



Q&A Panel

Madelaine Chiam (Chair), La Trobe University

Jesse Clarke, Attorney-General's Department

Anna Hood, University of Auckland

Fleur Johns, University of New South Wales

Jacqueline Peel, University of Melbourne

Hope and defeatism in international law

The theme is designed to allow the panel and audience to discuss the growing sense of despair around international issues such as the accelerating effects of climate change, widespread and regular cyber attacks, or the re-emergence of an arms race; and to place that despair in the context of our attempts as lawyers to find ways through what we might think of as challenges (if we are being hopeful) or catastrophes (if we are being defeatist). The Call for Papers for this year's ANZSIL conference conjures these twin senses of hope and defeatism, in its references to the 'complex future' of international law, the 'new challenges constantly arising' from 'technological developments', and "'fake news" and disputed facts'. The proposed panellists are well-placed to discuss these issues and, in combination, will generate what should be a fascinating discussion. Jesse Clarke brings a view from within governments, while the expertise of the three academics cuts across some key issues in international law: disarmament and nuclear law (Anna Hood); big data and automation (Fleur Johns); and climate change and the environment (Jacqueline Peel).

Madelaine Chiam is a Lecturer at the La Trobe Law School. She holds a PhD and a BA/LLB (Hons) from the University of Melbourne and an LLM from the University of Toronto. Madelaine researches and publishes primarily in the histories of international law, the relationships between the global and the local, and the role of international law in Australian life. She is currently completing on a monograph on the role of international law in public debate. Madelaine is a founding member of the International Legal Studies Research Group at La Trobe Law School, and a regular member of the faculty of the Harvard Law School Institute for Global Law and Policy Workshop.

Jesse Clarke is an Assistant Secretary in the Office of International Law of the Attorney-General's Department where he is responsible for practice groups providing advice on international human rights and refugee law, international humanitarian law and security, international criminal law, and jurisdiction, immunities and international organisations. As a dual



national, Jesse worked as a legal adviser for the United Kingdom Foreign & Commonwealth Office from 2007-2015, including serving as First Secretary (Legal Affairs) at the UK Mission to the United Nations in New York. In 2011-2012, he spent a year as a Visiting Lecturer at Harvard Law School where he taught courses on Government Lawyering and International Law. Jesse holds an LL.M. (International Law) from the University of Cambridge and an LL.B. and B.A. (Hons. Government) from the University of Sydney.

Dr Anna Hood is a senior lecturer at the University of Auckland. Her research focuses on international law and disarmament, the United Nations Security Council, and this history of New Zealand and international law. Anna has a BA/LLB (hons) from the University of Melbourne, an LLM (International Legal Studies) from NYU and a PhD from the University of Melbourne.

Fleur Johns is Professor and Associate Dean (Research) in the Faculty of Law at UNSW Sydney. Fleur studies patterns of governance on the global plane, employing an interdisciplinary approach drawing on the social sciences and humanities. Her current research focuses on changing modes of global relation emerging in the context of technological change. She is leading a 3-year Australian Research Council-funded project entitled 'Data Science in Humanitarianism: Confronting Novel Law and Policy Challenges' (with co-CI Wayne Wobcke, UNSW Computer Science). Fleur has held visiting appointments in Europe, the UK and Canada and is a graduate of Melbourne University (BA, LLB(Hons)) and Harvard University (LLM, SJD; Menzies Scholar). In 2019-20, she will be a member of the Institute of Advanced Study in Princeton in the School of Social Sciences. Before her academic career, Fleur practised as a corporate lawyer in New York, specialising in international project finance.

Jacqueline Peel is a Professor of Law at the Melbourne Law School and Associate Director of its Centre for Resources, Energy and Environmental Law. Her research expertise spans the fields of environmental law—domestic and international—climate law and the role of science in risk regulation. She has published widely on these topics, including the seminal international environmental law text, *Principles of International Environmental Law* (3rd and 4th editions, with Philippe Sands).



Stacey Henderson

University of Adelaide

The future of international law in the context of off-earth colonisation

Recent technological advancements made by governmental agencies and private industry have raised hopes for the future of human space flight beyond the Moon. These advancements are increasing the feasibility of endeavours to establish an off-Earth permanent human habitat, as a safeguard for our species, for scientific endeavours, and for commercial purposes. The current international space law treaties never contemplated human habitation beyond the Earth and are notably silent on what happens when humans dwell among the stars. While the possibility of human settlements beyond the surface of the Earth may be one of the most exciting prospects currently facing human kind; if we are to become a multi-planet species, there are many legal issues that will need to be considered before this actually occurs. We simply cannot afford to leave consideration of the legal framework that will govern human habitation beyond the Earth until humans are already en-route to the Moon, Mars or some other celestial body, or until after the settlement has already begun to be established. This paper highlights some of the legal issues that arise in the context of off-Earth human settlements, including how this activity could be reconciled with the principle of non-appropriation in the Outer Space Treaty. Additionally, this paper considers the impact that off-Earth human settlements may have on the future of international law, its continued relevance and its development.

Dr Stacey Henderson is a Lecturer at Adelaide Law School. Stacey is an early career researcher who successfully completed her PhD focusing on non-forceful responses to atrocity crimes, for which she was awarded a Dean's Commendation for Doctoral Thesis Excellence, in early 2018. Stacey's research focuses on the protective capacity of law, including international law generally, responsibility of States, and governance of outer space and space technology. Stacey is a member of the Management Board of Adelaide Law School's Research Unit on Military Law & Ethics.



Melissa de Zwart

University of Adelaide

How does international law deal with advanced technology in the context of hybrid warfare in space

The Outer Space Treaty, which is the foundation-stone of the UN Space Treaties, reflected a Cold War compromise between the only two space powers of the day, recognising that deployment of nuclear weapons in space could have undetermined, unpredictable and global catastrophic effects. Since that time, the number of space faring nations have increased exponentially, and the technological superiority of the US in the space domain is now challenged by earth-based kinetic, cyber and other threats. There is an increasing recognition of the vulnerability and fragility of the space environment. The asymmetric vulnerability of space assets has been brought into stark relief by recent events such as the North Korean missile tests, the activity of the Russian Luch/ Olymp satellite and the deployment of insecure 'Internet of Things' cube sat constellations. Technological advantage in space must now be offset against growing cyber and ASAT capability. Space is an international issue. Therefore any response to threats to space must be international in nature, hence the importance of the UN Space Treaties. In more recent years, there has been a push to plug perceived gaps in the UN Space Treaties with various transparency and confidence building mechanisms, including the revived Prevention of an Arms Race in Outer Space (PAROS) process due to report in 2019. This paper will address the strengths and weaknesses of that process.

Professor Melissa de Zwart is Dean of Adelaide Law School and Deputy Director, Research Unit on Military Law and Ethics. Having developed a keen interest in the regulation and commercialisation of cutting edge technology as Manager, CSIRO Corporate Legal Service, she has published widely on internet law, intellectual property, online intermediaries, social media and online communities, surveillance, privacy and the law of outer space. She is a Member of the Advisory Council, Space Industry Association of Australia, a Member of the International Institute of Space Law, and Director of the Woomera Manual on the International Law of Military Space Operations.



Joel Lisk

University of Adelaide

How future generations will shape space law and practice

The new space movement has spurred a surge of activity in commercial space industry. The industry's composition has rapidly shifted from a small number of large established launch operators, manufacturers and systems developers, to a large number of smaller, more specialised entities focused on innovation and disrupting established practices. A consequence of the rapid emergence of the NewSpace movement is a conflict between the will of individuals and the law as it stands.

The international laws applicable to outer space were developed at a time when travelling to the moon was the ultimate goal of humanity. International space law focuses on the activities of states, not private companies, individuals or large multi-nationals. Entrepreneurs and innovators strive to act in an agile and expeditious manner, taking great pride in being on cutting edge of new technologies and practices. It is these developments that potentially place states in breach of their treaty and customary obligations or on the line between internationally lawful and unlawful conduct. New generations of operators and legislators must aim to both work within the existing legal frameworks, but still act in a way that develops international practices and pushes state practice towards permitting new and emerging commercial operations, sometimes those that may be strictly prohibited through literal and textually pure interpretations of the international space law treaties

Joel Lisk is a Graduate Law Clerk at Adelaide-based commercial law firm Cowell Clarke and is a PhD candidate at the University of Adelaide focusing on the role of legislation in facilitating commercial operations in outer space. Joel holds a Bachelor of Laws (Hons) and a Bachelor of Sciences (Biochemistry and Genetics) from the University of Adelaide. Joel's primary commercial focus includes privacy law, Australian consumer law, personal property security rights, trademarks and intellectual property, transactional law and generalist corporate law. He has engaged in a number of research projects focused on the development of the commercial space sector in Australia, including assessments of the commercial efficacy of a number of international domestic space law instruments. Joel has presented at a number of conferences including the International Astronautical Congress, the Australian Space Research Conference, and the Australasian Conference of Undergraduate Research. Joel also has experience in teaching international law and advocacy.



Duncan Blake

University of New South Wales, Canberra

Space law in a military context

Disparate areas of international law, and the knowledge and expertise of their practitioners and scholars, necessarily intersect in the application of law to the growing possibility of conflict and tension in the space domain. We cannot continue to take a 'siloes' or fragmented approach to the application of laws in such situations, notwithstanding that the heritage of those disparate areas of international law and their practitioners and scholars may differ not just in their rules and institutions, but also in their objectives and foundational beliefs, or credos. Systemic integration means a genuine acceptance that so-called self-contained regimes all only find complete meaning in the system of which they are a part – that is, international law. It means a genuine attempt to cogently reconcile or harmonise apparently inconsistent rules, rather than throwing up one's hands at the first sign of inconsistency and seeking to resolve that inconsistency by asserting priority of one's preferred rule (on the basis of *lex specialis*, *lex posterior*, *lex superior* or some other basis). The need for systemic integration, as described, arises especially in the Woomera Manual project, which seeks to clarify, through consensus among legal and technical experts, the application of international law to the growing possibility of conflict and tension in the space domain. It necessarily involves reconciling apparently inconsistent rules from international space law, international humanitarian law, international law on the use of force, as well as other areas of international law. I propose to present my research on how systemic integration is applied in this context and may be applied in other contexts.

Duncan Blake transferred from the permanent RAAF to the Reserves in January 2017, after 22 years as a Legal Officer. He worked at tactical, operational and strategic levels at home and on deployment overseas. Duncan has contributed extensively to doctrine and policy for Defence and whole-of-government, on issues of operations and space law. He has chaired inter-departmental and international working groups on space law, especially in a strategic context. Although this work is not publicly accessible, he has authored many articles, including an article for which he was awarded the 2011 Lieber Society Military Prize by ASIL. Duncan has undergraduate degrees in Law and Economics from UWA, an LLM from the University of Melbourne and an LLM from McGill University. He is also a graduate of Australian Command and Staff College. His thesis topic at McGill University was on the need for a 'Manual on International Law Applicable to Warfare in Space'. Following completion of his thesis, Duncan is now Managing Editor of the Woomera Manual project, aiming for publication in 2020. He is Project Manager of a separate space-law project known as 'ANGELS'. Duncan is undertaking doctoral research at The University of Adelaide associated with the Woomera Manual project.



Kate Ogg

Australian National University

The future of feminist engagement with refugee law: from the margins to the centre and out of the 'pink ghetto'?

In this paper I contemplate the future directions of feminist engagement with refugee law. Unlike other areas of international law where feminist analysis is minimal or entirely absent, refugee law has attracted considerable attention from feminist scholars and practitioners. This has led to claims that issues of gender and sexuality in refugee law have transitioned from 'the margins to the centre'. In contrast to this view, I assert that feminist engagement with refugee law remains on periphery of the field due to the fact that gender analyses of refugee law and policy are siloed within issues that have obvious gender dimensions. I argue that the feminist agenda must include feminist examinations of all areas of refugee law and policy –not just topics where gender issues are immediately evident. I use two seemingly gender neutral topics (the exclusion clause and the concept of surrogate state protection) to demonstrate the ways in which feminist analysis can unmask previously ignored gender concerns, interrogate and destabilise core assumptions in current policy and provide fresh and alternate insights on primary legal texts.

Kate Ogg is a Senior Lecturer at the Australian National University College of Law. She undertakes interdisciplinary research in the areas of refugee law, human rights, litigation, access to justice and feminist legal theory. Through her research Kate has been a strong public policy advocate for those in the community experiencing social and political marginalisation, particularly refugees. Her current research focus examines the highly contemporary issue of the legal regulation of rescue from and confinement to inadequate places of refuge such as refugee camps and internally displaced persons' camps. Kate's research has also helped make a strong case for Australia's adherence to its obligations under the 1951 Refugee Convention and other international human rights instruments



Beth Goldblatt

University of Technology Sydney

Violence against women and social and economic rights: deepening the connections

Violence against women cuts across class touching both rich and poor. It is clear, however, that poverty and unequal access to resources contribute to the conditions that make women vulnerable to violence. The chapter suggests the need for a closer understanding of how violence acts as a barrier to women's exercise of and access to their social and economic rights and how these rights might support efforts to prevent and address violence against women. The chapter considers some of the concerns raised by critical feminist scholars in relation to feminist engagements with international law, particularly where they deal with violence against women within international human rights law. It argues that a focus on social and economic rights might overcome some of these concerns in using human rights to address violence against women. It explores ways in which the conceptual connections between violence against women and social and economic rights might be deepened in international human rights law. Social and economic rights have potential value in contributing to the prevention of violence, rather than just in responding to it. Together with substantive approaches to equality, social and economic rights might be marshalled to achieve transformative changes to society, by altering some of the structural underpinnings of poverty and inequality that contribute to violence against women.

Beth Goldblatt is an Associate Professor in the Faculty of Law at the University of Technology Sydney. She is a Visiting Fellow in the Faculty of Law at the University of New South Wales and a Visiting Associate Professor in the Faculty of Law at the University of the Witwatersrand. Beth is a co-convenor of her Faculty's Feminist Research Group. Her research areas include feminist legal theory, equality and discrimination law, comparative constitutional law, transitional justice, disability, family law, and human rights, with a focus on economic and social rights and the right to social security in particular. She is the author of *Developing the Right to Social Security – A Gender Perspective* (Routledge, 2016), co-editor of *Women's Rights to Social Security and Social Protection* (Hart, 2014, with Lucie Lamarche) and *Women's Social and Economic Rights* (Juta, 2011, with Kirsty McLean)



Belinda Bennett and Sara E. Davies

Queensland University of Technology

Looking to the future: gender, health and international law

Despite renewed interest in global health governance in recent years, analysis of gender remains under-represented, with the risk that policy initiatives in global health will fail to adequately prioritise the needs of women and girls. This paper analyses the potential role for international law in supporting recognition of gender in women's health-related rights. It begins with an overview of the gendered dimensions of health morbidities, the achievements in global health in terms of the Millennium Development Goals, and the targets set by the Sustainable Development Goals (SDGs). We then examine the intersections between gender and human rights. The relevance of gender for the SDGs is analysed, with a particular focus on the importance of gender-related considerations to achieving universal health coverage. We conclude by arguing for the need to move beyond traditional silos of gender, global health and human rights and in favour of the setting of gender-equitable health care as a global priority.

Belinda Bennett is a Professor of Health Law and New Technologies in the Australian Centre for Health Law Research, School of Law at Queensland University of Technology (QUT) in Brisbane. Her research addresses health law and globalisation, global public health law, and the legal and ethical challenges associated with regulation of new technologies in health care. She is Deputy Editor of the *Journal of Law and Medicine*.



Konstantina Tzouvala

University of Melbourne

The future of feminist international legal scholarship in a neoliberal university: doing law differently

This paper examines the ways institutional changes in (Anglophone) academia impact on the position of women as teachers of international law as well as on the project feminist approaches to international law. To do so, I map the changes brought about by the advancement of neoliberal managerialism in law schools around the world and its contradictory impact on feminist legal scholarship. Indeed, marketisation and the rise of metrics created an 'opening' for heterodox approaches by subjecting academic production to the imperatives of quantifiable outputs, which partially unsettled established hierarchies. However, the same processes of marketisation put disproportionate pressure both on women in legal academia and on feminism as a legal project. The paper proceeds to discuss the detrimental impact of casualised work and precarity as phenomena that disproportionately affect female academics, the reproduction of exclusionary practices and gendered hierarchies under the guise of market objectivity, as well as the contradictions between feminist critiques of violence and militarism in the international realm and the increasingly authoritarian and violent responses to dissent in our own campuses. Even though the overall picture is rather bleak, I conclude this paper with a reminder of past and present feminist solidarities in academia and beyond that can serve as useful roadmaps when thinking about and acting for the creating of such material, institutional conditions that would enable a feminist international law to flourish.

Ntina Tzouvala is an ARC Laureate Postdoctoral Fellow in International Law, at Melbourne Law School. Prior to this, Ntina was a lecturer in law at Durham Law School (UK), where she also completed her PhD thesis. Her research interests include the theory and history of international law, and particularly international law and the history of capitalism, feminist approaches to international law, and law and neoliberalism. Her work has been appeared in the *European Journal of International Law*, the *London Review of International Law* and *AJIL Unbound*. Her first monograph, *Capitalism as Civilisation: A History of International Law*, is forthcoming with Cambridge University Press.



Adejoke Babington-Ashaye

World Bank

The Investigation and Prosecution of International Crimes as Acts of Terrorism: A Boko Haram Case Study

As the future of international criminal justice becomes increasingly domestic or hybrid, more emphasis is placed on knowledge and information exchange to support national investigation and prosecution of international crimes. In the context of the armed conflict in north-east Nigeria, over 1,700 Boko Haram suspects have been prosecuted in national courts since 2017 using national laws, notably the Terrorism (Prevention) Act and its Amendment Act. The Rome Statute, though ratified, has not been domesticated and cannot be relied upon by national prosecutors. Thus, while these “Boko Haram trials” have been hailed as progress for the justice sector they have also been criticized as inadequate given the perceived limitations of domestic laws. Under the watchful eye of the International Criminal Court which is reviewing the national proceedings conducted by the Nigerian authorities, the question remains whether the admissibility assessment, namely complementarity and gravity, would be concluded in Nigeria’s favour. This paper considers the practicalities of investigating and prosecuting international crimes, particularly war crimes and crimes against humanity, committed by Boko Haram using Nigeria’s national laws. It addresses the intersection of the different legal regimes, the importance of knowledge sharing and the relevance of technology to overcome certain evidentiary barriers. Drawing from experience providing technical support for national prosecution of such crimes, the author proposes processes for gathering evidence and strategies for the prosecution of international crimes as acts of terrorism in Nigeria.

Adejoké Babington-Ashaye is a versatile international law expert with over 15 years of experience in public international law, international criminal law and investigations, human rights law, international administrative law and the international settlement of disputes. She is actively engaged in the provision of technical support and advice for national prosecution and investigation of international crimes. Currently Senior Counsel at the World Bank, Adejoké was an Associate Legal Officer at the International Court of Justice working with H.E. Judge Abdulqawi Yusuf, and an Associate Investigator in the Office of the Prosecutor of the International Criminal Court. Her international legal background includes human rights policy research at the Carr Center for Human Rights Policy, Harvard Kennedy School of Government, campaigning for the Protocol on the Rights of Women in Africa and investigating human rights



violations in Nigeria's Niger Delta region. Adejoké holds a LLM in Public International Law from the London School of Economics and is a qualified Attorney in the State of New York. She holds leadership positions within the Section of International Law of the American Bar Association and was recently appointed Co-Chair of the 2020 Annual Meeting of the American Society of International Law. Her publications include *International Criminal Investigations: Law and Practice* (ed), Eleven International Publishing (2018).



Grant Kynaston

University of Sydney

The law of the sea and Islam: a comparative approach to legal traditions of Mare Liberum

An autonomous body of rules –al-siyar –exists within Islamic law to govern the relations between States. However, the monopolising effect of the United Nations has occasioned a scholarly consensus in Islam that modern public international law, notal-siyar, now governs Muslim States' international relations. The modern UN system is fundamentally Western, reflecting international law as understood by European jurists. Academics have previously considered the extent to which this model accords with, reflects, or subsumes al-siyar, particularly in international humanitarian law and human rights law; elsewhere, however, comparative scholarship is lacking. This paper seeks to remedy this gap, by comparing approaches to the law of the sea. Having introduced the Islamic international law of the sea, this paper first considers how the universalism of modern international law relates to Islamic law, and identifies the International Court of Justice's failure to integrate non-Western legal traditions into the broader corpus of international law. Second, it compares the two traditions' perspectives on the freedom of navigation on the high seas. It first traces the development of Western thought, beginning with Grotius and culminating in the 1982United Nations Convention on the Law of the Sea. It then considers the equivalent Islamic tradition, as espoused in the Mediterranean Sea and Indian Ocean up to the 15thcentury. It concludes that, while both traditions came to accept mare liberum, the principled basis and historical context of the Islamic perspective caused distinctive approaches in its application, and rendered the norm more resilient to external political forces

Grant Kynaston is currently a student at the University of Sydney Law School, in his final year of the Bachelor of Laws. In July this year, he completed the Master of Islamic Studies at Charles Sturt University, writing a thesis on Islamic international law. Grant also holds a Bachelor of Arts (Hons) in Classics, and a Diploma of Language Studies in Arabic, both from the University of Sydney. Grant's research interests lie in international and comparative law: his work focuses on de-focalizing Western legal traditions in the development of international law, to generate broader consensus over its norms. He has presented conference papers on related topics both in Australia and abroad, including at the 2018 International Law Weekend in New York, and has contributed work to peer-reviewed journals. Grant was also a member of the Australian National Champion team in the 2018Philip C. Jessup International Law Moot Court Competition, and has since worked with universities in Ukraine and Palestine to implement Jessup programs. He has



completed an internship at the Sydney Centre of International Law, and currently works as a research assistant for Professor Butt at the University of Sydney. Grant is proficient in Modern Standard Arabic and Polish



Jacqueline Peel

University of Melbourne

Panel abstract - Managing international environmental law futures

International environmental law faces complex, dynamic and uncertain futures as a result of problems such as climate change, escalating marine pollution and ocean acidification, and accelerating biodiversity loss. This panel brings together a multidisciplinary, trans-Tasman group of scholars, both senior and early career, to consider how international law might respond to and manage these future challenges. It will consider questions such as: -the challenges of translating scientific knowledge about system-wide environmental challenges into concrete outcomes in international environmental regimes; -the capacity of existing treaties to respond to emerging problems like ocean acidification and how they might need to be reframed; -the role of new instruments like the Global Pact for the Environment in overcoming issues of fragmentation and instilling a more integrated, holistic approach to international environmental regulation; and -the capacity of emerging principles, such as non-regression and adjacency (an evolving feature of the biodiversity beyond national jurisdiction negotiations), to deal with gaps and emergent issues. The panel will take the format of short paper presentations from panel members with a moderated discussion of common themes by the proposed panel chair, Jacqueline Peel.

Jacqueline Peel is a Professor of Law at the Melbourne Law School and Associate Director of its Centre for Resources, Energy and Environmental Law. Her research expertise spans the fields of environmental law—domestic and international—climate law and the role of science in risk regulation. She has published widely on these topics, including the seminal international environmental law text, *Principles of International Environmental Law* (3rd and 4th editions, with Philippe Sands).



Anna Marie Brennan

University of Waikato

Utilising the International Criminal Court as a mechanism to prosecute collective entities: perspectives from complexity theory

This paper examines whether international criminal law could hold collective entities such as corporations and non-state armed groups responsible for international crimes, and if so, how could it punish them? From its inception, international criminal law has had very little to do with collective entities, because of its focus on individuals, but this gap is even more important now as questions emerge about how the collective entity can be brought within international criminal law's ambit. The underlying issue is not new, but has become more salient because of one key development in international law: it is now a given that many types of collective entities are obliged to comply with international humanitarian law. However, this expansion in international humanitarian law has been accompanied by a more general concern about how collective entities can be held accountable for breaches of humanitarian norms as there continues to be no formal international judicial mechanism with jurisdiction to investigate and prosecute them. This is reflected in criticisms by some scholars that international criminal law has been used to impose particular political structures on the international community, with resulting doubts about international criminal law's legitimacy. Building on existing accounts of international criminal justice, I will delineate an ontology of the collective entity that supplements the individual-centric focus of international criminal law. Harnessing complexity theory, the prospects for developing a new legal principle of collective entity responsibility under international criminal law is analysed and how it would operate alongside the principle of individual criminal responsibility

Anna Marie Brennan joined the University of Waikato as a senior lecturer in law in July 2018. Before joining the law school she held a lectureship at the University of Liverpool in the United Kingdom. Her book entitled 'Transnational Terrorist Groups and International Criminal Law' was published by Routledge in 2018. In 2015, she completed her doctorate (awarded without corrections) at University College Cork in Ireland. In addition, she has held visiting positions at Symbiosis Law School (2016), University of Belgrade (2015), Vrije Universiteit Amsterdam (2014), the International Criminal Court (2014), TMC Asser Institute for International Law (2013), Harvard Law School (2012-2013) and the Lauterpacht Centre for International Law at the University of Cambridge (2011 and 2012). During her PhD, she was awarded an Irish Research Council Government of Ireland Postgraduate Scholarship, the President James Slattery Gold Medal in Law, a UCC Law Faculty PhD Scholarship and the Aidan Synnott Prize to study at The Hague



Academy of International Law. She has worked at the Houses of the Oireachtas, the Office of the Attorney General, the Office of the Chief State Solicitor and the Child Law Clinic (UCC) in Ireland. More recently, she has worked on the defence team of Radovan Karadzic at the United Nations International Criminal Tribunal for the Former Yugoslavia and as a visiting professional to Judge Sylvia Steiner, the presiding judge, on the Jean Pierre Bemba Gombo trial at the International Criminal Court in the Netherlands.



Shannon Torrens

University of Sydney

Creating International Criminal Courts and tribunals: the politics of “the decider”

International criminal courts and tribunals do not materialise out of thin air. They are created by someone or more specifically by an entity with “authority”, either in isolation or in collaboration with another entity. These various establishing forces all comprise what this paper terms “the decider”. For example, the ad hoc tribunals for the former Yugoslavia and Rwanda were established by the UN Security Council as purely international tribunals. Meanwhile the hybrid courts for Sierra Leone and Cambodia were established through a collaboration between the situation state and the United Nations. The International Criminal Court was established by a group of states pursuant to a treaty. Most research in this area analyses international criminal courts and tribunals once they have been established, however this research seeks to assess how these judicial institutions came to be created and what role the identity and politics of “the decider”, the establisher of the respective tribunal or court, has had in its work and effectiveness. The role of “the decider” implies that this entity or individual comprises knowledge, information and expertise, particularly relating to the conflict or situation in question, however in the practice of modern international criminal law that is generally not the case. “The decider” is often external to the situation state, with little relevant knowledge or experience and arguably a deficiency in legitimacy necessary to respond to crimes in that country. In this context, political motivations and ideological priorities can influence the creation of international criminal courts and tribunals. Such an analysis is beneficial in better formulating future responses to international crime

Shannon Maree Torrens is an International and Human Rights Lawyer and PhD Candidate at the University of Sydney Law School. She is admitted as a lawyer of the Supreme Court of NSW, Australia. Her doctoral thesis is on international criminal law. She has a BA (Media and Communications, Government and English) and a Bachelor of Laws (LLB) (Honours) also from the University of Sydney, with a specialisation in public international law, international criminal law, international humanitarian law, international human rights law and legal theory. Shannon has worked in international criminal law at the international criminal tribunals and courts for Rwanda (ICTR), the former Yugoslavia (ICTY), Sierra Leone (SCSL) and Cambodia (ECCC). In addition, she has worked as a legal advisor for the Marshall Islands Permanent Mission to the United Nations in New York in the UN General Assembly Sixth Committee (Legal) and as an Editorial Advisor for the Cambodia Law and Policy Journal. She has also worked with the UN Food and



Agriculture Organisation (FAO), the United Nations Children's Fund (UNICEF) and at the Australian Embassies to Italy and



Rosemary Grey

University of Sydney

Gendering genocide: the Khmer Rouge judgment and its precedents

The crime of genocide, as defined in the 1948 Genocide Convention, does not immediately appear as a 'gendered' crime. The victims are by definition selected by reason of their national, ethnic, racial or religious identity, rather than their sex or gender per se. Yet as argued by feminist scholars including Fein(1999), Carpenter (2004), and Sellers (2015), the crime of genocide is often committed through gendered means. The recent judgment of the Extraordinary Chambers in the Courts of Cambodia (ECCC), rendered in November 2018, exemplifies this argument. Among other things, the Court convicted two former leaders of the Khmer Rouge for genocide against Cham and Vietnamese people during 1975-1979. It found that the Khmer Rouge's approach to targeting was shaped by its view of Vietnamese ethnicity as 'matrilineal.' Hence, in mixed-ethnicity families with a Vietnamese mother, both she and any children were killed while the father was spared. But if only the father was Vietnamese, he alone would be killed. In this paper, I show that the ECCC judgment is continuous with cases dating back to the 1940s in which genocide is understood as a gendered crime. These include the 'Medical case', regarding Nazi biological experiments, the Akayesu case, in which the Rwanda Tribunal held that sexual violence can constitute an act of genocide, the 'Srebrenica' judgments from the Yugoslavia Tribunal, and the International Criminal Court's Al-Bashir case, concerning alleged genocide in Darfur

Rosemary's research focuses on gender & international criminal law, particularly the prosecution of gender-based crimes in the International Criminal Court (ICC) and Extraordinary Chambers in the Courts of Cambodia (ECCC). She has consulted and interned for key organisations in the international criminal justice field, including Amnesty International, Women's Initiatives for Gender Justice, the International Bar Association, and the ICC. Before joining Sydney Law School in 2018, she completed a postdoctoral fellowship at the University of Melbourne, where she co-taught the International Criminal Justice Clinic, an initiative of Melbourne Law School and Amnesty International. She also spent time as a visiting scholar at the Grotius Centre for International Legal Studies (University of Leiden) and Pluri Courts (University of Oslo). Her PhD, titled Prosecuting sexual and gender violence crimes in the International Criminal Court was completed at the University of New South Wales in 2015. She uses feminist methods in international law, doctrinal analysis, and interviews.



Susan Harris Rimmer

Griffith University

Women making international law: towards feminist diplomacy

Feminist international law scholarship has always insisted on showing the human faces of the state. The sources of international law are learnt by heart from Article 38 of the International Court of Justice statute, namely treaties, customary international law derived from the practice of States; general principles of law recognized by civilised nations; and, as subsidiary means for the determination of rules of international law: judicial decisions and the writings of “the most highly qualified publicists”. This paper delves deeper into which actors are producing these sources, from the point of view of the female bodies now making international law. One of the most important changes to modern diplomacy is the increased participation of women, both as foreign policy elites and in wider transnational networks. If this most fundamental aspect of diplomacy is human interactions, then the new representation of women and LGBTI+ persons in the practice of diplomacy since the mid-twentieth century should have made a profound impact on the field of diplomacy studies. Moreover, societal changes in gender relations have affected some of the content and focus of foreign policy, along with the advent of female foreign ministers. This advent could be even more significant as the internet or the rise of NGOs for the practice of diplomacy. In fact, I find that efforts since WWII has resulted in inclusion of only some limited diversity in diplomatic personnel. This is not to downplay the achievements of the pioneers in diplomacy, as their efforts to serve have often been extraordinary, as I outline. I argue instead that the ‘business model’ of diplomacy has been resistant to transformation on gender equality grounds thus far, and the ideal diplomat is still gendered heterosexual upper-class rational and masculine. This paper considers gender dimensions in theories of diplomacy; gender dimensions in diplomatic practices; the changing role of the diplomatic spouse; and sex, sexuality and diplomatic cultures. I argue that the diplomatic spouse model with women in ancillary, decorative and undervalued roles has morphed into junior diplomats, or celebrity goodwill ambassadors. More data is needed on specific areas of diplomatic practice (peace negotiations, trade talks, summitry) to see how the participation of women and LGBTI+ persons is shifting the practice and content of diplomacy. However, the creation of thematic ambassadors focused on gender equality in the US, Australia, the Seychelles, Norway, Sweden and Finland is an interesting phenomenon that shows transformative potential.



Susan Harris Rimmer is an Australian Research Council Future Fellow appointed as Associate Professor to Griffith University Law School in July 2015. She was appointed an Associate Fellow, International Economics at UK think-tank Chatham House (the Royal Institute of International Affairs) in December 2015 for a four-year term. She was a Visiting Fellow at the Graduate Institute in Geneva, Switzerland in autumn 2016, and a Visiting Fellow to the International Gender Studies Programme at Lady Margaret Hall, Oxford University, UK for Michaelmas term 2016. In 2014 Susan was awarded a prestigious Australian Research Council Future Fellow for her project 'Are We Trading Women's Rights in Transitions?' to examine the role of gender in diplomatic negotiations until 2019. She is the author of *Gender and Transitional Justice: The Women of East Timor* (Routledge 2010) and over 30 academic works. She has given invited papers at Harvard, Oxford, SOAS, Trinity College Dublin, Georgetown, National University of Singapore, Lingnan University Hong Kong, University of Yangon Myanmar, Graduate Institute Geneva, Renmin University of China, Beijing and Bilkent University in Ankara, Turkey. Susan was involved with the creation of the position of the Global Ambassador for Women and Girls within the Australian foreign ministry and supported the creation of the W20 summit in Turkey and the C20 in Australia (civil society grouping giving policy advice to the G20). She was Australia's representative to the W20 in Turkey 2015, China 2016 and Germany 2017. She joined the Australian delegation to the UN Commission of the Status of Women in New York as an NGO delegate in 2014. In 2014 she was named one of the Westpac and Australian Financial Review's 100 Women of Influence in the Global category, and in 2018 she was named one of Apolitical's Top 100 in Gender Policy. Susan is a board member of the International Women's Development Agency.



Rowena Maguire

Queensland University of Technology

Gender, climate change and the United Nations Framework Convention on Climate Change

This paper explores gender representation within the United Nations Framework Convention on Climate Change and seeks to examine why greater focus has not been placed on gender within the modalities of the regime. It argues that there are three main reasons which have diverted attention away from the development of: gender targets, gender reporting and the development of gender tools for use at the national level. Firstly, the conceptualisation of vulnerability within the regime has traditionally been based upon North/South classifications, meaning that the regime has focused on the vulnerability of nations as compared with assessing vulnerability of certain groups (including but not limited to women) to climate change. Secondly, the climate change regime has prioritised scientific knowledge over other types of knowledge, including knowledge of the lived experience of climate change. And thirdly, Parties to the regime have been preoccupied with getting all major emitters to accept mitigation commitments, which has resulted in feminist issues, along with other stakeholders' interests, being sidelined in the global interests of solving climate change.

Rowena Maguire is a Senior Lecturer in the School of Law at the Queensland University of Technology and a visiting fellow at Strathmore Law School, Nairobi, Kenya. She is the theme leader of the Climate and Environmental Governance research hub within the International Law and Global Governance research program within the Faculty of Law. Rowena's research is primarily concerned with equitable design and implementation of climate and environmental law. Her PhD research examined the international regulation of forest resources, published as a monograph: *Global Forest Governance: Legal Concepts and Policy Trends* (Edward Elgar Publishing, 2013). Following on from this study, Rowena was appointed as a Research Affiliate to the Cambridge Centre for Climate Change Mitigation Research and worked on a donor REDD+ project in Kenya. From 2014 to 2016, Rowena was a Chief Investigator on an Australian Research Council Discovery project examining international climate governance integrity issues and was a co-editor of two edited collections emerging from this work. Rowena's current research projects are focused on women and climate regulation, with a focus on gender balance and gender-responsive climate policies. She is also collaborating on projects investigating emissions from the forestry sector in Australia and in developing countries (REDD+). Rowena coordinates the units 'Environmental and Sustainability Law' and 'Introduction to International Law' in the undergraduate program within the School of Law and supervises higher degree research students in the areas of international environmental and human rights law.



Katie Woolaston

Queensland University of Technology

Wildlife and International Law: Can feminism transform our relationship with nature?

Humanity is facing a crisis. We are losing species at an unprecedented rate. The loss of species is both a moral issue and a practical one—human security is at risk as we lose species that perform vital ecosystem services essential to our survival. It is estimated that 58% of all species were lost forever between 1970 and 2012. Human-induced habitat loss and climate change are significant contributing factors, however it is the human relationship with wildlife that is most damaging. Currently, that relationship is defined in law and policy by liberal notions of hierarchy, wherein humans (or certain privileged humans) are at the top of the hierarchy, ecosystems below, and individual animals at the bottom. That hierarchy results in a partisan style of management of wildlife interactions, wherein the wildlife are removed, and human behaviours, attitudes and values are not addressed. This relationship suffers the same dominating factors evident in patriarchal societies, and condemned by feminist theorists. Moreover, these factors are evident in the international law that seeks to protect wildlife and so minimise biodiversity loss. Currently, international law concerning wildlife management and species loss is in its fledgling stage. Wildlife has no blanket protection, but instead is subject to the environmental principals encompassed in the Convention on Biological Diversity, and a number of other international treaties with narrow scope. Those laws reflect a capitalist, rights model, such that wildlife is managed to increase its value to humans (by either increasing its worth or decreasing its harm potential), and to maintain human socio-economic rights and individual interests. There is an ethical imperative to reassess our relationship with wildlife and find a more appropriate response to the vulnerabilities we have created. In this vein, we have been given a unique opportunity to insert the feminine perspective into law and management policy and transform our relationship with wildlife. Conveniently, critical feminist theory is largely concerned with the resolution of conflict and removal of hierarchy. There is a focus on inter-personal and environmental relationships and the care and compassion associated with them. This paper will explore not only our ability to use feminism to transform international law, but also the use of feminism in international law to transform our relationship with wildlife and the greater environment. In doing so it will explore theories of eco-feminism and vulnerability. The purpose is to show that a sense of balance between gendered perspectives, reason and emotion, protection and compassion, can build a model of coexistence and work towards reducing species loss.



Katie Woolaston is an inter-disciplinary researcher and lecturer in the QUT Law School. She holds a Masters in Law (specializing in Human Rights & Social Justice) from the University of New South Wales, and is currently a doctoral candidate in the Griffith Law School. Her research is focused on international and domestic wildlife law, and the improvement of the human-wildlife relationship using an eco-feminist and vulnerability ontology. Recent projects and publications relate to case studies in human-wildlife conflict and endangered species protection for the International Union for the Conservation of Nature's Law for Sustainability Project. More recently she has been focused on the use of collaborative governance as a tool to manage the human-wildlife relationship.



Gabrielle Simm

Queensland University of Technology

Gender, disasters and international law

Every year, disasters kill, injure and displace millions of people around the world, causing extensive property damage and incurring considerable economic costs. While disasters are often assumed to be 'natural', disasters and the response to them are beginning to be regarded as not just a misfortune but potentially an injustice for which government authorities or private actors can potentially be held responsible. Disasters do not affect everyone equally and gender-related injustice is apparent in preparation for, during, and in the response to, disasters. This paper aims to analyse international law and disasters through a gender lens by asking two questions: where are the women? and what work is gender doing here? Drawing on studies of gender and disaster in sociology and human geography, the paper analyses international law on gender in disaster response and risk reduction. It concludes that women are sometimes invisible in discussions of international law and disasters, while at other times they are foregrounded to the extent that they block other genders from view. The question of what work gender is doing in international law and disasters is more complex and requires context-specific analysis.

My research interests are in international law, with a focus on peacekeeping, disasters and humanitarian assistance, international criminal law, and international law and film. I take a socio-legal and feminist approach to my research. I am currently Senior Lecturer, Faculty of Law, University of Technology Sydney. I have 11 years' experience teaching law at universities in Australia and Canada in core and elective courses at graduate and undergraduate levels. I supervise PhD and Honours students in my areas of research and regularly present at national and international conferences. For a list of my Publications, see: <https://www.uts.edu.au/staff/gabrielle.simm>



Genevieve Wilkinson

University of Technology Sydney

A tale of two packaging regimes: using knowledge, information and expertise to support public health justifications in trade disputes

In the disputes about tobacco packaging brought against Australia in the WTO and Uruguay in investor state arbitration there were significant differences in the knowledge, information and expertise relied on by the respective defendants to support their health-related justifications for regulating tobacco products. One common feature was reliance on the Framework Convention on Tobacco Control (FCTC). In the Uruguay decision the majority were willing to recognise the expertise underlying that agreement as significant support for Uruguay's defence against claims of breach of fair and equitable treatment obligations. This support was disputed in the minority judgment. The FCTC was also recognised as relevant support against some of the TRIPS and TBT claims in the WTO disputes. Although less weight was given to the FCTC by the WTO Panel, the decision opens opportunities for future reliance on non-trade obligations in TRIPS disputes. External international obligations can provide rational support for States relying on articles 7 and 8 to defend TRIPS claims disputing restrictions on IP. This paper compares the knowledge, information and expertise used to support the Australian and Uruguay regimes. Noting the expense incurred by Australia in the WTO disputes, it explores whether greater reliance on non-trade obligations, such as human rights obligations, could reduce the burden on developing countries to provide extensive and expensive evidence in support of intellectual property legislation designed to further domestic health objectives.

Genevieve Wilkinson is a lecturer at University of Technology Sydney in the fields of Australian intellectual property law and policy, intellectual property and human rights, designs law and practice, international intellectual property law and in subjects taught as part of the Bachelor of Creative Intelligence and Innovation. She is also a barrister with a practice in intellectual property law. She recently completed her doctoral research entitled *Founding a Human Rights Culture for Trade Marks: A human rights-based analysis of tobacco plain packaging and anti-counterfeiting in Australia*. The thesis considers the intersection between human rights and intellectual property in Australian trade mark law.



Suzanne Zhou

McCabe Centre for Law and Cancer

The multilateral scientific consensus revisited

To what extent should dispute settlement under one specialised treaty take note of other treaties or resolutions of international organizations as evidence of facts? An increasing number of decisions of international tribunals, including in high-profile decisions on health and the environment in trade and investment law, cite such instruments to resolve factual questions contested by the disputing parties. However, despite its implications for the fragmentation of international law, policy space under trade and investment treaties, and the evaluation of scientific evidence in factually complex disputes, the idea that such instruments might have evidentiary as well as legal significance has been under explored outside of scholarship on the use of international standards in the WTO's Sanitary and Phytosanitary Standards (SPS) and Technical Barriers to Trade (TBT) Agreements. This paper extends the idea of a 'multilateral scientific consensus' from scholarship on the SPS and TBT Agreements to the use of treaties and resolutions in fact-finding by international courts and tribunals more generally. It explores three issues invocations of such instruments raise. First, it looks at the extent to which treaty membership or voting should be considered in 'fact-finding' uses of international instruments, and the ways in which this might differ from how they are considered in treaty interpretation. Second, it explores the roles of political and of scientific/technical authority in determining the probative value of the instrument. Finally, it examines whether such cross-citations might also pose risks to the treaty regime or organization producing such consensus, by disciplining or politicising its deliberations

Suzanne Zhou is currently a Legal Policy Advisor at the McCabe Centre for Law and Cancer, where her work focuses on supporting countries to implement the WHO Framework Convention on Tobacco Control, and on the intersection between international economic law and regulatory measures to prevent cancer and other non communicable diseases. Prior to joining the McCabe Centre, Suzanne worked at Lawyers Collective, a New Delhi-based human rights organization focusing on strategic litigation in HIV/AIDS, where she worked as a research officer supporting the mandate of Anand Grover as the UN Special Rapporteur on the right to health and as the project manager of the Global Health and Human Rights Database; and at the Victorian Department of Education, where she was a lawyer in the Royal Commissions and Parliamentary Inquiries team of the Legal Division. She holds an LLM in international law from University of



Cambridge, first-class honours degrees in law and music from the University of Melbourne, and the Hague Academy of International Law's Diploma in Public International Law.



Olasupo Owoeye

RMIT

Tobacco plain packaging and States' obligations under WTO law: a review of the national measures in Australia and Vietnam

The Australian Tobacco Plain Packaging Act 2011 was enacted as a public health measure to address the challenges posed by smoking to public health in Australia. Following the enactment of the legislation, a legal action was instituted against Australia before the WTO Dispute Settlement Body. The WTO Panel found in favour of Australia in its report which was adopted in August 2018 on the basis that the measure was a legitimate public health measure under WTO law. Honduras and the Dominican Republic have both filed an appeal to the WTO Appellate Body in respect of the decision. Vietnam has not made a tobacco plain packaging legislation, but it introduced certain regulations in relation to health warnings covering 50% of tobacco products packaging in 2012. The paper seeks to investigate the extent to which nations may legally adopt such measures in international trade law with special emphasis on WTO law. The project will consider both the intellectual property and trade issues involved in the implementation of tobacco packaging plain packaging rules. It will also examine the compatibility of tobacco plain packaging regulations with the obligations of states under international law.

Dr Olasupo (Supo) Owoeye is a law academic with expertise in International Intellectual Property Law. He is admitted to the legal profession in Nigeria, New Zealand and Australia. Dr Owoeye practised as a counsel at Punuka Attorneys and Solicitors, a top tier Lagos law firm, before he became a law academic. He is a Senior Lecturer in Law at the Graduate School of Business and Law, RMIT University, Melbourne. He previously taught at both undergraduate and postgraduate levels at the University of Tasmania, the RMIT International University, Vietnam, and the University of South Australia. He was also a Humboldt Research Fellow at the University of Augsburg, Germany and the Catholic University of Lyon, France in 2015. Supo is the author of *Intellectual Property and Access to Medicines in Africa: A Regional Framework for Access* (Routledge, 2019). Supo Owoeye has published over twenty articles in refereed journals. He has also been a resource person for different academic institutions, national governments and inter-governmental organisations including the World Health Organization, the World Intellectual Property Organization, the Government of India and the African Regional Intellectual Property Organisation.



Timothy Stephens

University of Sydney

Are environmental treaty scientific committees fit for purpose in the Anthropocene?

One of the most significant contemporary challenges for international environmental law is translating scientific knowledge about system-wide environmental changes such as climate change into concrete outcomes in international environmental treaty regimes. Existing arrangements in many multilateral environmental treaties are effective in communicating the latest scientific understanding of relatively confined issues (e.g. the status of threatened species). However, at a time in which entire earth systems are being transformed by human activities there are few mechanisms within existing treaty regimes for assessing this transformation and the options available to governments to maintain a safe living space for humanity within planetary boundaries. Using selected treaty regimes this paper highlights existing weaknesses and assesses the potential for reform to improve the science-policy-law interface in environmental treaties in the Anthropocene

Tim Stephens is Professor of International Law and ARC Future Fellow at the University of Sydney Law School, Deputy Director of the University of Sydney Marine Studies Institute, and President of the Australian and New Zealand Society of International Law. Stephens teaches and researches in public international law, with his published work addressing the international law of the sea, the polar regions, international environmental law and international dispute settlement.



Joanna Mossop

Victoria University of Wellington

Area based management tools and dynamic oceans governance: Can international law adequately govern a changing ocean?

The ocean is a complex set of ecosystems with which humans interact in a growing number of ways. We have imposed artificial jurisdictional controls and boundaries over human activities on the ocean. On the high seas in particular, our governance of the ocean is completely inadequate to manage activities and prevent degradation of the environment. There is an opportunity, with the negotiations for the new treaty on the conservation and sustainable use of marine biodiversity beyond national jurisdiction (BBNJ Treaty), to make considerable progress in responding to the challenges. However, there are considerable challenges to the new treaty being adequately transformative. In this paper I will discuss just one aspect of this larger question: can area-based management tools, particularly MPAs, be designed in such a way that it facilitates modern and dynamic approaches to oceans management? Any set of tools for the high seas needs to create appropriate institutional frameworks, optimise general principles and allow for flexible mechanisms that deal with oceans in four dimensions.

Associate Professor Joanna Mossop's research is focused on the law of the sea. She has published on a range of topics including maritime security, the protection of marine biodiversity beyond national jurisdiction, international dispute settlement and fisheries. Her book *The Continental Shelf beyond 200 Nautical Miles: Rights and Responsibilities* (OUP, 2016) was the joint winner of the JF Northey Memorial Book Award for the best legal book by a New Zealand based author. She has been a non-government member of the New Zealand delegation for the first and second IGCs for the new BBNJ treaty. In addition to this on-going interest, other current writing projects include climate change and fisheries, and illegal fishing. From September to December 2019 she will be a McCormick Fellow at Edinburgh Law School. She has been an ANZSIL member for almost 15 years and was co-chair of the 2018 Conference held in Wellington.



Margaret Young

University of Melbourne

Global pact for the environment

In September 2017, a new initiative for an environmental rights charter was introduced to the United Nations. The draft preliminary text for the ‘Global Pact for the Environment’ entrenches a right to an ecologically sound environment (Article 1), sets out a duty of states and international institutions to take care of the environment (Article 2) and requires parties to promote patterns of production and consumption that are both sustainable and respectful of the environment (Article 3). These and other clauses provide a framework similar to the existing international human rights covenants, the ICCPR and the ICESCR. This extension of rights is significant for international law in at least three ways: 1)its mobilization of both state and non-state actors towards the holistic approach that is needed to address ecological problems –which have now reached crisis point in the oceans, atmosphere and biodiversity; 2)the direction it provides for international adjudicators and other treaty-interpreters within a wide variety of international regimes (trade, investment, law of the sea and others) in achieving systemic integration in public international law; and 3)the potential for emerging environmental rights to be taken up by domestic courts, even within relatively stagnant domestic constitutional traditions. In contextualizing these claims, the paper discusses the 2018 report by the United Nations Secretary General, ‘Gaps in International Environmental Law and Environment-Related Instruments: Towards a Global Pact for the Environment, and the planned work of an intergovernmental working group constituted by the United Nations General Assembly.

Dr Margaret A. Young is Associate Professor of Law at the University of Melbourne, Australia and a DFAT Visiting Legal Fellow for 2019-2020. She was one of the international legal experts who met in Paris to finalize a draft preliminary text for the ‘Global Pact for the Environment’ in 2017. Dr Young was Director of Studies at The Hague Academy of International Law in 2016 and has worked at the World Trade Organization (Appellate Body Secretariat), the United Nations International Law Commission and as Associate to the Chief Justice of the Federal Court of Australia. She is the author of the prize-winning *Trading Fish, Saving Fish: The Interaction between Regimes in International Law* (CUP, 2011) and *Regime Interaction in International Law: Facing Fragmentation* (CUP, 2012). Together with co-authors from the Melbourne Law School, she was awarded the American Society of International Law Certificate of Merit in 2019 for her latest book, *The Impact of Climate Change Mitigation on Indigenous and Forest Communities* (CUP, 2017).



Ellycia Harrould-Kolieb

University of Melbourne

(Re)defining ocean acidification in the context of the UNFCCC

Ocean acidification (OA) has been coined ‘the other CO₂ problem’ and ‘the evil twin of climate change’. These monikers hint at nature of the relationship between climate change and OA; that they are separate, albeit related problems. Because of this interconnectedness through their common driver (CO₂) there is general agreement that the mitigation of OA should be governed under the auspices of the UNFCCC. However, there is scepticism within the legal scholarship as to whether the existing climate regime has the capacity to extend its work to address this concurrent threat, suggesting that the regime contains no obligation to address ocean acidification. This interpretation of the treaty has, arguably resulted in an unreasonable outcome, with the primary global legal instrument for regulating CO₂ emissions unable to address a major negative impact resulting from these emissions and even possibly requiring its exacerbation. Moreover, placing OA outside of the mandate of the UNFCCC has created a significant gap in the global governance of this issue. With no multilateral environmental agreement understood as having jurisdiction over the mitigation of OA, either due to limitations to incorporate OA (such as the UNFCCC) or an inability to regulate CO₂ (such as the Convention on Biological Diversity). It is for this reason that this paper argues that an alternative reading of the UNFCCC is warranted so as to include ocean acidification in its core obligations, thereby filling the mitigation gap and avoiding perverse implementation outcomes. It is contended that OA can be defined as an effect of climate change in the context of the treaty and that this is more consistent with the object and purpose of the Convention than defining OA as a concurrent problem

Ellycia is a PhD candidate in the School of Geography and the Climate and Energy College at the University of Melbourne. Her research focuses on the global governance of ocean acidification with a particular interest in the role of multilateral environmental agreements. Before embarking upon her Ph.D., Ellycia worked as a Marine Scientist, with Oceana –the world’s largest marine conservation organization. While with Oceana Ellycia was a delegate at the United Nations Framework Convention on Climate Change negotiations in Copenhagen and was the head of Oceana’s delegation at the Cancun negotiations, where she presented at a number of side events. She has also sat on the Board of the Victorian branch of The Wilderness Society and is an alumna of the Academy of the Melbourne Sustainable Society Institute at the University of Melbourne. Ellycia has published over 20 peer-reviewed articles, technical reports and book chapters and holds a Masters of Environment from the University of Melbourne and a Bachelor of Arts and a Bachelor of Science from Monash University.



Douglas Guilfoyle

Australian Defence Force Academy

The Chagos Islands litigation: international law and the use and production of historical knowledge

On 25 February 2019 the International Court of Justice ruled the continuing occupation of Chagos Archipelago an unlawful act of continuing colonialism ('the Advisory Opinion'). This marked the culmination of a legal strategy pursued by Mauritius that both deployed historical/archival material regarding the 'excision' of the archipelago prior to independence and sought to change the historical narrative about those events. The case thus provides a clear example of international litigation as a vehicle for the use of historical materials to produce an authoritative historical interpretation. The Advisory Opinion, of course, did not arise in a vacuum. There are deep continuities between the historical materials and arguments advanced by Mauritius and the UK in the Advisory Opinion proceedings and the earlier Chagos Archipelago Marine Protected Area arbitration proceedings heard under the UN Convention on the Law of the Sea Arbitration (2011-2015). A key victory for Mauritius is that its understanding of the historical record –and what documents constitute it –has now been inscribed in the Advisory Opinion. In this context, this paper explores international litigation as having a potential 'history making' function

Douglas Guilfoyle is an Associate Professor of International and Security Law at the University of New South Wales Canberra at the Australian Defence Force Academy. He is expert in the international law of the sea and international criminal law. His monograph *Shipping Interdiction and the Law of the Sea* is widely regarded as the leading scholarly work on maritime law-enforcement operations. He has extensive experience consulting to governments and international organisations and is a Visiting Legal Fellow at the Department of Foreign Affairs and Trade for 2019-2020. He holds honours degrees in Law and History from the Australian National University; and an LLM and PhD in international law from the University of Cambridge, where he was a Chevening and then a Gates Scholar. Prior to joining UNSW Canberra he worked at the Faculty of Laws at University College London (2007-2015); and the Faculty of Law at Monash University (2015-2018). In 2010-2015 he was part of the legal team working for the government of Mauritius in the Chagos Archipelago Marine Protected Area (Mauritius v UK) arbitration proceedings heard under the UN Convention on the Law of the Sea.



Tamsin Paige

Deakin University

Understanding the social impact of post-9/11 security theatre and the existential threat of terrorism

This paper seeks to understand the impact upon society of 'security theatre': being the proliferation of security legislation and processes, particularly in the context of airport security and refugee screening. Security theatre is a response to the ongoing threat of terrorist attack without warning since September 11, 2001. While as lawyers we have a clear understanding of the laws have been put in place in response to these issues, we often have very little real grasp of how these laws impact society at large. Responses to social change are often first documented in popular literature. This paper seeks to explore the social impact of security theatre through examining bestselling popular literature that was intended as an allegory of these issues. Thus, the approach taken is to use such literature as a sociological text to provide insight into social responses. To that end Mira Grant's apocalyptic Newsflesh trilogy (Feed, Deadline, and Blackout) and interviews with Mira Grant herself about these topics within the books will be analysed and explored with a view to understanding the social impact of security theatre. By examining forms of knowledge outside of traditional legal sources is my hope that as international lawyers we gain greater insight into the social perception of the work that we as lawyers do, and the ability to view it from an outside perspective.

Tamsin Phillipa Paige is a Lecturer in Law at Deakin University. Her work is interdisciplinary in nature, using qualitative sociological methods to analyse international law and the impact of law in society. She undertook a Postdoctoral Fellowship with Conflict and Society at UNSW Canberra, and was awarded an Endeavour Scholarship by the Australian Government for her PhD research conducted at the University of Adelaide and Columbia Law School. In a former life, she was a French trained, fine dining pâtissier.



Konstantina Tzouvala

University of Melbourne

Ways of knowing in international law: the turn to facts and the 'unwilling or unable' doctrine

This paper examines the unacknowledged epistemological background of the controversial 'unwilling or unable' doctrine, which authorises the use of defensive force in the territory of states that are 'unwilling or unable' to prevent attacks from non-state actors even in the absence of attributable conduct. As such, the doctrine signals a turn away from formal sovereignty and an embrace of 'functional sovereignty' and a purported embrace of the 'facts on the ground'. By examining both influential scholarly writings and relevant state practice and *opinio juris* I argue that the relevant facts appear to have little relation to a state's concrete engagement with a particular non-state actor. Rather, assessments of 'willingness and ability' are linked to either a desire not to engage with a state's government (notably in the case of Syria) or, more fundamentally, with a general assessment of a state's governing capacity. To do so, international lawyers turn to indexes about state failure or even 'common knowledge', which, in turn, means that it is only specific, non-Western states that can ever find themselves on the receiving end of the violence authorised by the doctrine. Read in this way, 'unwilling or unable' does not simply bring the law in line with some obvious, unmediated facts, but rather legitimises inequality amongst states and exerts pressure on non-Western states to subscribe to the imperatives of the 'war on terror'.

Ntina Tzouvala is an ARC Laureate Postdoctoral Fellow in International Law, at Melbourne Law School. Prior to this, Ntina was a lecturer in law at Durham Law School (UK), where she also completed her PhD thesis. Her research interests include the theory and history of international law, and particularly international law and the history of capitalism, feminist approaches to international law, and law and neoliberalism. Her work has been appeared in the *European Journal of International Law*, the *London Review of International Law* and *AJIL Unbound*. Her first monograph, *Capitalism as Civilisation: A History of International Law*, is forthcoming with Cambridge University Press.



Jayson Lamchek

National University of Singapore

Digital evidence in a post-truth World: improving investigation of the Philippines' war on drugs

Digital evidence presents immense opportunities for human rights fact-finding and advocacy. (Land and Aronson 2018; Alston and Knuckey 2016; McPherson 2015) Photos and videos can capture details of events with a greater degree of accuracy than human memory (Koettl 2016, 7). They also carry the potential to democratise human rights advocacy. (Land et al. 2012, 17) That is to say, more witnesses than can be reached and interviewed by professional/trained advocates are enabled to participate in evidence production and dissemination. In addition, by authenticating them, advocates are able to use as evidence open-source online material that were not originally produced for advocacy purposes. (Aronson 2018, 133ff) However, human rights technology also involves new dangers including targeted surveillance of the individual witnesses and their contacts through spyware and the deception of advocates through manipulation of information. These risks can immobilise under-resourced advocates without technological knowledge and social capital. (McPherson 2018, 194–98, 200–205) The Philippines' War on Drugs exhibits many of the features associated with post-truth politics that is on the rise worldwide. Countering government-instigated disinformation about drug-related killings requires improved documentation of violations in the Philippines that mobilises or involves contributions by ordinary citizens. This paper surveys the opportunities for bolstering investigation of human rights violations and/or international crimes in the Philippines through digital evidence. It considers how local advocates can be supported to engage in appropriate technology-enabled human rights practice.

Jayson is a Post-Doctoral Fellow at the Faculty of Law, National University of Singapore (NUS). Jayson researches the law and politics of human rights, especially as they intersect with discourses of security. He has done extensive fieldwork in the Philippines and Indonesia. His first monograph *Human Rights-Compliant Counterterrorism: Myth-making and Reality in the Philippines and Indonesia* (Cambridge University Press, 2019) critically examines the human rights turn in counterterrorism law and policy using detailed empirical case studies. Before turning to academia, Jayson worked for seven years as a lawyer in civil society organisations in the Philippines including the Public Interest Law Center (PILC) and the Legal Rights and Natural Resources Center (LRC). He earned his Ph.D. from the Australian National University (ANU).



Annemarie Devereux

Challenges associated with human rights fact-finding in International Commissions of Inquiry

When dealing with situations of mass violations of international human rights law and international humanitarian law, the international community has increasingly turned to the establishment of an International Commission of Inquiry or Fact-Finding Mission. These may operate for a matter of months (eg ICOI-Libya) or over many years (eg ICOI-Syria). Drawing upon her experience with UN investigations as well as the nascent body of literature, this paper will highlight some of the complex challenges navigated by such bodies. These include how investigations:

- Prioritise which violations to investigate in pursuance of their mandate;
- Identify and engage with victims, witnesses, and alleged perpetrators;
- Collaborate with States, UN entities and national and international civil society;
- Verify information (including increasing amounts of digital data);
- Integrate considerations of victim and witness security, and ensure a methodology which supports, rather than compromises parallel processes, including criminal justice processes;
- Address critical information gaps (eg arising from lack of access, lack of data or lack of time) and unsettled questions of international law;
- Evaluate information and reach conclusions according to an appropriate standard of proof; and
- Finalise and present a report in a manner to optimise its influence at the national and international levels.

Whilst recent years have seen welcome attempts to develop guidelines and compile ‘best practices’ for ICOIs, this paper concludes by identifying further structural reforms which could be taken to maximise the performance and contribution of ICOIs.

Dr Annemarie Devereux is an international lawyer whose practice has included working as an Assistant Secretary with the Office of International Law (AGD), and working in a range of capacities with the United Nations. Her roles have included working as a legal advisor in 3 peace missions in Timor Leste (UNTAET, UNMISSET, UNOTIL), with the Security Council’s Counter-



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Big data, self-fulfilling prophecies, and inescapable errors. How algorithms challenge state applications of international standards

On August 13, 2015, a U.S. airstrike in Syria targeted Junaid Hussain, a British hacker who was a central figure in the ISIS online recruitment campaign. The strike killed three people, all of whom civilians, and injured five. In a brief press release, the U.S. Central Command emphasized its “commitment to transparency,” yet left most of the relevant information in the dark, including the causes for the intelligence failure and civilian deaths. Where the press release is silent, a growing literature has identified big data analytics as increasingly important in the creation of kill-lists and collateral damage calculations. While adding valuable information, big data analytics suffer from inherent weaknesses, as they rely on probabilities and propositions; and transform qualitative intelligence into numerical data. This article employs interdisciplinary theories of risk-assessment, organizational culture, and international law to analyse the impact of big data analytics on security decision-making. The article finds that these practices violate the principles of distinction, proportionality, and precaution, as they rely on value-infused predictions that increase the risk of error, while producing a pretence of robustness and clarity. Particularly, in the context of targeted killings, big data analytics enhance already existing organizational biases; engender dehumanization; and generate avatars that replace the real persons –or the actual conditions on the ground –with no effective way available to refute these virtual representations. The article redefines “data,” “evidence,” and “facts” for the purposes of security decision-making, and recommends several safeguards, such as red teams, to improve data quality and accuracy.

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