarks by the International Court of Justice, the International Tribunal for the Law of the Sea, and the Appellate Body of the World Trade Organisation. All of these standing courts have indicated how international environmental rules and principles applicable in the cases before them may apply to areas of shared environmental concern.

For instance, international law will require environment risk assessments where significant harm may be caused beyond national borders, and the general environmental obligations in the UN Convention on the Law of the Sea have been relied on in establishing obligations to take the necessary measures 'to ensure' sustainable fishing and protection of the marine environment. Do these advances contribute to 'resetting' the concept of the global in Latour's terms?

At the same time, the ICJ and the ITLOS have made clear that many of these obligations are to be considered only obligations of conduct, rather than obligations of result. States must exercise due diligence in their efforts to fulfil them – achieving the desired result is not required. The turn to obligations of conduct recognises that there are many more actors in the international sphere than the State, and that the State's control over many of them may only be partial. Is this consistent with a 'reset' of the global? Or do these developments rather expose our vulnerability in a world caught in the knot of Latour's homo economicus, where ultimate control of harmful activity is being declared potentially impossible?

Dr Caroline Foster is an Associate Professor at the University of Auckland, currently researching aspects of the international judicial and arbitral function in the twenty-first century, supported by a grant from the Marsden Council of the Royal Society of New Zealand. This work looks into the adjudicatory mechanisms, techniques and concepts being employed by international courts and tribunals, particularly in cases determining States' regulatory powers and obligations in sensitive areas such as where economic interests overlap with environmental concerns.

The project investigates whether international courts and tribunals may in effect be involved in redesigning the interface between national and domestic regulatory orders, and between public and private power in the international arena – that is to say, in the restructuring of global legal relations. Caroline was previously employed by the New

Zealand Ministry of Foreign Affairs and Trade (1991-1999). Publications include: 'A New Stratosphere? Investment Treaty Arbitration as 'Internationalized Public Law'' (2015) 64(2) *International and Comparative Law Quarterly* 461-485; 'Diminished Ambitions? Public International Legal Authority in the Transnational Economic Era' (2014) 17(2) *Journal of International Economic Law*, 440 and *Science and the Precautionary Principle in International Courts and Tribunals: Expert Evidence, Burden of Proof and Finality* (Cambridge University Press 2011) – cited by Judges Simma and Al-Khasawneh in the Case Concerning Pulp Mills (*Argentina v Uruguay*).

Jai Galliot

University of New South Wales

Forty Years of the 1977 Additional Protocols

Dr Galliot is a defence analyst and expert on the ethical, legal and political issues associated with the employment of emerging technologies, including autonomous vehicles, cyber systems and soldier augmentation technologies as they affect Australia and the world abroad. Dr Galliot has received competitive research funding from the Commonwealth Government, Defence Science and Technology Organisation, and the Australian Army.

He served briefly as an officer of the Royal Australian Navy prior to commencing his academic career and is an associate of the Consortium on Emerging Technologies, Military Operations, and National Security (CETMONS), the Consortium for Robotics and Unmanned Systems Education and Research (CRUSER) and is a member of the Institute for Ethics and Emerging Technologies (IET). He has spoken on defence and strategic studies for ABC Television, BBC World Service, Triple M, and The Wire. He has also written for The Sydney Morning Herald & The Canberra Times.

Eugenio Gomez-Chico

Australian National University

Towards an International Investment Court: Challenges of reform

The current ad hoc mechanisms for investor-state dispute settlement respond to a reality that no longer stands. With more than 3200 international investment agreements developing since the 1960s, the current highly fragmented system is criticized for its lack of accountability, legitimacy and transparency. ISDS arbitral tribunals have been said to be unaccountable panels likely to award companies unreasonably large awards, leaving governments no chance to appeal. A system created to provide protections for investors

is now deemed to be excessive to the detriment of states. The criticisms might be exaggerated, but they have triggered a debate on reform and opportunities for improvement.

The European Union has proposed in recent treaties a new Investment Court system, with the idea of transitioning towards it in the future, eventually reaching the creation of an International Investment Court. The United Nations Commission on International Trade Law (UNCITRAL) is analysing options for reform as well, debating whether the establishment of an Appellate Body will suffice, and how this could be effected.

The viability of the models and their benefits over one another are yet to be established, but they both face the same challenge. How to reach a multilateral reform in a system with such a wide array of decentralised actors and interests that are in constant flux? The aim of this paper is to map those actors and interests, and determine how they could evolve in ways politically acceptable and beneficial for the different stakeholders.

Eugenio Gomez-Chico is a Yale Fox International Fellow at the School of Regulation and Global Governance (RegNet) of the Australian National University, where he is exploring the evolution of investment dispute settlement procedures.

He is a graduate from Yale Law School Master of Laws, and graduated with honours from the Instituto Tecnológico Autónomo de México (ITAM), where he received a BA in Law and a BA in International Relations.

His research has been focused on issues of international law and adjudication, as well as judicial globalization. Outside academia Eugenio has experience in the public sector in Mexico, having worked for the Supreme Court of Mexico in the office of international affairs. Eugenio is member of the Mexican Bar, the American Society of International Law, and the European Society of International Law.

Victoria Hallum

New Zealand Ministry of Foreign Affairs and Trade

Year in Review

Victoria Hallum is the currently International Legal Adviser of the New Zealand Ministry of Foreign Affairs and Trade, where she leads the team responsible for providing advice to the New Zealand government on all aspect of international law including trade, environment and natural resources and peace and security issues. Career highlights include appearing as counsel in the ICJ Nuclear Tests case in 1995 and serving as chief legal counsel for the New Zealand-China FTA negotiations. Victoria has had

diplomatic postings to the UN in New York and to Paris where she was New Zealand Permanent Representative to UNESCO, as well as deputy head of mission of the New Zealand Embassy to France. Victoria has an LLM in Public International Law from the London School of Economics and LLM from Victoria University of Wellington.

Susan Harris Rimmer

Griffith University

Sexing impunity: Farkhunda's case and the fragility of women's rights in transitions

This paper examines the gender politics of transitions and argues for a feminist reimagining of impunity norms.

Using the case-study of Farkhunda Malikzada, murdered in Kabul in March 2015, I argue that both current 'peace' versus 'justice' debates are based on the absence and silence of women, and many other social groups such as youth, ethnic minorities, people with disabilities and others. So-called 'realist' international relations theorists typically focus only on elite men as the subject of discourse and do not describe the reality of women's lives or the complexity of gender roles, (Pettman, 1996: 3) but for much the same reasons the gendered nature of international law means that it too will be resistant to the lived experience of women (Charlesworth and Chinkin, 2006).

This paper examines Bassiouni's ideas of 'tradeability' of rights during transition, but is more concerned about regression or progression of group status against a wide range of indicators associated with 'ordinary', everyday law rather than achieving formal justice for extraordinary crimes.

'Ordinary' laws relating to personal status can be flashpoints in a transition. Women's status and use of public spaces can be traded between male elite interest groups, as a values statement and as a way of demonstrating control when social boundaries are changing. Feminist critiques of impunity norms can illuminate this dynamic and find new points of entry into some of the intransigent debates around post-conflict justice.

Susan Harris Rimmer is an Australian Research Council Future Fellow appointed as Associate Professor to Griffith University Law School in July 2015. Susan is an expert in women's rights and international law, and has a track record in influencing government to adopt progressive policy ideas.

She is the author of *Gender and Transitional Justice: The Women of East Timor* (Routledge 2010) and over 50 academic works. She is a National Board member of the International Women's Development Agency.

Alan Hemmings

University of Canterbury

The Future of Antarctic Regionalism in an Age of Rising Nationalism

The contribution considers nationalism in the present Antarctic and Antarctic politico-legal system (as distinct from the widely recognised historic polar nationalism of the early 20th Century 'Heroic Age' and post WWII periods). Notwithstanding continuities with the expression of nationalism elsewhere, in Antarctica nationalism occurs remote from 'national territory' in any meaningful sense, notwithstanding assertions of territorial claims by some states. So its form – and hitherto its intensity – may differ from the expression of nationalism elsewhere. But this of itself does not mean that it is not nationalism. Whilst evident in the stances of some claimants states (and in domestic agendas not necessarily set by the state), nationalism is not confined to claimants.

This nationalism is – as elsewhere – generally different from the 'national interest' that all states pursue in Antarctica. Nationalism in Antarctica arises from multiple causes (I identify 11) – operating individually or synergistically. Worryingly, given inter alia the central role assigned to science in the purposes and functioning of the Antarctic Treaty System and the supposed cooperative ethic of Antarctic scientific research, nationalism seems increasingly to be informing the rationales for, and budgetary commitments to, Antarctic research.

Dr Alan Hemmings is a specialist on Antarctic governance based in Perth in Western Australia, and an Adjunct Associate Professor at Gateway Antarctica Centre for Antarctic Studies and Research at the University of Canterbury in Christchurch, New Zealand. His Antarctic operational experience includes the British, French and New Zealand national programmes, Greenpeace, and as a Government observer of Antarctic tourism. He participated in dozens of Antarctic Treaty System meetings between 1989 and 2010.

His current research focuses on Antarctic geopolitics, considering the roles of globalism, changing world-order and contemporary roles of territorial sovereignty and, particularly, nationalism. Recent publications include Hemmings et al 'Nationalism in Today's Antarctic' (2015: *The Yearbook of Polar Law*); consideration of the *Antarctic in History Lessons for the Arctic: What International Maritime Disputes Tell us about a New Ocean* (2016: Brzezinski Institute on Geostrategy and Center for Strategic & International Studies), *Handbook on the Politics of Antarctica* edited with Klaus Dodds and Peder Roberts (2017: Edward Elgar); *International Polar Law* edited with Donald R. Rothwell (Forthcoming 2018: Edward Elgar).

Etienne Henry

Australian National University

Parliamentary control over the decision to use force in the case of the intervention against ISIL in Syria: Towards the 'rule of law in international affairs'

In the last few decades, constitutional democracies have increasingly tended to submit the decisions to use military force—traditionally understood as a core executive prerogative—to the control of parliaments. While this democratization of the decision-making process is highly welcome from a constitutional perspective, there are reasons to question its impact on the application of international law. A priori, such developments should lead to a better compliance with international law, as parliaments tend to adopt decisions in a principled manner and are less vulnerable than the executive to the dictates of Realpolitik. But the analysis of the parliamentary debates that took place among States that got involved in the intervention against ISIL in Syria seems to caution against excessive optimism.

This paper aims to identify some problematic trends such as the highly emotional and populist rhetoric sometimes used, the highly selective and unorthodox approach to legal authorities, and the often uncritical reliance on the executive's legal arguments. Although the legislative branch could act as a counterweight, no single domestic parliament has reversed the decision to intervene nor challenged its legal rationale. Regardless of one's opinion on the legality of the intervention, there are reasons to doubt whether domestic parliaments are ideally equipped to apply—and, in this case, purportedly develop—the relevant legal regime.

Dr Etienne Henry is a Visiting Fellow at the Centre of International and Public Law of ANU College of Law. His research and teaching focus on general issues of public international law, with a special emphasis on issues of the law of armed conflicts and international law on the use of force. His doctoral dissertation on the principle of military necessity has recently been published with the French publisher A. Pedone.

Prior to coming to ANU College of Law, Etienne Henry has been a visiting researcher at the Centre of International Law of the Free University of Brussels (ULB), and at the Geneva Academy of International Humanitarian Law and Human Rights in Geneva. He also worked as a teaching and research assistant and as a lecturer at the University of Neuchâtel, teaching public international law to undergraduate students. He also worked as a course moderator for an online course of international humanitarian law delivered by UNITAR.

Outside the academia, he has worked as a legal advisor for the Swiss Federal Office of Justice in the field of private international law (2007–09) and for the Directorate of International Law of the Swiss Federal Department of Foreign Affairs (2014–15).

An Hertogen

University of Auckland

Can an international law of nuisance curb the excesses of rising nationalism?

With talk about putting one's own nation first on the rise again, beggar-thy-neighbour policies are increasingly likely. Attempts to restrict such policies through multilateral agreements have not proven fruitful. Moreover, existing principles such as the no harm and due diligence principles, limited as they are to physical impacts, equally fail in this respect. The proposed paper explores if an international law of nuisance can curb the excesses of rising nationalism.

The paper fits in a research project on good neighbourliness. While many international instruments recognize good neighbourliness, few have moved beyond the abstract notion to develop specific standards for the exercise of state sovereignty. I therefore suggest to draw on domestic law experiences with regulating neighbourly behaviour, to develop international rules of good neighbourliness. Of particular interest is the tort of nuisance, which is a tort against land, and from which parallels can therefore be drawn to territorial sovereignty.

It is interesting to note that the principle of *sic utere tuo ut alienum non laedas* — which despite its Roman 'flavour' is actually a product of Anglo-American nuisance law — has only been used in international law for the development of the no harm principle, which reflects the tort of negligence rather than nuisance. There is therefore scope to expand ideas of nuisance in international law as part of improving good neighbourly relations. The rebalancing of sovereign rights as a result may moreover reshape incentives towards multilateral cooperation and put international law back on the right track, even in a nationalistic world.

An Hertogen is a lecturer at the University of Auckland Faculty of Law, where she completed her PhD in 2012. She also holds an undergraduate law degree from the KU Leuven in Belgium, and an LLM from Columbia University. After the completion of her doctoral thesis, she was a visiting researcher at the Georgetown University Law Center in Washington DC, a visiting fellow at the GlobalTrust Project at Tel Aviv University, and a participant in the 2013 Centre for Studies and Research at The Hague Academy for International Law. From 2012–15, she was an assistant editor of *Opinio Juris*.

An is currently working on a three year research project on 'Good Neighbourliness in International Law', funded by a Marsden Fund Fast-Start grant of the Royal Society of New Zealand. The research explores the potential of 'good neighbourliness' as a foundation for legal restrictions on states' sovereign decisions that have a non-physical impact on other states.

Patricia Holmes

Department of Foreign Affairs and Trade

The WTO dispute settlement system: Keeping the sparkle in the crown

The WTO dispute settlement system has been widely regarded as the 'jewel in the crown' of the WTO, as well as an increasingly important part of the international rules based system. While multilateral trade negotiations have laboured hard in pursuit of progress, the dispute settlement system has emerged as a robust and popular forum for the resolution of trade disputes. In 21 years, over 520 complaints have been brought to the WTO with over 60% of Members participating as parties or third parties – a workload well in excess of other international fora such as the ICJ or ITLOS.

However, this success also represents a challenge as the system struggles to keep up to its previously impressive timeframes. The Appellate Body had strictly adhered to the requisite 90 day deadline for the first 15 years – but now routinely falls well behind, while Panel work is stalled even before it starts.

New challenges are on the horizon, both in terms of the number of disputes, their complexity and the political context in which these disputes are being taken. How much additional resource pressures can the WTO dispute settlement system withstand? What challenges might a less effective WTO dispute settlement system present for Australia? How should Australia engage to promote and protect our own interests, and to ensure the continuing legitimacy and effective functioning of this important part of the international rules based system.

Patricia Holmes is a career Diplomat with the Australian Department of Foreign Affairs and Trade. She is currently Assistant Secretary, Trade and Investment Law Branch in the Office of Trade Negotiations, a position she has held since February 2015.

Ms Holmes was Australia's Ambassador to Argentina, with concurrent non-resident accreditation to Paraguay and Uruguay, from November 2011 to December 2014. Prior to her appointment to Argentina, Ms Holmes was Assistant Secretary, FTA Legal Counsel Branch, a position she held since April 2010. Ms Holmes has served previously in Geneva WTO, Papua New Guinea and Vanuatu. Ms

Holmes has extensive experience in trade and investment legal work, having prosecuted and defended a number of WTO disputes and served as a WTO Panelist.

Ms Holmes holds a Bachelor of Science with a Bachelor of Law (Hons) degree from Macquarie University; a Graduate Diploma in Legal Studies from the University of Technology Sydney; a Masters of Arts in Foreign Affairs and Trade and a Masters of Laws in Environmental Law from the Australian National University. Ms Holmes was admitted to practice in 1992.

Sarah Joseph

Monash University

Sport, globalisation and human rights

Sport has long been associated with nationalism. Millions around the world 'buy into' their national teams, riding the waves of success and failure. Arguably, no public or other cultural activity brings so many strangers routinely together emotionally. Furthermore, sport is one area where globalisation is not receding, with global regimes governing athlete working rights and due process, as well as mega events like the Olympics.

In this respect, I will address the impact on the rights of athletes of the globalisation of sports law, and the human rights accountability of relevant global sports organisations, such as FIFA, the IOC, and the Court of Arbitration for Sport.

Sarah Joseph is a Professor of Law at Monash University, Melbourne, and has been the Director of its Castan Centre for Human Rights Law since 2005.

Her main area of research is in the area of International Human Rights Law. Her publications have focused, for example, on the intersections between human rights and international trade law, international investment law, multinational corporations, patents on pharmaceutical products, counterterrorism laws, the work of the media, and the impact of social media. A new area of research concerns sport and human rights.

She has published a number of books including the monographs, *Blame it on the WTO: A Human Rights Critique* (OUP, 2011) and *Corporations and Transnational Human Rights Litigation* (Hart 2004). She is the main author of *The International Covenant on Civil and Political Rights: Cases, Commentary and Materials* (OUP, 3rd ed, 2013), *Federal Constitutional Law: A Contemporary View* (Thompson, 4th ed, 2014), and *Human Rights Translated: A Business Reference Guide* (UN, 2008; update to be published in 2017).

Daniel Joyce

University of New South Wales

Q&A: Readers Meet Authors

Dr Daniel Joyce is a Lecturer in the Faculty of Law at UNSW. He researches in the areas of international law, international legal theory and media law. He is currently co-organising, with Guy Fiti Sinclair, ANZSIL's postgraduate workshop. Daniel is a Laureate of the Junior Faculty Forum for International Law in 2014, an Affiliated Research Fellow at the Erik Castrén Institute of International Law and Human Rights, University of Helsinki, and a member of the Australian Human Rights Centre at UNSW.

Amokura Kawharu

University of Auckland

The influence of Australia and New Zealand on Asia-Pacific investment treaty negotiations as a collective middle power

President Donald Trump's decision to withdraw the United States from participation in the Trans-Pacific Partnership (TPP) agreement reflects the rising nationalism theme of the conference. Yet the US withdrawal also opens up greater potential for alternatives to US approaches to investment liberalization and protection to take hold. Our paper considers what contribution New Zealand and Australia jointly might make to the development and pursuit of such alternatives in the Asia Pacific.

To further tease out such potential, we compare key areas of three existing treaties already signed (the bilateral CER Protocol, their treaty with ASEAN, and the TPP), as well as apparent positions set forth by Australia and New Zealand in a leaked investment chapter for the Regional Comprehensive Economic Partnership (RCEP). Given the concerns about US-style treaty drafting displayed recently by Indonesia and India, major economies still negotiating RCEP with New Zealand and Australia (as well as bilateral agreements with the latter), we also consider the scope to promote more pro-state provisions regarding both substantive commitments and ISDS, which characterise contemporary preferences of the European Union. We conclude that this transition is likely not only given the evolving preferences of counterparties and local politics in New Zealand and (especially) Australia. It is also feasible because of various policy arguments for dialing back treaty commitments to foreign investors – albeit without eschewing them altogether – and the skepticism towards the current trade and investment treaty architecture displayed by the Trump Administration.

Amokura Kawharu holds a BA/LLB(Hons) degree from Auckland University and an LLM with a major in international law from the University of Cambridge. She became member of the Law Faculty's academic staff in 2005 after working for several years in private commercial law practice in Auckland and Sydney. Her research interests include international trade and investment law, arbitration, and international disputes resolution. She contributes reviews on disputes settlement for the New Zealand Law Review and co-authored the leading text on New Zealand arbitration law with Sir David Williams QC, "Williams & Kawharu on Arbitration" (LexisNexis, 2011). Amokura is a member of the LCIA, and the Arbitrators' and Mediators' Institute of New Zealand. With Chester Brown, she co-chairs the ANZSIL International Economic Law Interest Group.

She contributes reviews on disputes settlement for the *New Zealand Law Review* and co-authored the leading text on New Zealand arbitration law with David Williams QC, *Williams & Kawharu on Arbitration* (LexisNexis, 2nd ed forthcoming). Amokura is a member of the LCIA and the Arbitrators' and Mediators' Institute of New Zealand, and has co-chaired ANZSIL's International Economic Law Interest Group since 2015.

Ben Keith

Office of the Inspector-General of Intelligence and Security, New Zealand

International human rights law together or apart: Engagement between national courts and United Nations treaty bodies

Engagement between national courts and the ten specialist United Nations human rights treaty bodies confusingly presents both cooperation – as suggested by the empirical findings suggested by successive International Law Association-led studies – and confrontation, as seen in the curt dismissals of treaty body views by, for example, the High Court of Australia in *Maloney v R* and by the House of Lords in *Jones v Ministry of Interior of Saudi Arabia*.

Such engagement can be seen, as recently suggested by Machiko Kanetake and André Nollkaemper, as another instance of a 'cycle of contestation and deference' between national and international conceptions of the rule of law. However, the form of that engagement – in particular, through the (often) reasoned judgments of appellate courts and the collaborative work of expert committee members – presents a potentially richer analytical starting point: how do the respective methodologies of these categories of institutions tend toward cooperative or confrontational outcomes?

In seeking to answer that question, this paper sets out findings from a thorough survey of instances of such engagement

found in treaty *body dicta* and decisions of a range of appellate courts. Taking up the themes of this conference, this paper canvasses whether reasoned engagement between judicial and/or quasi-judicial bodies indicates the partial or potential emergence of a common methodology.

Ben Keith is currently the New Zealand Deputy Inspector-General of Intelligence and Security. He otherwise practices in administrative, constitutional and public international litigation and advice, with an emphasis on human rights law. Prior to his current appointment, he was Crown Counsel with the New Zealand Crown Law Office. He is a graduate of Victoria University of Wellington and has also studied at the Australian National University and the Hague Academy of International Law.

Sir Kenneth Keith ONZ KBE QC

Forty Years of the 1977 Additional Protocols

Sir Kenneth Keith was the first New Zealand judge elected to the International Court of Justice at the Peace Palace in The Hague. He is a member of the Order of New Zealand and is also a Knight Commander of the Order of the British Empire.

Sir Kenneth Keith studied law at Auckland, Victoria University Wellington and Harvard. He taught Law, served in the New Zealand Foreign Ministry (including as part of the New Zealand delegation to the negotiations of the Additional Protocols) and the UN Secretariat and was President of the New Zealand Law Commission. He was a Judge of the Court of Appeal of New Zealand, a member of the Judicial committee of the Privy Council and one of the inaugural appointments to the new Supreme Court of New Zealand.

Luke Kemp

Australian National University

Can the Centre Hold? Nationalist (and Other) Challenges to the Paris Agreement on Climate Change

Luke is a lecturer in climate and environmental policy at both the Fenner School of Environment and Society and Crawford School of Public Policy at the Australian National University (ANU). He holds both a Doctorate in Political Science (2016) and a Bachelor of Interdisciplinary Studies with first class honours from the ANU (2011). He is a Senior Economist with Vivid Economics and regular media contributor. His research has been covered in international media including the Washington Post and New York Times.

Natalie Klein

Macquarie University

The arbitrators' role in the South China Sea Arbitration and beyond

China's non-participation in the South China Sea Arbitration has contributed to discussions about the validity of the Award itself as well as the potential influence of the Tribunal's decisions and its reasoning in the future. That influence may extend to state practice both within and beyond the South China Sea region more immediately and in the years ahead. The influence also goes to future decisions under the dispute settlement regime of the UN Convention on the Law of the Sea (UNCLOS). This paper reflects on the roles of judges and arbitrators in procedures resolving disputes under UNCLOS, drawing on the particular example and experience of the South China Sea Arbitration.

Different roles may be identified for arbitrators or judges, including: undertaking the interpretation and application of the provisions in UNCLOS; deciding questions of fact based on evidence presented; resolving the particular disputes between the parties; contributing to the resolution of a broader diplomatic dispute. How well did the South China Sea arbitrators perform these roles? This question can be answered by reference to the issues concerning the definition of rocks and islands; the protection and preservation of the marine environment and the jurisdictional limits recognized by the Tribunal. We also need to consider how we can actually assess the arbitrators' performance? There may be different benchmarks to utilise in this respect that will have bearing on the future relevance of the South China Sea Award.

Dr Natalie Klein is Professor and [former] Dean at Macquarie Law School, Macquarie University, Sydney, Australia. She also served as the Acting Head of the Department for Policing, Intelligence and Counter-Terrorism at Macquarie. Professor Klein teaches and researches in different areas of international law, with a focus on law of the sea and international dispute settlement.

Professor Klein is the author of *Dispute Settlement and the UN Convention on the Law of the Sea* (Cambridge University Press, 2005) and *Maritime Security and the Law of the Sea* (Oxford University Press, 2011). She provides advice, undertakes consultancies and interacts with the media on law of the sea issues. Prior to joining Macquarie, Professor Klein worked in the international litigation and arbitration practice of Debevoise & Plimpton LLP, served as counsel to the Government of Eritrea (1998–2002) and was a consultant in the Office of Legal Affairs at the United Nations. Her masters and doctorate in law were earned at Yale Law School and she is a Fellow of the Australian Academy of Law.

Emma Larking

Australian National University

Q&A: Readers Meet Authors

Emma Larking is a Visiting Fellow at the School of Regulation and Global Governance (RegNet), ANU. Her disciplinary background is in law and political philosophy. She has worked as a lecturer in the University of Melbourne's Schools of Historical and Philosophical Studies and of Social and Political Sciences, and was a Postdoctoral Fellow at RegNet working on Professor Hilary Charlesworth's ARC Laureate Fellowship project, 'Strengthening the International Human Rights System: Rights, Regulation and Ritualism'.

She has published widely on the concept and status of human rights, and on refugees and people movements. She is author of *Refugees and the Myth of Human Rights: Life Outside the Pale of the Law* (Ashgate, 2014) and co-editor with Hilary Charlesworth of *Human Rights and the Universal Periodic Review* (Cambridge University Press, 2014). Her current research considers the capacity of human rights to redress material inequality. She is also interested in political mobilisations for social justice, with a focus on anti-poverty campaigns and the global food sovereignty movement.

Simon Levett

Western Sydney University

International human rights law and journalists in war zones

The legal principle that International Human Rights Law applies in conflict zones has endowed previously academic questions with practical force. How does International Human Rights Law work in conflict zones? This has particular meaning for the journalist who reports on conflict zones who arguably has both rights and responsibilities at law in times of war. Human rights jurisprudence protects journalists from harm but also adjudicates on the role of journalists, mostly in times of peace.

This paper will discuss human rights law relating to the behaviours and needs of the journalist and how they are applied to times of war. This paper will draw upon examples of the exercise of the Freedom of Expression in relation to the safeguard of source protection during times of peace; analogies will be made to conflict situations. The safeguard of source protection has been curtailed where the courts have agreed it is necessary for national security in a democratic society.

This paper will finally ask whether the import of such peace-time international human rights legal principles into the sphere of conflict zones helps or troubles the journalist and their activities.

Simon Levett is a lawyer who has worked for the United Nations Office for the High Commissioner for Human Rights, the Diplomacy Training Program, the International Development Law Organisation and the International Criminal Tribunal for the Former Yugoslavia.

He was a Legal Officer for the Royal Commission into Institutionalised Responses to Child Sexual Abuse. He has also worked as a journalist and producer for the ABC. He obtained a Masters of Advanced Studies in International Humanitarian Law from the Geneva Academy of International Humanitarian Law and Human Rights, a Graduate Diploma in Human Rights and Social Justice from the University of New South Wales and a Combined Arts/Law degree from the University of Sydney. He has worked on an Australian Research Council project on Forced Migration at the University of Technology, Sydney, and a Griffith University project on the biography of former Justice Michael Kirby. He is currently a PhD student specialising in the international protection of journalists at Western Sydney University.

Alicia Lewis

Attorney-General's Department

Environmental considerations in the law of armed conflict: Alternative paths to enhanced protection

Basic principles of environmental protection permeate many areas of international law, from the law of the sea and human rights, to trade and space law. International Humanitarian Law (IHL) is no exception. The IHL protections aimed at addressing the risk of environmental harm during armed conflict fall into two categories. The first are a set of very particular treaties which address specific types of weapons or harm, and the second offer more general protections. However due to their narrow scope and high thresholds, these instruments offer protection in only limited circumstances.

The broad foundational principles and protections which make up the wider body of international environmental law (IEL) may offer further protection and assist in filling this lacuna. Treaties and domestic legislation protecting vulnerable regions, or aimed at mitigating specific threats are increasingly common as anthropogenic impacts on the earth become more apparent. There is however ongoing debate as to the legal status and application of these principles during armed conflict, as well as questions as to their efficacy.

A number of solutions could go towards addressing these gaps and making the framework more easily implemented on a practical level. While many legal commentators and practitioners have advocated for the negotiation of a fifth Geneva Convention directed towards the protection of the environment during armed conflict, the negotiation of a

comprehensive new environmental protection treaty is unlikely to gain traction.

Soft law instruments, as in many other areas of international law, offer the potential for progress towards a more robust system. There are many examples of such instruments being used to address perceived deficiencies in IHL. For example, the Lucens Guidelines on Protecting Schools and Universities from Military Use during Armed Conflict fill a gap in special protections. The Guidelines, while not intended to be binding, nevertheless 'are intended to lead to a 'shift in behaviour.' The need to address emerging threats and technological developments are a further driver. This can be seen in the negotiation of ENMOD and more recently in the Tallinn Manual on the International Law Applicable to Cyber Warfare. These two examples demonstrate the potential and importance of soft law instruments in international law.

IHL remains the *lex specialis* applicable to environmental damage incurred in the course of armed conflict. The environment will continue to be protected only from the most serious damage, while more minor damage continues to be an essentially unregulated aspect of IHL, with military necessity often the prevailing consideration. In the absence of strong and binding IEL to fill this void, soft law instruments may offer an avenue for enhanced environmental protection. Through the use of template processes which have strong support and demonstrated success, state practice can be established and perhaps a new norm of customary law developed.

Alicia Lewis is a legal officer in the Attorney-General's Department Office of International Law (OIL), providing advice to Government across a broad range of issues including international environmental law, international humanitarian and security law, and jurisdiction and immunities. She is currently completing a Master of Laws, specialising in international law, at the Australian National University. Prior to joining OIL in 2015, Alicia worked on domestic climate change policy in the Department of the Environment.

Angeline Lewis

Australian Defence Force

Multilateralism in international law: Are Reports of its demise by resurgent nationalism greatly exaggerated?

Rising nationalism and its apparent coefficient, the demise of multilateralism, would seem to pose a fundamental challenge to the international legal order. This is not unlike the challenges of the period following the so-called 'Locarno honeymoon' of the 1920s, and, it would seem, at various moments since. If true now, it is a particularly acute challenge for Australia, which

has based its national defence strategy on commitment to the rules-based global order.

There is a significant risk, however, that responses to this rise are based on an historically inaccurate view of the place and significance of multilateralism in the post-1945 world. A focus on sustaining a multilateral legal order in an era of rising nationalism presupposes a system founded on a general principle of multilateralism, and not one which may have envisaged a finite field of critical issues to be collectively compromised upon (in the interests of nation states), beyond which principles of state consent and non-interference in domestic affairs would continue to rule.

This paper proposes an historical overview of the nature of multilateralism in international law in the modern period. It questions whether the calls for stability through increased regionalism and multilateralism, especially in the post Cold War period, were reflected in actual and representative practice, displacing the pragmatism of the original collective security bargain of the Charter system. That is, from an historical perspective, and despite increasing nationalist clamour, are reports of the decline of multilateralism in the international order greatly exaggerated?

Angeline Lewis has served as a Legal Officer in the Australian Defence Force since 2003. She has also taught international law casually at the Australian National University College of Law, in various roles, since 2009.

Her research and publications include *Judicial Reconstruction and the Rule of Law: Reassessing Military Intervention in Iraq and Beyond* (Brill, 2012) as well as shorter works addressing the rule of law in military operations, the future of air power in a rules-based global order, law of the sea, various issues in the law of armed conflict, and the women, peace and security doctrine. She is currently finalising an historical research project addressing nineteenth century public debate on the legitimacy of naval support to Sir James Brooke against the 'pirates' of Borneo.

Sebastián Machado

University of Melbourne

Risky rhetoric: How not to talk about Humanitarianism

Sebastián Machado holds an LL.M. from the University of Cambridge, UK, and an Abogado (LL.B. equivalent) from Los Andes University, Colombia. He has been a Senior Advisor on International Law to the Attorney General of the Republic of Colombia and a member of the delegation for peace negotiations with the National Liberation Army of Colombia, Head of the Advisory Section of the Bureau

for International Legal Affairs at the Colombian Ministry of Foreign Affairs, and Adjunct Professor of Law at Los Andes University.

Sebastián is a doctoral candidate with the Laureate Program in International Law and his thesis is entitled *Hermeneutics and Humanitarianism: Interpretation, Tradition and Existentialism in Wars*.

Amy Maguire

University of Newcastle

The United Nations and forced human displacement: An assessment of the multilateral promises of the UN charter

It took the First World War to prompt States to affirm the importance of multilateralism and establish the League of Nations. It then took the Second World War to spur the development of the United Nations (UN), remedy the defects of its predecessor, and strengthen multilateralism. At the heart of the UN's creation are the boldly proclaimed purposes and principles of the UN Charter; saving succeeding generations from the scourge of war, reaffirming faith in fundamental human rights, maintaining international peace and security, achieving international cooperation in solving international problems, and preserving the sovereign equality of States and non-interference in the domestic affairs of States.

However, more than 70 years after its creation, the UN still struggles to keep its promise to 'the peoples of the United Nations'. What is required to reform the *modus operandi* of the UN and the multilateral response to global problems, including forced human displacement?

In this paper, we explore the past and present engagements of the UN with the issue of forced human displacement. We identify the prevention of forced human displacement as one of the underlying justifications for the UN's establishment and highlight the nexus between the rules of international law, human rights and conflict/disaster prevention within the context of the UN. In this context, we question the adequacy of current international normative frameworks to regulate forced human displacement.

Dr Amy Maguire is a Senior Lecturer in international law and an active media commentator on human rights issues. Her fields of research are public international law and human rights, with particular focus on self-determination, Indigenous rights, climate change, refugees and asylum seekers, and the death penalty. Amy has research collaborations in relation to the rights of refugees, human rights and human displacement, legal regulation of climate change mitigation strategies, Indigenisation of curriculum, and blended/active teaching and learning.

In 2015, Amy's submissions and evidence before the federal parliamentary inquiry into Australia's advocacy for the abolition of the death penalty influenced the recommendations of the inquiry Committee (A World Without the Death Penalty, 2015). In 2016, Amy was selected as a finalist for the Lawyer's Weekly Women in Law Awards – Academic of the Year Award and was named Early Career Researcher of the Year at the University of Newcastle.

David Matas

The development of international law on organ transplant abuse in an era of rising nationalism

Human rights violators have traditionally invoked state sovereignty to fend off accusations of violations. This defence has increasing resonance in an era of rising nationalism.

Even for established norms, rising nationalism works against the international human rights legal order. The impact on evolving norms is even more profound.

The international legal order to combat cross border organ transplant abuse is still developing. The Council of Europe Convention against Trafficking in Human Organs, which any state can join with the approval of the Council, was opened for signature only in March 2016. The issue whether transplant tourism is encompassed in organ trafficking is still unsettled. The enactment of extra-territorial jurisdiction to combat organ transplant abuse is increasing but limited. There is a growth of international soft law standards articulated to combat organ transplant abuse, *lex ferenda*, yet to become *lex lata*.

In the midst of these developments and partly sparking them is compelling evidence of systematic, widespread state driven organ transplant abuse in China. The Chinese government, amongst its other defences, has been riding the wave of increasing nationalism to fend off global efforts to address this evidence. The question the paper would address would be the extent to which the international law to combat organ transplant abuse can develop in this context.

David Matas is a lawyer in Winnipeg, Manitoba, Canada practising international human rights, immigration and refugee law. He has produced eleven different books including *Bloody Harvest: the Killing of Falun Gong for their Organs* co-authored with David Kilgour in November 2009 and *State Organs: Transplant Abuse in China* in August 2012 co-edited with Torsten Trey. He is a member of the Order of Canada. In 2010, he and David Kilgour were nominated for the Nobel Peace Prize for their work on organ transplant abuse in China.

Tim McCormack

Melbourne Law School

The International Criminal Court: Major Achievements and Contemporary Challenges

This year marks the 15th anniversary of entry into force of the Rome Statute – an opportune moment to reflect on past achievements and current challenges confronting the Court. The establishment of the world's first permanent International Criminal Court was a significant breakthrough and Australia's contributions throughout the Rome Diplomatic Conference left an indelible mark. After early teething problems, the Court has concluded proceedings in a number of cases and there is growing evidence of complementarity at work as some States take more seriously their primary responsibility to investigate and prosecute allegations of serious international crimes. But the Court also faces many challenges from limited resources, lack of co-operation and increasing politicisation of the Court's jurisdiction, procedures and decisions. Persistent allegations of African bias, withdrawals of some States Parties from participation in the Rome Statute and increasing controversies around the application of the Court's jurisdiction to nationals of non-Party States combine to guarantee a tough next phase of the Court's history.

Tim is a Professor of Law at the Melbourne Law School and an Adjunct Professor of Law at the University of Tasmania. He was a member of the Australian Government Delegation to the Rome Diplomatic Conference and, since March 2010, has served as the Special Adviser on International Humanitarian Law to the Prosecutor of the International Criminal Court in The Hague.

Tim was a Fulbright Senior Scholar in the US from July 2015 – July 2016 and held positions as Charles H Stockton Distinguished Scholar-in-Residence, US Naval War College, Newport, Rhode Island and as James Barr Ames Visiting Professor, Harvard Law School.

Jeffrey McGee

University of Tasmania

Climate intervention: A necessary element of international climate change law

'Climate intervention' or 'geoengineering' has a controversial history in international climate change policy. Climate intervention is deliberate human intervention in the global climate system to offset climate change. The two key methods of climate intervention are solar radiation management and carbon dioxide removal. Until recently, climate intervention lived in the shadows of international climate change law and policy. This was due to concern that climate intervention might detract from mitigation efforts and be symptomatic of an over-

reliance on technology. However, due to the continued growth of global greenhouse gas emissions over recent decades and modest ambition of emission reduction commitments, climate intervention has become necessary for any real prospect of avoiding dangerous climate change.

The recent Paris Agreement and reports of the IPCC implicitly recognise the necessity for future climate intervention in the form of significant 'negative emissions' later this century. Aside from some narrow development in the ocean-dumping regime, international climate change law is yet to adapt to this new reality of climate intervention. We argue that international climate law should be at the forefront of a transdisciplinary research program to regulate scientific research and field-testing to assess technical feasible and social acceptable means of climate intervention. A transdisciplinary dialogue is urgently required to initiate such a program and avoid the prospect of ill-considered, unilateral climate interventions in response to future climate-disaster events.

Dr Jeffrey McGee is the Senior Lecturer in Climate Change, Marine and Antarctic Law in the Faculty of Law and the Institute for Marine and Antarctic Studies, University of Tasmania. Jeff was a partner in a successful legal practice in NSW and a senior legal advisor to the Federal Government prior to commencing his academic career.

His work is widely published in leading international journals in the fields of international environmental law, global environmental governance and climate change policy. Jeff is Fellow of the Earth System Governance Network at Lund University and a member of the SCAR Antarctic Humanities, Arts and Social Sciences Expert Group.

Simon McKenzie

University of Melbourne

IHL, the law of occupation, and international criminal law: Problems in translation

The crimes in the Rome Statute of the International Criminal Court were formulated by incorporating the obligations from international humanitarian law (IHL) and applying them directly to individuals. Some of the crimes are in identical terms to the provisions of the Geneva Conventions and Hague Regulations, without any amendment that recognises that individual criminal responsibility is different from state responsibility. This paper will demonstrate how the interface between IHL and international criminal law can be problematic. The adoption of vague and flexible principles from IHL into crimes for which individuals can be held liable has the potential to cause serious inconsistencies between IHL doctrine and the operation of international criminal law.

This tension is most evident in the criminalisation of the law of occupation, particularly regarding the use of property. These

crimes rely on the 1907 Hague Regulations to provide their content. The Hague Regulations were formulated in the early twentieth century and have built-in assumptions about the use and management of property that are ill-suited to modern states and modern occupations. Understanding these crimes is difficult because of a disjuncture between the modern setting of international criminal law and the content of the much older law of occupation. Further, the broad principles of occupation law are difficult to articulate as criminal offences because the criminal law requires levels of specificity that the law of occupation does not provide. This also calls into question whether the law of occupation is fit for modern use.

Simon McKenzie is currently completing a PhD at the University of Melbourne in international criminal law.

Simon graduated in 2011 from the University of Tasmania with a combined Arts and Law Degree with First Class Honours in Law. He was admitted to practice in late 2011, and worked as a litigation lawyer in a large commercial law firm in Melbourne. During this time, he was the recipient of the Tim Hawkins Memorial Scholarship, allowing him to work for six months at the International Criminal Court as a researcher assisting Professor Tim McCormack, the Special Advisor to the Prosecutor in International Humanitarian Law.

Before starting his PhD, he was a Trial Division researcher at the Supreme Court of Victoria. He continued working for the Court after starting his PhD, and led a research project on the management of expert evidence in the Kilmore East bushfire proceeding, the largest class action in Victoria's history. This project resulted in a collected series of papers that were published by the Court and launched at the University of Melbourne in early 2016.

Rob McLaughlin

Australian National University

On the water: Operational implications of the South China Sea Arbitration

The SCS arbitral award has a number of significant implications for maritime operations and freedom of navigation within the SCS region. There are three of particular interest for 'on water' operations which will be examined in this paper.

The first implication relates to the character to be afforded to FON assertions in the vicinity of those features to which the award has allocated a specific legal status – rock or low tide elevation. This carries significant implications for warships in terms of what form of passage they assert when transiting in the vicinity of these features, and is complicated by the location of the contested feature within or without the Philippines EEZ.

The second implication resides in the nature of 'use of force' in terms of divining the increasingly grey legal line between uses of force described as 'maritime law enforcement' (but in pursuit of a clearly illegitimate claim to law enforcement authority), and uses of force which rise to the level of a UN Charter Article 2(4) matter.

The third implication hinges around the legal character of 'private' vessels (in this case, fishing vessels) acting in a co-ordinated and commanded manner in pursuit of state aims and objectives. Does this bivalent character alter the legal status of their conduct, and if so, to what end?

Dr Rob McLaughlin researches, publishes, and teaches in the areas of Law of Armed Conflict, Law of the Sea, Maritime Security Law and Maritime Law Enforcement, and Military Law. He routinely engages in research activities, and course development and delivery, with the ICRC, the Australian Red Cross, the International Institute for Humanitarian Law, and the UN Office on Drugs and Crime.

Prior to joining ANU College of Law, Dr McLaughlin was in the Royal Australian Navy as a Seaman officer and a Legal officer. Consequently, his research interests are primarily focused around issues of practical operational significance.

His legal roles included as the Fleet Legal Officer, the Strategic Legal Adviser, as a Counsel Assisting the HMAS SYDNEY II Commission of Inquiry, Director Operations and International Law, and Director Naval Legal Service. Rob holds the following appointments: CAPT, RANR Consultant, Counter-Piracy (UNODC and IMO) Member, Australian Red Cross ACT IHL Committees Faculty, International Institute of Humanitarian Law.

Cassandra Mudgway

Auckland University of Technology Law School

United Nations peacekeepers and sexual crimes: Towards a hybrid solution

In August 2015 Amnesty International reported the rape of a 12 year old girl by a UN peacekeeper in the Central African Republic. Following these allegations, there were further reports of peacekeepers involved in the sexual abuse of several young women living in shelters in the same area. Unfortunately, sexual exploitation and abuse by UN peacekeepers is not an isolated or recent problem but has been present in almost every peacekeeping operation. A culture of sexual exploitation and abuse is contrary to the UN's zero-tolerance policy and has been the target of institutional reforms since 2005. Despite this, allegations of sexual abuse continue to emerge.

The current framework is insufficient to ensure accountability of peacekeeping personnel who commit sexual exploitation

and abuse. Primary reasons for this gap include the total reliance on Troop-Contributing Countries (TCCs), which have exclusive criminal jurisdiction over their military forces, and that victims of sexual exploitation and abuse cannot enforce their rights as individuals at the international level. Prosecution by TCCs rarely happen or are not reported on. Overall, justice is neither done nor seen to be done.

Drawing on previous, current and planned UN reforms, this paper will explore a more contentious proposal as a potential solution: a series of hybrid courts. Such an undertaking requires navigation of particular hurdles; these include (1) the material jurisdiction, (2) the political will of states, and (3) resources.

Cassandra is a lecturer in the School of Law at the Auckland University of Technology (AUT). She teaches Legal Reasoning & Writing and Constitutional law, with research interests in international human rights, international criminal law and feminist legal theory.

She completed her PhD in 2016 (on the topic of sexual exploitation and abuse by UN Peacekeepers) and has been a previous Student Editor for the *New Zealand Yearbook of International Law*. Outside of academia, she was a founding member of the University of Canterbury's Feminist Society and is currently the Secretary of the National Council of Women New Zealand, Auckland Branch.

Luke Nottage

University of Sydney

The influence of Australia and New Zealand on Asia-Pacific investment treaty negotiations as a collective middle power

President Donald Trump's decision to withdraw the United States from participation in the Trans-Pacific Partnership (TPP) agreement reflects the rising nationalism theme of the conference. Yet the US withdrawal also opens up greater potential for alternatives to US approaches to investment liberalization and protection to take hold. Our paper considers what contribution New Zealand and Australia jointly might make to the development and pursuit of such alternatives in the Asia Pacific.

To further tease out such potential, we compare key areas of three existing treaties already signed (the bilateral CER Protocol, their treaty with ASEAN, and the TPP), as well as apparent positions set forth by Australia and New Zealand in a leaked investment chapter for the Regional Comprehensive Economic Partnership (RCEP). Given the concerns about US-style treaty drafting displayed recently by Indonesia and India, major economies still negotiating RCEP with New Zealand and Australia (as well as bilateral agreements with the latter), we also consider the scope to promote more pro-state provisions regarding both substantive commitments and ISDS, which

characterise contemporary preferences of the European Union. We conclude that this transition is likely not only given the evolving preferences of counterparties and local politics in New Zealand and (especially) Australia. It is also feasible because of various policy arguments for dialing back treaty commitments to foreign investors – albeit without eschewing them altogether – and the skepticism towards the current trade and investment treaty architecture displayed by the Trump Administration.

Dr Luke Nottage is Professor of Comparative and Transnational Business Law at Sydney Law School, specialising in arbitration, contract law, consumer product safety law and corporate governance, with a particular interest in Japan and the Asia-Pacific. He is founding Co-Director of the Australian Network for Japanese Law (ANJeL) and Associate Director of the Centre for Asian and Pacific Law at the University of Sydney. He is also Managing Director of Japanese Law Links Pty Ltd.

Isaiah Okorie

University of Tasmania

The refugee as a pariah: Navigating an international legal path to avoid the perilous waves of resurgent nationalism

The United Nations Convention and Protocols Relating to the Status of Refugees establishes an international legal order for the protection of people at risk of persecution in their countries of origin. Scholars have however identified several knotty challenges in the efficacy and continued relevance of this convention, given global realities today.

These challenges include: the definitional poser of the word 'refugee'; the abeyance of refugee rights until arrival in a signatory country; the lack of a mandate for signatories to prevent persecution or expulsion of their citizens; the absence of a formulae for equitable 'burden sharing' of the refugee pool between signatories; the problem of mixed migration patterns like asylum and economic migration linked with people smuggling and criminality; the inequity of outcomes between mobile refugees that reach a signatory country, and refugees with the greatest need; the tricky Convention categorization of asylum seekers as either political and thus 'genuine' and deserving, or economic and thus 'abusive' and undeserving etc.

To grapple with these challenges, states may become nationalist or 'protectionist' and rely on their legitimate right of withdrawal from the convention. However, this option leads to avoidable fragmentation of the refugee experience and ultimately undermines the international legal order. A better alternative is to embrace solutions that promotes globalization and multilateralism.

This paper therefore proposes the establishment of a uniform global refugee assessment schema, that takes aboard these challenges, national security concerns and the need to ensure that the cardinal principle of non-refoulement, is upheld.

Isaiah Okorie holds dual LLM degrees in Global Business Law and Maritime Law from New York University and National University of Singapore, respectively. Though he is still enrolled as a PhD candidate at the University of Tasmania, with previous research interests on the law regarding infrastructure assets sales and maritime law, Isaiah's research interests have recently shifted to International Refugee law, particularly state practices on the principle of non-refoulement and he is in the process of making a PhD project switch. Recently, Isaiah finished a contractual stint as a Deputy Registrar at the Alternative Dispute Resolutions Unit of the ACT Magistrates Court, and is currently a registered migration agent, running his own migration agency – SWIVIVA.

Rose Parfitt

University of Melbourne

The fascist doctrine of international law

The idea that fascism, having first attacked international law, was then defeated by it in 1945, allowing the discipline to be reborn with a strengthened commitment to sovereign equality and global peace, is often taken for granted both in the international legal academy and in the sphere of diplomatic relations. Yet the widely-held and overtly progressivist assumption which this narrative generates – the idea that international law is quintessentially antifascist in nature, and hence that international legality and fascism are conceptual opposites – is, in fact, deeply misleading.

In the first place, and in defiance of their supposed liquidation, the ideology of fascism and the practice of expansionism are clearly alive and well, from Athens to Crimea. Secondly, while it is certainly true that fascism celebrated racial supremacy, political subjugation and territorial expansionism, a close look at the legal history of fascism reveals that behind this celebration lay not mindless (and lawless) brutality but, on the contrary, a highly-developed metaphysics and aesthetics of the relationship between law and violence, individual and collective, past and future.

Focusing primarily on the case of Italy, this paper will suggest that international law's retrospective assumptions concerning fascism's illegality, if not a legality, cannot withstand such a process of historicisation. However, the aim of the paper is not only to suggest that the fascist doctrine of international law was, in fact, a historical reality (and not an oxymoron). It also seeks to question the nature of the international order we inhabit today, characterised by precisely those

'values' (violence, hierarchy, expansionism) in whose defeat international law's legitimacy is so firmly anchored.

Rose Parfitt is the recipient of an Discovery Early Career Research Award (DECRA) from the Australian Research Council. She began work on her DECRA project, entitled 'International Law and the Legacies of Fascist Internationalism', in January 2016 at Melbourne Law School, following on from her McKenzie Postdoctoral Research Fellowship at the same institution. She joined MLS in June 2013 after two years as Assistant Professor of International Law at the American University in Cairo.

Rose received her doctorate in 2011 from the School of Oriental & African Studies (SOAS) Law School, University of London, and will be recommencing her position as a Lecturer in Law at Kent Law School in 2019. In terms of substance, the broad theme connecting the various strands of her work concerns the relationship between individual and collective conceptions of self-determining subjectivity – that is, the co-constitution of the legal personality of the individual in the domestic legal order and the legal personality of the collective (usually, but not always, the state) in the global legal order. In terms of methodology, she is particularly interested in the role of law in constructing social reality, and in the critical potential of bringing history to bear on law and vice versa.

These substantive and methodological concerns play out in a number of different research projects, which are linked together by a focus on the permeability of the barrier between the global and domestic legal orders, and in particular the parallel ways in which legal subjectivity has been imagined and actualised in both dimensions of juridical society, with significant material and social repercussions for the distribution of wealth, power and pleasure.

Jacqueline Peel

University of Melbourne

Can the Centre Hold? Nationalist (and Other) Challenges to the Paris Agreement on Climate Change

Jacqueline Peel is a Professor of Law at the Melbourne Law School. Professor Peel is an expert in the field of environmental and climate change law. Her scholarship on these topics encompasses international, transnational and national dimensions, as well as interdisciplinary aspects of the law/science relationship in the environmental field.

Professor Peel is the author or co-author of five books and numerous articles on these topics. She holds the degrees of Bachelor of Science and Bachelor of Laws (Hon I) from

the University of Queensland, a Master of Laws from New York University where she was a Fulbright scholar, and a PhD from the University of Melbourne.

Alison Pert

University of Sydney

Foreign sovereign (and diplomatic) immunity in the age of Trump: Is he immune from suit in foreign courts?

This paper explores two current issues in the law of immunity: immunity of a foreign Head of State in civil proceedings, and immunity of foreign state officials in criminal proceedings.

The law on immunity from suit of foreign Heads of State is remarkably undeveloped. We know from the Arrest Warrant case that at international law a serving Head of State has complete immunity from criminal proceedings in a foreign state. What remains something of a mystery, however, is the extent to which a foreign head of state is immune from civil proceedings. This was left open in Arrest Warrant, and a variety of views is apparent from the literature and state practice; there is no settled position at international law.

In Donald Trump we now have a Head of State with extensive commercial interests in the US and overseas. There is a real possibility that someone, somewhere, will bring proceedings against him and his companies. Would he be entitled to immunity?

The second issue affects not Heads of State but other officials: are they immune from criminal prosecution in foreign states? Again there is a wide divergence in state practice, as illustrated by the current dispute between Italy and India over the latter's prosecution of two Italian marines in the *Enrica Lexie* case.

This paper explores these issues. It surveys the literature and state practice for any discernible trends in the development of the law, and makes some proposals *de lege ferenda*.

After her Bar exams in London Alison spent five years in Papua New Guinea working in the Eastern Highlands Provincial Government and subsequently in the Department of Justice of the National Government. She returned to the UK to undertake her pupillage – one with (then) Professor Rosalyn Higgins – and a Master's Degree at University College, London, specialising in international law.

On moving to Canberra she worked in the Attorney-General's Department, working in constitutional, international, and international trade law areas. She represented Australia at international organisations including Unidroit and the Hague Conference on Private International Law, and at the diplomatic conference at

which the Unidroit Conventions on International Financial Leasing and International Factoring were adopted.

She spent several years in private practice, mainly in commercial litigation, maintaining her interest in international law and lecturing in international trade law at ANU. Her doctorate, awarded in 2010, formed the basis of her monograph *Australia as a good international citizen* (Federation Press, 2014). Since 2003 she has lectured at the University of Sydney in public international law, international law on the use of armed force, and international humanitarian law, and is the co-author of a textbook on *International Humanitarian Law* published by Cambridge University Press in 2015.

Jonathan Pickering

University of Canberra

Can the Centre Hold? Nationalist (and Other) Challenges to the Paris Agreement on Climate Change

Jonathan joined the Centre for Deliberative Democracy and Global Governance at the University of Canberra in 2015. He is a Postdoctoral Fellow working with Professor John Dryzek on his Australian Research Council Laureate Fellowship project, 'Deliberative Worlds: Democracy, Justice and a Changing Earth System'. He completed his PhD in philosophy at the Australian National University, based in the Centre for Moral, Social and Political Theory and graduating in 2014. His thesis explored opportunities for reaching a fair agreement between developing and developed countries in global climate change negotiations.

Before joining the University of Canberra he taught climate and environmental policy at the Crawford School of Public Policy at ANU, and has been a Visiting Fellow at the Development Policy Centre at ANU since 2014. Jonathan's research interests include the ethical and political dimensions of global climate change policy, global environmental governance, development policy and ethics, and global justice. He has a Masters' degree in development studies from the London School of Economics and Political Science (LSE), and undergraduate degrees in arts and law from the University of Sydney. Previously he worked as a policy and program manager with the Australian Government's international development assistance program (AusAID, 2003–09).

Tony Press

University of Tasmania

The Future of Antarctic Regionalism in an Age of Rising Nationalism

Dr Tony Press is an Adjunct Professor at the Antarctic Climate and Ecosystems Cooperative Research Centre. He was its CEO from 2009–14. From 1998–2008 he was the Director of the Australian Antarctic Division. Tony chaired the Antarctic Treaty's Committee for Environmental Protection from 2002–06. He was Australia's representative to the CEP and Alternative Representative to the Antarctic Treaty Consultative Meetings from 1999–2008 and Australia's Commissioner for the Convention on the Conservation of Antarctic Marine Living Resources from 1998–2008. He has a BSc (Hons 1) and PhD from the University of Sydney.

Balakrishnan Rajagopal

Massachusetts Institute of Technology

International Law beyond First and Third World Nationalisms

International law's relationship with nationalism has been 'ambivalent' and characterized by 'despair', as scholars have noted. Third World nationalism has been treated as atavistic and savage, while first world nationalism has been institutionalized in 'ambivalent' ways into the very structure and ideology of international law. Critiquing both, the question that is asked here is whether there is an international law beyond both nationalist accommodations. At least three different contemporary pathways, and their implications, are explored: a postnationalist-globalism (transnational law); a networked global technocracy (global law), and global constellations of insurgent practices (international law from below).

Balakrishnan Rajagopal is Associate Professor of Law and Development at the Department of Urban Studies and Planning and founding Director of the Program on Human Rights and Justice at MIT (Massachusetts Institute of Technology) and the founder of the Displacement Research and Action Network. He is recognized as a leading participant in the Third World Approaches to International Law (TWAAIL) Network of scholars and is one of its founders, and is recognized as a leading global commentator on issues concerning the global South. He has been a member of the Executive Council and Executive Committee of the American Society of International Law, and is currently on the Asia Advisory Board of Human Rights Watch, the International Advisory

Committee of the Robert F. Kennedy Memorial Center for Human Rights and the International Rights Advocates. He is a Faculty Associate at Harvard Law School's Program on Negotiation and has been a Fellow at the Woodrow Wilson Center for International Scholars in Washington, DC, the Madras Institute of Development Studies and the Jawaharlal Nehru University in India, the Institute for Advanced Studies at Hebrew University and a Visiting Professor at the UN University for Peace, University of Melbourne Law School and the Washington College of Law, the American University.

John Reid

Attorney-General's Department

Year in Review

John Reid leads the Office of International Law in the Commonwealth Attorney-General's Department. He has been a legal adviser on international law to Government for over a decade, working across a range of portfolios. John is responsible for advice to Government on all areas of international law, including international human rights and refugee law, international security, international humanitarian law, environment law, law of the sea, air law and international trade and investment law.

In his current role, John is appointed Australia's Agent in international litigation involving Australia, including disputes before the International Court of Justice and those conducted under the auspices of the Permanent Court of Arbitration.

Previously, John has worked as counsel in the Office of General Counsel and as an in-house legal adviser for the Australian Customs and Border Protection Service.

Christian Riffel

University of Canterbury

The chapeau reconsidered

Recently, the international trading order has come under increased pressure. The TPP fell through; CETA struggles to pass ratification; the negotiations for a Regional Comprehensive Economic Partnership (RCEP) are stalled.

The overarching issue is to find the right balance between trade liberalization, on the one hand, and non-trade values, on the other hand. Critics of the current system point out that the law as it stands emphasizes too much trade liberalization to the detriment of regulatory freedom of national lawmakers. Trade liberalization is even seen as a threat to democratic processes.

The author submits that the key clause of the entire system is the introductory clause of the general exceptions: the chapeau. This clause also appears in free trade agreements

(FTAs), as it is common practice to draw on the language of the WTO Agreement when formulating FTAs. The interpretative conflict pivots around two extremes: on the one end of the spectrum, the chapeau is read as a stringent threshold requirement, thus reducing the policy space of states to regulate on public welfare matters.

On the other end, the chapeau reaffirms the tenet of good faith, which guides the performance of every treaty in any event. It bears noting that so far a respondent has only won in one WTO case by invoking a general exception. The author argues that the meaning of the chapeau should be clarified by negotiators in future FTAs, such as RCEP, with a view to constraining its restrictive clout.

Christian Riffel, PhD (2014), University of Bern, is a senior lecturer at the University of Canterbury, New Zealand, and Co-Director of the Master of Laws (LLM) in International Law and Politics. He is the Associate Editor of the *New Zealand Yearbook of International Law*, *Regional Advisor for the Max Planck Encyclopedia of Comparative Constitutional Law*, and a member of the ILA Committee on Rule of Law and International Investment Law.

Also, he is one of the main contributors to the *Max Planck Encyclopedia of Public International Law*, in which he recently authored the entry on 'Mega-Regionals'. In his book, *Protection Against Unfair Competition in the WTO TRIPS Agreement* (Brill 2016), Chris offers an account of the potential which Article 10bis of the Paris Convention has for the world trading system. In particular, he explores what hard law obligations emerge for WTO Members.

Sue Robertson

Attorney-General's Department

The International Criminal Court: Major Achievements and Contemporary Challenges

Sue Robertson is an Assistant Secretary in the Office of International Law in the Commonwealth Attorney-General's Department. She currently has responsibility for practice groups including international humanitarian law and security law, and trade and investment law. Previously she worked for five years in the Department of Foreign Affairs and Trade including as the international legal adviser at the Australian Permanent Mission to the United Nations in New York. Sue has held various international legal policy positions in the United Nations including with the High Commissioner for Refugees in Egypt, the UN Development Program in Bhutan and the Department of Peacekeeping Operations in Sudan. She has a LLB (Hons) and BA (Hons) from Melbourne University and an LLM (International Law) (Dean's Prize) from Australian National University.

Nathan Ross

Victoria University of Wellington

Maintaining sovereignty and self-determination in the age of climate change

In addition to the question of statehood, the people of low-lying States have their collective right of self-determination being existentially challenged. Some scholars have suggested that external self-determination is a substantive right only in instances of decolonisation, and that internal self-determination is the only means by which it can be expected otherwise. It has also been suggested that the right is not a hard rule but merely an open-textured principle. Both of these conclusions, if right, would create significant risks for the affected peoples, since self-determination is a precondition for the enjoyment of the individual human rights.

This paper will challenge these theses. It will explain the substantive and procedural aspects of the right, which then relate to the obligations of various duty-bearers. It will argue that low-lying States, international organisations, and third party States all have duties. Although the substance and the nature and binding force of those duties vary considerably, it will be argued that there is considerable scope for low-lying States to use this right as a central lever in international law to ensure ongoing enjoyment of self-determination in the territory of other States.

Nathan has degrees in environmental science and law, and is currently working as a Research Fellow at VUW and undertaking a doctorate. His research brings together his expertise in science, public policy and law, and analyses how low-lying States' statehood, self-determination and human rights can be maintained in the event of climate change-related relocation. After his science education, Nathan worked as an ecologist and then in climate change mitigation programmes, including as the manager of New Zealand's solar and large-scale renewable energy programmes at the Energy Efficiency and Conservation Authority.

Since completing the undergraduate law programme, he has assisted esteemed barristers in public law, including Rt Hon Sir Geoffrey Palmer QC, whilst undertaking his doctoral research. Nathan has published in peer reviewed journals on resource management law, comparative constitutional law, legal pedagogy (forthcoming), and the international law of statehood (forthcoming). He is progressing additional articles on international law stemming from his doctoral research, and is co-authoring a monograph with Alberto Costi on related topics.

Within the academic environment, Nathan has spoken regularly on topics including: climate change science; climate change and international peace and security; and policy-making for law graduates.

Richard Rowe PSM

Forty Years of the 1977 Additional Protocols

Richard Rowe PSM was the Senior Legal Adviser in the Department of Foreign Affairs and Trade prior to his retirement at the end of 2013.

He has been an Australian representative at numerous international conferences and meetings, including at the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, and as head of the Australian delegation to the United Nations Diplomatic Conference on the Establishment of an International Criminal Court and to the International Criminal Court Review Conference; the United Nations Sixth (Legal) Committee; and as Head of Delegation to Antarctic Treaty Consultative Meetings (ATCM). He was Chair of the ATCM held in Hobart in 2012. He has served overseas, including at Australia's Missions to the UN in New York and Geneva, and as Ambassador to Sweden, Finland, Estonia, Latvia and Lithuania.

Kerrie Sadiq

Queensland University of Technology

Fiscal sustainability and the role of an international tax regime

Tax is often perceived as one of the last bastions of sovereignty with jurisdictions traditionally viewed as competing for a share of global taxes. Yet, with the advent of a potentially new international tax regime, fiscal law and policy is moving against the tide of rising nationalism.

The genesis of the current movement towards multilateralism in tax can be traced to the global financial crisis and ensuing austerity measures. Subsequent increased public scrutiny, following evidence of highly aggressive tax planning strategies by large multinational entities such as Google, Apple, Starbucks, and Amazon, has provided even greater impetus for international tax reform. Studies suggest that between US \$100bn and \$240bn is lost annually through profit shifting which means that countries at all corporate tax levels are losing revenue and competing for a much smaller amount than would otherwise be available if base erosion and profit shifting (BEPS) strategies were no longer available to corporate taxpayers.

Together, as a response to corporate tax practices, over 100 countries are currently collaborating to implement minimum standards recommended by the OECD to address BEPS and ensure corporate tax revenues are captured by the appropriate jurisdiction. These minimum standards deal with harmful tax practices, tax treaty abuse, country-by-country reporting and dispute resolution mechanisms. The consequence of the change in approach to international tax

policy is that the international tax regime is no longer viewed as a mechanism for preventing double taxation but rather a means of counteracting less than single taxation. This paper considers the rise of this potentially new international tax regime and addresses the question of why regionalism and multilateralism measures are viewed as a means to ensure fiscal sustainability, rather than the national protectionist measures of the past.

Professor Kerrie Sadiq BCom, LLB (Hons), LLM, PhD, CTA, GAICD, holds the position of Professor of Taxation in the School of Accountancy at the QUT Business School, Queensland University of Technology. She is an Adjunct Research Fellow of the Taxation Law and Policy Research Group, Monash University, a Senior Tax Adviser to the Tax Justice Network (UK) and a Chartered Tax Adviser as designated by the Taxation Institute of Australia. Kerrie primarily researches in international tax, tax expenditures and capital gains tax.

She is the co-editor of *Australian Tax Review*, an internationally recognised leading academic tax journal. She is author of publications in both Australian and International journals and edited books and is a co-author of taxation texts. Kerrie is often cited in the media in relation to international tax issues and regularly receives invitations to speak on contemporary tax topics. Recent work has been specifically on issues in international tax, such as transfer pricing, the OECD's approach to base erosion and profit shifting (BEPS), Australia's role in the G20 and the BEPS project, and automatic exchange of tax information.

Kerrie has written balanced articles on BEPS for *The Conversation*, as well as writing and presenting findings for the Committee for Economic Development of Australia (CEDA) and appearing before the 2015 Senate Inquiry into Corporate Tax Avoidance. Prior to joining Queensland University of Technology, Kerrie spent 20 years at The University of Queensland as a member of both their Law School and Business School.

Aruna Sathanapally

12 Wentworth Selbourne Chambers

International law in the hands of others: Human rights in legislative and business decision-making

The past twenty years has seen the attempted integration of international human rights standards into the decision-making of institutions beyond those which have traditionally been responsible for them: beyond national and international courts and human rights bodies, to State-level institutions and to the private sector. Within this phenomenon, this paper considers

the question: what is it that non-judicial institutions are doing when international human rights standards are placed in their hands? It will consider two examples: first, the role of legislatures in upholding international human rights standards, and second, the introduction of human rights standards into business decision-making. In each example, an institution is entrusted with self-regulation against international law standards originally devised for a different decision-making context.

In each case, there are pragmatic reasons for instituting self-regulation. But how are these institutions to apply international human rights law, compared to what a court or international lawyer would do, and what type of decision-making can we expect them to capably and effectively engage in?

Dr Aruna Sathanapally is a barrister whose practice includes public and private international law, and regulatory matters. She has a BA (Politics and Economics)/LLB with the University Medal in Law from the University of NSW, and completed the BCL, MPhil in Law and DPhil in Law (Socio-Legal Studies) at the University of Oxford as a Menzies Scholar and a John Monash Scholar. She is the author of *Beyond Disagreement: Open Remedies in Human Rights Adjudication* (OUP, 2012). She is a visiting lecturer in public international law at the University of Sydney.

Formerly a Senior Lawyer at the Australian Government Solicitor, Aruna acted for Australia in the tobacco plain packaging investment treaty arbitration against Philip Morris. From 2010–12, Aruna advised the private sector, governments and major intergovernmental agencies on regulatory strategy, sustainable development and public health strategy as a consultant at McKinsey & Co, London.

In 2016, Aruna was appointed as the legal advisor to Australia's parliamentary Joint Committee on Human Rights, which is responsible for scrutinising legislation for its compatibility with Australia's international obligations under the seven principal human rights treaties.

Karen Scott

University of Canterbury

Karen Scott is a Professor in law, having formerly lectured at the University of Nottingham in the UK. She researches and teaches in the areas of public international law, international environmental law, the law of the sea and Antarctic Law and Policy.

She has published widely in these areas in journals such as the *Michigan Journal of International Law*, the *International and Comparative Law Quarterly*, the *Yearbook of International Environmental Law* and the *Melbourne Journal of International Law*. She is the co-editor (with Alan D. Hemmings and Donald R. Rothwell) of *Antarctic*

Security in the Twenty-first Century: Legal and Policy Perspectives (Routledge, 2012). Recent and current research projects comprise: science and security in Antarctica; maritime safety in the Southern Ocean; the fragmentation of international environmental law; the regulation of geo-engineering; marine protected areas on the high seas; and justice and legitimacy within the Antarctic Treaty System.

Karen is also engaged in a major research project on oceans governance in New Zealand, funded by the New Zealand Law Foundation. Until 2013 Karen was the Editor of the *New Zealand Yearbook of International Law*. She is currently a member of the Advisory Board for Gateway Antarctica (based at the University of Canterbury) and Vice-President of the Australian and New Zealand Society of International Law (ANZSIL).

Uzma Sherieff

NSW Crown Solicitor's Office

Bridging the local and the global: The city as an international legal person

The Westphalian international legal order is in a state of flux. Decades of efforts to develop multilateral legal regimes based on state cooperation are increasingly threatened by forces of nationalism and diversifying power. In response to these challenges, international law must demonstrate its ongoing relevance. It can do this by better recognising the true range of actors participating in the international legal sphere. While non-governmental organisations, corporations and individuals have recently featured in debates over rights, obligations and international legal personality, little has been said of cities as subjects of international law.

This paper examines the emergence of the city, and particularly the 'global city', as an informal actor in the shaping and application of international law. It considers the prospect that cities, as drivers of progress and innovation in challenging areas of international law-making, could formally bridge the gap between 'local' and 'global' spaces to become international legal persons. Notwithstanding the obstacles that arise, this paper argues that affording a limited measure of formal recognition and personality to cities would be valuable for the international legal order, particularly in its aim to remain relevant to, and reflective of, power on the global stage.

Uzma Sherieff is a government solicitor at the NSW Crown Solicitor's Office, Sydney. She completed her studies in Law and International Studies, with a major in Globalisation Studies, at the University of New South Wales in 2015. Her research interests include public international law, global governance and international legal theory. Uzma has previously interned with the United Nations International Criminal Tribunal for the former Yugoslavia as

part of a major international criminal prosecution and has conducted research on a range of international law topics for the Australian Human Rights Centre, Zhicheng Public Interest Law in Beijing and the Rule of Law Institute of Australia.

Tom Sparks

University of Durham

The law of succession in an era of nationalism: Multipartite treaties and the legal position of new states

History has repeatedly shown that with the splitting of countries and the dividing of peoples come some of the most dangerous and destructive times for individuals and communities, and some of the most challenging circumstances for the international rule of law. Now, as the World appears to be approaching a new wave of secessions, dismemberments and nationalism, international law arguably needs to bring renewed energy to consideration of the processes involved in the dissolution of States and the secession of regions, such that changes of this type to the membership of the international community may be managed by and in accordance with international law.

This paper contributes to that effort. Although new States and entities aspiring to Statehood face a future filled with imponderables, the rights and obligations they can expect to enjoy and to bear under international law should not be a matter of uncertainty. Starting from this premise, the paper notes that while the law on treaty succession has been in the past a rich topic of study, an effective means of distinguishing between 'multilateral' treaties, to which succession is achieved by right of option, and 'plurilateral' treaties, to which succession is achieved only by the grace of the parties, remains elusive. Yet the practical effects on new as well as existing States are significant. This paper focuses on this vital question, and offers a working definition of multi- and plurilateral for the purposes of succession law, as well as highlighting avenues for further study.

Tom Sparks is a PhD Researcher at Durham University, where he is writing a thesis on the theory of international law, and in particular the position of self-determination in the international legal system, under the supervision of Professor Robert Schütze and Dr Gleider Hernández. He is also interested in the operational aspects of self-determination, statehood and sovereignty, and the processes by which States are created and destroyed.

In addition to his doctoral studies, Tom is a research assistant to Professor Schütze under the auspices of his ERC-funded 'Neo-Federalism' project (ERC Grant Agreement n. 312304), and is Assistant Editor to the

International Courts of General Jurisdiction project of the Oxford Reports on International Law. In the summer of 2015 Tom was a visiting fellow at the Max Planck Institute for Comparative Public Law and International Law (Heidelberg).

Tim Stephens

University of Sydney

The Future of Antarctic Regionalism in an Era of Rising Nationalism

Tim Stephens is Professor of International Law and Australian Research Council Future Fellow at the University of Sydney. He is President of the Australian and New Zealand Society of International Law. Tim teaches and researches in public international law, with his published work focussing on the international law of the sea, international environmental law and international dispute settlement.

His major career works include *The International Law of the Sea* (Hart, 2nd edition, 2016) with Donald R Rothwell and *International Courts and Environmental Protection* (Cambridge University Press, 2009). His ARC Future Fellowship research project is examining the implications of the Anthropocene for international law. In 2010, Tim was awarded the International Union for the Conservation of Nature (IUCN) Academy of Environmental Law Junior Scholarship Prize for 'outstanding scholarship and contributions in the field of international environmental law'.

He has been a consultant for several non-governmental organisations, including the International Fund for Animal Welfare in relation to cetacean conservation. In 2014, Tim was appointed, on the nomination of the Australian Government, to the List of Experts for the South Pacific Regional Fisheries Management Organisation. Between 2010 and 2013 Tim was Co-Director of the Sydney Centre for International Law.

Alison Todd

Crown Law Office, New Zealand

Year in Review

Crown Law Alison Todd is a Crown Counsel at Crown Law's Auckland office, specialising in international, constitutional and human rights law. She has worked at Crown Law since August 2013, having returned to New Zealand from the United Kingdom after nearly 10 years. Alison spent most of her time at the UK Ministry of Defence, practising mainly in international humanitarian

law and also advising on command, discipline and constitutional law issues.

Ntina Tzouvala

University of Melbourne

Talking about international economic law: Lawyers, neoliberals and the undoing of economic democracy

In this paper I interrogate the interventions of international lawyers in the ongoing debates about controversial international trade and investment treaties, including the Transpacific Partnership Agreement (TPP) and the Transatlantic Trade and Investment Partnership (TTIP), especially in the light of national political controversy and popular resistance.

My paper focuses on the image of international (economic) law that arises from these academic interventions, as well as on the self-image that international lawyers construct for themselves and their position within different centres of power. My concern is that most relevant interventions accept without much debate the central role of judicialisation and internationalisation of contemporary economic governance without reflecting upon (or even while enthusiastically accepting and promoting) the wider economic and normative underpinnings of such trends.

To do so, I first focus on the increased judicialisation and internationalisation of economic regulation as a vital feature of contemporary globalised neoliberalism. Revisiting the work of key neoliberal figures such as Wilhelm Roepke and Friedrich Hayek, I argue that the steady development of international law and institutions after 1990, as observed by Anne Orford and others, is not incidental to the global hegemony of neoliberalism, but its direct consequence and its enduring pre-condition.

Therefore, I argue that internationalisation and judicialisation of economic governance have contributed significantly to patterns of rising inequality, environmental destruction and erosion of social cohesion under neoliberalism and needs to be challenged, rather than upheld.

Ntina Tzouvala took up a position as Postdoctoral Fellow with the Laureate Program in International Law in September 2016. In the context of the Program she will work on a project entitled *The Forgotten War: The Greek Civil War and International Law*. Prior to this post, Ntina was a lecturer in law at Durham Law School (UK), where she also completed her PhD thesis. Her teaching focused on international law, international human rights law and research skills training for undergraduate and postgraduate students.

Her research concerns international law, with particular emphasis on history, theory, and the political economy of international law. Entitled *Letters of blood and fire: a socio-economic history of international law*, her thesis traced the role of international law and international institutions in the diffusion of free-market economy outside Europe between the 1870s and the early 21st century. Ntina also holds an LLM in international law from University College London and an LLM in sociology of law from the National and Kapodestrian University of Athens, as well as an LLB from the same institution. As part of the Laureate Fellowship Program team Ntina intends to analyse the impact of international law and international institutions on the Greek civil war. Being the first major incident in the wake of the Cold War, the Greek civil war posed pressing questions of intervention and international legality in the immediate aftermath of the UN Charter.

More broadly, Ntina intends to examine the role of international law in the construction of European peripheries, the political economy of interventionism, and their lasting impact for the region.

Ashlee Uren

Attorney-General's Department

Change and continuity in international investment law: Trump as a variable

This paper evaluates the possible implications of the Trump administration and consequent changes to the United States' typically pro-investor policy on recent trends to reform the international investment law regime. This paper finds that there is alignment between the trend towards greater deference for states' right to regulate, including through renegotiating older investment agreements, and Trump's nationalist agenda. Trump's election also ushers in a new wave of uncertainty and instability for the future direction of international investment dispute settlement and foreign direct investment flows.

The year 2016 saw several reform initiatives responding to criticism of the international investment law regime. Each sought to overhaul the international legal order in the investment law space through establishing harmonised standards and common institutions. For example, the EU proposed (including in negotiations with the US for the Transatlantic Trade and Investment Partnership) the establishment of a permanent 'investment court' to replace ad hoc tribunals to resolve of international investment disputes. The Trans-Pacific Partnership Agreement ('TPP') signaled a shift towards mega-regionalism and a consolidated set of international investment law standards, away from the fragmented patchwork of bilateral investment treaties. Against this backdrop, the Trump rhetoric presents as an abrupt turn away from multilateralism and closer economic integration. Within days of assuming office, Trump signed executive order

to withdraw from the TPP, stating that the US will instead pursue bilateral deals.

Such bilateral treaties may still permit states to pursue reform, albeit with more limited prospects of delivering cohesive, radical and far-reaching international policy outcomes.

Ashlee Uren is a Legal Officer in the Office of International Law within the Commonwealth of Australia's Attorney-General's Department. Ashlee currently practices in the areas of international trade, investment, economic and environment law. Ashlee has attended trade negotiations as legal advisor to the Australian delegation. Ashlee has also worked as part of the team responsible for preparing Australia's defence of tobacco plain packaging measures before an ad hoc investor-state arbitration tribunal.

Ashlee holds a Bachelor of Laws and a Bachelor of Arts majoring in International Relations from the University of Western Australia in Perth, where she was the recipient of the Ciara Glennon Scholarship and the Geoff Adjuk Memorial Prize. She is currently completing a Masters of International Law at Melbourne University. Ashlee was admitted as a Solicitor of the ACT Supreme Court in December 2014.

Maria Varaki

University of Helsinki

The end of an era or a new era for territorial sovereignty and citizenship? Re-reading 1943 Hannah Arendt for a 'new' cosmopolitan order in 2017?

The latest mixed migration movements have triggered an unprecedented challenge of the European Union project and the overall liberal system as whole. The fundamental idea of a cosmopolitan liberal order is under severe contestation by populist and nationalist voices in some European countries, whereas in other moderate advocates unsuccessfully balance between security and humanitarian concerns. Within this context, the traditional Kantian right to hospitality will be examined towards the right to have rights, as supported by Hannah Arendt.

The question to be addressed is twofold: on the one hand, to what extent has the liberal international legal order contributed with its biases and flawed structure to the 'darkness of our era'? On the other hand, does this 'crisis' reveal the need for a revolutionary re-conception of the post cold war cosmopolitanism or the resurrection of a Rawlsian theory of toleration of non-liberal national policies? In other words; Do we experience the end of an era or a new era for territorial sovereignty and citizenship?

Dr Maria Varaki is a post doctoral research fellow with the Erik Castren Institute of International Law and Human Rights in Helsinki, working on an Aristotelian theory of ethics for global governance. During the last two years she was Assistant Professor in International Law at Kadir Has University, Faculty of Law in Istanbul. Before joining Kadir Has University, she was a post-doctoral at the Law Faculty of Hebrew University in Jerusalem and a visiting fellow at the iCourts Centre of the University of Copenhagen.

She holds a PhD in International Criminal Law from the Irish Centre for Human Rights in Galway, Ireland and two LLM degrees in International and Comparative Law, one from Tulane University, School of Law and one from New York University, School of Law. Additionally, she has worked for the OHCHR in Geneva, the UNHCR in New York and for the Legal Advisory section of the Office of the Prosecutor of the International Criminal Court in the Hague.

Her current research interests focus on legal theory and virtue ethics, international responsibility with regard to refugee law, international courts and tribunals and populist challenges to the rule of law concept. Currently she also participates in the joint research project run by LSE/SOAS/Melbourne on Cold War and International law working on the 'revival' of cold war theories on refugees.

In July-August 2017 will be a Kathleen Fitzpatrick visiting post doctoral fellow with the Laureate Program in International Law, Melbourne Law School completing her project titled *Navigating Between a Minimalist model of Sovereign Trusteeship and a Maximalist re-conception of Human Security*. Her latest article 'Introducing a fairness based theory of prosecutorial legitimacy before the International Criminal Court' was published in 27 *European Journal of International Law* 3 2016.

Fabia Veçoso

University of Melbourne

Risky rhetoric: How not to talk about humanitarianism

This paper explores the trend towards the merging of international human rights and humanitarian law through the focus on a holist doctrine of the principle of humanity. In the perspective of Inter-American Human Rights bodies, this way of interpreting human rights presupposes a fundamental unity of international law under the guiding principle of humanity, enabling the assertion of an international corpus juris to protect the human person in any circumstance. In this setting, international human rights law, international humanitarian law and international refugee law would all converge to assure a pro homine interpretation of concrete cases involving these branches of law.

Focusing on leading Inter-American cases on war-affected states, this paper explores the stakes connected to the merging of international human rights law and international humanitarian law under this particular perception of humanity. We argue that national backgrounds and contexts may assist regional perspectives in making better sense of international human rights law and humanitarian law. In this very specific sense, it is a properly nationalist outlook on issues related to peace-building, transitional justice, and access to justice that may come to the aid of overarching regional perspectives of the principle of humanity or pro homine interpretation of regional human rights instruments. This paper argues that if such is the case, then this holistic approach involving an uncritical preference for human rights cosmopolitanism over individual, nationalist backgrounds may be potentially more damaging than the guardianship it intends to achieve.

Fabia Veçoso is a Postdoctoral Fellow with the Laureate Program in International Law at Melbourne Law School, working on the contextual origins of the principle of non-intervention in Latin America. Her project explores the movement of Pan-Americanism and the related continental debates promoted by international lawyers and politicians between the late nineteenth century and early twentieth century. In this setting, legal vocabulary proved to be essential in carrying forward the idea of an independent and respectable Latin American region able to face European and US interventions during this period, and the principle of non-intervention became central to this regional understanding of international law.

During the last two and a half years she was Assistant Professor of International Relations at the Federal University of São Paulo, Brazil. Fabia earned her LLB and LLM from the University of São Paulo Law School. She completed her PhD in international law at the same institution, examining the case law of the Inter-American Court of Human Rights related to amnesties. She was a Doctoral Visiting Research Fellow at the Erik Castrén Institute of International Law and Human Rights at the University of Helsinki. Her current research interests focus on the theory and history of international law, regionalism and Latin America.

Genevieve Wilkinson

University of Technology Sydney

Intellectual Property, Domestic Regulatory Autonomy and Tobacco Plain Packaging

In a climate of increasing nationalism, the ability of states to balance national interests with multilateral obligations becomes an important consideration in international law. This paper considers domestic regulatory autonomy in the context of international intellectual property law. It uses the

Agreement on Trade Related Aspects of Intellectual Property (TRIPS) as an example of a treaty which has numerous flexibility mechanisms. These provide member States with the opportunity to exercise domestic regulatory autonomy in their implementation of TRIPS. Despite this, these flexibility mechanisms are frequently underutilised and consequently their scope remains relatively untested.

This paper considers Australia's utilisation of certain flexibility mechanisms in the WTO disputes surrounding Australia's tobacco plain packaging mechanisms. It explores the potential role of Articles 7 and 8 of TRIPS in permitting States to emphasise the human right to health and other human rights obligations where they are relevant, noting the health justifications relevant to tobacco plain packaging legislation. In a broader context, greater use of flexibility mechanisms within TRIPS may permit greater domestic regulatory autonomy for member states and strengthen the relevance, legitimacy and usefulness of the agreement in the present international legal context.

Genevieve Wilkinson is barrister with a practice in intellectual property law. She is a Quentin Bruce Doctoral Scholar and Teaching Fellow currently completing her doctoral research considering the intersection between human rights and intellectual property in Australian trade mark law. Genevieve lectures at University of Technology Sydney in the fields of Australian intellectual property law and policy, designs law and practice, international intellectual property law and in subjects taught as part of the Bachelor of Creative Intelligence and Innovation. She also lectures in human rights law at Australian Catholic University.

Yvette Zegenhagen

Australian Red Cross

The role of the International Red Cross Red Crescent Movement in eliminating nuclear weapons

The International Red Cross and Red Crescent Movement (Movement) has been responding to the catastrophic humanitarian consequences of nuclear weapons since 1945, when they were first used over Hiroshima and Nagasaki. Witnessing the terrible intergenerational effects of these weapons has fuelled the Movement's opposition to their very existence, and, in recent years, the Movement has re-committed itself to intensifying efforts to ensure that nuclear weapons are never again used.

Nuclear weapons are unique in their destructive power – in the unspeakable human suffering they cause, the impossibility of controlling their effects in space and time and their irreversible harm to the environment. There are no means or methods of

nuclear weapon delivery that could comply with the principles of international humanitarian law. They threaten the climate and future generations; indeed, they threaten the very survival of humanity.

The historic significance of the 2017 Draft Convention on the Prohibition of Nuclear Weapons cannot be overstated. Seven decades after calls for the elimination of nuclear weapons were first made States are finally meeting to prohibit these weapons under international law. A treaty prohibiting nuclear weapons will not make them immediately disappear, but it will reinforce the stigma against their use, support commitments to nuclear risk reduction, deter proliferation, and be a concrete step towards fulfilling existing disarmament commitments. This paper will set out the Movement's plan of action and highlight the work of Australian Red Cross and other Movement partners in the elimination of nuclear weapons.

Yvette joined Australian Red Cross in 2011 after working in a range of legal and training roles in the tertiary, not-for-profit and commercial sectors in Australia and overseas. She undertook a Bachelor of Laws and a Bachelor of International Relations at Bond University as an Australia Day Scholar, has a Masters in Community and International Development from Deakin University and has also received specialist IHL instruction through the Institute of IHL in San Remo and the Geneva Centre for Security Policy. Yvette is responsible for the overall management and operations of the Australian Red Cross IHL program, including IHL engagement with the broader International Red Cross Red Crescent Movement.

Yvette is the chair of the Asia-Pacific National Society Legal Advisers' Network, is a registered delegate with Australian Red Cross and undertakes offshore immigration detention monitoring visits for the Australian Red Cross immigration detention monitoring program.

NOTES

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