



Australian and New Zealand
Society of International Law

INTERNATIONAL LAW-MAKING AT A CROSSROADS: PARTICIPANTS, PROCESSES AND PRINCIPLES

THURSDAY 2 JULY 2015

8.30 am **REGISTRATION** *Lecture Theatre 1 and 2 Foyer*
TEA/COFFEE *Common Room*

9–9.30 am **CONFERENCE OPENING**

Location: Lecture Theatre 1

Mihi Whakatau

WELCOME REMARKS

Professor Anne Orford, ANZSIL President

OPENING SPEECH

Hon Chris Finlayson QC, Attorney-General of New Zealand

9.30–10.30 am **KEYNOTE ADDRESS**

Location: Lecture Theatre 1

Chair: Anne Orford, ANZSIL President

Gerry Simpson, Kenneth Bailey Professor of Law, University of Melbourne

> *Mutually assured construction: international law and the Cold War*

10.30–11 am Morning tea (*Common Room*)

11 am–12.30 pm **PANEL 1: THE ROLE OF SOFT LAW**

Location: Lecture Theatre 1

Chair: Stephanie Ierino, Australian Attorney-General's Department

Alison Duxbury, University of Melbourne

> *Using soft law to interpret the constituent instruments of international organisations: whaling in the Antarctic*

Sanzhuan Guo, Flinders University

> *Critical review of the Paris principles as soft law and their effectiveness and legitimacy in the context of international human rights law-making*

Peter Lawrence and **Rebecca Byrnes**,
University of Tasmania

> *Can 'soft law' solve 'hard problems'? Justice, legal form and the Durban-mandated climate negotiations*

PANEL 2: SITES OF INTERNATIONAL ENVIRONMENTAL LAW-MAKING

Location: Lecture Theatre 2

Chair: Tim Stephens, University of Sydney

Afshin Akhtarkhavri, Griffith University

> *Living emotionally through nature: fear, anxiety and the limits of environmental principles and law-making in the Anthropocene Epoch*

Felicity Deane, Queensland University of Technology

> *Sustainable development and economic growth*

David Tong, University of Auckland

> *Common in Durban but differentiated in Paris: the rise of a subjective interpretation of common but differentiated responsibility*

Vernon Rive, Auckland University of Technology

> *Fossil fuel subsidy reform: a New Zealand perspective on the international law framework*



11 am–12.30pm	PANEL 3: THE MAKING OF INTERNATIONAL TRADE LAW <i>Location: Lecture Theatre 3</i> Chair: Vivienne Bath, The University of Sydney Ruth Nichols , New Zealand Ministry of Foreign Affairs and Trade > <i>Competition policy in international trade agreements</i> Hunter Nottage , New Zealand Ministry of Foreign Affairs and Trade > <i>New Zealand's World Trade Organisation legal dispute challenging Indonesia's agricultural restrictions</i> Kelly Shang , Maastricht University > <i>Make thee mightier yet: GATT article XX(A) and the EU export control in the Ukraine crisis</i>	
12.30–1 pm	Lunch (<i>Common Room</i>)	
1–2pm	LUNCH-TIME PLENARY: THE SECURITY COUNCIL AS INTERNATIONAL LAW-MAKER <i>Location: Lecture Theatre 1</i> Chair: Christopher Michaelsen, University of New South Wales Michael Bliss , Australian Department of Foreign Affairs and Trade Colin Keating , New Zealand Ministry of Foreign Affairs and Trade	
2–3.30pm	PANEL 4: INTERNATIONAL STANDARD-SETTING AS LAW-MAKING <i>Location: Lecture Theatre 1</i> Chair: Holly Cullen, University of Western Australia Andrew Byrnes , University of New South Wales > <i>The lex sportiva – the relationships of public and private international law, 'law beyond the state', and the laws of nation-states</i> David Matas , Lawyer, Winnipeg > <i>International professional association standards as a source of international law</i> Sharmin Tania , Curtin University > <i>Making of informal international law on food safety</i>	PANEL 5: NON-STATE ACTORS AND INTERNATIONAL LAW-MAKING <i>Location: Lecture Theatre 2</i> Chair: Stephen Bouwhuis, Australian Attorney-General's Department David Mason , Australian Department of Foreign Affairs and Trade > <i>International treaty-making at a crossroads: new participants, new processes, new principles?</i> Sarah Williams and Emma Palmer , University of New South Wales > <i>The changing role of non-state influence at the International Criminal Court</i>
2–3.30pm	PANEL 6 HAS BEEN CANCELLED	
3.30–4pm	Afternoon tea (<i>Common Room</i>)	
4–5.30pm	YEAR IN REVIEW <i>Location: Lecture Theatre 1</i> Chair: Andrew Byrnes, University of New South Wales Virginia Hardy , New Zealand Crown Law Office David Dolphin , New Zealand Ministry of Foreign Affairs and Trade John Reid , Australian Attorney-General's Department Katrina Cooper , Australian Department of Foreign Affairs and Trade Patricia Holmes , Australian Department of Foreign Affairs and Trade	
6pm	KEYNOTE LECTURE RECEPTION (<i>Lecture Theatre 1 and 2 Foyer</i>)	



Australian and New Zealand
Society of International Law

6.30–7.30pm

KEYNOTE LECTURE

Location: Lecture Theatre 1

Chair: Justice Terence Arnold, New Zealand Supreme Court

Sir Kenneth Keith, Victoria University of Wellington

> *International humanitarian law: principles, problems and prospects*

Vote of thanks: **Mark Hickford**, Pro Vice-Chancellor and Dean, Faculty of Law, Victoria University of Wellington

FRIDAY 3 JULY 2015

9–10.30am

KEYNOTE SESSION

Location: Lecture Theatre 1

Chair: Alberto Costi, Victoria University of Wellington

OPENING REMARKS

Mark Hickford, Pro Vice-Chancellor and Dean, Faculty of Law, Victoria University of Wellington

KEYNOTE PANEL

Mary Keyes, Griffith University

> *Making private international law in the 21st century: participants, processes and principles*

Douglas Arner, University of Hong Kong

> *The new silk road: all roads lead to China?*

10.30–11 am

Morning tea (*Common Room*)

INTERNATIONAL PEACE AND SOCIETY INTEREST GROUP MEETING
(*Moot Room, GB340*)

11 am–12.30pm

PANEL 7: THE PROCESSES OF INTERNATIONAL HUMANITARIAN LAW-MAKING

Location: Lecture Theatre 1

Chair: John Reid, Australian Attorney-General's Department

Robert Mathews, University of Melbourne

> *The making of disarmament and arms control law in a changing world: participants, processes and principles*

Zoe Scanlon, Australian Attorney-General's Department

> *The development of soft law instruments in the international humanitarian law context*

Netta Goussac, International Committee of the Red Cross

> *Custom and the quest for universal adherence: reflections on the study on customary international humanitarian law*

PANEL 8: NEGOTIATING AND ADJUDICATING INTERNATIONAL TRADE AND INVESTMENT LAW

Location: Lecture Theatre 2

Chair: Caroline Henckels, University of New South Wales

Vivienne Bath, University of Sydney

> *Free trade agreements and the fragmentation of investment law and policy*

Luke Nottage, University of Sydney

> *Investment treaty arbitration 'down under': international implications of policy and politics recently in Australia*

Dai Tamada, Kobe University

> *International law-making by arbitrators: binding force of provisional measures in ICSID*



11 am–12.30pm	PANEL 9: THE FRAGMENTATION OF INTERNATIONAL LAW-MAKING <i>Location: Lecture Theatre 3</i> Chair: Gerry Simpson, University of Melbourne Musa Shongwe , University of Johannesburg > <i>Regime collisions: fragmentation across international law disciplines</i> Maria Pozza , Helmore Ayers Lawyers, Christchurch > <i>The threat or use of force in outer space: a prime example of international law expansion and fragmentation</i>	
12.30–1.30pm	Lunch (<i>Common Room</i>) ANNUAL GENERAL MEETING OF ANZSIL (<i>Lecture Theatre 1</i>)	
1.30–3pm	PANEL 10: DEVELOPING AND INTERPRETING INTERNATIONAL HUMANITARIAN LAW <i>Location: Lecture Theatre 1</i> Chair: Rain Liivoja, University of Melbourne Treasa Dunworth , University of Auckland > <i>'Humanitarian disarmament' as a new law-making process?</i> Jadranka Petrovic , Monash University > <i>The impact of the Syrian conflict on cultural property: rethinking the use of cultural property for military purposes under international law</i>	PANEL 11: CUSTOM AND THE MAKING OF INTERNATIONAL LAW <i>Location: Lecture Theatre 2</i> Chair: Greg French, Australian Department of Foreign Affairs and Trade Robert McLaughlin , Australian National University > <i>Customary international law on maritime insurgencies as a guide to filling a gap in the modern law of armed conflict</i> Stephanie Ierino , Australian Attorney-General's Department > <i>Whose practice? intergovernmental organisations as independent actors in the formation of customary law</i> Alberto Costi and Monique Egli Costi , Victoria University of Wellington > <i>Formalisation of international financial regulation: a place for customary international law?</i>
1.30–3pm	PANEL 12: LAWYERS, JUDGES, AND LAW-MAKING <i>Location: Lecture Theatre 3</i> Chair: Sir Kenneth Keith, Victoria University of Wellington Edwin Bikundo , Griffith University > <i>Carl Schmitt as a subject and object of international criminal law: ethical judgment in extremis</i> Toby Hanson , Australian Attorney-General's Department > <i>Electing the makers of international law: lessons from the International Criminal Court</i> Joshua Paine , University of Melbourne > <i>Interpretive communities in international law: understanding legal meaning, regimes and interpretive power</i>	
3–3.30pm	Afternoon tea (<i>Common Room</i>)	



3.30–5pm	<p>PANEL 13: NEW CHALLENGES FOR INTERNATIONAL HUMANITARIAN LAW</p> <p><i>Location: Lecture Theatre 1</i></p> <p>Chair: Leonard Blazeby, International Committee of the Red Cross</p> <p>Chris Jenks, SMU Dedman School of Law</p> <ul style="list-style-type: none">> <i>The human as placebo and the path to offensive autonomous weapons</i> <p>Rain Liivoja, University of Melbourne</p> <ul style="list-style-type: none">> <i>Bioenhanced soldiers and the prohibition of superfluous injury or unnecessary suffering</i> <p>Marnie Lloyd, New Zealand Red Cross</p> <ul style="list-style-type: none">> <i>The protection of health care in armed conflict and other emergencies: implementation of international law in domestic normative frameworks</i>	<p>PANEL 14: BETWEEN PUBLIC AND PRIVATE: REGULATING INTERNATIONAL BUSINESS</p> <p><i>Location: Lecture Theatre 2</i></p> <p>Chair: Mary Keyes, Griffith University</p> <p>Holly Cullen, University of Western Australia</p> <ul style="list-style-type: none">> <i>The OECD's development of responsible business norms: decentralisation, incrementalism and participation</i> <p>Alexandra Harrington, Albany Law School</p> <ul style="list-style-type: none">> <i>International industries and self or joint regulation</i> <p>Jonathan Kolieb, University of Melbourne</p> <ul style="list-style-type: none">> <i>The promise and perils of market-based international law-making</i>
3.30–5pm	<p>PANEL 15: REMAKING INTERNATIONAL HUMAN RIGHTS LAW</p> <p><i>Location: Lecture Theatre 3</i></p> <p>Chair: Daniel Joyce, University of New South Wales</p> <p>Stephen Bouwhuis, Australian Attorney-General's Department</p> <ul style="list-style-type: none">> <i>Revisiting Philip Alston's 'human rights and quality control'</i> <p>Bridget Lewis, Queensland University of Technology</p> <ul style="list-style-type: none">> <i>Quality control for new rights in international human rights law: a case study of the right to a good environment</i> <p>Jackie Mapulanga-Hulston, Curtin University</p> <ul style="list-style-type: none">> <i>An analysis of the challenges of international law in the development of the human right to water</i> <p>Iain McColl, New Zealand Ministry of Business, Innovation and Employment</p> <ul style="list-style-type: none">> <i>Today's needs tomorrow – towards a UN convention on the rights of older persons</i>	
5.15–6.30pm	<p>PANEL DISCUSSION: THE ROLE OF INTERNATIONAL LEGAL ADVISORS TO GOVERNMENT</p> <p><i>Location: Lecture Theatre 1</i></p> <p>Chair: Treasa Dunworth, University of Auckland</p> <p>Katrina Cooper, Australian Department of Foreign Affairs and Trade</p> <p>Bill Campbell, Australian Attorney-General's Department</p> <p>Penelope Ridings, New Zealand Ministry of Foreign Affairs and Trade</p> <p>John Reid, Australian Attorney-General's Department</p> <p>Gerry Simpson, University of Melbourne</p>	
7.15pm	<p>CONFERENCE DINNER <i>Pipitea Marae & Function Centre</i></p>	



SATURDAY 4 JULY 2015

9.15–10.45 am

PANEL 16: DEVELOPMENTS IN THE LAW OF THE SEA

Location: Lecture Theatre 1

Chair: Karen Scott, University of Canterbury

David Letts, Australian National University

- > *Soft law and warships: measures for reducing conflict at sea*

Joanna Mossop, Victoria University of Wellington

- > *New Zealand restrictions on protests at sea and the Law of the Sea convention*

Robyn Frost, Australian Attorney-General's Department

- > *Oceanscaping: establishing maritime boundaries in the Pacific*

Robin Bowley, University of Technology Sydney

- > *The proliferation security initiative a decade on: assessing its impact on scholarly understandings of maritime interdiction powers under the UN Convention on the Law of the Sea*

PANEL 17: INTERNATIONAL ORGANISATIONS AND LAW-MAKING

Location: Lecture Theatre 2

Chair: Alison Duxbury, University of Melbourne

Kevin Chang, Australian Attorney-General's Department

- > *When do-gooders do harm: legal and ethical accountability of the United Nations in peacekeeping and development assistance efforts*

Niamh Kinchin, University of Wollongong

- > *Reflecting modern realities: constitutional interpretation and international organisations*

9.15–10.45 am

PANEL 18: PRIVATE INTERNATIONAL LAW-MAKING

Location: Lecture Theatre 3

Chair: Daniel Kalderimis, Chapman Tripp

Valerii Lisitsa, Novosibirsk National Research State University

- > *Principles of private international law: problems of law-making*

Jessica Viven-Wilksch, Flinders University

- > *International law making: networks, norms and systems in international commercial law*

Assaduzzaman Khan, Taylor's University

- > *Application of the UN convention on contracts for the international sale of goods in online sale (e-commerce) contracts*

10.45–11.45 am

Morning tea (*Common Room*)

11.15 am–12.30 pm

PRESIDENT'S CLOSING PLENARY: INNOVATION, IMPROVISATION, AND INTERNATIONAL LAW-MAKING

Location: Lecture Theatre 1

Chair: Anne Orford, ANZSIL President, University of Melbourne

Karen Scott, University of Canterbury

Greg French, Australian Department of Foreign Affairs and Trade

Netta Goussac, International Committee of the Red Cross

Kim Rubenstein, Australian National University

12.30–12.45 pm

Close