



Australian and New Zealand
Society of International Law

30TH ANNUAL ANZSIL CONFERENCE:

IS INTERNATIONAL LAW RESILIENT?

PROGRAMME

About the conference

Australia and New Zealand are longstanding supporters of the international rules-based order, but is this order sufficiently resilient to survive both acute and systemic challenges? Since the start of the 2020s, the international order has been challenged by Russia's invasion of Ukraine, geopolitical tension between China and the West, the increasingly visible effects of climate change, the ongoing COVID-19 pandemic, the economic disruptions caused by supply chains in crisis, and the challenges posed by cyber threats and new technologies, to name just a few.

These challenges pose significant questions for international law, international lawyers and international legal institutions. Is international law, and are international institutions, resilient in the face of these threats? Can international law contribute to supporting the resilience of ecosystems and communities in the face of inexorable environmental degradation? Is international law equipped with the tools to "save succeeding generations from the scourge of war" as the UN Charter's preamble so solemnly proclaims? Are key UN institutions such as the Security Council and the International Court of Justice still capable of contributing to peace and security and the peaceful resolution of disputes? How are the UN and other international organisations developing resilience in response to changing geopolitical norms? Is resilience supported through domestic processes of incorporation and interpretation of international law? Does resilience require the development of new international rules in areas where none existed previously? Or does resilience resist change and prevent the creation of flexible and innovative solutions? Where does a resilient international law sit on the continuum between continuity and change? Finally, how can we remain resilient as teachers, students and practitioners of international law?

We invite participants at the 30th ANZSIL Conference to re-evaluate the resilience of international law and institutions in the face of these acute and systemic challenges and the future of the international order.

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ANZSIL 2023 Conference Sponsors

ANZSIL is delighted to be hosting the 30th conference in partnership with the [New Zealand Centre for Public Law – Te Wānanga o Ngā Kaupapa Ture ā Iwi o Aotearoa](#) and is grateful for the support provided by the Centre and Victoria University of Wellington | Te Herenga Waka.

ANZSIL gratefully acknowledges the financial and other support for the 30th Annual Conference and the ANZSIL Postgraduate Workshop provided by:

- The Ministry of Foreign Affairs and Trade (New Zealand)
- The Department of Foreign Affairs and Trade (Australia)
- Attorney General's Department (Australia)
- Brill Publishing
- Springer Publishing

DAY 1: THURSDAY 29 JUNE 2023

| TIME | SESSION |
|---------------------|--|
| 9:00am– 9:45am | Welcome and Conference Opening |
| 9:45am– 10:30am | Keynote: <i>Resilience in International Law: An Institutional Perspective</i> Guy Fiti Sinclair, University of Auckland Waipapa Taumata Rau |
| 10:30am– 11:00am | <i>Morning Tea</i> |
| 11:00am– 12:30pm | Panel 1: The Resilience of the Antarctic Treaty System in Managing Sovereignty Concerns |
| 11:00am– 12:30pm | Panel 2: International Humanitarian Law and Technology |
| 11:00am– 12:30pm | Panel 3: The Utility of “Soft Law” in Assessing International Law’s Resilience |
| 12:30pm– 1:30pm | <i>Lunch and Interest Group Meetings</i> |
| 1:30pm– 3:00pm | Panel 4: Spaces Beyond National Jurisdiction |
| 1:30pm– 3:00pm | Panel 5: International Humanitarian Law |
| 1:30pm– 3:00pm | Panel 7: The Indo-Pacific |
| 3:00pm– 3:30pm | <i>Afternoon Tea</i> |
| 3:30pm– 4:30pm | Panel 7: High seas, high jinks: BBNJ and international law making with respect to the high seas |
| 3:30pm– 4:30pm | Panel 8: Is International Humanitarian Law Resilient? A Lively Debate |
| 3:30pm– 4:30pm | Panel 9: Trade and the Environment |
| 4:30pm– 5:30pm | Panel 10: The resilience of international security law to new and evolving technologies |
| 4:30pm– 5:30pm | Panel 11: Decay, Resilience or Evolution? The International Human Rights Law Project in the 21st Century and Beyond |
| 4:30pm– 5:30pm | Panel 12: Souvenirs of International Law |
| 6:00pm– 7:00pm | Sir Kenneth Keith Lecture Tim McCormack, University of Tasmania |

DAY 2: FRIDAY 30 JUNE 2023

| TIME | SESSION |
|---------------------|--|
| 9:00am– 10:00am | Keynote: <i>Blue Resources for the Green Transition: What is Left out of the Frame</i> Surabhi Ranganathan, University of Cambridge |
| 10:00am– 10:30am | <i>Morning Tea</i> |
| 10:30am– 12:00pm | Panel 13: Resilience and Climate Change |
| 10:30am– 12:00pm | Panel 14: Legal Responses to Civilian Harm in Armed Conflict |
| 10:30am– 12:00pm | Panel 15: The Stretching of Trade Law |
| 12:00pm– 1:30pm | <i>Lunch and AGM (AGM to start at 12.30pm)</i> |
| 1:30pm– 3:00pm | Panel 16: Resilience in the Law of the Sea and International Environmental Law |
| 1:30pm– 3:00pm | Panel 15: International Criminal Law |
| 1:30pm– 3:00pm | Panel 16: Accommodating Differences in Trade Law |
| 3:00pm– 3:30pm | <i>Afternoon Tea</i> |
| 3:30pm– 4:30pm | Panel 19: Resilience at the Fault Lines: National Security and International Law |
| 3:30pm– 4:30pm | Panel 20: Practising International Law – In Conversation |
| 4:30pm– 5:30pm | President's Panel Resilience in Teaching, Research and Practice in International Law |
| 7pm onwards | <i>Conference Dinner – Pāremata Aotearoa New Zealand Parliament in the Grand Hall</i> |

DAY 3: SATURDAY 1 JULY 2023

TIME

SESSION

9:00am–
10:30am

Panel 21: Critical Approaches

9:30am–
10:30am

Panel 22: Resilience through Law-Making and Interpretation

10:30am–
11:00am

Morning Tea

11:00am–
1:00pm

Year-in-Review and Conference Close

RELATED ACTIVITIES

WEDNESDAY 28 JUNE 2023: POSTGRADUATE WORKSHOP

TIME

LOCATION

8:45am–
5:15pm

Moot Room, 3rd floor, Victoria University of Wellington | Te Herenga Waka

VENUE MAP



Pipitea Campus Key

- a This map identifies the location of buildings and facilities and the accessible routes that link them for people with disabilities.
- b
- c
- d (MS) Building code
- e --- Accessible route
- f ☕ Café
- g 📖 Library
- g 🚌 Public transport stop
- g 🎤 Lecture theatre
- h P Parking (permit holders only)
- i M Motorcycle parking
- j ♿ Mobility parking
- j 🚲 Bike rack
- k i Ttoko—Student Service Centre
- l + Health services
- l ⚡ Automatic external defibrillator
- m D Te Amaru—Disability Services
- n 📞 Campus Safety (Security) 04 463 5398
- n 📞 Te Herenga Waka—Victoria University of Wellington 0800 04 04 04

DAY 1: THURSDAY 29 JUNE 2023

| | | | |
|-------------------------------|---|--|--|
| 8:30am–9:00am | <i>Conference Registration</i> | | |
| 9:00am–9:45am Room: GBLT 1 | <i>Conference Opening</i> | | |
| 9:45am–10:30am Room: GBLT1 | <p>Keynote: Resilience in International Law: An Institutional Perspective Guy Fiti Sinclair, University of Auckland Waipapa Taumata Rau Chair: An Hertogen, University of Auckland Waipapa Taumata Rau</p> | | |
| 10:30am–11:00am | <i>Morning Tea</i> | | |
| 11:00am–12:30pm | <p>Panel 1: The Resilience of the Antarctic Treaty System in Managing Sovereignty Concerns</p> <p>Room: GBLT 1</p> <p><i>International Law, Antarctic Law and Legal Titles to Sovereignty in Antarctica</i> Bruno Arpi, University of Tasmania</p> <p><i>Article IV of the Antarctic Treaty: The Settlement of Disputes over Antarctic Sovereignty</i> Tony Press, University of Tasmania</p> <p><i>The Australian Antarctic Territory and the international law of effective occupation of territory in the 21st century</i> Indi Hodgson-Johnston, University of Tasmania</p> | <p>Panel 2: International Humanitarian Law and Technology</p> <p>Room: GBLT 2</p> <p><i>Should command responsibility be considered in the Article 36 review of an autonomous weapon system?</i> Tennille Marsh, Australian Army (presenter) Catherine Burns, Australian Army Peter Jew, Australian Department of Defence</p> <p><i>Understanding the impact of computer technology on the laws of war</i> Simon McKenzie, Griffith Law School</p> <p><i>The problem with ‘human dignity’ in the international legal debate over autonomous weapons</i> Jeremy Moses, University of Canterbury Te Whare Wānanga o Waitaha</p> <p>Chair: TBC</p> | <p>Panel 3: The Utility of “Soft Law” in Assessing International Law’s Resilience – Some Examples from Financial Markets Regulation</p> <p>Room: GBLT3</p> <p><i>The Utility of “Soft Law” in Assessing International Law’s Resilience</i> Michael Webb, O’Connell Street Barristers</p> <p><i>An Agency’s Perspective</i> Liam Mason, Financial Markets Authority</p> <p><i>The Perspective of Small Island Developing States</i> Petra Butler, Victoria University of Wellington Te Herenga Waka</p> <p><i>How Institutional Arrangements and Regulation Make International Law More Resilient</i> Monique Egli Costi, Victoria University of Wellington Te Herenga Waka</p> |

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| | <p><i>Are Antarctic Marine Area Proposals an exercise of 'Soft Sovereignty' by Antarctic Claimant States?</i> Jeffrey McGee, University of Tasmania and Shirley Scott, UNSW Canberra</p> <p>Chair: Karen Scott, University of Canterbury Te Whare Wānanga o Waitaha</p> | | <p>Chair: Alberto Costi, Victoria University of Wellington Te Herenga Waka</p> |
| <p>12:30pm–1:30pm</p> | <p><i>Lunch and Interest Group Meetings</i></p> | | |
| <p>1:30pm–3:00pm</p> | <p>Panel 4: Spaces Beyond National Jurisdiction</p> <p>Room: GBLT 1</p> <p><i>The Resiliency of the United Nations Space Treaties and the Threats Posed by Increasing Military and Commercial Space Activities</i> Ricky J Lee, University of Notre Dame Maria Pozza, Gravity Lawyers</p> <p><i>Complexities in Applying International Human Rights Law to Future Outer Space Settlements: A Potential Role for the Doctrine of Effective Control?</i> Anna Marie Brennan, University of Waikato Te Whare Wānanga o Waikato</p> <p><i>A Resilient Law of the Sea for the Anthropocene?</i> Karen Scott, University of Canterbury Te Whare Wānanga o Waitaha</p> <p>Chair: Don Rothwell, ANU College of Law</p> | <p>Panel 5: International Humanitarian Law</p> <p>Room: GBLT 2</p> <p><i>Reparations in International Armed Conflicts in Light of the ICJ's Judgment in Armed Activities on The Territory of the Congo (Democratic Republic of the Congo v Uganda), The Eritrea-Ethiopia Claims Commission's Awards And Russia's Invasion.</i> Alberto Alvarez-Jimenez, University of Waikato Te Whare Wānanga o Waikato</p> <p><i>To identify but not to try – can the Chemical Weapons Convention survive having perpetrators of chemical weapons attacks in Syria identified without subjecting them to trial?</i> Yasmin Naqvi, Office of International Law, Attorney-General's Department, Australia</p> <p><i>Sharp War, Soft War</i> Samuel White, University of Adelaide</p> <p><i>Rethinking International Legal Management of Humanitarian Crises: International Law as a Negotiated Regime of Compromises</i> Mostafa Haider, Curtin University</p> <p>Chair: TBC</p> | <p>Panel 6: The Indo-Pacific</p> <p>Room: GBLT 3</p> <p><i>Performing permanent sovereignty: International Law and Tuvalu's Te Ataeao Nei (Future Now) Project</i> Milla Vaha, University of the South Pacific</p> <p><i>Oceans Traditions in Action: A Comparative Study of Mobilizing International Law for Oceans Co-Governance in the Anthropocene Pacific – New Zealand and Taiwan</i> Sun Shan-Ya, Independent Researcher</p> <p><i>The Resilience of International Law in Its Unconventional Usage: How Global South States of the Indo-Pacific Safeguard Their Interests through Regional Law Cooperation</i> Tan Hsien-Li, National University of Singapore</p> <p><i>Enforceability of Mahr under a Shari'ah Law-based Contract in New Zealand: A Comparison with Australia, England and Canada</i> Durgeshree Raman, University of Waikato Te Whare Wānanga o Waikato</p> <p>Chair: Alison Duxbury, University of Melbourne</p> |
| <p>3:00pm–3:30pm</p> | <p><i>Afternoon Tea</i></p> | | |

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|----------------------|---|---|--|
| <p>3:30pm–4:30pm</p> | <p>Panel 7: High Seas, High Jinks: BBNJ and International Law Making with respect to The High Seas</p> <p>Room: GBLT 1</p> <p>Jennifer Cavenagh, Head of Australia’s delegation to BBNJ negotiations.</p> <p>Victoria Hallum, Head of New Zealand’s delegation to BBNJ negotiations.</p> <p>Thea Chesterfield, Legal adviser to Australia’s delegation to BBNJ negotiations.</p> <p>Chair: Luke Roughton, Deputy Head of New Zealand’s delegation to BBNJ negotiations.</p> | <p>Panel 8: Is International Humanitarian Law Resilient? A Lively Debate</p> <p>Room: GBLT 2</p> <p><i>Has IHL been resilient throughout history?</i> Kevin Riordan, Judge Advocate General of the New Zealand Armed Forces</p> <p><i>Is IHL resilient in the face of international rules-based disorder?</i> Rain Liivoja, University of Queensland</p> <p><i>How can IHL remain resilient in the future?</i> Yvette Zegenhagen, Australian Red Cross</p> <p><i>Fragility as Resilience</i> Amanda Alexander, Australian Catholic University</p> <p>Chair: Rebecca Dudley, New Zealand Red Cross</p> | <p>Panel 9: Trade and the Environment</p> <p>Room: GBLT 3</p> <p><i>Net Zero Emissions and the Free Trade Agreement (FTA) between the United Kingdom and Australia</i> Margaret Young, Melbourne Law School</p> <p><i>Turning over a New Leaf of International Trade: Eco-trade Policies at the WTO</i> Shannon Ward, Ministry of Justice, New Zealand Michelle Zang, Victoria University of Wellington Te Herenga Waka</p> <p><i>Chinese Mining and Technology Investments in Melanesia: Impact on Indigenous Rights and Potential Legal Remedies</i> Francine Hug, Chinese University of Hong Kong</p> <p>Chair: Caroline Foster, The University of Auckland Waipapa Taumata Rau</p> |
| <p>4:30pm–5:30pm</p> | <p>Panel 10 The resilience of international security law to new and evolving technologies</p> <p>Room: GBLT 1</p> <p><i>The application and development of international law in relation to outer space</i> Naushyn Janah, MFAT, NZ</p> <p><i>The application and development of international law in relation to cyberspace</i> Nish Perera, DFAT, Australia</p> <p><i>The application and development of international law in relation to lethal autonomous weapons systems</i> WGCDR Tim Wood, NZDF</p> <p>Chair: Rain Liivoja, University of Queensland, DFAT Visiting Fellow</p> | <p>Panel 11: Decay, Resilience or Evolution? The International Human Rights Law Project in the 21st Century and Beyond</p> <p>Room: GBLT 2</p> <p>Catherine Renshaw, Western Sydney University</p> <p>Petra Butler, Victoria University of Wellington Te Herenga Waka</p> <p>Diana Qiu, Thorndon Chambers</p> | <p>Panel 12: Souvenirs of International Law</p> <p>Room: GBLT 3</p> <p><i>At the Vanishing Point? The Merchandise, Memorabilia and Souvenirs of International Law as Modern Day Relics and Fetishes</i> Emily Crawford, University of Sydney</p> <p><i>Of Teddy Bears and International Law</i> Jacqueline Mowbray, University of Sydney</p> <p><i>Furnishing Legal Histories</i> Jessie Hohmann, University of Technology Sydney</p> <p>Chair: Amanda Alexander, Australian Catholic University</p> |

6:00pm–7.00pm

Sir Kenneth Keith Lecture: *Burnham, Brereton, the OSI and Haddon-Cave: The ICC and National Responsibility for War Crimes*

Tim McCormack, University of Tasmania

LT1, Rutherford House, 33 Bunny Street

The venue will open from 5.45pm. Refreshments will be served after the lecture on the Mezzanine Level, Rutherford House.

DAY 2: FRIDAY 30 JUNE 2023

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| <p>9:00am–10:00am</p> <p>Room: GBLT 1</p> | <p>Keynote: <i>Blue Resources for the Green Transition: What is Left out of the Frame</i></p> <p>Surabhi Ranganathan, The University of Cambridge</p> <p>Chair: Joanna Mossop, Victoria University of Wellington Te Herenga Waka</p> | | |
| <p>10:00am–10:30am</p> | <p><i>Morning Tea</i></p> | | |
| <p>10:30pm–12:00pm</p> | <p>Panel 13: Resilience and Climate Change</p> <p>Room: GBLT 1</p> <p><i>Due Regard for the Future</i> Caroline Foster, University of Auckland Waipapa Taumata Rau</p> <p><i>The Promise of the Loss and Damage Principle: Assessing the Effectiveness of International Climate Change Law</i> Krishnee Appadoo, University of Mauritius</p> <p><i>In Search of a Resilient International Climate Regime</i> Sharon Mascher, University of Calgary</p> <p><i>Forsaking Process for Progress? Transnational Environmental Law and Climate Change</i> Jessica Kirton-Luxford</p> <p>Chair: TBC</p> | <p>Panel 14: Legal Responses to Civilian Harm in Armed Conflict</p> <p>Room: GBLT 2</p> <p><i>Aotearoa New Zealand’s Inspector-General of Defence and civilian harm in armed conflict</i> James Mehigan, University of Canterbury Te Whare Wānanga o Waitaha</p> <p><i>Accountability for War Crimes in Afghanistan</i> Azadah Raz Mohammad, Melbourne Law School</p> <p><i>Aotearoa New Zealand’s Defence Force Order 35 and Offshore Detention Policy Framework as responses to civilian harm in armed conflict</i> Marnie Lloyd, Victoria University of Wellington Te Herenga Waka</p> <p>Chair: Alberto Costi, Victoria University of Wellington Te Herenga Waka</p> | <p>Panel 15: The Stretching of Trade Law</p> <p>Room: GBLT 3</p> <p><i>Does the World Trade Organization Promote Consumer Protection?</i> Pallavi Kishore, Jindal Global Law School</p> <p><i>Resilience through flexibility? International trade law and the regulation of e-cigarettes</i> Genevieve Wilkinson, University of Technology Sydney</p> <p><i>AI-Assisted Authorship: Can International Law Adapt?</i> Dilan Thampapillai, UNSW Business School</p> <p><i>Digital Economy Agreements and Global Tech Governance</i> Thomas Streinz, New York University</p> <p>Chair: An Hertogen, University of Auckland Waipapa Taumata Rau</p> |
| <p>12:00pm–1:30pm</p> | <p><i>Lunch and AGM</i></p> <p><i>AGM to start at 12.30pm sharp in GBLT 1</i></p> | | |

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| <p>1:30pm–3:00pm</p> | <p>Panel 16: Resilience in the Law of the Sea and International Environmental Law</p> <p>Room: GBLT 1</p> <p><i>Climate Change to Maritime Cybersecurity: The Law of the Sea's (lack of) Response to the Emerging Challenges and Opportunities?</i> Saiful Karim, Queensland University of Technology</p> <p><i>The Unrealised Value of the Commons</i> Joanna Mossop, Victoria University of Wellington Te Herenga Waka</p> <p><i>Ensuring the resilience of marine ecosystems and communities in international ocean law and fisheries management</i> Ruby Moynihan Magsig, Department of Conservation and Victoria University of Wellington Te Herenga Waka</p> <p><i>Why international environmental law must support the resilience of kelp forests: a case study of a lesser known coastal ecosystem</i> Erika Techera, The University of Western Australia</p> <p>Chair: Karen Scott, University of Canterbury Te Whare Wānanga o Waitaha</p> | <p>Panel 17: International Criminal Law</p> <p>Room: GBLT 2</p> <p><i>Sentencing Ecocide</i> Daley Birkett, Macquarie University</p> <p><i>International Criminal Law after Ukraine: The Enduring Power of Narrative in the Absence of Legal Accountability</i> Jonathan Hafetz, Seton Hall University</p> <p><i>Law in a World of Shadows: the Duty to Prevent Genocide and the Ecology of Norms</i> Melody Yang, Magistrates' Court of Victoria</p> <p>Chair: [Name, Affiliation]</p> | <p>Panel 18: Accommodating Differences in Trade Law</p> <p>Room: GBLT 3</p> <p><i>The Impact of Chinese Trade Coercion on the Resiliency of International Law</i> Ben Czapnik, National University of Singapore</p> <p><i>Strengthening international trade law's resilience to beggar-thy-neighbour policies</i> An Hertogen, University of Auckland Waipapa Taumata Rau</p> <p><i>They do Things Differently There: International Economic Law and a Making of the post-Communist State</i> Michał Swarabowicz, University of New South Wales</p> <p>Chair: [Name, Affiliation]</p> |
| <p>3:00pm–3:30pm</p> | <p><i>Afternoon Tea</i></p> | | |

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|----------------------|---|--|
| <p>3:30pm–4:30pm</p> | <p>Panel 19: Resilience at the Fault Lines: National Security and International Law</p> <p>Room: GBLT 1</p> <p><i>Integrating marine autonomous vehicles into national security architecture</i> Douglas Guilfoyle, UNSW Canberra</p> <p><i>IHL in a domestic setting – lessons of resilience from Ukraine</i> Lauren Sanders, The University of Queensland</p> <p><i>Foreign Interference: What domestic responses mean for international law?</i> Danielle Ireland-Piper, Australian National University</p> <p>Chair: David Letts, ANCORS, University of Wollongong</p> | <p>Panel 20: Practising International Law – In Conversation</p> <p>Room: GBLT 2</p> <p>Elana Geddis, Kate Sheppard Chambers</p> <p>Kate Wilson Butler, Chapman Tripp</p> <p>Gitanjali Bajaj, DLA Piper</p> <p>Chair: Sarah McCosker, Lexbridge Lawyers</p> |
| <p>4:30pm–5:30pm</p> | <p>President’s Panel: Resilience in Teaching, Research and Practice of International Law</p> <p>Claire Charters, University of Auckland Waipapa Taumata Rau</p> <p>Sarah McCosker, Lexbridge Lawyers</p> <p>Tamsin Paige, Deakin University</p> <p>Douglas Guilfoyle, UNSW Canberra</p> <p>Tim McCormack, University of Tasmania</p> <p>Alison Duxbury, University of Melbourne</p> <p>Chair: Karen Scott, ANZSIL President</p> | |
| <p>7:00pm</p> | <p><i>Conference Dinner – Pāremata Aotearoa New Zealand Parliament in the Grand Hall</i></p> | |

DAY 3: SATURDAY 1 JULY 2023

9:00am–
10:30am

Panel 21: Critical Approaches

Room: GBLT 1

A Critique of Resilience Discourses in International Law

Phillip Kastner, University of Western Australia

How longtermism can shape more proactive international law

Bjørn-Oliver Magsig, Victoria University of Wellington | Te Herenga Waka

The Resilience of Identity: Indigeneity and the turn to history in international law

Lucas Lixinski, University of New South Wales

Marginalised Economies in World Trade Law: Re-thinking the History and Making of International Trade Law

Sharmin Tania, Curtin University

Chair: Jesse Hohmann, UTS, Sydney

Panel 22: Resilience through Law-Making and Interpretation

Room: GBLT 2

The Evolving Role of the General Assembly vis-à-vis the Security Council in the Maintenance of Peace

Rebecca Barber, University of Queensland

Supporting Resilience of MEAs and RFMOs: Potential of Global Administrative Law Principles

Josephine Toop, University of Canterbury | Te Whare Wānanga o Waitaha

The UN Secretariat, the Drafting of the Genocide Convention, and the Progressive Development of International Law

Ash Stanley-Ryan, Graduate Institute of International and Development Studies

The Resilience of the Customary Law-Making Process: an Examination of the Guidance Provided by the International Court of Justice

Nish Perera, Department of Foreign Affairs and Trade

Angad Keith, Department of Foreign Affairs and Trade

Chair: [Name, Affiliation]

10:30am–
11:00am

Morning Tea

11:00am–
1:00pm

Year-in-Review and Conference Close

Genevieve Taylor, Crown Law, New Zealand

Andrew Williams, MFAT, New Zealand

Nathan Kensey, Assistant Secretary, Office of International Law, AG's Department, Australia

tbcb, DFAT, Australia

Chair: Karen Scott, ANZSIL President

Room: GBLT 1



KEYNOTE LECTURE

Resilience in International Law: An Institutional Perspective

Guy Fiti Sinclair, University of Auckland | Waipapa Taumata Rau

This talk will critically reflect on the idea of resilience in international law. Adopting an institutional (and inter-institutional) perspective, the talk will consider how international organizations have responded, and relations among them have been re-ordered, in previous moments of crisis in international law. Such a perspective offers grounds for hope – but also caution – as we consider meaning and possibility of resilience in the face of “acute and systemic challenges” today.



Guy Fiti Sinclair is an Associate Professor and the Associate Dean (Pacific) at Auckland Law School. He holds first degrees in law and history, and a JSD from New York University School of Law. He publishes widely in public international law, with a focus on international organizations and international economic law, and is a member of several editorial boards including the Scientific Advisory Board of the *European Journal of International Law*. His book, *To Reform the World: International Organizations and the Making of Modern States* (Oxford University Press, 2017), was awarded the European Society of International Law Book Prize in 2018.



KEYNOTE LECTURE

Blue Resources for the Green Transition: What is Left out of the Frame

Surabhi Ranganathan, University of Cambridge

This talk will begin with tracing the current debate on seabed mining. On the one side, there is a push for it, on the argument that seabed minerals are essential resources for the green energy transition, accompanied by enduring institutional and commercial efforts to cement an extractive imaginary of the sea. On the other side is a growing and important call to slow down and even pause these efforts while better scientific knowledge is collected about the ocean. It goes – or should go – without saying that the concerns expressed about the precipitate commencement of seabed mining are important and timely, and the view that precaution must be observed rightly enjoys wide support. Yet the discourse of the present day is notable also for what remains out of its frame or is taken for granted within it: the fundamental shape of the mining regime, questions of reparations, and the very *telos* of international law-making; the very matters, in fact, that speak to questions of resilience in these times.



Surabhi Ranganathan is Professor of International Law at the University of Cambridge, and deputy director of the Lauterpacht Centre for International Law. Her current work on the legal ordering of the ocean, explores ocean depths and bottoms, marine infrastructures and techno-utopian imaginaries, and – from the vantage point of oceanic

law-making – the legal historiography and politics of statehood and territory, decolonization and the new international economic order, knowledge production and circulation, and the emergence of new legal forms and institutions. Her writing has been published in leading journals including the *European Journal of International Law*, the *British Yearbook of International Law*, the *American Journal of International Law*, and the *Journal of the History of International Law*, several edited collections, and popular platforms such as the *New York Times* and *The Dial*. Author of the monograph *Strategically Created Treaty Conflicts and the Politics of International Law* (CUP), editor-in-chief of the *Leiden Journal of International Law*, and an occasional host of *EJIL: The Podcast!*, she is, most recently, an editor of the *Santander Art and Culture Law Review* special issue 'Colonial Loot and its Restitution'. She is spending 2022-2023 as a fellow at the *Wissenschaftskolleg, Berlin*.



SIR KENNETH KEITH LECTURE

Burnham, Brereton, the OSI and Haddon-Cave: The ICC and National Responsibility for War Crimes

Tim McCormack, University of Tasmania

States have traditionally been reticent to take seriously allegations of war crimes – particularly by members of their own militaries. In response to respective allegations of wrongdoing by NZDF, ADF and UK elite special forces in Afghanistan, however, NZ, Australia and now the UK have established rigorous national inquiries and, at least in Australia's case to date, also initiated formal criminal investigations. Prof McCormack will briefly explain the processes in each State and identify some common themes emerging from the respective initiatives. He will offer some analysis on the extent to which the ICC's jurisdiction over Afghanistan has incentivised NZ, Australia and the UK to take a more rigorous approach than might have otherwise have been the case. Tim will also reflect upon some broader challenges for the enforcement of serious violations of the Law of Armed Conflict arising from these national initiatives.

Tim McCormack is Professor of International Law at the University of Tasmania and Special Adviser on war Crimes to the Prosecutor of the International Criminal Court in The Hague (since 2010). Tim has been providing Law of Armed Conflict advice to the Office of the Special Investigator in relation to alleged ADF war crimes in Afghanistan and has recently been engaged to provide Law of Armed Conflict advice to Sir Charles Haddon-Cave's Independent Inquiry into alleged UK war crimes in Afghanistan. Tim has long been involved in this area of the law having served as: Foundation Australian Red Cross Professor of International Humanitarian Law (1996-2010) and Founding Director of the Asia Pacific Centre for Military Law (2000-2010), both at Melbourne Law School; *Amicus Curiae* on International Law issues for the Trial of Slobodan Milosevic at the ICTY in The Hague (2002-2006); Charles H Stockton Distinguished Scholar-in-Residence at the US Naval War College, Newport, Rhode Island (2015-16).



Australian and New Zealand
Society of International Law

SOUVENIRS OF INTERNATIONAL LAW EXHIBITION



Panel #1: The Resilience of the Antarctic Treaty System in Managing Sovereignty Concerns

The Antarctic Treaty (AT) of 1959 is a legal and political agreement to address specific regional problems, particularly conflicting claims to territorial sovereignty in Antarctica. Article IV of the AT has created the necessary legal framework to protect the different state's positions on territorial sovereignty. However, the AT has not resolved this issue, and sovereignty claims still shape the practice and evolution of the Antarctic Treaty System (ATS). The ATS faces a new set of geopolitical tensions that challenge the legal framework created under the foundation of the AT. After 6 decades of the entry into force of the AT, it is important to assess the resilience of the ATS in managing sovereignty concerns. This panel explores the relevance of the sovereignty claims in the 21st century and the ability of the ATS to manage concerns regarding sovereignty in the region.

Paper Abstracts and Short Biographies

Bruno Arpi

The legal and political status of the Antarctic continent is unique. The Antarctic community has created a *sui generis* regional regime to address problems of the region, particularly the issue of conflicting claims to territorial sovereignty in Antarctica. Antarctic territorial claims are important for understanding the history and future possibilities of the Antarctic region. Although Article IV of the Antarctic Treaty of 1959 put on hold arguments about territorial claims over the continent, these claims still play a role in shaping the Antarctic Treaty System. To understand these arguments, it is important to consider the legal basis of the claims to sovereignty in Antarctica and to what extent general rules and principles of international law on acquisition of territory might have been applicable to the Antarctic continent. Since political tensions over whether general international law was capable of providing effective tools to address sovereignty in the region were unable to be resolved, the Antarctic community found a solution through the creation of a regional legal regime. This article, therefore, examines the legal basis of Antarctic sovereignty claims in the light of international law prevailing in the middle of the last century. It explains the main differences of approach to sovereignty claims of States which had a direct interest in Antarctica and why it was necessary to find a regional solution. The paper concludes by highlighting the importance of the regional legal regime created around the Antarctic Treaty to address the problem of conflicting claims to territorial sovereignty in Antarctica.

Bruno Arpi is a PhD candidate at the Faculty of Law and the Institute for Marine and Antarctic Studies (IMAS) at the University of Tasmania. He holds a Master of Laws (LL.M) degree from the University of Copenhagen (Denmark) and a Bachelor of Laws from the Universidad Nacional de Rosario (Argentina). Bruno is a sessional lecturer in public international law, law of the sea, and Antarctic Law at the University of Tasmania and the Universidad Nacional de Rosario. He is a member of the Council of the Australian Institute of International Affairs (AIIA) Tasmania, and the Standing Committee on the Humanities and Social Sciences (SC-HASS) of the Scientific Committee



on Antarctic Research (SCAR). Bruno is also a co-chair of the Australian and New Zealand Society of International Law (ANZSIL) Oceans and International Environmental Law Interest Group

Tony Press

Article IV of the Antarctic Treaty is the keystone of the 1959 Antarctic Treaty System (ATS). Its power and function is often misunderstood, and its importance in all elements of the ATS sometimes overlooked. Before the negotiation of the Treaty, tensions over the status of Antarctic sovereignty claims, dispute over competing claims, and suspicions over the potential actions of the Soviet Union and the USA, drove various proposals to resolve this unique “Antarctic problem”. It was the successful negotiation of the Treaty that resolved these tensions and allowed the various positions of the negotiating Parties to be politically and legally accommodated. Article IV does not set aside Antarctic claims or force their renunciation, nor does it diminish the positions of the then Soviet Union and the USA both of which asserted the bases of claims to Antarctica. It also does not prejudice the position of Parties’ recognition or non-recognition of claims. Further, the Treaty provides that no act or activity undertaken during the life of the Treaty can be used to assert, support, or deny sovereignty in Antarctica; and that no new claims can be made during the life of the Treaty. This paper looks at the history of the Antarctic Treaty negotiation, and the successful incorporation of Article IV; the importance of Article IV in the stability of the Antarctic Treaty System; and significant events during the life of the Treaty that have impinged on Article IV.

Tony Press is an adjunct Professor at the Institute for Marine and Antarctic Studies (IMAS), and the Australian Antarctic Program Partnership, at the University of Tasmania. He was formerly the CEO of the Antarctic Climate and Ecosystems Cooperative Research Centre (ACE CRC) from 2009 to 2014; and Director of the Australian Antarctic Division (AAD) from 1998 to 2009. He chaired the Antarctic Treaty’s Committee for Environmental Protection (CEP) from 2002 to 2006; was Australia’s representative to the CEP and variously Head of Delegation and Alternative Representative to Antarctic Treaty Consultative Meetings from 1999 to 2008; and Australia’s Commissioner to the Commission for the Conservation of Antarctic Marine Living Resources from 1998 to 2008. Dr Press provided the Australian Government with the 20 Year Australian Antarctic Strategic Plan in 2014. Dr Press is well known nationally and internationally for his work in Antarctic and Southern Ocean policy and science, and for his work on climate change.

Indi Hodgson-Johnston

The quantification of what ‘effective’ is, and the type and number of effectivities necessary to prove effective authority over territory, is the subject of much debate in Antarctic legal scholarship. This paper will first discuss the context of territorial sovereignty under the Antarctic Treaty. Then, it will examine the notion of effectiveness of state authority in remote and inhospitable areas to contribute to the ongoing debate on thresholds of effectiveness of occupation over territory in Antarctica. This will include discussion of the jurisprudence of the International Court of Justice related to physical occupation of territory in both past and contemporary contexts potentially



relevant to the Antarctic. This paper seeks to give clarity to an area of legal scholarship steeped in somewhat controversial rhetoric, and which is somewhat compounded by a lack of contemporary legal analysis of the question of territoriality in Antarctica in the public sphere, and a continued reliance on the decades-old scholarly analyses from the 1980s.

Indi Hodgson-Johnston works in the area of Antarctic and oceans scientific, policy and legal research at the University of Tasmania. Her PhD is in international law at the Institute for Marine and Antarctic Studies the area of the laws of sovereignty, territorial acquisition, territorial disputes, and boundaries, and the Australian Centre for Excellence in Antarctic Science where she is Chief Operating Officer. She previously worked in Southern Ocean fisheries enforcement and other security roles, held commercial maritime qualifications, and has provided legal advice in the maritime security area. She is a rapporteur for the Antarctic Treaty Consultative Meeting and previously the Committee for the Conservation for Antarctic Marine Living Resources.

Jeffrey McGee and Shirley Scott

The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) is a key institution of Antarctic governance charged with the function of pursuing the conservation mandate of the 1980 CAMLR Convention, including by creating conservation measures that are legally binding upon member states. Over the past 15 years various proposals for marine protected areas (MPAs) have been considered by CCAMLR, however, only two MPA proposals have achieved consensus and been created under conservation measures, the first in 2009 near the South Orkney Islands, and second in 2016 in the Ross Sea area. MPA proposals for the East Antarctic, Weddell Sea and the Antarctic Peninsula have been considered by CCAMLR for an extended period, but have been effectively blocked by a small minority of one or two member states. It has been suggested that one or more of the blocking states is concerned that the proposals may be an assertion of sovereignty by Antarctic claimant states. This paper analyses this suggestion and argues that MPA proposals and MPAs once created provide no rights or obligations to claimant states that are not enjoyed by any other party to the CAMLR Convention. The paper therefore concludes that any concerns that the MPA proposals in CCAMLR might further sovereignty claims are misplaced.

Jeffrey McGee is Associate Professor at the Institute for Marine and Antarctic Studies (IMAS) and Faculty of Law at the University of Tasmania. His work is published in leading international journals in the fields of Antarctic policy, international environmental law, and climate change policy. He co-edited the book *Anthropocene Antarctica*, a special issue of the *Australian Journal of Maritime and Ocean Affairs* on 21st Century Challenges to the Antarctic Treaty System, and the *Edward Elgar Research Handbook on Climate Change, Oceans and Coasts*. He is the lead author of the recent book *The Future of Antarctica: Scenarios from Classical Geopolitics*. He is an affiliated researcher with Humanities and Social Science expert group of the Scientific Committee on Antarctic Research. He is also a member of the Australian Government's consultative forum for the Convention on the Conservation of Antarctic Marine Living Resources and the Tasmanian Polar Network. In 2021, Jeff was a member of the Australian delegation to the 43rd Antarctic Treaty Consultative Meeting in 2021 and 41st meeting of the



CCAMLR in 2022. He also has experience as a lecturer on tourist flights to the Ross Sea area and East Antarctic.

Shirley Scott is Professor of International Law and International Relations at UNSW Canberra. She is the immediate Past President of the Asian Society of International Law and a Fellow of the Australian Institute of International Affairs. Professor Scott has published widely in leading journals of both International Law and International Relations. At the heart of her scholarship has been her theorisation of international law as ideology. She also has an international reputation for her scholarship on Antarctica, particularly the issue of Antarctic sovereignty, and on the increasing role of the United Nations Security Council in climate change governance and the scope for it to play an even greater role in future. She is the author of a number of books including *International Law, US Power. The US Quest for Legal Security* (CUP, 2012), *International Law in World Politics. An Introduction* (3rd ed. Lynne Rienner, 2018), and *Climate Change and the UN Security Council*, edited with Charlotte Ku (Edward Elgar, 2018).

Chair: Karen Scott

Karen Scott is a Professor of Law at the University of Canterbury | Te Whare Wānanga o Waitaha in New Zealand, Associate Dean (Research), President of the Australian and New Zealand Society of International Law (ANZSIL) and Editor-in-Chief of *Ocean Development and International Law (ODIL)*. Karen is on the board of seven journals including the Brill Research Perspectives on the Law of the Sea and the Australian Yearbook of International Law. She researches and teaches in the areas of public international law, law of the sea and international environmental law. Karen has published over 100 edited books, journal articles and book chapters in these areas. Karen was Head of the School of Law at the University of Canterbury between 2015 and 2018. She previously taught at the University of Nottingham in the UK.



Panel #2: International Humanitarian Law and Technology

Paper Abstracts and Short Biographies

Tennille Marsh (presenter), Catherine Burns, and Peter Jew

Should command responsibility be considered in the Article 36 review of an autonomous weapon system?

The emergence of autonomous weapons systems (AWS) challenges the resilience of international law. A critical challenge is how to ensure humans remain legally accountable for the use of force in armed conflict. As human-machine teams develop as a method of warfare, the traditional mechanisms for command responsibility must be adapted to ensure military commanders remain responsible for those under their command, including AWS.

This paper discusses whether the traditional article 36 weapons review process should be modified to determine whether command responsibility is maintained over AWS designed to operate under command in a human-machine team. Section one describes the traditional weapons review process and the content of command responsibility. The application of command responsibility to future human-machine teams is considered in section two before section three identifies the essential elements of a command responsibility over AWS. Finally, section three explores the relationship between article 36 and article 87 and concludes that, as a matter of both law and policy, command responsibility should be a relevant consideration in the article 36 weapons review process.

Tennille Marsh is a legal officer in the Australian Army and is currently posted to Army Headquarters as the Chief Legal Advisor to the Chief of Army. She holds a Bachelor of Laws (First Class Hons), a Masters of Law (International) from Cambridge University and a Masters in Military and Defence Studies from the Australian National University.

Catherine Burns is a legal officer in the Australian Army and is currently posted to Army Headquarters. She holds a Bachelor of Laws (Hons), GDLP, Masters in Applied Law and is studying a Masters of Military Law at the University of Adelaide.

Peter Jew is a policy officer with the Australian Department of Defence. He graduated from the Queensland University of Technology with a Bachelor of Laws (First Class Honours) in January 2022. He also completed his GDLP in December 2022 and will be admitted as a legal practitioner in February 2023.

Simon McKenzie

Understanding the impact of computer technology on the laws of war

Computers make life and death decisions in war. While complex command and control systems have assisted military decision making for decades, more and more military computer systems capable of acting without direct human oversight are being built. By determining when and how to act in armed conflict, computing systems reduce, displace



and even exclude the need for human reflection about whether an act is lawful. Furthermore, the speed, capacity and opacity of these technologies undermine fundamental assumptions about how legal determinations are made, and in doing so, places unprecedented demands on the interpretation and application of the laws of war.

Examining how the laws of war will be changed by computing systems is essential. This paper will set out how we can examine this urgent question by investigating the relationship between the laws of war and military computer technology, including how law has regulated the use of computer technology in the past, and how this regulation should occur in the future. Recognising that the laws of war and military computing systems are co-constituted and the necessity of reckoning with the broader social and political context, it will propose that using archival sources and insights from Science and Technology Studies provides a useful way of investigating how the practice of interpreting and applying the law – essential for the rule of law in armed conflict – is possible alongside computer technology.

Simon McKenzie is a Lecturer at the Griffith Law School and an Honorary Research Fellow at the University of Queensland School of Law. Simon's current research focuses on the legal challenges connected with the defence and security applications of science and technology, with a particular focus on the impact of autonomous systems. He is the author of *Disputed Territories and International Criminal Law: Israeli Settlements and the International Criminal Court* (Routledge, 2020) and his work has appeared in the *Journal of International Criminal Justice*, the *Melbourne Journal of International Law*, the *Asian Journal of International Law* and the *Journal of International Humanitarian Studies*. His broader research and teaching interests include the law of armed conflict, international criminal law, and domestic criminal law.

Jeremy Moses

The problem with 'human dignity' in the international legal debate over autonomous weapons

The Campaign to Stop Killer Robots was officially launched in 2013, bringing together a range of activist groups aiming to prevent the development and deployment of lethal autonomous weapons systems (LAWS). The primary aim of the group is to ensure that 'meaningful human control' is maintained over new weapons systems and one of the key foundations for this is that delegating killing to machines is contrary to human dignity. In this paper I undertake a close examination of the 'human dignity' arguments being advanced by anti-LAWS campaigners at the Convention on Certain Conventional Weapons (CCW). I argue that this approach represents another example in a long history of attempts to humanise war through international law, which Samuel Moyn (amongst others) argues has instead led to the perpetuation of war. Thus, the focus on 'human dignity' as a foundation for new international law on LAWS is not only unlikely to succeed, but also runs the risk of reinforcing the war system by implicitly (and sometimes explicitly) endorsing the 'dignity' of humans making decisions to kill others. A pacifist critique of the anti-LAWS campaign could engender a more radical and morally-consistent position from which to criticise and resist the emergence of new weapons technologies and sustain anti-war politics.



Jeremy Moses is Associate Professor in the Department of Political Science and International Relations at the University of Canterbury | Te Whare Wānanga o Waitaha, Christchurch, New Zealand. His research interests are in the ethics of war and intervention, with a particular focus on realism, pacifism, humanitarianism, and military technology. His publications include the book *Sovereignty and Responsibility* and articles in journals including *Review of International Studies*, *International Politics*, *Cooperation and Conflict*, *Critical Studies on Security*, *Journal of Intervention and Statebuilding*, and *Digital War*.

Chair:



Panel #3: The Utility of “Soft Law” in Assessing International Law’s Resilience – Some Examples from Financial Markets Regulation

Traditionally, international law has influenced the conduct of states and non-state actors through formal treaty mechanisms or the development of customary international law. However, increasingly, some of the most significant changes in the conduct of states occur as a result of arrangements between governments or through international organisations of differing levels of formality; and involving significant processes going to monitoring and observance. Such arrangements are sometimes referred to as “soft law” although that term itself is not without difficulty. One area where state behaviour is significantly impacted by such arrangements and processes is financial regulation. Some examples will be discussed to illustrate the considerable impact of this aspect of international law:

- The IMF Financial Sector Assessment Programme, being a comprehensive review of a country’s financial system;
- The Financial Action Task Force arrangements for combating money laundering and the financing of terrorism and proliferation of weapons of mass destruction (AML/CFT);
- The OECD/ Global Forum on Transparency and Exchange of Information for Tax Purposes;
- The Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information developed by the International Organization of Securities Commissions.

All involve international standards developed under differing arrangements, with compliance significantly addressed through regular processes of external review, comment and “recommendations” on changes states should make. The efficiency and effectiveness of the domestic legal regime to give effect to the international arrangements is subject to a formal, regular, and structured international assessment process. Even though the outcomes of review process may be described as “recommendations”, failure to address them can have meaningful consequences, and putting them into effect frequently involves major changes within the domestic jurisdiction. Such arrangements and processes with these review and implementation mechanisms are not necessarily a feature of international law generally.

To question the resilience – and, therefore, effectiveness – of international law requires examining the nature and role of such arrangements in international law. The panel intends to couch the topic along the lines of the concept and role of “soft law” in increasing the resilience of international law, using financial markets regulation as a case study.



Paper Abstracts and Short Biographies

Michael Webb

Michael Webb will speak generally about the topic and provide an overview of the examples mentioned above.

Michael Webb is a New Zealand barrister providing specialist advice and representation in New Zealand and internationally on matters involving commercial, financial markets, government and regulatory law.

He is closely involved in commercial public law issues and the development of legislation and public policy, advising both governments and private sector clients.

Michael has extensive regulatory experience including as a foundation Board Member of the New Zealand Financial Markets Authority, and prior to that, as a Member of the New Zealand Securities Commission and Chair of the Ministerial Task Force on the Regulation of Financial Intermediaries

Michael is a frequent speaker at conferences in New Zealand and internationally on financial markets, corporate governance, banking, insolvency, and regulation. He also has extensive governance experience as a director and board member of public and private sector companies and entities.

Liam Mason

Liam Mason will give an agency's perspective illustrating the relevance and consequences of the use of "soft law" in the shaping of law and policy.

Liam Mason is the Executive Director, Evaluation & Oversight and General Counsel, and Acting Executive Director, Strategy & Design at the New Zealand Financial Markets Authority (FMA). He is responsible for a broad range of audit, risk, legal and governance matters along with evaluating the effectiveness of regulatory interventions and activity. He remains the FMA General Counsel.

Liam has been with the FMA since its inception. He has extensive experience in securities law and corporate governance matters, advising on securities and financial services law and policy, Crown entity governance and legal compliance.

Liam has previously led frontline teams overseeing the FMA's compliance frameworks, licensing, knowledge management and intelligence, and fintech functions.

Liam is also Acting Executive Director, Strategy & Design and has interim responsibility for leading the strategy and direction setting for the FMA, ensuring a clear view of the systems, priorities and regulatory design is developed and communicated across a broad range of external stakeholders.



Petra Butler

Petra Butler will look in particular at the application to Small Island Developing States (SIDS) of such arrangements and the types of issues that they may raise for them.

Petra Butler specialises in domestic and international human rights, public and private comparative law, and international commercial law with an emphasis on international commercial contracts and dispute resolution. She has published extensively in those areas (including together with Andrew Butler, *The New Zealand Bill of Rights Act 1990: a commentary* (2nd ed, Lexis Nexis, 2015) and together with the late Professor Peter Schlechtriem, *UN Law on International Sales* (2nd ed, forthcoming)) and regularly is invited to speak at conferences, workshops and seminars. In addition, she teaches and consults on the law of unjust enrichment. Petra has particular expertise in law reform and has most recently lead the Commonwealth Secretariat study into international commercial arbitration.

Petra is a fully qualified German and New Zealand lawyer. She is admitted as a barrister to the High Court of New Zealand and regularly advises private and public clients in her areas of expertise. Petra is also the Director of the Institute of Small and Micro States (ISMS). ISMS' aim is inter alia to provide independent expert advice and the placement of (regional) experts.

Petra has held visiting positions on all five continents. She also has been associated with the Willem C Vis Moot for nearly 20 years and arbitrating the final of the Vienna competition in 2020. Petra is New Zealand's CLOUT correspondent for the CISG and the United Nations Convention on the Use of Electronic Communications in International Contracts. Petra sits on advisory boards of a number of human rights NGOs and has received a number of prizes and fellowships, including in 2018/19 the scholar- in- residency at Wilmer Cutler Pickering Hale and Dorr LLP and being a guest of the Max Planck Institute, Luxembourg, for Procedural Law.

Monique Egli Costi

Monique Egli Costi will comment on institutional arrangements and how financial regulation serves to make international law more resilient.

Monique Egli Costi is an independent scholar and a Research Affiliate of the New Zealand Centre of International Economic Law (NZCIEL), Faculty of Law, Victoria University of Wellington | Te Herenga Waka. She is interested in institutions and governance arrangements, including aspects of international cooperation. She guest-lectures on international financial regulation for a seminar on multidisciplinary approaches to international trade.

Her publications include "Between Shifts and Continuum in Cooperation: The International Securities Regulatory Regime and its Gradual Evolution" in (2018) *Netherlands Yearbook of International Law* 2017, Vol 48 – Amtenbrink F, Wessel RA and Prévost D (eds) *Shifting Forms and Levels of Cooperation in International*



Economic Law: Structural Developments in Trade, Investment and Financial Regulation 327-377; as well as “Institutional Evolution and Characteristics of the International Organization of Securities Commissions (IOSCO)” (2014) 20 *New Zealand Association for Comparative Law Yearbook* 199-232; (2015) 21 *Comparative Law Journal of the Pacific/Journal de Droit Comparé du Pacifique* 199-232.

Monique has spoken at numerous international conferences. Prior to turning to academic research, she was Head of International Affairs at the New Zealand Financial Markets Authority (FMA) and its preceding Securities Commission. Monique holds an MPhil in International Relations from the University of Cambridge (Wiener-Anspach fellow), a degree in political science and public administration (distinction) from the Université Libre de Bruxelles, and a postgraduate degree in business administration (distinction) from the Vrije Universiteit Brussel.

Chair: Professor Alberto Costi

Alberto Costi is a Professor of Law at Victoria University of Wellington | Te Herenga Waka. He has published widely on canonical topics such as the history of international law, international environmental law, use of force as well as on topics in the subfields of international criminal law, the law of armed conflict and human rights. He has published over seventy books, book chapters and journal articles, spoken at numerous international conferences and commented widely in the media and before parliamentary committees in these areas. Recent publications include the editorship of the first ever textbook on international law from a New Zealand perspective (*Public International Law: A New Zealand Perspective* (LexisNexis, 2020)) as well as the joint editorship of “*In the Eye of the Storm*” – *Reflections from the Second Pacific Climate Change Conference* (NZACL, VUW and SPREP, 2020). Alberto serves on the editorial board of eight journals, including the *Asia-Pacific Journal of International Humanitarian Law* and the *Revue Québécoise de Droit International*. He is the President of the New Zealand Association for Comparative Law, Co-Director of the New Zealand Centre of International Economic Law and Secretary-General of the International Law Association New Zealand Branch, and sits on the New Zealand International Humanitarian Law Committee.



Panel #4: Spaces Beyond National Jurisdiction

Paper Abstracts and Short Biographies

Ricky J Lee and Maria Pozza

The Resiliency of the United Nations Space Treaties and the Treats Posed by Increasing Military and Commercial Space Activities

Since the first of the United Nations space treaties were adopted in 1967, these decades have seen tremendous change in geopolitical, technological, and commercial aspects of space activities. The Apollo missions landed humans on the Moon; the Cold War ended; the International Space Station have seen unprecedented international cooperation; and modern life take global positioning, communications, weather forecasting, remote sensing, radio and television broadcasting, and even broadband internet by satellite for granted. Despite being mostly the outcome of Cold War compromises, these treaties have withstood the challenges posed by these developments.

However, recent years have seen unprecedented challenges to the U.N. space treaties. The testing and development of kinetic anti-satellite weapons, the military use of satellite applications for operational and tactical purposes, and cyberattacks on space assets are all significant threats to continuing peace and rule of law in outer space. The increasingly multinational and private nature of space activities, including space tourism ventures from the recent “billionaires’ space race”, present scenarios that were not foreseen or considered when the U.N. space treaties were negotiated. Further, the prospects of renewed human activities on the Moon and future space resource utilisation and exploitation have led to countries seeking a new legal framework through domestic legislation, bilateral arrangements such as the Artemis Accords, and even withdrawing from one of these treaties.

This paper will explore briefly the way in which the U.N. space treaties have survived through the decades and how they may remain resilient in the face of these contemporary challenges.

Ricky J. Lee is a space law and international business law specialist, having acted for launch operators, satellite operators, regulatory agencies, multinational businesses, and government agencies worldwide. Since 1999, he has worked in private practice and lectured at space law and commercial law. Ricky is Senior Research Associate of the Intellectual Forum at Jesus College, University of Cambridge; Principal Research Fellow of the North American Space Institute; Adjunct Professor of International Law at Nirma University, India; and Adjunct Professor of Law at University of Notre Dame Australia.

Ricky is a Fellow of the Royal Society for Arts, Manufactures, and Commerce, the Commercial Law Association of Australia, the Australia and New Zealand College of Notaries, and the International Association for the Advancement of Space Safety. He holds a Ph.D. in International Law from Murdoch University; an LL.M. in International



Law from the Australian National University; and a Grad. Dip. In Chinese Business Law from the University of Western Australia.

Since 1999, Ricky has published over 150 books, chapters, articles, and papers on space law, international law, and commercial law, including the multidisciplinary monograph *Law and Regulation of Commercial Mining of Minerals in Outer Space* published in 2012.

Maria A. Pozza is the Principal Lawyer and Director of Gravity Lawyers, a law firm in New Zealand that offers specialist legal advice on Space law. The firm also offers legal advice in Corporate and Commercial law, IT, Cyber Security, Data, Technology and UAV's.

Dr Pozza holds her own practising certificate as a Barrister and Solicitor in New Zealand and is a qualified Trust Account Supervisor in New Zealand. She completed her Master's of Business with a focus on business administration and management in 2022, she gained her PhD at the University of Otago specialising in Space Law in 2013, and was also awarded the visiting Lauterpacht Fellowship, Lauterpacht Centre for International Law, University of Cambridge, UK. She also holds a Masters in International Studies from the University of Otago in 2010, completed the New Zealand Law and Practice Exams in 2009, Called to the Bar by the Honourable Society of Lincoln's Inn UK in 2005, completed her Bar Vocational course at the Inns of Court School of Law in London UK where she also completed a post-graduate Diploma in Legal Skills and Research (whilst studying Arabic) between 2004- 2005, and completed her LLB Law (Hons) in 2004.

Dr Anna Marie Brennan

Complexities in Applying International Human Rights Law to Future Outer Space Settlements: A Potential Role for the Doctrine of Effective Control?

Since the United States announced its intention to establish a military force to safeguard its interests in outer space the military and commercial exploitation of outer space has attracted considerable media and academic attention.

Instantaneously, the National Aeronautics and Space Administration (NASA) and private commercial enterprises such as SpaceX have announced their intention to establish human colonies on both Mars and the Moon. Even though science and technology are developing precipitously to bring these plans to fruition the applicability of international law to these developments is ambiguous and, in many cases, completely absent. Without doubt, these future developments will have significant consequences for the application of international human rights law in view of the extreme adverse environment in outer space and the perils involved in establishing sustainable colonies compatible with human life. An exploration of the legal issues in this area is pivotal. Initially, this chapter will examine whether international human rights law is capable of extra-territorial application in outer space in view

of the present standing of outer space law. In doing so, it will provide a synopsis of some of the key human rights issues that are pertinent to living in outer space. The



role which the doctrine of effective control may have to play on this matter will also be critically examined.

Karen Scott

A Resilient Law of the Sea for the Anthropocene?

How resilient is the law of the sea in the Anthropocene? At the time of its adoption, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) was hailed as a 'constitution' for the oceans that provided a framework for developing a modern, more equitable and more environmentally responsible law of the sea. While lacking some now typical treaty institutions that support treaty evolution, UNCLOS has nevertheless proved a dynamic instrument over the 40 years of its history. But, like many international regimes, the law of the sea is facing unprecedented pressure as we enter the Anthropocene. Challenges include the equitable and environmentally responsible management of biodiversity beyond national jurisdiction and deep sea minerals, threats to ecosystems from climate change and plastic pollution, new technologies affecting shipping, security and warfare and geopolitical tensions that impact on cooperation and dispute resolution. This paper will explore the mechanisms that exist within the UNCLOS regime that support resilience in the face of environmental and political change and assess whether those mechanisms are sufficient or whether in fact, rather than resilience, we need to explore ideas of transformational change if we are to develop a law of the sea for the Anthropocene

Karen N Scott is a Professor of Law at the University of Canterbury | Te Whare Wānanga o Waitaha in New Zealand, Associate Dean (Research), President of the Australian and New Zealand Society of International Law (ANZSIL) and Editor-in-Chief of Ocean Development and International Law (ODIL). Karen is on the board of seven journals including the Brill Research Perspectives on the Law of the Sea and the Australian Yearbook of International Law. She researches and teaches in the areas of public international law, law of the sea and international environmental law. Karen has published over 100 edited books, journal articles and book chapters in these areas. Karen was Head of the School of Law at the University of Canterbury | Te Whare Wānanga o Waitaha between 2015 and 2018. She previously taught at the University of Nottingham in the UK.

Chair: Don Rothwell

Donald R Rothwell is Professor of International Law at the ANU College of Law, Australian National University where he has taught since July 2006, and a Fellow of the Australian Academy of Law since 2015. His research has a specific focus on law of the sea, polar law, and implementation of international law within Australia as reflected in 28 authored, co-authored and edited books, and over 200 articles, book chapters and notes in international and Australian publications. A third edition of his leading work with Tim Stephens – *The International Law of the Sea* (3rd) – is now in press. Rothwell's other recent books include *Islands and International Law* (Hart,



2022); and Rothwell and Letts (eds), *The Law of the Sea in South East Asia: Environmental, Navigational and Security Challenges* (Routledge, 2020). Major career works include *The Polar Regions and the Development of International Law* (CUP, 1996), and Rothwell, Oude Elferink, Scott and Stephens (eds), *The Oxford Handbook of the Law of the Sea* (OUP, 2015). He is currently subject to Russian Federation sanctions for his commentary on the Russia/Ukraine conflict.



Panel #5: International Humanitarian Law

Paper Abstracts and Short Biographies

Alberto Alvarez-Jimenez

Reparations in International Armed Conflicts in Light of the ICJ's Judgment in Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda), the Eritrea-Ethiopia Claims Commission's Awards and Russia's Invasion

A few days before Russia's invasion, the ICJ dealt with reparations in armed conflict in *RDC v Uganda*. It relied conceptually on the work of the Eritrea-Ethiopia Claims Commission (EECC). This close connection could bring back to life other EECC's interpretations on the topic. Though they were not explicitly referred to by the ICJ, two of them have particular relevance owing to their effect on the reparation to be paid to Ukraine in the future.

This proposal explores two interpretations. First, the EECC's statement that capping compensation may be appropriate to prevent a lack of compliance with the UN Covenants by the responsible State. The proposal explores this approach and recommends reliance on the Covenants' compliance machinery (HRC and CESCR). It also suggests the use of the concept "peace dividend," before the EECC's approach is applied. Second, the proposal shows that the EECC considered international aid offered by multilateral institutions and private NGOs as a factor that reduced the extent of the compensation owed to the injured State. This approach would have significantly adverse consequences for Ukraine. The proposal criticises this EECC's interpretation for lack of legal basis in the ILC's Articles on State Responsibility.

Although the UNGA resolution on reparations for aggression against Ukraine did not mention these two approaches, Ukraine and its allies should be aware of these interpretations that limit the extent of compensation, when the time for negotiations on reparations arrives.

Alberto Alvarez-Jimenez is a Senior Lecturer at the Faculty of Law of the University of Waikato | Te Whare Wānanga o Waikato in New Zealand. Prior to his appointment, he taught at the University of Ottawa and at numerous tertiary institutions in Latin America. He is a Colombian and Canadian citizen and his research has appeared in *JIEL*, *EJIL*, *ICLQ*, *World Trade Review*, and *AJIL (Unbound)*, among other publications. His other interests include art, architecture, and literature.

Yasmin Naqvi

To identify but not to try – can the Chemical Weapons Convention survive having perpetrators of chemical weapons attacks in Syria identified without subjecting them to trial?

On 23 January 2023, the Organisation for the Prohibition of Chemical Weapons (OPCW)'s Investigation and Identification Team (IIT) issued a report identifying the Syrian Air Force as the perpetrator of the 2018 chemical weapons attack in Douma,



Syria, which killed 43 people and affected dozens more. It was the fifth time that the IIT had identified Syria – a party to the Chemical Weapons Convention - as the perpetrator of chemical weapons attacks. Previously, the Security Council-established United Nations-OPCW Joint Investigative Mechanism had also identified Syria as the perpetrator of several chemical weapons attacks. International bodies and States have repeatedly asserted that the perpetrators of such crimes must be held accountable. But with multiple findings by these international fact-finding bodies that there are reasonable grounds to believe that Syria has used chemical weapons but no international accountability mechanism in sight, the statement has begun to ring hollow.

The Convention has remained resilient in the face of the flagrant violations in some respects. No State or non-State group in Syria or elsewhere has admitted to using chemical weapons, affirming that the prohibition remains intact. Unlike the Security Council, the OPCW has taken some measures to respond to Syria's breaches, most notably by restricting Syria's rights and privileges in 2021. But this is far from accountability. Further, the credibility of the OPCW's reports has been challenged by some States, leading to exchanged accusations of politicisation and a divided organisation. Can the Convention, and the OPCW, survive identifying perpetrators without establishing an accountability mechanism?

Yasmin Naqvi an international lawyer and academic with extensive experience in international courts and tribunals and international organisations. She currently serves as Principal Legal Officer, Office of International Law, Attorney-General's Department, Australia. Prior to this, she worked for more than 20 years in international organisations in The Hague and Geneva, including the Organisation for the Prohibition of Chemical Weapons, the International Residual Mechanism for Criminal Tribunals, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Court, the United Nations Office of the High Commissioner for Human Rights, and the International Committee of the Red Cross.

Yasmin is Visiting Professor in the International Law Department of the Graduate Institute of International Studies, Geneva, and regularly lectures at universities around the world. She has published widely on matters relating to international law, international criminal law, international humanitarian law, human rights, and terrorism. Yasmin's publications have been cited before international courts, including the International Criminal Court, and national courts, including the Supreme Court of the United States.

Yasmin holds a Ph.D. and a Master's degree in public international law from the Graduate Institute of International Studies, and LLB (Honours) and BA degrees from the University of Tasmania.



Samuel White

Sharp War Soft War

The eurocentricity of international humanitarian law is not a novel observation to make. However, how culturally unique rules of war interplayed with European colonisation and ultimately proved resilient is a gap within current literature. It is perhaps due to an underlying, constantly reemerging debate in IHL: whether laws should apply ('soft war') or whether warfare should be fought without rules ('sharp war'). Often, colonial wars of expansion were argued to fall under sharp war constructs. This is not correct, however. IHL has remained remarkably resilient.

A recent series – called *The Laws of Yesterday's Wars* (Brill Nijhoff, 2021 & 2022) – has looked to address in a systematic manner at geographically and culturally diverse customs, norms and rules that mitigate warfare. This paper, drawing upon research underpinning these Volumes, seeks to look at the 'clash of cultures' in eras of colonial expansion in order to demonstrate how resilient the desire to control the excesses of warfare has been. It will do so through four historical case studies: the clash between Rome and Carthage; the Spanish and the Mexica (Aztecs); the British and the Maori; and the British and Indigenous Australians. The latter two are particularly relevant noting ANZSIL's remit, and the lamentably understudied area of Maori and Indigenous Australian laws of war.

Samuel White MPHA is a RUMLAE Associate Researcher at the University of Adelaide, as well as an Adjunct Senior Research Fellow at the University of New England. He was Adelaide Law School's inaugural [Cybersecurity Post-Doctoral Researcher](#).

Samuel has served as both a Royal Australian Infantry Corps and an Australian Army Legal Corps officer in a variety of tactical, operational and strategic level postings. These include platoon command in the 9th Royal Queensland Regiment; Staff Officer in the Directorate of Operations and International Law; Deputy Command Legal Officer - Headquarters Maritime Border Command; and Legal Officer within Headquarters Special Operations Command. He holds the rank of Major.

In 2018, he served as Associate to the Honourable Justice Logan of the Federal Court of Australia. He is admitted to practice as a Solicitor in the State of Queensland and before the High Court of Australia; as well as a Barrister and Solicitor in New Zealand. In 2021, he was recognised by the International Committee of the Red Cross as an ['Emerging Voice'](#) for his scholarship in international humanitarian law.

Mostafa Haider

Rethinking International legal Management of Humanitarian Crises: International Law as a Negotiated Regime of Compromises

International legal structure, if we think of it mainly as a body of rules and institutions supported by the global political and economic arrangements, at once



discourages and normalises humanitarian crises. This paper explores international legal structure in the context of the ongoing humanitarian crises in Yemen and Myanmar, focussing on the sufferings of children and refugees, about which international law was initially disapproving but then gradually took on a managerial role. Beyond its routine role of disapproval and management or discouragement and normalisation, international lawyers have shown, international legal structure is frustratingly inflexible and limiting to address humanitarian crises. Rather than worry about structure, the paper examines the operational mechanisms that make international legal rules and institutions look like a structure. The paper looks particularly at the relevant international legal rules on starvation as applicable in Yemen and right to repatriation as applicable to the Rohingya Refugees and how they are being negotiated at an operational level. Looking through an operational lens, the paper argues that international law looks more like a negotiated regime of compromises than a rigid regime of rules or structure. Rethinking international legal management of starvation in Yemen and displacement of the Rohingyas as negotiated regimes of compromises, the paper suggests, may help open up diverse legal avenues to better address humanitarian crises.

Mostafa Haider is a Lecturer at the Law School of Curtin University. Mostafa works on topics in international law, global politics, and social justice. His research has explored global inequality as a legal and political work. He has particularly looked at the relationship between law, expertise and people on the margin of the global economy including women in microfinance programs and children in precarious work. Currently he is working on a new project around humanitarian crises expanding on themes from his doctoral research. Mostafa completed his doctorate in international law at the University of Sydney and held a residential fellowship at Harvard Law School's Institute for Global Law and Policy (IGLP). He has an LLB(Hons) and LLM, from the University of Chittagong, and an LLM from the School of Oriental and African Studies (SOAS), University of London.

Chair:



Panel #6: The Indo-Pacific

Paper Abstracts and Short Biographies

Milla Vaha

Performing permanent sovereignty: International law and Tuvalu's Te Ataeao Nei (Future Now) Project

Pacific low-lying atoll states such as Tuvalu and Kiribati have become symbols of rising seas and fight against negative impacts of anthropogenic climate change. An increasing amount of academic literature looks at prospects of these states to continuous sovereignty from migration with dignity to statehood ex-situ. Meanwhile, the government of one these states has taken innovative steps to secure its continuous existence as a sovereign entity. This paper analyses Tuvalu's *Te Ataeao Nei (Future Now) Project*, and particularly two of its key components: a plan to achieve bilateral agreements with world states securing the permanent recognition of Tuvalu's sovereignty and maritime boundaries; and an establishment of the 'digital nation'. Both, the paper argues, are innovative proposals to secure the state's territorial sovereignty, yet they operate on different foundations on what the sovereignty is built on in contemporary international law. The first proposal aims at securing the corporate identity of the state in terms of traditional territorial sovereignty and act of recognition; while the second concentrates on collective identity of Tuvaluans as a community, and thereby on the right to self-determination. As such, Tuvalu's innovative approach to the legal issue of continuity of sovereign statehood can provide some insight on the status and future of oceanic states at the time of climate crisis as well as indicate how the contemporary international law should be interpreted in cases such as this one, radically challenging the status quo.

Milla Vaha is a Senior Lecturer in Politics and International Affairs at the School of Law and Social Sciences, University of the South Pacific. She did her PhD at the European University Institute in Florence, Italy. Her research focuses on the ethics of world politics, and she is interested in topics including (but not limited to) statehood and sovereignty; international order; ethics of war and peace; human rights; nuclear justice; global justice; and climate ethics. She is the author of *The Moral Standing of the State in International Politics: A Kantian Account* (University of the Wales Press, 2021) and various journal articles and book chapters. In her current research project, she is interested in the relationship between nuclear legacy and climatic loss and damage in the Pacific region. She is also working on the social and political meaning and significance of the ocean to indigenous communities in the South Pacific and Sami territories in the Northern Europe

Sun Shan-Ya

Oceans Traditions in Action: A Comparative Study of Mobilizing International Laws for Oceans Co-Governance in Anthropocene Pacific – New Zealand and Taiwan



At the end of 2019, the first-ever law in the name of the oceans -The Ocean Basic Act- was enacted in Taiwan. As a sovereign dotting the subtropical western Pacific, one of the most geopolitically intensive marine areas and an economy substantially relying on the exploitation of the oceans, it might be surprising that a law guiding the use of the oceans did not exist in Taiwan prior to the second decade of the 21st century. Existing studies have considered the prolonged impact of authoritarianism on Taiwan's underdevelopment of ocean governance. This study furthers the discussion by emphasizing the roles of indigenous peoples and international laws in the vibrant dialogues of ocean governance in post-authoritarian, globalized, Anthropocene Taiwan - and beyond. This paper studies how indigenous oceans traditions are voiced and understood in the ongoing campaigns for oceans co-governance in Taiwan and Aotearoa New Zealand. In particular, this paper tackles how international laws and forums regarding indigenous peoples and oceans habitats are referenced and rejuvenated in the process. First, the paper reviews the interconnected global-local contexts that grounded oceans co-governance in Aotearoa New Zealand and Taiwan. Next, it analyzes the mobilization for ocean co-governance in two States respectively. Thirdly, the paper compares the ways indigenous traditions are understood, oceans co-governance are crafted, and international laws and principles are mobilized in two States. The paper concludes by highlighting current limitations and opportunities of international society in nudging States to embrace pluralist oceans governance platforms in the Anthropocene.

Shan-Ya Su is an independent researcher currently collaborating with Greenpeace East Asia (GPEA) in conducting interdisciplinary research in support of GPEA's Climate and Energy Campaign. Shan-Ya received her master's degree last year from UC Berkeley School of Law with a specialization in energy and clean technology law. Her passion in international law, comparative law, and multidisciplinary research is rooted in her education at National Taiwan University where she received a bachelor's degree in anthropology and a postgraduate degree in interdisciplinary legal studies with a thesis award. There, she gained invaluable experience working with local environmental organizations. Shan-Ya is currently conducting fieldwork in island communities in Taiwan as preliminary research for studying the governance of anthropogenic exploitation in the Indo-Pacific region. She welcomes bibliographic recommendations, feedback, and discussions with those of similar interests.

Tan Hsien-Li

The Resilience of International Law in its Unconventional Usage: How Global States of the Indo-Pacific Safeguard Their Interests through Regional Law Cooperation

The use of international law by global South states in the rules-based Indo-Pacific has accelerated in the past two decades. Yet, the unconventional usage of international law in regional organizations to safeguard member interests may sit uncomfortably with dominant international law practices of treaty law and adjudication. Consequently, global South states of the Indo-Pacific and their organizations are often looked upon as 'fringe' or 'less legalistic' entities of the international legal order. In examining how the Association of Southeast Asian Nations (ASEAN) cooperates



through regional law, this paper contends otherwise. Unconventional usage of international law does not diminish its meaning or the stature of such organizations. Instead, it evinces international law's resilience in providing flexible and innovative pathways for ASEAN – and very likely for other global South states of the Indo-Pacific as well – to safeguard regional security and economic interests amid geopolitical pressures. ASEAN's experience has resulted in three unconventional uses of regional law corresponding to changing geopolitical contexts: via realist rhetoric laws in the Cold War, constructivist co-operation laws amid globalization, and rules-based ordering in the contemporary Indo-Pacific. This has enabled ASEAN to develop from a diplomatic grouping focused on preventing inter-member aggression to a rules-based integrationist community that seeks ASEAN centrality in foreign power engagement to safeguard regional security and economic interests. ASEAN's experience may have generalizable lessons in investigating, or may prompt reflexive reconsideration of, how other global South regimes of the Indo-Pacific safeguard interests through unconventional international law usage.

Tan Hsien-Li is the Co-Director of the ASEAN Law and Policy Programme at the Centre for International Law (CIL) and Assistant Professor at the Faculty of Law, National University of Singapore (NUS). Dr Tan has held fellowships at the European University Institute, Florence, and the Jean Monnet Center for International and Regional Economic Law and Justice, NYU School of Law. She was also the AsianSIL Research Fellow at NUS and the Ushiba Memorial ASEAN Fellow in Tokyo. Dr Tan researches on the role and the rule of law and institutions in ASEAN integration; public international law, particularly on institution building and norm creation; and human rights and peace and security. She is the author of *The ASEAN Intergovernmental Commission on Human Rights* (2011) and co-author of *Promoting Compliance: The Role of Dispute Settlement and Monitoring Mechanisms in ASEAN Instruments* (2016) and *Can ASEAN Take Human Rights Seriously* (2019) (all titles published by Cambridge University Press). She is a co-editor of the *Asian Journal of International Law* and the general co-editor (together with Joseph Weiler) of the *ASEAN Integration Through Law Book Series* (Cambridge University Press).

Durgeshree Raman

Culture and the Law in Aotearoa New Zealand

As Aotearoa New Zealand continues to culturally diversify, its Judiciary is going to have to become more culturally aware as well. Recently, the Supreme Court in *Deng v Zheng* stressed the significance of the consideration of legal issues within a cultural context where such considerations could make a material difference to the outcome of a decision. It also took this opportunity to issue guidelines where it would be appropriate for Judges to receive such evidence within a social and cultural framework.

To put this into perspective, this paper highlights the level of complexities such cases can involve by unpacking the legal issues and judicial pronouncements in the case of *Almarzooqi v Salih*, which considered the enforcement of a *Shari'a* law-based contract for the first time in New Zealand. This case involved two sets of litigation including



three High Court Decisions, one Court of Appeal and a Supreme Court decision. The first set of litigation involved the issue of whether New Zealand had the jurisdiction to entertain the application and the second one looked at which law of contract, that of United Arab Emirates or New Zealand, was the most appropriate. The final decision in this string of cases stressed the expectations around the use of 'qualified' expert witnesses to assist the judge in making an informed decision.

This paper will conclude by giving an overview of the key areas in Aotearoa New Zealand where cultural factors are shaping the law.

Durgeshree Raman has been lecturing at Te Piringa-Faculty of Law, University of Waikato | Te Whare Wānanga o Waikato, New Zealand since completing her doctoral studies titled 'Governance of International Rivers: Threats, Gaps and Challenges' in 2015. Durgeshree has taught a range of law papers including Equity, Trusts, Succession, Family, Crimes, Evidence and Legal Systems. She also has a number of publications including the most recent: Raman, D and Chevalier-Watts, J *Equity, Trusts and Succession* (2nd ed, Thomson Reuters, Wellington, 2022) and Raman, D "Almarzooqi v Salih: High Court Rules that Dower under a Sharia Law-based Contract is Enforceable in New Zealand" (2022) 32 *ANZSIL Perspective* and Raman, D "The Doctrine of Precedent (Stare Decisis) Revisited" (2022) *New Zealand Law Journal* 28. Durgeshree is also an enrolled Barrister and Solicitor of the New Zealand High Court and has previously worked as a Lawyer and Judges' Research Counsel.

Chair: Alison Duxbury

Professor Alison Duxbury is the Deputy Dean of Melbourne Law School and the Chair of the International Board of the Commonwealth Human Rights Initiative. She is also a member of the Executive Council of the Asian Society of International Law. Alison's major teaching and research interests are in the fields of international law, international institutional law, human rights law and public law. Her publications include *The Participation of States in International Organisations: The Role of Human Rights and Democracy* (Cambridge, 2011), a co-edited collection, *Military Justice in the Modern Age* (Cambridge, 2016), and a co-authored book, *Can ASEAN Take Human Rights Seriously?* (Cambridge, 2019). Together with Dr Madelaine Chiam, Alison is currently editing a collection, *Australia and the International Legal System: From Empire to the Contemporary World*, to be published by Hart.



Panel #7: High seas, high jinks: BBNJ and international law making with respect to the high seas

This Panel will discuss the impact of geopolitics on multilateral law making, and its implications for future international cooperation, through the prism of UN Biodiversity Beyond National Jurisdiction (BBNJ) treaty negotiations. The BBNJ treaty was finalised in March 2023, after almost two decades of discussions and negotiations. A historic global agreement, the treaty will apply to more than 60% of the world's oceans and establish a new multilateral framework for the conservation and sustainable use of marine biodiversity. The Panel will address, in particular:

- BBNJ negotiating dynamics and challenges, and their impact on law making and outcomes at the UN;
- Key international law issues in BBNJ, including relationship with existing laws and frameworks; and
- Implications for future multilateral law-making.

Short Biographies

Victoria Hallum

Victoria Hallum is currently Deputy Secretary, Multilateral and Legal Affairs, at the New Zealand Ministry of Foreign Affairs and Trade. Before this she held the role of Chief International Legal Adviser for six years. She has had diplomatic postings to the UN in New York and Paris (bilateral and UNESCO). She holds LLMs in international law from the London School of Economics and Political Science and Victoria University of Wellington | Te Herenga Waka. She was New Zealand's head of delegation for the 3 final sessions of the Biodiversity Beyond National Jurisdiction Negotiations.

Jennifer Cavenagh

Jennifer Cavenagh is an international lawyer with extensive experience across the Australian Government and with the United Nations. Currently head of Diplomatic and Security law advising in the Department of Foreign Affairs and Trade, Jennifer was Head of Australia's delegation to the recent High Seas Treaty negotiations and has led teams advising on international law matters ranging from human rights to State responsibility, climate change and war crimes. Prior to joining DFAT, Jennifer worked in the Office of International Law (Attorney-General's Department) from 2010-2015 and 2017-2018 and at the International Court of Justice as Associate to Sir Christopher Greenwood GBE CMG KC (UK) and David Caron (US) from 2015-2017, and Sir Kenneth Keith ONZ KBE KC PC (NZ) and Jiuyong Shi (China) from 2009-2010. During her time in the Office of International Law, Jennifer led the legal team which managed – and won – the Philip Morris Plain Packaging litigation and advised across a range of international law areas. Jennifer joined the Attorney-General's Department in 2008. Prior to that time, she worked in private practice.



Thea Chesterfield

Thea Chesterfield is a generalist public international lawyer in the Australian Attorney-General's Department, with advisory and litigation experience across a range of areas including law of the sea, international environmental law, international human rights law, trade, and investor-state dispute settlement. From 2022 onwards, Thea has advised the Australian Government on negotiations for an agreement on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) as a legal adviser on Australia's delegation to the United Nations. Thea holds an LL.B.(Hons) and B.A. from the University of Melbourne and an LL.M.(Hons) from the University of Cambridge. Separately to her work in legal practice, Thea is pursuing doctoral research at the University of Cambridge as a Cambridge Australia Trust Scholar. Thea's academic research focuses on the concept of risk and its function as a doctrinal filter on responsibility in international human rights law.

Chair: Luke Roughton

Luke Roughton is a Lead Adviser (Pacific and Climate) in the Legal Division of New Zealand's Ministry of Foreign Affairs and Trade. Luke was a member of the New Zealand delegation to BBNJ preparatory committee and intergovernmental conference meetings between 2016 and 2023, and was the Deputy Head of Delegation for the final meetings. Luke was formerly the Legal Adviser at the Permanent Mission of New Zealand to the United Nations, and served in the Legal and Environment Divisions of the Ministry of Foreign Affairs and Trade. Before entering the public service, Luke spent six years in policy and advocacy roles in the non-governmental sector. Luke holds a LLB(Hons) and a BA in political science and international relations from Victoria University of Wellington | Te Herenga Waka.



Panel #8: Is International Humanitarian Law Resilient? A Lively Debate

Recent events on the world stage have sparked debate as to the resilience of the international rules-based order and the effectiveness of the humanitarian response to growing threats. Despite changing geopolitical norms, new types of warfare and emerging humanitarian challenges, the core principles of international humanitarian law (IHL) remain steadfast. It could be said that these principles – being centuries old and reflective of cultures, religions and traditions that pre-date the nineteenth century emergence of contemporary IHL – demonstrate resilience; an adaptability of IHL to aptly respond to the crises of our time. Others, however, argue that this very response – often the prolific development of new laws, rules, manuals and guidance – is indicative of the fact that IHL is always one war behind, and the development of new instruments is ‘increasingly undermining the normative coherence and clarity of IHL’.

Drawing from either argument posed above, panellists will contemplate the resilience of IHL in past, present and future practice and seek to identify solutions where relevant to strengthen its resilience in the future.

Paper Abstracts and Short Biographies

Kevin Riordan

Has IHL been resilient throughout history?

The future of IHL raises questions of substance (which rules will we need, and which rules will we be able to get?) and of process (how can future rules of IHL be developed?). In Marco Sassoli’s recent article, ‘How will International Humanitarian Law Develop in the Future?’, he argues that in both respects many other branches of international law are equally under fire, and States are unable to find a consensus on many issues on which the international community has pressing normative needs. Drawing from historical practice, Brigadier Riordan will share his experience and operational expertise in the development of international treaties, and will endeavour to answer whether the resilience of IHL requires the continuous development of hard and soft law to be effective, or whether its resilience in the face of new and emerging challenges requires creative and innovative solutions to be adopted.

Kevin Riordan is the Judge Advocate General of the New Zealand Armed Forces and is an honorary lecturer in law at Victoria University of Wellington | Te Herenga Waka. He has been involved in some of the major developments in international law in the last two decades, including the establishment of the International Criminal Court and the Convention Banning Cluster Munitions. In his former career with the New Zealand Defence Force, Kevin held numerous legal positions providing advice on international law, IHL, peace-support operations and counterterrorism. Brigadier Riordan has also deployed to various operational contexts including in the Middle East, Afghanistan, and Bougainville.



Rain Liivoja

Is IHL resilient in the face of international rules-based disorder?

Drawing from a 2022 [editorial](#), co-authored by Rain Liivoja, Emily Crawford and Russell Buchan, Professor Liivoja will explore the notion of international rules-based *disorder*, and the resilience of IHL in the face of this, focusing on recent events that have dominated international headlines. The conflict between Russia and Ukraine is one context that has prompted some astonishing developments, such as the confirmation of Sweden and Finland's intention to join nato, altering neutrality and non-alignment measures that have been in place since the end of the Second World War. Professor Liivoja will bring his insight and expertise into the debate on the resilience of IHL and its adaptability to the international rules-based disorder and evolving geopolitical landscape.

Rain Liivoja is a Professor and Deputy Dean (Research) at the University of Queensland Law School, where he leads the Law and the Future of War research group. Rain is also a Visiting Legal Fellow at the Australian Department of Foreign Affairs and Trade, and a Senior Fellow with the Lieber Institute for Law and Land Warfare at the United States Military Academy at West Point. He holds the title of Adjunct Professor of International Law at the University of Helsinki, where he is affiliated with the Erik Castrén Institute of International Law and Human Rights.

Yvette Zegenhagen

How can IHL remain resilient in the future?

In December 2019, the 33rd International Conference of the Red Cross and Red Crescent adopted a resolution entitled '*Bringing IHL home: A road map for better national implementation of international humanitarian law*'. The resolution is based on the widely shared recognition that better respect for IHL is needed to protect victims of armed conflict, and that the implementation of IHL domestically is an essential step towards achieving this goal. Since then, States and National Red Cross and Red Crescent Societies, including National IHL Committees, have seen obstacles and opportunities arise in the practical implementation of this resolution at the domestic level. Ms Zegenhagen will share her insights and experiences, as Director of IHL for Australian Red Cross and Chair of the Australian National IHL Committee, on the Australian experience of 'bringing IHL home' and how this relates to the continued resilience of IHL in the future.

Yvette Zegenhagen joined the Australian Red Cross IHL program in 2011 and has been Head of the IHL department since 2014. In this role she leads a dedicated team of over 150 staff and volunteers who work closely with stakeholders that implement, apply and interpret IHL in Australia; and assist Australian organisations with operations in conflict zones to understand and utilise these laws and related humanitarian policy issues. Yvette has held the positions of Secretary and Chair of the Asia Pacific National Society Legal Adviser's Network and has also been the ad-interim common law legal adviser for the International Committee of the Red Cross



(ICRC) in Geneva. She is currently the Chair of Australia's National IHL Committee. Prior to joining the International Red Cross Red Crescent Movement, Yvette worked as an Adjunct Teaching Fellow in the Bond University Law Faculty and as a commercial litigator in Melbourne. Yvette is admitted to practice as a Legal Practitioner to the Supreme Court of Victoria and High Court of Australia.

Amanda Alexander

Fragility as Resilience: The Beleaguered Principle of Distinction and the Reaffirmation of International Humanitarian Law

International humanitarian law has been extensively codified yet its claims to be an effective legal regime, whether practically or conceptually, are always under attack. Practically, international humanitarian law often appears to be broken or bypassed. It is only sporadically enforced. Conceptually, international humanitarian law can be attacked as ambiguous, misleading, or anachronistic-constantly lagging behind military and technological developments.

The principle of distinction, which is often viewed as the central precept of international humanitarian law, shoulders many of these concerns. It is seen as an essential, yet fragile, principle, which is endangered by modern and projected forms of warfare: drone warfare; irregular warfare; the use of human shields; the development of autonomous weapons systems. The principle seems increasingly hard to apply. Yet, this paper will show that this is not a new fear. Rather, the principle of distinction has been said to be under threat ever since it was first formulated in its modern form. This paper will discuss how the deployment of fragility and jeopardy has actually been used to strengthen international humanitarian law, to shape its discourse and values, and confirm its importance. In this way the fragility of its principles has helped constitute the resilience of international humanitarian law.

Chair: Rebecca Dudley

Rebecca Dudley works at New Zealand Red Cross as Principal Advisor, International Humanitarian Law and Policy. Prior to 2016, she was for 6 years the Human Rights Training Advisor to the Police Service of Northern Ireland, a role that was established as part of the Northern Irish peace process. In Belfast, she also worked for several years with the Northern Ireland Human Rights Commission. She has a BA in History from Yale University and received her LLM, and PhD in international law from Queen's University Belfast. She has worked in London, the US and the Caribbean among other places on issues related to human rights advocacy, community development, transitional justice, and sexual and gender based violence.



Panel #9: Trade and the Environment

Paper Abstracts and Short Biographies

Margaret Young

Net Zero Emissions and the Free Trade Agreement (FTA) between the United Kingdom and Australia

The negotiation of the free trade agreement (FTA) between Australia and the United Kingdom promised to integrate trade and climate policies. As a leader of the United Nations Framework Convention on Climate Change (UNFCCC) conference in Glasgow, the UK seemed well-placed to exert pressure on Australia, a country that was yet to embrace a target of net zero emissions by 2050. This paper asks whether the FTA achieves this aim. It explains the link between trade liberalization and climate change, referring to the scale and composition of economic activity in energy, agriculture, building and transportation sectors, as well as strategic factors. It offers an original analytical framework to assess the FTA's contributions to climate change goals, pointing to: (1) provisions to strengthen climate commitments, including net zero targets; (2) provisions to facilitate trade and investment in climate-related areas; and (3) provisions relating to enforcement and cooperation. It compares selected initiatives of other FTAs, including the UK—New Zealand FTA, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the EU—Canada Comprehensive Economic and Trade Agreement (CETA), and the Singapore—Australia Green Economy Agreement. It reviews the FTA's negotiating process and its aftermath, including complaints about a lack of public participation. The article's conclusion that the FTA makes minimal contribution to climate change mitigation has implications for the broader quest for mutually supportive trade and climate policies, and, now that a net zero target has been legislated by the newly elected Australian Parliament, for the FTA's future implementation.

[Margaret Young](#)'s award-winning research at the Melbourne Law School spans public international law, the law of the sea, international trade law, climate change and environmental law. In mid-2023, she will commence an Australian Research Council (ARC) Future Fellowship on 'The Blue Economy and International Law'. Margaret's research on free trade agreements and climate change will be published in 2023 in the *International and Comparative Law Quarterly* (co-authored with Georgina Clough). She is also currently completing an ARC-funded project on '[The Potential and Limits of International Adjudication](#)', which has led among other things to a recent special issue of the *Melbourne Journal of International Law* on '[National Encounters with the International Court of Justice](#)'. Her co-authored text, [The Impact of Climate Change Mitigation on Indigenous and Forest Communities](#) (Cambridge University Press, 2017), won the American Society of International Law's Certificate of Merit in 2019. Margaret has been Director of Studies for Public International Law at The Hague Academy of International Law, and Visiting Professor at St Petersburg State University, Russia, the University of St Gallen, Switzerland, and Aix-Marseille University, France. In 2021, she was elected as a Fellow of the Australian Academy of Law.



Shannon Ward And Michelle Zang

Turning over a New Leaf of International Trade: Eco-trade Policies at the WTO

The nexus between climate change and international trade has been gradually re-defined in the last decades. The classic misunderstanding claiming mutual exclusiveness and regulatory conflict is replaced by the proposition that trade and trade policy could be the force multiplier for global climate adaptation through the enforcement of eco-trade policies.

This paper argues that WTO rules continue to exert strong influence over the development and enforcement of eco-trade policies and thus revisits the classic interpretative issue of the likeness test, with reference to the ongoing WTO disputes on *EU - Palm Oil* and the plurilateral negotiation on the Agreement on Climate Change, Trade and Sustainability.

As conclusion, it is argued that, on the one hand, for eco-trade policy that is proportionately designed with solid scientific grounds, its compliance with WTO obligations should be warranted, rather than being considered as a “carved-out” exception to trade liberalisation. Being forced to rely on exception clauses does not provide states and governments sufficient confidence to implement robust policies with meaningful climate outcomes. On the other hand, there is a need for caution with disguised discrimination and protectionist intention under the policy’s “greenized” cover, as well as the potential for unintended but nevertheless excessive trade restrictiveness stemming out of the same policy. Such nuanced borderlines are most realistically to be drawn through updated and focused interpretation and clarification of the relevant WTO rules.

Shannon Ward is a former diplomat with more than 20 years' experience as an international trade law advisor and negotiator. She holds an LLM (Distinction) from Victoria University of Wellington | Te Herenga Waka, and a BA/LLB(Hons) from the University of Auckland | Waipapa Taumata Rau.

Michelle Zang is a Senior Lecturer at the Faculty of Law at Victoria University of Wellington | Te Herenga Waka and Co-Director for the New Zealand Centre of International Economic Law. Michelle teaches and researches in a wide range of topics in international trade law and European Union law. Most recently, she has been working on the sustainability of international trade policy with specific focus on climate change and indigenous interests.

Francine Hug

Chinese Mining and Technology Investments in Melanesia - Impact on Indigenous Rights and Potential Legal Remedies

Amidst heated geopolitical rivalry in the Pacific, especially between China and the US, this paper investigates how to better address the concerns of Pacific Island Nations' Indigenous communities, and improve legal instruments pertaining to foreign



investments in the region. To this purpose, this paper focuses on energy and technology security in China's avid pursuit for natural resources on one hand, and data on the other. To illustrate the issues at stake, it explores specific case studies from extractive industries (deep-sea mining) and critical information-infrastructures (submarine cable) in Melanesia (PNG and Vanuatu).

Adopting doctrinal, empirical, comparative, and interdisciplinary methods, this paper examines the multipronged legal framework governing Chinese investments in the Pacific at the international, regional, and domestic level. In this context, it critically analyses whether international economic law, environmental and ocean laws, Court jurisprudence, Constitutions, corporate and data governance, as well as Indigenous and customary land rights are resilient. Based on its findings, this paper argues that this fragmented legal framework is insufficient to rebalance geopolitical power dynamics, and fails to do justice to Pacific communities.

Thus, this paper provides normative suggestions to improve legal remedies for Indigenous communities and harmonise these fragmented laws. To this purpose, it chiefly advocates for legal pluralism, taking into account unwritten Indigenous governance concepts, and facilitated by inclusive participation in regional treaty negotiations, alternative dispute resolution, and sectorial litigation. In doing so, this work contributes to scholarship on international economic law and Indigenous rights in general, and Chinese investments in the Pacific in particular.

Francine Hug is a Postdoctoral Fellow at the Chinese University of Hong Kong working on investment, energy, and environmental law reforms pertaining to China's phase-out of coal-fired power generation along the Belt and Road Initiative (BRI), especially in South and Southeast Asia.

Previously, she was a Visiting Fellow at the East-West Center, where her research focused on foreign investments in the Pacific. To this purpose, she analysed domestic and international economic laws at the cybersecurity, energy, labour, environment, and Indigenous rights nexus.

Prior to academia, Francine served as Senior Economic Officer at the Embassy of Switzerland to China, Mongolia, and the Democratic People's Republic of Korea, where she negotiated treaties, provided ministerial advice, and designed strategies on *inter alia* fossil fuel subsidies reforms and WTO-law.

Francine also worked in non-governmental organisations in Tanzania, Haiti, Peru, and South Africa on microfinance, sustainable development, capacity-building, health, and conflict resolution. She gained additional experiences at think-tanks, international organisations (IOC, OSCE, ICRC), the private sector (Nokia Siemens Networks), and in journalism.

Francine holds a Ph.D. from the National University of Singapore, M.A. from the University of London, and B.A. from Beijing Language and Culture University. She is fluent in half-a-dozen languages, including Mandarin-Chinese.



Chair: Caroline Foster

Caroline Foster is Director of the New Zealand Centre for Environmental Law (NZCEL) at the Faculty of Law, University of Auckland | Waipapa Taumata Rau, New Zealand. Publications include: Caroline E. Foster, *Science and the Precautionary Principle in International Courts and Tribunals: Expert Evidence, Burden of Proof and Finality* (Cambridge University Press, 2011); Caroline E. Foster, *Global Regulatory Standards in Environmental and Health Disputes: Regulatory Coherence, Due Regard and Due Diligence* (Oxford University Press, 2021); Foster, C.E. and Voigt C. (Eds) *International Courts versus Non-Compliance Mechanisms: Comparative Advantages in Strengthening Treaty Implementation* (Cambridge University Press, forthcoming, 2023).



Panel #10: The resilience of international security law to new and evolving technologies

International law's resilience is dependent on its capacity to adapt to evolving forms of State behaviour. The application of international security law to new and emerging forms of technology is a particular challenge facing the international community. Security law was developed on the basis of traditional means and methods of warfare, and when there was a clearer dividing line between peace and war. The law also crystallised at moments in history when broad international consensus was possible.

None of these factors are present today. Warfare can be conducted through new means (e.g. cyber), through new methods (e.g. employing autonomous functions) and in new domains (e.g. space). The distinction between peacetime and armed conflict is also blurred and increasingly tested through grey zone activities. Further, the conditions for multilateral consensus are facing increasing challenges.

The panel will explore how Australia and New Zealand are working to ensure the resilience of international security law in multilateral bodies in the field of new and emerging technologies. Specifically, this panel will consider negotiations across the UN Open Ended Working Groups on cyber and outer space, as well as the UN Group of Governmental Experts on Lethal Autonomous Weapons Systems. The panel will be asked to explore tensions between states advocating for a better understanding of how existing international law applies, against those proposing new legal frameworks, including new treaties. Panellists will also be asked to examine how international law sits within a broader normative framework on responsible State behaviour in these respective areas. This panel is about the application and development of international law in relation to outer space.

Paper Abstracts and Short Biographies

Naushyn Janah

The application and development of international law in relation to outer space

There is broad consensus that international law applies to space. However, many areas of international law were developed without space in mind, including use of force, international humanitarian law, and state responsibility. Given the characteristics and potential uses of technologies deployed in space, the international community is working through challenges when it comes applying existing international law in the context of space.

While the focus remains on maintaining space as a peaceful domain, some of the key legal considerations that arise relate to the prevention and regulation of the use of force in space. In particular, the international community has discussed how the dual-use nature of space objects poses a challenge to prohibiting the placement of weapons in space. Similarly, States need to continue to examine how international



humanitarian law rules would apply to conflict in space, such as the principle of distinction. States' views have also diverged as to whether the existing prohibition on the use or threat of force is sufficient, or whether specific norms or legal rules are required for space.

This paper will explore these key questions currently being debated by the international community, and the tensions between states seeking a new treaty framework against those advocating for a better understanding of how international law applies and a normative framework on responsible behaviour. It will look specifically at the approach of the Open-Ended Working Group on norms, rules and principles of responsible behaviours in space, and how the work of this group will complement the existing international law framework and could contribute to the development and/or clarification of international law.

Naushyn Janah is a Legal Adviser at the New Zealand Ministry of Foreign Affairs and Trade. She advises on issues of general international law, with subject matter expertise on outer space, disarmament, UN legal issues and international health law. She was previously Assistant Crown Counsel at the Crown Law Office, where she advised and represented the Crown on the COVID-19 response, climate change (including the *Smith v Attorney-General* and *Lawyers for Climate Action NZ v Climate Change Commission* cases), and the Crown response to the Royal Commission of Inquiry into Abuse in Care. Prior to her career in the public sector, Naushyn worked as a civil litigator at one of New Zealand's largest law firms. She has also interned at the Hong Kong International Arbitration Centre and represented New Zealand at the Jessup International Law Moot Court, where she won the Richard R. Baxter Award for Best Respondent Memorials in the world. Naushyn holds an LLB(Hons)/BA degree from the University of Auckland | Waipapa Taumata Rau, with her Honours dissertation focussing on the intersection of international trade, investment and climate change law.

Nish Perera

The application and development of international law in relation to cyberspace

Recent advances in cyber capability and a rise in malicious activity online raise novel questions about how international law applies to states in cyberspace. While there is general consensus amongst states that international law applies to state activity in cyberspace, the question of how it applies is more nuanced, and under consideration in a number of contexts including in the United Nations Open-Working Group. For example when does state cyber activity amount to a use of force for the purposes of international law? At what point will malicious state cyber activity be inconsistent with the rule of non-intervention? How do principles of territorial sovereignty apply in cyberspace and what (if any) are the due diligence obligations when it comes to monitoring cyber activities within states' territories? How are states interpreting and applying international humanitarian and human rights law to cyber activities?

As international law has evolved primarily with a territorial, physical conception of the world, the international law community is being challenged to consider how



established rules and principles apply to the multi-layered context of cyberspace. Applied appropriately, our presentation will argue, existing international law – as part of the framework of responsible state behaviour in cyberspace – provides an effective toolkit to regulate state behaviour online, including in armed conflict (international humanitarian law) and in respect of international human rights obligations. This includes the ability to identify breaches of international law in cyberspace, attribute state responsibility for those breaches, and guide responses from victim states.

Nish Perera's current work focuses on cyber, security treaties, and Australia's ICJ intervention in Ukraine's case against Russia. She is DFAT's legal advisor to the UN Open-Ended Working Group on Cyber, and works very closely with DFAT's Office of the Pacific in relation to implementation and negotiation of security treaties. She also tutors international law at the Australian National University.

Before joining DFAT, Nish worked in the Attorney-General's Department's Office of International Law, where she worked across a variety of practice groups, including human rights and refugee law, environmental law, and trade law. Prior to joining the public service, Nish worked as a refugee lawyer with Asylum Access Malaysia, where she mainly represented clients from Afghanistan, Iran and Somalia. This variety of experience across a number of areas of international law enables her to look at general international law issues and consider how those issues affect discrete topics.

Nish holds a Master of Laws (Hons) from Columbia Law School, where she was a Fulbright Scholar and was the recipient of the Edwin Parker Prize for Excellence in International Law. She also holds a Bachelor of Arts/Bachelor of Laws (Hons I) from the Australian National University, where she was a National Merit Scholar.

WGCDR Tim Wood

The application and development of international law in relation to lethal autonomous weapons system

Lethal autonomous weapons systems (LAWS) give rise to a number of significant legal and ethical issues on which there is either no clear international consensus, or where current practice and interpretations appear to pose challenges for the existing framework of international humanitarian and human rights law.

While it is broadly understood that LAWS must be capable of being used in accordance with international humanitarian law, the responsibility of which rests with states that are developing, deploying and using such weapons, features of LAWS present numerous challenges. The development of LAWS that have effects which cannot be anticipated or controlled, or do not have appropriate levels of human control (e.g. which effectively delegate life and death decisions to machines), raises significant questions about their compliance with international law and ethical acceptability.

Some states argue for new international rules and limits on the development, deployment and use of LAWS. Others argue that existing international humanitarian



law is sufficient. This presentation will explore the key issues being debated by the international community under the Convention on Certain Conventional Weapons by the Group of Governmental Experts (GGE) and the range of views among states on new international law on LAWS.

WGCDR Tim Wood is currently the Deputy Director DLS Operations and Intelligence Law with primary responsibility for the provision of legal counsel to AC SCE and CDI, and support to MOD and other units within HQ NZDF. WGCDR Tim Wood enlisted into the RNZAF in Aug 2016. Significant commitments include providing legal and subject matter expertise to the Special Inquiry Office; revitalising the Law of Armed Conflict training provided to members of the NZDF; the NZDF response to the Whakaari/White Island volcanic eruption, the Kabul NEO, assistance to the Government of the Solomon Islands, the HADR response to the volcanic eruption in Tonga, and the NZ All of Government response to COVID-19. Prior to emigrating to New Zealand, Wood served in the RAF. His operational deployments include Saudi Arabia, Iraq and Afghanistan with posts in Northern Ireland, NATO, MOD, and as Legal Adviser to JFHQ and HQ Provost and Security Service RAF. Wood is also on the Editorial Committee of the ICRC Update of the Fourth Geneva Convention, 'Relative to the Protection of Civilian Persons in the Time of War'.

Chair: Rain Liivoja

Rain Liivoja is a Professor and Deputy Dean (Research) at the University of Queensland Law School, where he leads the Law and the Future of War research group. Rain is also a Visiting Legal Fellow at the Australian Department of Foreign Affairs and Trade, and a Senior Fellow with the Lieber Institute for Law and Land Warfare at the United States Military Academy at West Point. He holds the title of Adjunct Professor of International Law at the University of Helsinki, where he is affiliated with the Erik Castrén Institute of International Law and Human Rights.



Panel #11: Decay, Resilience or Evolution? The International Human Rights Law Project in the 21st Century and Beyond

Few people would dispute that International Human Rights Law (IHRL) is under severe pressure. We are in 'the end times of human rights' (Stephen Hopgood) 'the twilight of human rights' (Eric Posner) or flailing in the ruins of the 'last utopia' (Samuel Moyn). The IHRL project stands accused of being too ambitious (John Tasioulas) or not ambitious enough (Moyn). The problem is perceived, variously, as being with the IHRL movement itself (tethered to neoliberalism; impotent in the face of populism; of least utility when rights are most severely under threat) or with the current geopolitical context, which holds challenges to which IHRL has no adequate response (wide-scale atrocities carried out during war; climate change; statelessness).

This panel brings together the perspectives of human rights academics, advocates, sceptics and political actors, in a conversation about what the 21st century holds for the theory and practice of human rights.

This panel brings together the perspectives of human rights academics, advocates, sceptics and political actors, in a conversation about what the 21st century holds for the theory and practice of human rights

Short Biographies

Catherine Renshaw

Petra Butler

Petra Butler specialises in domestic and international human rights, public and private comparative law, and international commercial law with an emphasis on international commercial contracts and dispute resolution. She has published extensively in those areas (including together with Andrew Butler, *The New Zealand Bill of Rights Act 1990: a commentary* (2nd ed, Lexis Nexis, 2015) and together with the late Professor Peter Schlechtriem, *UN Law on International Sales* (2nd ed, forthcoming)) and regularly is invited to speak at conferences, workshops and seminars. In addition, she teaches and consults on the law of unjust enrichment. Petra has particular expertise in law reform and has most recently lead the Commonwealth Secretariat study into international commercial arbitration.

Petra is a fully qualified German and New Zealand lawyer. She is admitted as a barrister to the High Court of New Zealand and regularly advises private and public clients in her areas of expertise. Petra is also the Director of the Institute of Small and Micro States (ISMS). ISMS' aim is inter alia to provide independent expert advice and the placement of (regional) experts.



Petra has held visiting positions on all five continents. She also has been associated with the Willem C Vis Moot for nearly 20 years and arbitrating the final of the Vienna competition in 2020. Petra is New Zealand's CLOUT correspondent for the CISG and the United Nations Convention on the Use of Electronic Communications in International Contracts. Petra sits on advisory boards of a number of human rights NGOs and has received a number of prizes and fellowships, including in 2018/19 the scholar-in-residency at Wilmer Cutler Pickering Hale and Dorr LLP and being a guest of the Max Planck Institute, Luxembourg, for Procedural Law.

Diana Qiu

Diana Qiu is a junior barrister to Thorndon Chambers. Prior to commencing legal practice, she was a judge's clerk to two Presidents of the Court of Appeal of New Zealand | Te Kōti Pira o Aotearoa.

Diana graduated from the University of Auckland | Waipapa Taumata Rau in 2021 with a BA and LLB(Hons). She was a Senior Scholar in Law and received the Faculty of Law Dean's Academic Excellence Award. As a student, Diana also competed in numerous national and international mooting competitions. For example, she represented New Zealand in the 61st Philip C Jessup International Law Moot Court Competition, during which she was named best oralist in the European Regional Rounds in 2020.

Diana has a keen interest in public law, human rights law and international law, including commercial and investor-state arbitration. Her publications have primarily focused on these areas. She is conversational in French and, in her spare time, is an active archer and classical music enthusiast.

One more speaker to be confirmed

Chair:



Panel #12: Souvenirs of International Law

Perhaps surprisingly, souvenirs and merchandise of international law appear to be some of its most resilient artefacts. In this panel, we look at international law and international institutions through the lens of merchandise, memorabilia, and souvenirs. How do international organisations present themselves to the world (by way of their gift shops or commercial collaborations) and how does society at large perceive of international law and international institutions (through invocation of international law in commercial imagery and objects)? What do such objects and imagery say about the role of international law in the social and cultural zeitgeist? In these papers we explore how international law's symbolic capital is supported through souvenirs and other material objects. How is authority tied to objects? How does international law's merchandise allow us to comment on the relationship between capitalism and international law? How do objects become memorabilia, relics or fetishes for international law and international lawyers? And how do souvenirs allow for different readings of international law's claim to authority and relevance?

Paper Abstracts and Short Biographies

Emily Crawford

At the Vanishing Point? The Merchandise, Memorabilia and Souvenirs of International Law as Modern Day Relics and Fetishes

Much has been written on the physical sites and material objects of international law and of law more generally, in particular drawing connections between judicial and legal buildings as modern-day secular cathedrals. This paper, and the project of which it is a larger part, interrogates this connection through the medium of souvenirs and merchandise. Drawing on the work of, inter alia, Benjamin and Baudrillard, this paper introduces our larger project (which includes an exhibition and website, as well as a visual diary) and explores the souvenirs and merchandise of international law. Using the souvenirs, merchandise, and memorabilia that emerged from and about international institutions (such as the UN, ICJ, and ICRC), we look at how international institutions present themselves to the world (through their gift shops and other commercial collaborations) and, in return, how society at large perceives of international institutions (through the invocation of international law in commercial imagery and objects). What do such objects and imagery say about the role of international law in society and do such perceptions impact how international law is received by the population?

Emily Crawford is a Professor at the University of Sydney Law School, where she teaches and researches in international law, international humanitarian law and international criminal law. She has published widely in the field of international humanitarian law, including three monographs (*The Treatment of Combatants and Insurgents under the Law of Armed Conflict* (OUP 2010), *Identifying the Enemy: Civilian Participation in Hostilities* (OUP 2015) and *Non-Binding Norms in International*



Humanitarian Law: Efficacy, Legitimacy and Legality (OUP 2021)) and a textbook (*International Humanitarian Law* (with Alison Pert, 2nd edition, CUP 2020)). She is an associate of the Sydney Centre for International Law at the University of Sydney, and a co-editor of the *Journal of International Humanitarian Studies*

Jacqueline Mowbray

Of Teddy Bears and International Law

In 2021, UNICEF paired with French luxury goods manufacturer Louis Vuitton to produce a plush teddy bear, which retailed for US\$995, with \$US200 going to UNICEF. The toy was constructed of organic cotton and adorned with the trademark Louis Vuitton signature 'LV'. At the same time as the release of the bear, civil society organisation KnowTheChain was reporting that Louis Vuitton's corporate owner, LVMH, was one of the worst offenders for exploitation in their supply chain, with workers often subject to bonded and slave labour.

This paper considers the contradiction inherent in the promotion of international law and children's rights through merchandise produced by an entity engaged in violation of those legal principles, and asks what this phenomenon reveals about the nature of international law. Following Bourdieu, I map the peculiar dynamics of the cultural field of international law and the way in which those dynamics produce symbolic capital. I argue that aesthetics of 'internationalism' and 'humanitarianism', and homologies with the field of political power, combine to imbue international law with significant symbolic and cultural capital. And homologies with the field of economics allow this capital to be realised in material terms, through the commodification of international law artifacts. In this way, this paper builds on the work of scholars who have demonstrated the ways in which international law supports and sustains international capitalism, by revealing how international law itself participates in a fundamentally capitalist aesthetic.

Jacqueline Mowbray is an Associate Professor at the University of Sydney Law School. She is also the external legal adviser to Australia's Parliamentary Joint Committee on Human Rights. Her work uses critical theory to explore the operation of international law, and focuses on international law and language policy, and economic, social and cultural rights. Her monograph *Linguistic Justice: International Law and Language Policy* was published by OUP in 2012. Her second monograph, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (co-authored with Saul and Kinley) was winner of the 2015 American Society of International Law Certificate of Merit. She has been consulted on human rights issues, including language and minority issues, by NGOs including the Open Society Foundation, Global Initiative for Economic, Social and Cultural Rights and the Right to Education Initiative, and she was a member of the drafting committee of the Abidjan Principles on the Right to Education (winner of the 2019 Paris Peace Prize).



Jessie Hohmann

Furnishing Legal Histories

This paper engages with the material backdrop of international law's production of knowledge and authority. It focuses on a table and a chair at the Lauterpacht Centre for International Law at the University of Cambridge. The Centre is the home of the Cambridge School of International Law and the stage for international legal life at the University. Our table is a physical object, a prop in a room that functions as a library and also as a 'backstage' to the public lectures that are a prominent aspect of life at the Centre. The table has long functioned as a means to display and support international legal knowledge and networks, while remaining an everyday object with no legal significance of its own. The Whewell Chair, on the other hand, is the named professorship of International Law held by a prominent person of international law and a key figure of authority within the field. By considering the contrasting roles of the table and the chair – one as object, the other as subject – this paper moves away from the way in which international legal history has often been framed through the biographies of its grand figures. Could the table tell a different story, both speculative and unprovable, feminist and domestic, pointing to a different and more materially focused international legal history? Can this exploration of the furnishings of legal history point to the domestic and the everyday that is, yet, part of international law's authority?

Jessie Hohmann is an Associate Professor at the Faculty of Law, University of Technology Sydney. Her work encompasses the material culture, materiality and objects of international law, human rights and the rights of Indigenous Peoples. Her publications include the groundbreaking *International Law's Objects* (Hohmann and Joyce, eds, 2018). Before joining UTS, Jessie was a senior lecturer at Queen Mary, University of London. She holds degrees from the University of Cambridge – where she was a PhD student based at the Lauterpacht Centre – Sydney University, Osgoode Hall (York University) and the University of Guelph.

Chair: Amanda Alexander



Panel #13: Resilience and Climate Change

Paper Abstracts and Short Biographies

Caroline Foster

Due Regard for the Future

This paper invites international law to show its systemic resilience as a developing public law system, considering the virtues of adopting a requirement for States to have “due regard for the future” in their regulatory and administrative decision-making in the era of the Anthropocene.

The paper suggests that fairness and dignity require that States’ international environmental legal obligations be re-interpreted to clarify and emphasise that they include an inter-temporal responsibility, given the anthropogenic challenge of climate change and the impending ecological crisis. Specifically, this paper argues that international environmental law should be read as incorporating a duty for States actively to consider how their decisions will impact on future generations and the environment, and when challenged to be able to demonstrate they have done so. The paper builds on the concept of States’ obligation to have due regard to one another’s interests in their legislative and regulatory decision-making, an emerging global regulatory standard (Caroline E. Foster, *Global Regulatory Standards in Environmental and Health Disputes*, OUP, 2021). The paper extends this idea to a requirement for States to analyse and consider the anticipated future effects of actions taken today on the interests of others.

This contribution invites ITLOS and the ICJ to draw on the concept that States should have due regard for the future in the advisory opinions it is hoped will be given in response to the requests initiated by the Commission of Small Island States on Climate Change and, it is expected, by the UNGA, led by Vanuatu, in the International Court of Justice (the ICJ), on which the General Assembly will vote in early 2023.

Caroline Foster is Director of the New Zealand Centre for Environmental Law (NZCEL) at the Faculty of Law, University of Auckland | Waipapa Taumata Rau, New Zealand. Publications include: Caroline E. Foster, *Science and the Precautionary Principle in International Courts and Tribunals: Expert Evidence, Burden of Proof and Finality* (Cambridge University Press, 2011); Caroline E. Foster, *Global Regulatory Standards in Environmental and Health Disputes: Regulatory Coherence, Due Regard and Due Diligence* (Oxford University Press, 2021); Foster, C.E. and Voigt C. (Eds) *International Courts versus Non-Compliance Mechanisms: Comparative Advantages in Strengthening Treaty Implementation* (Cambridge University Press, forthcoming, 2023).

Krishnee Appadoo

The Promise of the Loss and Damage Principle: Assessing the Effectiveness of International Climate Change Law



The climate emergency is all too real and can be confirmed through the latest report of the Intergovernmental Panel on Climate Change (IPCC, 2022). Despite the robust United Nations Framework on Climate Change (UNFCCC) including its accompanying Paris Agreement (PA), efforts remain vastly insufficient to limit global temperature rise to 1.5 degrees Celsius by the end of the century. Loss and damage (L&D) pertains to the destructive impacts of climate change that cannot be or have not been avoided by mitigation and/or adaptation (Chatham House, 2022). While enshrined in the PA in 2015, it is devoid of legal force due to the omission of the terms “compensation” and “liability”. The long journey of L&D demonstrates how challenging it is to negotiate, enforce and finally implement international climate change law. However, it is also testament of the power that multilateralism holds. At COP27, funding arrangements and a funding mechanism were announced, a decision which holds promise in terms of compensating countries, especially Small Island Developing States (SIDS) bearing the brunt of climate change impacts. The author aims at critically assessing the effectiveness of international climate change law by focusing on the loss and damage principle. Recommendations will be proposed to enhance the resilience of international climate change law and to ensure that L&D remains a key priority.

Krishnee Appadoo is a senior lecturer at the University of Mauritius where she specialises in Environmental and Climate Change Policy and Law. She is currently a distance learning doctoral student at the University of Western Australia where her PhD focuses on the loss and damage principle. She is an environmental, climate, gender, and disability activist. She has published articles and book chapters on the topic of environmental and climate change law, sustainable tourism and ocean governance. She is the Vice President of CUT which works on harm reduction in Mauritius. She is the co-founder and co-director of Mind Matters Mauritius which is a social enterprise empowering people living with mental health conditions. She will be joining the UN Climate Secretariat as a Fellow in Spring 2023

Sharon Mascher

In Search of a Resilient International Climate Regime

Climate change is causing acute system changes to the functioning of the global ecological systems. In responding to climate change, the international legal framework has from the outset focused on maintaining ecological resilience of the climate system (Article 2, United Nations Framework Convention on Climate Change). Yet, three decades on, scientists are warning that the climate system is already irreparably damaged and that the window to avoid catastrophic impacts is rapidly closing. In the face of this reality, there is growing attention on whether the international climate regime is itself resilient. The existing international climate regime has many of the features identified by various resilience theorists – it is adaptive, it is flexible, it is goal-based rather than rule-based, it operates on multiple scales, and it embeds important principles of such as intergenerational equity and non-regression. Yet, uncertainty surrounding the operation of foundational international environmental law norms in the context of climate change undermine



the existing international climate regime's ability to meet its ecological resilience objectives. Key amongst these is clarity as the legal obligations under international law to protect the climate system for present and future generation and the legal consequences under these obligations for States which have, through action or inaction. This paper argues that the International Court of Justice does have an important role to play, by way of an advisory opinion on questions, if the international climate regime is to be resilient.

Sharon Mascher is a Professor in the Faculty of Law at the University of Calgary (Canada), an affiliated faculty member at the Canadian Institute of Resources Law, an Honorary Fellow at the University of Western Australia, and an active member of the British Columbia Law Society. She has previously held academic positions in the Faculties of Law at the University of Western Australia and Victoria University of Wellington | Te Herenga Waka. Professor was co-editor of the *Journal of Environmental Law and Practice* from 2012-2020. She is currently a review editor for *Frontiers in Climate, Climate Law and Policy* and a Climate Governance Experts with the Canadian Climate Law Initiative. While in Australia, Sharon was a member of the Management Committee of the Environmental Defender's Office (Western Australia) and served as a principal policy officer for the Greenhouse Unit in Western Australian Department of Environment and Conservation. Professor Mascher's research focuses on legal issues relating to climate change law, environmental law, property law and laws affecting Indigenous peoples.

Jessica Kirton-Luxford

Forsaking process for progress? Transnational environmental law and climate change

State actors have long been attempting to address complex environmental issues through multilateral action. However, process has been slow and stilted. As a result, many doubt the ability of traditional international law to effectively mitigate climate change. This article notes the emergence of transnational environmental law (TEL) and those who herald it as a progress-maker in the climate change space. This article identifies a fundamental theme in transnational environmental legal scholarship: TEL achieves progress at the expense of process. This article then proffers the question: can we forsake process for progress? This article evaluates two pre-eminent examples of TEL, the SBTi and C40, and evaluates both their processes and achieved progress. Following analysis of these case studies, this article concludes there is a minimum floor of process necessary to achieve measurable progress. Process can only be forsaken whilst achieved progress remains legible – but beyond this point, progress is compromised.

Jessica Kirton-Luxford is a judges' clerk to the President of the Court of Appeal of New Zealand | Te Kōti Pira o Aotearoa. Jessica is a recent graduate of the University of Otago in 2022 with an LLB(Hons) and a BA, and was awarded the Otago District Law Society prize, given to the top two students graduating from the law programme. She was awarded the Prime Minister's Scholarship for Asia and interned at an NGO in Toyko, Japan. Alongside experience in the commercial sector, she has extensive faculty tutoring experience both the University of Otago and Victoria University of



Wellington | Te Herenga Waka, and has been a research assistant at the University of Auckland. She has a keen interest in international law and climate change. Her research has focussed on transnational legal governance structures which have evolved to respond to climate change.

Chair:

Chair's bio



Panel #14: Legal Responses to Civilian Harm in Armed Conflict

Compliance with fundamental principles of international humanitarian law (including harm prevention, mitigation, and response) remains a problem worldwide. In 2020, the Government Inquiry into Operation Burnham recommended improvements to the New Zealand Defence Force's (NZDF) responses to allegations of civilian harm, in light of NZDF's experience in Afghanistan.

The Inquiry's recommendations were directed towards greater compliance with New Zealand's international legal obligations and effective future oversight of NZDF. It recommended a review of relevant NZDF organisational structures and administration, the establishment of an independent Inspector-General of Defence, a revised detention policy, and a new Defence Force Order (DFO) on Response to Civilian Harm. The government accepted, and committed to implementing, all recommendations.

The panel speakers are contributors to a Special Issue of the New Zealand Journal of Public and International Law on legal responses to civilian harm (Issue 2022/2, forthcoming July 2023), edited by Dr Marnie Lloyd and Professor Alberto Costi. The panel's purpose is to examine the importance of this Inquiry and the implementation of its key recommendations such as DFO 35 on Civilian Harm, as well as the Offshore Detention Policy, and to explore responses to civilian casualty allegations from the perspectives of both accused parties and victim communities, whether through in-theatre investigations and/or compensation, criminal investigations and prosecutions, and national or international commissions of inquiry.

Can law only be resilient when alleged violations are appropriately investigated as part of its enforcement? How do investigations into, and responses to, civilian harm (whether lawful or unlawful harm under international law) contribute to the law's integrity, resilience, and coherence?

Paper Abstracts and Short Biographies

James Mehigan

Aotearoa New Zealand's Inspector-General of Defence and civilian harm in armed conflict

The Burnham Inquiry recommended that an Inspector-General of Defence (IGD) be established to improve oversight of the defence forces. In particular, the Inquiry found troubling failures on the part of senior defence staff in providing transparent information to ministers. The establishment of an IGD therefore is seen to be a step to improve that transparency and increase public confidence in the military in Aotearoa New Zealand.

These are laudable aims. However, it seems likely that the office of IGD will be endowed with a selection of powers that will not allow them to effectively oversee the behaviour of defence force staff or leaders. Significant questions have been raised



about, inter alia, the office's independence, its inability to initiate prosecutions and its power to suppress information. This contribution will consider what the IGD's statutory framework says about how much oversight we want of the military and asks what this might mean for civilian harm in conflicts to which our troops are deployed.

James Mehigan is a Senior Lecturer at the University of Canterbury | Te Whare Wānanga o Waitaha, School of Law. His research considers international and domestic criminal justice processes, in particular, how the state and other powerful actors are held accountable for the harms they cause, and the struggle for justice amongst marginalised groups. He is the General Editor of the New Zealand Yearbook of International Law.

Azadah Raz Mohammad

Accountability for War Crimes in Afghanistan

Despite the gravity and scale of the indiscriminate attacks on civilian/protected sites killing thousands of people, the protracted conflict in Afghanistan and the lack of political will or availability of robust justice mechanisms/institutions means there has never been an investigation into the mass atrocity/international crimes committed in Afghanistan by different parties, including the Soviets, International Allied Group and the Taliban. This contribution will explore the importance and reception of national investigations such as Australia's Brereton Report and New Zealand's Operation Burnham Inquiry in the context of Afghanistan. It will also discuss the *Ham Diley* Campaign, which is calling for accountability through criminal prosecution for the alleged international crimes committed in Afghanistan by the Taliban.

Azadah Raz Mohammad is a Ph.D. candidate at Melbourne Law School. Her doctoral research investigates whether, with the Taliban's return to power, Afghanistan can move forward without addressing the legacies of international crimes committed by the Taliban. In September 2021, Azadah co-founded the *Ham Diley* Campaign assisting vulnerable Afghans at the risk of persecution and advocating accountability for victims of international crimes in Afghanistan. She has worked on humanitarian and human rights-related projects in close collaboration with Afghanistan's justice institutions. She has also worked with the Administrative Office of the Afghan President and as an adjunct lecturer of law at the American University of Afghanistan.

Marnie Lloyd

Aotearoa New Zealand's Defence Force Order 35 and Offshore Detention Policy Framework as responses to civilian harm in armed conflict

Aotearoa New Zealand's Defence Force Order 35 on Response to Civilian Harm and Policy Framework for Humane Treatment of Detainees in Offshore Deployments were two concrete responses adopted following recommendations of the Government Inquiry into Operation Burnham. This contribution discusses key questions of legal



compliance and policy choices arising from these two policies regarding investigations of, and responses to, civilian casualties, and the prevention of harm in detention, through the lens of multinational and partnered operations. While both policies are still to be properly tested, can their adoption demonstrate the broader potential value of inquiries such as the Operation Burnham Inquiry in contributing to integrity, resilience, and coherence in the implementation of the law of armed conflict?

Marnie Lloyd is Senior Lecturer and Associate-Director of the New Zealand Centre for Public Law at Victoria University of Wellington | Te Herenga Waka, Faculty of Law. Marnie was recognised as a Women Leader in Law by the Borrin Foundation in 2022, and serves as Co-Chair of ANZSIL's International Peace & Security Interest Group, as well as on New Zealand's IHL Committee, Inter-governmental Working Group on Lethal Autonomous Weapons, and the Editorial Boards of the Asia-Pacific Journal of International Humanitarian Law and New Zealand Journal of Public and International Law. Marnie has extensive prior experience as a Delegate and Legal Adviser with the International Committee of the Red Cross (ICRC) and as a legal consultant for the United Nations High Commissioner for Refugees (UNHCR).

Chair: Alberto Costi

Alberto Costi is a Professor of Law at Victoria University of Wellington | Te Herenga Waka. He has published widely on canonical topics such as the history of international law, international environmental law, use of force as well as on topics in the subfields of international criminal law, the law of armed conflict and human rights. He has published over seventy books, book chapters and journal articles, spoken at numerous international conferences and commented widely in the media and before parliamentary committees in these areas. Recent publications include the editorship of the first ever textbook on international law from a New Zealand perspective (*Public International Law: A New Zealand Perspective* (LexisNexis, 2020)) as well as the joint editorship of *"In the Eye of the Storm" – Reflections from the Second Pacific Climate Change Conference* (NZACL, VUW and SPREP, 2020). Alberto serves on the editorial board of eight journals, including the *Asia-Pacific Journal of International Humanitarian Law* and the *Revue Québécoise de Droit International*. He is the President of the New Zealand Association for Comparative Law, Co-Director of the New Zealand Centre of International Economic Law and Secretary-General of the International Law Association New Zealand Branch, and sits on the New Zealand International Humanitarian Law Committee.



Panel #15: The Stretching of Trade Law

Paper Abstracts and Short Biographies

Pallavi Kishore

Does the World Trade Organization Promote Consumer Protection?

The resilience of international law is directly proportional to its completeness. One way of making it complete and thus, resilient is by expanding its reach and by building bridges with other branches of law.

In this vein, this article examines the protection of consumers by primarily focusing on the law of the World Trade Organization (WTO). It finds that as much as the WTO promotes the interests of traders, liberalization allows consumers access to cheap and high-quality goods and services. WTO law also incorporates consumer protection to a certain extent. The cases in the General Agreement on Tariffs and Trade (GATT) and the WTO show that consumer protection has been and is present in the GATT and the WTO, the extent to which both are willing to go to accommodate the concerns of consumers, and that protection of consumers can be conceived of broadly. Additionally, the interaction of WTO law with other international laws also shows the importance it accords to consumers.

However, there are certain challenges that arise while protecting consumers. For example, consumer protection may lead to protectionism, consumer protection law reflects prevailing inequalities in society, absence of a single international treaty and organization for consumer protection etc.

This paper examines the aforementioned issues in detail and makes suggestions to resolve the challenges faced in consumer protection. The essence of these suggestions is to prioritize the interest of the consumer but their success depends on political willingness.

Pallavi Kishore is Professor and Senior Fellow, Centre for International Investment and Trade Laws at the Jindal Global Law School, India. She holds graduate degrees from the University of Delhi, India and postgraduate degrees from the Université Paul Cézanne d'Aix-Marseille III, France. Previously, she was Research Fellow at the World Trade Organization, Geneva. She has also worked with the Centre de Sciences Humaines and the United Nations High Commissioner for Refugees. She has varied interests but her main interest lies in Trade, Dispute Settlement, and Development. She has written and published extensively in English and French in international peer-reviewed journals not only in trade law but also in other areas of public international law and comparative law. Dr. Kishore has received awards, scholarships, and fellowships from the Government of France, the European Union, and the United Nations, as well as from various national and international educational institutions. She is fluent in English, Hindi, and French. For more information, see <https://jgu.edu.in/jgls/prof-dr-pallavi-kishore/>.



Genevieve Wilkinson

Resilience through flexibility? International trade law and the regulation of e-cigarettes

In *Australia – Tobacco Plain Packaging*, the Panel and the Appellate Body found sufficient flexibility in the WTO rules to recognise Australia's regulatory autonomy regarding the protection of domestic health concerns, consistent with the emerging multilateral consensus that standard packaging for tobacco products was a valuable regulatory tool. But, in the wake of this and other unsuccessful litigation, tobacco companies have invested in tobacco-consumption alternatives such as e-cigarettes used in vaping. Although e-cigarettes can aid smoking cessation, consumption of vaping products can pose serious health risks, including lung injuries and consumption of vaping liquids by children. Increasingly, regulation in Australia, New Zealand and other jurisdictions addresses these harms. However, more stringent regulation of e-cigarettes, including marketing rules restricting the use of trade marks or product standards infringing rules concerning trade in goods, could raise many WTO law issues similar to those addressed in *Australia - Tobacco Plain Packaging*. The relevant public health objectives are particularly complex for e-cigarettes, which can both harm individual health and benefit health by aiding smoking cessation. This paper, co-authored with Elizabeth Sheargold from Monash University, considers how the TBT and TRIPS Agreements may apply to the regulation of e-cigarettes, and whether these WTO rules contain sufficient flexibility to adequately respond to such a complex regulatory problem. While continuing to find new flexibility in the existing WTO rules may prove the resilience of those rules in the face of technological and social change, we query whether this is necessarily a good outcome, or whether this actually undermines much needed efforts to reform WTO rules.

Genevieve Wilkinson is a senior lecturer at University of Technology Sydney. She teaches and researches in the fields of intellectual property and human rights; economic, social and cultural rights; and technology law. Her research focuses on the intersection between human rights and intellectual property in international law.

Dilan Thampapillai

AI-Assisted Authorship: Can International Law Adapt?

Just over thirty years ago, Professor Sam Ricketson wrote an influential article in the *Columbia Journal of Law and Arts* titled '*People or Machines: The Berne Convention and the Changing Concept of Authorship*.' Ricketson's paper was a deep analysis of the text of the Berne Convention undertaken with the goal of discerning a guiding philosophy from the terms of the Convention. The learned author concluded that Convention served human authorship alone. The question of human authorship and its monopoly position within international copyright law has arisen again. There is now a significant challenge to the viability of that monopoly position, posed not just by AI-generated works, but rather by AI-assisted works. The successful interrelationship between human authorship and AI technologies resulting in useful



works of authorship again brings copyright law to a crossroads. The law will need to adapt, but the nature of the task before international copyright law is immense. The starting point must be the Berne Convention for the Protection of Literary and Artistic Works. The treaty is woven into the fabric of domestic copyright laws, the TRIPS Agreement and almost every bilateral free trade agreement. In this talk, I propose that amendments to the Berne Convention can be made that reflect the changing nature of authorship without necessarily disrupting international copyright law's central bargains.

Dilan Thampapillai is the Associate Dean of Postgraduate Programs at the UNSW Business School. His underlying UNSW appointment is the Director of Education at the Centre for Social Impact in the UNSW Business School at the University of New South Wales. Dr Thampapillai is also a Senior Research Associate with Jesus College, Cambridge. Dr Thampapillai is also the National Administrator of the Philip C Jessup International Law Moot Competition in Australia. He has previously been the co-chair of the International Economic Law Group of the Australia & New Zealand Society of International Law (ANZSIL) and the Deputy Chair of the Diversity & Equity Committee of the Australian National University. In 2017, Dilan was a Faculty Visitor at the Faculty of Law, Cambridge University and at the Faculty of Law, Singapore Management University. He was previously an academic at the ANU College of Law from 2014 – 2021. Dilan's research interests are in copyright law, contracts and artificial intelligence. His work on artificial intelligence looks at the capacity of the law to adapt and develop in response to technological change.

Thomas Streinz

Digital Economy Agreements and Global Tech Governance

While the World Trade Organization (WTO) is engaged in a plurilateral effort to advance its electronic commerce agenda through a Joint Statement Initiative (JSI), countries in the Asia-Pacific have crafted a new generation of instruments of international economic law: Digital Economy Agreements. Agreements such as the Digital Economy Partnership Agreement (DEPA) between Chile, Singapore, and New Zealand and the Digital Economy Agreements that Singapore has concluded with Australia and the United Kingdom, respectively, address a broad range of regulatory questions caused by the widespread deployment of digital technologies, including artificial intelligence, and the resulting rapid digitalization of economies and societies.

This paper argues that Digital Economy Agreements transcend formally established yet substantively underdeveloped paradigms of “digital trade” and “electronic commerce”. Digital Economy Agreements are better understood as instruments of international economic law that “meta-regulate” governments’ domestic and international efforts to regulate the digital economy – irrespective of a nexus to transnational “trade” or “investment”. To substantiate this claim, the paper shows how Digital Economy Agreements interface with current debates in other venues of global data and technology governance, in particular public regulatory and private standard-setting efforts to mitigate risks associated with artificial intelligence.



Ultimately, Digital Economy Agreements largely reflect the “Silicon Valley Consensus” of uninhibited data flows and data-driven innovation as superior pathways towards digital development. The paper suggests that this development model need more theoretical and empirical support to legitimize the meta-regulatory frameworks that current Digital Economy Agreements are propagating.

Thomas Streinz is the Executive Director of Guarini Global Law & Tech, a Fellow at the Institute for International Law & Justice, and an Adjunct Professor of Law at New York University School of Law where he convenes the Guarini Colloquium: Regulating Global Digital Corporations and teaches courses on Global Data Law and Global Tech Law.

His current research interests include global economic governance, the law and global governance of digital infrastructures, the regulation of the global data economy, and global law and technology. He is a co-editor of *“Megaregulation Contested: Global Economic Ordering After TPP”* (OUP 2019) and of *“Artificial Intelligence and International Economic Law”* (CUP 2021). He is a co-author of *“The Beijing Effect: China’s ‘Digital Silk Road’ as Transnational Data Governance”* (NYU Journal of International Law & Politics 2021) and of *“Confronting Data Inequality”* (Columbia Journal of Transnational Law 2022).

Chair: An Hertogen

An Hertogen is a Senior Lecturer at the University of Auckland | Waipapa Taumata Rau, New Zealand, where she researches international law and international economic law. She is the co-editor, with Anna Hood, of *International Law in Aotearoa New Zealand* (Thomson Reuters, 2021).



Panel #16: Resilience in the Law of the Sea and International Environmental Law

Resilience in international law can be looked at through many lenses. This panel approaches resilience in a number of ways in the context of the law of the sea and international environmental law. All of the speakers are exploring the intersection of international environmental law, the law of the sea, and theory to build more resilient outcomes for the environment.

Paper Abstracts and Short Biographies

Saiful Karim

Climate Change to Maritime Cybersecurity: The Law of The Sea's (lack of) Response to the Emerging Challenges and Opportunities?

The maritime world is facing unprecedented threats and emerging challenges from various sources. Marine ecosystems and coastal areas are facing greenhouse gas emissions-induced ocean warming, acidification, deoxygenation and sea level rise. The life, property and livelihood of coastal communities worldwide, particularly in the global south, are increasingly vulnerable due to pollution, climate change and unsustainable resource exploitation. The growing impacts of climate change exacerbate the long-standing problems of marine pollution and the unsustainable exploitation of resources. Moreover, the maritime sector is facing other emerging challenges such as cyber-attacks, regulation of autonomous ships, and ensuring seafarers' rights during a global crisis. Against this backdrop, this paper aims to examine the response of the law of the sea in combating emerging challenges. In doing so, it will discuss the United Nations Convention on the Law of the Sea (UNCLOS) and other associated legal regimes including International Maritime Organisation (IMO) legal instruments, regional fisheries management organisations (RFMOs) legal instruments and the Regional Seas Conventions and Action Plans (RSCAPs). UNCLOS is an umbrella regime including many specialised international and regional legal instruments by reference. This provides the UNCLOS legal regime with inherent resilience or flexibility. The question is whether the regime successfully uses this inherent flexibility in response to emerging challenges. Therefore, this paper will focus on the global ocean legal regime's responses (or lack) to the emerging challenges in a resilient and effective way.

Saiful Karim is an Associate Professor and the Leader of the Ocean Governance Research Group (OGRG) in the School of Law at Queensland University of Technology (QUT). Dr Karim teaches and researches in various areas of ocean and environmental law. He has published extensively in the fields of ocean and environmental law and has presented research papers at several conferences and workshops organised by various organisations based in Asia, Europe, North America and Oceania. He is a lead author of the Intergovernmental Panel on Climate Change (IPCC) Special Report on the Ocean and Cryosphere in a Changing Climate (SROCC). He is also a lead author of the first Global Assessment and the first Asia Pacific Regional Assessment of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services



(IPBES). Dr Karim was an advisor to the Australian government delegation in various meetings of the Indian Ocean Tuna Commission (IOTC).

Joanna Mossop

The unrealized value of the commons

The notion of the ocean as a 'commons' space is not new. Fisheries have long been seen an example of common property and a tragedy of the commons. Much of the analysis of commons has come from a property or economic perspective. However, the commons discourse has the potential to contribute so much more to the theoretical and practical application of international law. Resilience of international law requires the ability to adapt and shift as conditions change. If not, if international law is resilient **to** change, then the legal framework cannot adapt adequately in the face of new challenges.

In this paper I want to explore the underlying values of a commons area or resource. Does the fact that the high seas is a commons area bring with it specific obligations to protect the environment, and what does that mean for international organisations that exploit commons resources? In doing so I will draw on the literature theorising the commons and look at recent calls for new approaches to managing oceans that may offer a path to a sustainable future.

Joanna Mossop is a Professor at the Law Faculty at Victoria University of Wellington | Te Herenga Waka. She is an expert in the law of the sea and her publications touch on: maritime security, the continental shelf, biodiversity beyond national jurisdiction, dispute settlement, whaling and more. She has recently been an observer on the New Zealand delegation for the negotiation of the new treaty on conservation and sustainable use of marine biodiversity beyond national jurisdiction, and she has published widely on this topic. In 2019 The New Zealand government nominated her to the list of arbitrators and conciliators under the United Nations Convention on the Law of the Sea. She has consulted for the UNDP and has provided training to many New Zealand government departments in the law of the sea.

Ruby Moynihan Magsig

Ensuring the resilience of marine ecosystems and communities in international ocean law and fisheries management

Marine ecosystems and biodiversity face unprecedented decline. Anthropocentric pressures (including overexploitation, pollution, and climate change) are critically endangering the health of marine ecosystems, undermining food security, health, economic development and cultural values derived from our ocean resources. Ocean law has failed to respond to the marine biodiversity crisis, jurisdictional structures and substantive rules are not aligned with the natural reality of ocean systems and do not distribute the benefits of ocean resources in an equitable way. Despite increasing recognition of the connectivity of ocean ecosystems and the impact of degrading



ocean health on human well-being, the overall trend has been to develop law in silos, and zones that artificially divide ecosystems.

Fisheries management is the human activity with the biggest impact on marine ecosystems. This paper will ask how can an ecosystem approach be better used as a critical legal framework to transform equitable and sustainable use of marine ecosystems as part of ocean law and international fisheries management? The ecosystem approach has had significant impact across several areas of international environmental law, however its legal status, normative content and the effect of its application within ocean law requires further clarification. This research will draw from other areas of international environmental law to explore how the resilience of marine ecosystems and communities could be improved through a strengthened ecosystem approach in international oceans law and fisheries management. These questions are examined through the lens of Aotearoa and the Pacific with a focus on regional fisheries management organisations.

Ruby Moynihan is a Senior International Advisor to the New Zealand Government's Department of Conservation and a Senior Research Fellow at the Victoria University of Wellington | Te Herenga Waka.

Ruby leads and contributes on behalf of the New Zealand Department of Conservation to international negotiations and the implementation of international environmental law and policy. Ruby's research and teaching examines how international law evolves to address complex environmental challenges in a changing geopolitical world. She specialises in the areas of biodiversity, freshwater, and ocean law where she explores questions of natural resources equity, human rights approaches to environmental justice and the interface between law, science, and policy. Ruby has worked across diverse developed and developing country contexts and contributes to high-level collaborative projects for the UN, other international organisations and NGOs. Ruby currently co-leads a Royal Society of NZ Marsden Project on 'Reimagining Ocean Law to Achieve Equitable and Sustainable Use of Marine Ecosystems'.

Ruby is an invited member of the IUCN Commission on Environmental Law, the European Environmental Law Forum, an appointed expert to the Wuhan University China Institute of Boundary and Ocean Studies (CIBOS), International Water Law Academy and an Enrolled Barrister and Solicitor of the High Court of New Zealand.

Erika Techera

Why international environmental law must support the resilience of kelp forests: a case study of a lesser known coastal ecosystem

Environmental degradation, including biodiversity loss and the impacts of climate change, poses significant threats to marine and coastal ecosystems. Supporting the resilience of these ecosystems will have multiple ecological, socio-economic and cultural benefits. International environmental law regimes play an important part in catalysing conservation, management and restoration, however, not all ecosystems



have received the same level of attention. While there is growing interest in addressing threats and conservation challenges for many marine and coastal ecosystems, kelp forests are being left behind. Kelp forests are one of the world's most extensive coastal ecosystems and provide critical ecological functions and services that are relied upon by diverse communities in myriad ways. Kelp forests also have significant potential to contribute to climate change responses, yet just as this potential is being investigated by scientists these ecosystems are experiencing rapid rates of decline. To ensure future food security and livelihoods, as well as economic and climate resilience, we must find ways to catalyse conservation, management and restoration activities. This presentation focuses on kelp forests as a lesser known ecosystem, to highlight their invisibility in international environmental law compared with other coastal ecosystems such as coral reefs, mangroves and seagrass meadows, and to underscore the mismatch between emerging scientific data and governance responses. This presentation contributes to the rapidly expanding multi-disciplinary scholarship on kelp forests.

Erika Techera is a Professor of Law at *The University of Western Australia (UWA)*. She is an international and comparative environmental law academic with particular expertise in environmental governance issues across the Indo-Pacific. Her research interests include marine environmental and natural resources law in small island developing states, maritime heritage and history, and issues at the interface of science, technology, and law. Her current projects focus on strengthening marine environmental law in the Indian Ocean to support the blue economy, shark conservation law and policy, and the legal protection of kelp and mangrove ecosystems.

Chair: Karen Scott

Karen Scott is a Professor of Law at the University of Canterbury | Te Whare Wānanga o Waitaha in New Zealand, Associate Dean (Research), President of the Australian and New Zealand Society of International Law (ANZSIL) and Editor-in-Chief of Ocean Development and International Law (ODIL). Karen is on the board of seven journals including the Brill Research Perspectives on the Law of the Sea and the Australian Yearbook of International Law. She researches and teaches in the areas of public international law, law of the sea and international environmental law. Karen has published over 100 edited books, journal articles and book chapters in these areas. Karen was Head of the School of Law at the University of Canterbury between 2015 and 2018. She previously taught at the University of Nottingham in the UK.



Panel #17: International Criminal Law

Paper Abstracts and Short Biographies

Daley Birkett

Sentencing Ecocide

In June 2021, commissioned by the Stop Ecocide Foundation, the twelve-strong Independent Expert Panel for the Legal Definition of Ecocide announced the text of its proposed definition of ecocide. The definition is explicitly designed for inclusion – by way of amendment to the Rome Statute of the International Criminal Court (Rome Statute) – among the “core crimes” that fall within the jurisdiction of the International Criminal Court (ICC, Court). Drawing on the jurisprudence of the Land and Environment Court of New South Wales (LEC), this paper examines the consequences of including this proposed crime, which possesses characteristics distinct from the other crimes under the Court’s jurisdiction, for the ICC’s sentencing regime. The paper evaluates how the LEC’s rich case law might assist the ICC’s judges in interpreting the sentencing criteria detailed in Article 78 of the Rome Statute and Rule 145 of the Court’s Rules and Procedure and Evidence, particularly in relation to the central notions of “gravity”, “damage”, “harm”, and “victims”. The paper proposes that the ICC sentencing schema offers sufficient flexibility to accommodate the proposed crime of ecocide, though safeguards ought to be employed when sentencing crimes whose primary “victim” is the environment. Even if the ICC is not the ultimate forum before which individuals (and, perhaps in time, entities) are tried for committing ecocide, the recommendations detailed in this paper, underpinned by the LEC’s decisions, might serve as a guide to which other tribunals, whether international(ised) or domestic, might turn for direction when sentencing similar crimes in the future.

Daley J. Birkett is a Senior Lecturer at Macquarie Law School. He holds a PhD from the University of Amsterdam as well as LLM (Leiden University) and LLB (Durham University) degrees. Daley’s research interests lie in the field of public international law, with a particular focus on the law and practice of international(ised) criminal tribunals and the United Nations Security Council and the *jus ad bellum*. A prize-winning researcher, Daley has published his scholarship in prominent periodicals, including the Leiden Journal of International Law, the Journal of International Criminal Justice, and the Chinese Journal of International Law. Daley has also (co)-edited and/or contributed chapters to books published by Cambridge University Press, Routledge, and Brill Nijhoff. He has twice served as (Senior) Legal Consultant to the United Nations Assistance to the Khmer Rouge Trials, supporting the International Judges of the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia.

Jonathan Hafetz

International Criminal Law after Ukraine: The Enduring Power of Narrative in the Absence of Legal Accountability



International criminal law (ICL) faces its most significant challenge in decades. Russia's invasion of Ukraine has not only killed hundreds of thousands of people, displaced millions of others, and wreaked economic devastation across the globe. It has also highlighted the challenges, if not seeming impossibility, of deterring or holding responsible those most responsible for international law violations when the stakes are highest. ICL's perceived shortcomings, moreover, reflect broader concerns about a breakdown in the rules-based international order—the rich web of norms and institutions developed since World War II to restrain state power and foster international cooperation. The conflict thus squarely presents the question of whether international law is still resilient and, indeed, still relevant.

The paper examines ICL's continuing influence over how conflicts are framed, waged, and ultimately memorialized by exploring its effects beyond the realm of prosecutions and judicial decisions. It describes, for example, how ICL has supplied a framework for public debate about Russia's invasion of Ukraine and generated support for military assistance and economic sanctions. The paper further examines how ICL's impact on narratives about the war have relevance not only for Ukraine but also for future conflicts amid an increasing fragmentation of the international legal order. The paper thus describes how ICL continues to have a significant impact, even if it often remains unenforced and falls short of its ideals.

Jonathan Hafetz is an expert on constitutional law, international criminal law, national security law, and transnational justice. He joined Seton Hall Law School in 2010. Professor Hafetz is the author of the books, *Punishing Atrocities through a Fair Trial: International Criminal Law from Nuremberg to the Age of Global Terrorism* (Cambridge Univ. Press 2018), and *Habeas Corpus after 9/11: Confronting America's New Global Detention System* (NYU Press 2011), which received the American Bar Association's Silver Gavel Award, Honorable Mention, and the American Society of Legal Writers, Scribes Silver Medal Award. He is the editor of *Obama's Guantanamo: Stories from an Enduring Prison* (NYU Press 2016) and the co-editor (with Mark Denbeaux) of *The Guantanamo Lawyers: Inside a Prison Outside the Law* (NYU Press 2009). Professor Hafetz's scholarship has appeared in numerous publications, including the *Yale Law Journal*, *UCLA Law Review*, *Columbia Law Review Sidebar*, *Wisconsin Law Review*, *International Journal of Human Rights*, and *Cambridge Journal of Comparative & International Law*, and has been cited by numerous courts. Professor Hafetz was awarded a Fulbright Scholarship (for Japan) and was a Visiting Research Scholar in the Program in Law and Public Affairs at Princeton University.

Melody Yang

Law in a World of Shadows: the Duty to Prevent Genocide and the Ecology of Norms

Prevention in its various forms is arguably the most important of the objectives of international agreements targeting heinous conduct. Yet the assessment of prevention involves the calibration of effects that are intangible or indirect when contrasted with concrete outcomes such as the prosecution of offenders under criminal law whether municipal or international. The evaluation of effectiveness in relation to such intangible effects calls for interrogation of the wider context or



'ecology' of international regulation including both synergies and conflicts of relevant norms. This exercise in turn illuminates the drafting of international agreements and may inform critique. Against this background, this article, co-authored with John Morss, assesses the status of the duty to prevent genocide applicable to States Parties under the Convention on the Prevention and Punishment of the Crime of Genocide 1948. As well as noting the key role of the United Nations Security Council, it explores whether the unilateral use of force is permissible to prevent genocide, given the near-absolute prohibition of the unilateral use of force enshrined in the Charter of the United Nations. Available proposals designed to resolve this conflict within the international legal system are evaluated with attention being paid to the preemptory nature of the relevant conflicting norms. It is concluded that the unilateral use of force is not permissible to prevent genocide under the existing international legal system. This conflict of norms illustrates the ecological interrelationships between norms. Consequences for the design and implementation of preventive measures in international law are discussed.

Melody Yang is a dedicated court staff member at the Magistrates' Court of Victoria in Australia. She received a Bachelor of Laws (Honours) with First Class Honours from Deakin University in 2022 and is currently completing her Practical Learning Training to be admitted to practice in Victoria. Ms Yang has a deep passion to help vulnerable groups and her dedication is exemplified through her volunteer work at the Asylum Seeker Resource Centre, where she provides valuable assistance to those seeking asylum. Her areas of interest include: International Law, Refugee Law, International Humanitarian Law, and War and Peace. Ms Yang's commitment to community service makes her an asset to the legal profession and the broader community.

Chair: Marnie Lloyd

Marnie Lloyd is Senior Lecturer and Associate-Director of the New Zealand Centre for Public Law at Victoria University of Wellington | Te Herenga Waka, Faculty of Law. Marnie was recognised as a Women Leader in Law by the Borrin Foundation in 2022, and serves as Co-Chair of ANZSIL's International Peace & Security Interest Group, as well as on New Zealand's IHL Committee, Inter-governmental Working Group on Lethal Autonomous Weapons, and the Editorial Boards of the Asia-Pacific Journal of International Humanitarian Law and New Zealand Journal of Public and International Law. Marnie has extensive prior experience as a Delegate and Legal Adviser with the International Committee of the Red Cross (ICRC) and as a legal consultant for the United Nations High Commissioner for Refugees (UNHCR).



Panel #18: Accommodating Differences in Trade Law

Paper Abstracts and Short Biographies

Ben Czapnik

The Impact of Chinese Trade Coercion on the Resiliency of International Law

The US-China trade war has fuelled a debate about which party should take primary responsibility for undermining the multilateral trading system and the broader impact on international law. While the ignition point for this trade war was reached under the Trump Presidency, we argue that there were already significant underlying forces pushing in the direction of conflict and confrontation.

This paper, co-authored with Bryan Mercurio, focusses on three aspects of China's approach to international trade law which serve as worrying harbingers for the resiliency of international law more broadly. First, China challenges certain widely-accepted foundational principles of the WTO, including non-discrimination and transparency. It has used retaliatory discrimination against trade partners for grand strategy purposes, including Japan, Norway, Korea, Canada and Lithuania, as well as its ongoing "trade tensions" with Australia. Second, China challenges the system through the non-implementation of legal commitments. While some scholars suggest that China's non-compliance can be addressed through WTO litigation, we argue that the scale of non-compliance represents a unique and fundamental challenge. Third, China's approach to WTO negotiations reveals an inherent antagonism towards new rules. While the US has recently veered towards unilateralism, we suggest that China will not replace it by serving as *demandeur* for a stronger system. Indeed, even if China does not explicitly seek to unwind international law, it will be satisfied to see it atrophy and lose importance. When combined, these challenges — to foundational principles, legal obligations and the continual negotiation and renewal of the system — represent an existential threat to international law.

Ben Czapnik is a postdoctoral fellow at the National University of Singapore where he researches the WTO's right to regulate, especially for public morals purposes. He previously undertook a postdoctoral fellowship at the Chinese University of Hong Kong conducting research on China's trade relations including its trade tensions with the US, Australia and other countries. His research on WTO law has been published in leading peer-reviewed journals, including the *Journal of International Economic Law*. In addition to his academic research, Dr Czapnik has extensive experience as a government official and diplomat representing Australia in trade negotiations and disputes.

An Hertogen

After World War II, trade liberalisation agreements were agreed upon to avoid the beggar-thy-neighbour policies of the 1930s. With the ongoing Appellate Body appointments crisis at the WTO, the US insistence that the national security exception is entirely non-justiciable, efforts at "friend-shoring" by powerful economies, and



increasing unilateralism, the question arises of how resilient international trade law is to avoid a return of such policies in an era of geopolitical tension and of other pressing challenges such as global pandemics and climate change.

I address what can be changed, if anything, to make international trade law more resilient. Interdependence has always been the bread-and-butter of international law, but our main technique of managing interdependence —international treaty-making — has produced few results over the past few decades. I intend to return to international law basics about moral and legal duties towards other states and their citizens to evaluate how these might apply in the context of in international trade to safeguard against the return of beggar-thy-neighbour policies.

An Hertogen is a Senior Lecturer at the University of Auckland | Waipapa Taumata Rau, New Zealand, where she researches international law and international economic law. She is the co-editor, with Anna Hood, of *International Law in Aotearoa New Zealand* (Thomson Reuters, 2021).

Michał Swarabowicz

In *Vladislav Kim v. Uzbekistan*, an investment treaty tribunal found that a payment made to the country's first daughter would not qualify as an act of bribery because her "family relationship" did not render her "a government official". A myriad of similar judicial and arbitral pronouncements dealing with: "systemic" deficiencies in local governance, the "highly uncertain legal environments", and the "quid pro quos", raise questions about international law's adaptation to the post-communist political economy.

This article describes the exoticizing gaze of the attempted interventions into constituting a boundary between the State and the market. It spotlights the shared ideational horizon which structures oppositions in legal argument about the power lurking behind the façade of "weak" institutions. The two ideal-type approaches either stigmatizing or accommodating the "realities" of power are abstracted from selected decisions of arbitral tribunals, ECtHR, and the FCPA adjudication. The research contributes to scholarship problematizing international law's engagement with illiberal regimes. First, international economic law scholars usually operate with a model of a Western liberal regulatory State. Second, pos-colonial scholars focus on continuities and effects of power – they examine less often the legal imagery through which that power operates. The paper seeks to put the imagery developed in transnational adjudication in a perspective offered by on literature on law's role in post-Communist governance and to contribute to discussions about law's engagement with heterodox forms of capitalism.

Michał Swarabowicz is a Swiss National Science Fund postdoctoral research fellow at the University of Amsterdam (UvA) and University of the New South Wales (UNSW). His current research concentrates on international economic law's liberal legalism in historical perspective. Michał holds a PhD in international law from the Graduate Institute in Geneva. Before that he completed his legal education at Sciences Po Paris and Paris I Pantheon Sorbonne. Michał also holds an undergraduate degree



in economics from the Warsaw School of Economics. He worked on Russia-related arbitration cases at the Shearman & Sterling's LLP in Paris.

Chair:



Panel #19: Resilience at the Fault Lines: National Security and International Law

The meaning of the term “national security” is mutable and amorphous, and so it is that national security law is constituted by various disciplines, including international law. National security law is preoccupied with attempts by the State to respond to actual and perceived threats to government, values, even existence. In turn, this also tests the resiliency of international law, including the application of international law to new technologies and methods. In that context, this panel includes three papers. First, the resiliency of international humanitarian law vis a vis domestic constructs in the context of the Russian conflict in Ukraine is considered. Second, the consequences for international law of integrating marine autonomous vehicles into national security architecture are identified. Third, the relevance to international law of increased domestic attention on foreign interference is explored.

Paper Abstracts and Short Biographies

Douglas Guilfoyle

Integrating marine autonomous vehicles into national security architecture

What do we want Marine Autonomous Vessels (MAVs) for, and how do we expect to use them? There has been a degree of techno-optimism about the potential for MAVs to transform navies or coastguards into ‘distributed’ or ‘networked’ forces by providing a greater number of cheaper assets requiring fewer human operators. However, we should distinguish between the potential uses of MAVs for maritime domain awareness operations (MDA), constabulary law-enforcement operations, and military activities (including intelligence gathering); as well as between near-and distant-water operations. To the extent that a major function for MAVs may be MDA surveillance or military intelligence gathering operations a question of how that information is processed and decisions made by ‘humans in the loop’ arises. Using Australia’s Maritime Border Command as a case study we see an example of an Artificial Intelligence (AI) system is used to flag which vessels at sea need consideration from law enforcement and security services. This means potential maritime security incidents are pre-screened and filtered by a human-out-of-the-loop system and human decision makers have only a AI-filtered MDA picture. The consequences of such systems for decision makers exercising jurisdiction or responsibility under international law remain largely under-examined in a civilian maritime context.

Douglas Guilfoyle is Professor of International Law and Security at University of New South Wales Canberra. His principal areas of research are maritime security, the international law of the sea, and international and transnational criminal law. He is a 2022-2025 Australian Research Council Future Fellow, working on the project "Small States' use of law of the sea litigation against greater powers" (FT210100186). He is also a non-resident fellow at the Sea Power Centre-Australia and was a Visiting Legal Fellow at the Department of Foreign Affairs and Trade (2018-2019). He is the author of *Shipping Interdiction and the Law of the Sea* (CUP 2009) and *International Criminal*



Law (OUP 2016). His research work is informed by his consultancy to various governments and international organisations. He was previously a Professor of Law at Monash University, Reader in Law at University College London, and has worked as a judicial associate in the Australian Federal Court and the Australian Appeals Tribunal. He was also practiced as a commercial litigation solicitor in Sydney. He was a Gates Cambridge Trust scholar and a Chevening scholar during his graduate study at the University of Cambridge.

Lauren Sanders

IHL in a domestic setting – lessons of resilience from Ukraine

The application of IHL in a domestic setting is not often considered by states with advanced democracies; however, the events in Russia has caused many states to reflect on which laws of IHL are still applicable in large-scale international armed conflicts. Additional consideration should be given to how the law may impact upon questions of national security when facing an existential crisis, and how application of laws to enable participation in an armed conflict may need to adjust. In this presentation Dr Sanders will elucidate which laws of armed conflict have been found in need of an adjustment to account for other legal developments since World War II, focusing in particular upon novel technologies. She will also briefly consider which Australian domestic laws necessarily require adaptation to support deployment of a large-scale military force, such as laws necessary for internment, conscription, acquisition of property and expansion of national security measures. This observation will demonstrate that the laws in place are sufficiently robust to achieve the needed outcomes in armed conflict for protection of civilians and combatants; and that the mechanisms in place to activate the necessary laws in Australia to give domestic effect to mass mobilization requirements are also satisfactory, albeit with some policy challenges in determining the scope and extent of the necessary executive action in the face of such a crisis.

Lauren Sanders is a Senior Research Fellow with the TC Beirne School of Law, The University of Queensland in the Law and Future of War project. She is also the Managing Director of public international law firm International Weapons Review, which specialises in international law relevant to the weapons, means and methods of warfare including autonomous and AI enhanced systems. Her doctoral studies were in international criminal law accountability measures, and her expertise is in the practice of international humanitarian law including advising on the accreditation and use of new and novel weapons technology. She has recently been invited to sit as a member of NATO's first Defence AI Review Board legal sub-committee. She has over twenty years of military experience and has advised the ADF on the laws applicable to military operations in Iraq and Afghanistan and domestic terrorism operations. She is a graduate of the Australian Command and Staff College, and was awarded a Conspicuous Service Cross for her work as the Command Legal Officer within Special Operations Command and a CDF commendation for aiding in the reform of the summary discipline system. Lauren is a Colonel in the Australian Army Reserve,



where she is a member of the Principal Writing Team for the Law of Armed Conflict Manual and teaches at the Asia Pacific Centre for Military Law.

Danielle Ireland-Piper

Foreign Interference: what domestic responses mean for international law?

In February 2014, the Australian Minister for Home Affairs chose a speech at the ANU National Security College to name Iran as having engaged in intimidation of Australian citizens in Australia. Subsequent public commentary employed in acts of foreign interference. The express naming of a country accused of having engaged in acts of foreign interference. The term attribution, however, has technical, legal, and political meaning. Subsequent commentary also referred to the need for deterrence and resilience in the context of foreign interference. In that context, this paper considers what the rise of domestic national strategies on the issue of foreign interference mean for international law, including as relates to state responsibility, counter measures, and the principle of non-interference. The paper also considers the notion of “resilience” as used by national security policy makers and the ways in which international law can – and should – inform the conceptualisation of resilience in domestic frameworks.

Danielle Ireland-Piper is an Associate Professor at the National Security College, The Australian National University and an Honorary Adjunct Professor at the Faculty of Law, Bond University. She is the author of *Extraterritoriality in East Asia* (Edward Elgar, 2021) and *Accountability in Extraterritoriality: A Comparative and International Law Perspective* (Edward Elgar, 2017), as well as other book chapters and articles. Danielle was part of a team awarded a Strategic Defence Policy Grant in 2020–2021. Danielle also contributes to public dialogue and education through media and other forms of public commentary. Her teaching and research expertise includes international law, constitutional law, comparative law, as well as the intersection between these areas of law and national security. Danielle has an LLM from the University of Cambridge where she was a Chevening Scholar, and a PhD from the University of Queensland. She also has experience in both policy and legal roles, including in private legal practice as well as in the Queensland, New South Wales, and Australian governments. She was Associate to the Hon. Chief Justice Susan Kiefel during her Honour’s tenure on the Federal Court of Australia. In 2014, Danielle was awarded a National Citation for “Outstanding Contribution to Student Learning” by the Australian Government Office for Learning and Teaching.

Chair: David Letts

After a decade of teaching and researching at the ANU College of Law, David is now an Honorary Associate Professor at ANU. He is also an Associate Professor at the Australian National Centre for Ocean Resources and Security, University of Wollongong.

Co-edited publications include *Law of the Sea in South East Asia* (Routledge 2020) (with Professor Donald Rothwell) and *Maritime Operations Law in Practice*



(Routledge 2022) (with Professor Rob McLaughlin). David recently wrote the Australian contribution to the Asia Maritime Transparency Institute's series of analyses regarding the Conceptualization of "Maritime Security" in Southeast Asia. He is also one of the authors of *The Newport Manual on the Law of Naval Warfare* (International Law Studies 2023).

David's research interests centre upon the application of legal regimes to military operations, and he has published academic articles and book chapters on topics including military justice, law of the sea, maritime security, the law of naval warfare, international humanitarian law and the legal issues that arise on peacekeeping operations.



Panel #20: Practising International Law – In Conversation

Over the past few decades there have been significant developments in the practice of international law—with an increasing volume and diversity of international law work in the private sector. Following on from a successful international law practitioner panel at the 2022 ANZSIL Conference, this panel aims to bring together different international law practitioners from across Australia and New Zealand, to share their experiences of practising international law across a diverse range of areas in international law and for different kinds of clients. Ranging from general public international law to international environmental law, international trade law and international human rights law, their experience includes working in private law firms and consultancies, for governments, international organisations and non-government organisations—as well as undertaking pro bono work. Among other things, their practice includes providing advice, undertaking litigation and advocacy, developing legislative reform, conducting negotiations, and providing training and capacity-building.

As with the 2022 panel, we envisage the panel as a facilitated discussion, with each speaker addressing questions from the moderator, rather than a set presentation. This way we aim to create a dynamic ‘in conversation’ session that will be of interest to all those interested in learning more about the lived experience of practising international law – and to discuss some of the current and projected trends in this field. The panel also aims to help promote one of ANZSIL’s objectives of encouraging greater engagement of private practitioners in the work of ANZSIL and the international law community across Australia and New Zealand.

Short Biographies

Elana Geddis

Elana Geddis (LLB (Hons), LLM(Harvard)) has over 25 years of comprehensive experience in the practice of public international law, particularly specialising in the law of the sea. She regularly assists clients in New Zealand and overseas. An experienced diplomatic negotiator and advocate, Elana has appeared as counsel in the International Court of Justice, the International Tribunal for the Law of the Sea, an UNCLOS Annex VII Tribunal and the New Zealand Supreme Court. She is also a nominated arbitrator, mediator and conciliator under UNCLOS, the SPRFMO Convention and the Environmental Protocol to the Antarctic Treaty. Most recently, Elana has been instructed by the Government of New Zealand in its intervention before the International Court of Justice in Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation). Elana practises as a barrister and is a member of Kate Sheppard Chambers in Wellington, New Zealand.

Kate Wilson Butler



Gitanjali Bajaj

Gitanjali Bajaj is a Litigation & Regulatory partner with over 15 years' experience in dispute resolution and risk management in major international and domestic projects in the renewable energy, oil and gas, defence, construction and infrastructure and transport sectors. Gitanjali is also the Asia-Pacific Co-Head of International Arbitration for DLA Piper and the Regional Lead for DLA Piper's India Group in Australia. Gitanjali is recognised as Band 1 for Dispute Resolution - Arbitration in Chambers Global and Asia Pacific 2022. Gitanjali is also recognised by Legal 500 as a Leading Individual for Dispute Resolution - Arbitration and as a Next Generation Partner for Construction, and for International Arbitration in Who's Who Legal 2022 and The Best Lawyers in Australia from 2020 to present. Gitanjali has received national recognition for her achievements, for example having been named Lawyer of the Year in The Best Lawyers in Australia 2022 list for International Arbitration and International ADR Practitioner of the Year 2021, at the Australian Dispute Centre's ADR Awards. Gitanjali regularly represents principals and contractors in both domestic proceedings and international commercial arbitrations, where she brings together her in-depth knowledge of the sector and a practical understanding of the procedures of such forums to achieve commercially sustainable outcomes. Gitanjali serves as Vice President of the Australian Centre for International Commercial Arbitration (ACICA), is a Member of the Chartered Institute of Arbitrators (MCI Arb) and is an Ambassador for the IBA Asia Pacific Arbitration Group.

Chair: Sarah McCosker

Sarah McCosker is a founding Partner of Lexbridge, the first specialist international law firm and consultancy in the Asia-Pacific region. Through Lexbridge, she serves as a Special Legal Counsel to the Australian Department of Defence and a legal adviser to the Department of Foreign Affairs and Trade. Her principal fields of expertise are international humanitarian law, international human rights law, negotiation of treaties and other intergovernmental instruments and the relationships between international law and diplomacy. Sarah has also previously worked as an international law adviser for the International Committee of the Red Cross in Geneva, and the Office of International Law in the Attorney-General's Department. In the Office of International Law, Sarah served as Director of the International Security section, Director of the International Human Rights and Anti-Discrimination Section, and Acting Assistant Secretary of the International Human Rights and Anti-Discrimination Branch. Sarah is a Squadron Leader in the Royal Australian Air Force Legal Reserves, and also serves on the ACT International Humanitarian Law Committee of the Australian Red Cross. She holds a doctorate, a Master of Philosophy and Bachelor of Civil Laws from the University of Oxford, all specialising in international law. She also holds double First Class Honours degrees in law and arts from the University of Queensland.



President's Panel: Resilience in Teaching, Research and Practice of International Law

Short Biographies

Claire Charters

Sarah McCosker

Sarah McCosker is a founding Partner of Lexbridge, the first specialist international law firm and consultancy in the Asia-Pacific region. Through Lexbridge, she serves as a Special Legal Counsel to the Australian Department of Defence and a legal adviser to the Department of Foreign Affairs and Trade. Her principal fields of expertise are international humanitarian law, international human rights law, negotiation of treaties and other intergovernmental instruments and the relationships between international law and diplomacy. Sarah has also previously worked as an international law adviser for the International Committee of the Red Cross in Geneva, and the Office of International Law in the Attorney-General's Department. In the Office of International Law, Sarah served as Director of the International Security section, Director of the International Human Rights and Anti-Discrimination Section, and Acting Assistant Secretary of the International Human Rights and Anti-Discrimination Branch. Sarah is a Squadron Leader in the Royal Australian Air Force Legal Reserves, and also serves on the ACT International Humanitarian Law Committee of the Australian Red Cross. She holds a doctorate, a Master of Philosophy and Bachelor of Civil Laws from the University of Oxford, all specialising in international law. She also holds double First Class Honours degrees in law and arts from the University of Queensland.

Tamsin Paige

Tamsin Phillipa Paige is a Senior Lecturer with Deakin Law School and periodically consults for the UN Office on Drugs and Crime in relation to Maritime Crime. Her work is interdisciplinary in nature, using qualitative sociological methods to analyse international law. She also does law and literature research using popular fiction to understand social perceptions of the law. Her work has examined (among other things) Somali piracy, UN Security Council decision making, and conflict based sexual violence. In a former life, she was a French trained, fine dining pâtissier

Douglas Guilfoyle

Douglas Guilfoyle is Professor of International Law and Security at University of New South Wales Canberra. His principal areas of research are maritime security, the international law of the sea, and international and transnational criminal law. He is a 2022-2025 Australian Research Council Future Fellow, working on the project "Small States' use of law of the sea litigation against greater powers" (FT210100186). He is



also a non-resident fellow at the Sea Power Centre - Australia and was a Visiting Legal Fellow at the Department of Foreign Affairs and Trade (2018-2019). He is the author of *Shipping Interdiction and the Law of the Sea* (CUP 2009) and *International Criminal Law* (OUP 2016). His research work is informed by his consultancy to various government and international organisations. He was previously a Professor of Law at Monash University, Reader in Law at University College London, and has worked as a judicial associate in the Australian Federal Court and the Australian Administrative Appeals Tribunal. He has also practised as a commercial litigation solicitor in Sydney. He was a Gates Cambridge Trust scholar and Chevening scholar during his graduate study at the University of Cambridge.

Tim McCormack

Tim McCormack is Professor of International Law at the University of Tasmania and Special Adviser on war Crimes to the Prosecutor of the International Criminal Court in The Hague (since 2010). Tim has been providing Law of Armed Conflict advice to the Office of the Special Investigator in relation to alleged ADF war crimes in Afghanistan and has recently been engaged to provide Law of Armed Conflict advice to Sir Charles Haddon-Cave's Independent Inquiry into alleged UK war crimes in Afghanistan. Tim has long been involved in this area of the law having served as: Foundation Australian Red Cross Professor of International Humanitarian Law (1996-2010) and Founding Director of the Asia Pacific Centre for Military Law (2000-2010), both at Melbourne Law School; *Amicus Curiae* on International Law issues for the Trial of Slobodan Milosevic at the ICTY in The Hague (2002-2006); Charles H Stockton Distinguished Scholar-in-Residence at the US Naval War College, Newport, Rhode Island (2015-16).

Alison Duxbury

Professor Alison Duxbury is the Deputy Dean of Melbourne Law School and the Chair of the International Board of the Commonwealth Human Rights Initiative. She is also a member of the Executive Council of the Asian Society of International Law. Alison's major teaching and research interests are in the fields of international law, international institutional law, human rights law and public law. Her publications include *The Participation of States in International Organisations: The Role of Human Rights and Democracy* (Cambridge, 2011), a co-edited collection, *Military Justice in the Modern Age* (Cambridge, 2016), and a co-authored book, *Can ASEAN Take Human Rights Seriously?* (Cambridge, 2019). Together with Dr Madelaine Chiam, Alison is currently editing a collection, *Australia and the International Legal System: From Empire to the Contemporary World*, to be published by Hart.

Chair: Karen Scott

Karen Scott is a Professor of Law at the University of Canterbury | Te Whare Wānanga o Waitaha in New Zealand, Associate Dean (Research), President of the Australian and New Zealand Society of International Law (ANZSIL) and Editor-in-Chief of *Ocean Development and International Law* (ODIL). Karen is on the board of



seven journals including the Brill Research Perspectives on the Law of the Sea and the Australian Yearbook of International Law. She researches and teaches in the areas of public international law, law of the sea and international environmental law. Karen has published over 100 edited books, journal articles and book chapters in these areas. Karen was Head of the School of Law at the University of Canterbury between 2015 and 2018. She previously taught at the University of Nottingham in the UK.



Panel #21: Critical Approaches

Paper Abstracts and Short Biographies

Philip Kastner

A Critique of Resilience Discourses in International Law

Because of the pervasiveness of ‘resilience’ in neighbouring fields, such as peacebuilding, security studies and international development, it is timely to engage with this concept in international law to better understand its use, function and impact in this context. While the notion of resilience has, generally speaking, highly positive connotations, this paper argues that it can be a double-edged or even a deceitful discursive and conceptual device, including in the context of international law.

Building on the recent critical literature on resilience and adaptive regulation, the paper demonstrates that resilience thinking, because of its future-orientedness and focus on preparing individuals and communities for violent events, does not seek to prevent such violence or to provide justice for it. The focus on managing and adapting to threats can hide power relations and be a distraction that prevents a genuine consideration of the drivers of vulnerability and root causes of threats. In a resilience paradigm, the past, present and future are actually disconnected from each other, which is why a resilience approach can even be deemed antithetical to fundamental values that international law stands for and seeks to promote, such as justice, responsibility and accountability.

Taking the recent armed attack on Ukraine by Russia as a case study, the paper argues that there is – somewhat ironically – great value in international law’s resilience to resilience discourses and to a neoliberal rationality of law and governance: international law can and should resist certain forms of change and prevent an abdication to pragmatic, real political solutions.

Philipp Kastner is a Senior Lecturer at the Law School of the University of Western Australia. He holds degrees from McGill University, Canada (D.C.L. and LL.M.) and the University of Innsbruck, Austria (Dr. iur. and Mag. iur). He researches and teaches in the areas of the resolution of armed conflicts and transitional justice, international criminal law, public international law, law of the sea, and legal pluralism. Publications include *Law and Peace: A Critical Introduction* (Anthem Press, forthcoming 2023), *Legal Normativity in the Resolution of Internal Armed Conflict* (Cambridge University Press, 2015) and *International Criminal Justice* (Martinus Nijhoff, 2012). He is also the editor of *International Criminal Law in Context* (Routledge, 2018) and co-editor of *The Politics of International Criminal Law* (Brill, 2021).

Bjørn-Oliver Magsig

How longtermism can shape more productive international law



The resilience of international law is being tested by a multitude of crises which are constantly in flux. While threats like the climate breakdown are rapidly increasing the scale and complexity of societal risks, international law has failed to bridge the glaring gap between knowledge and action, as inaction only rarely triggers responsibility. One of the main reasons for this is that we have colonised the future. We treat it as a distant colonial outpost devoid of people where we can legally dump ecological degradation and technological risk – as if nobody will ever be there.

To overcome this apparent failing, international law not only has to keep pace with a world that seems to be stuck in an ever-accelerating crisis mode, but it must ensure that the common interests of humanity are protected over time – rather than prioritising short-term national or corporate interests. This Herculean task requires nothing less than challenging international law's inherently reactive character and setting it on a path of longtermism.

For this transformative endeavour to be successful, we need to reanimate the principle of intergenerational equity and sharpen its contours. This research argues that the responsibility to prepare and prevent (R2P2), which is influenced by the Māori concept of whakapapa in which past, present and future are intertwined, can provide a powerful vehicle for the development of a more proactive international law. While the focus is on international environmental law, lessons will also be drawn for the further development of general public international law.

Bjørn-Oliver Magsig is a Senior Lecturer at the Faculty of Law, Victoria University of Wellington, New Zealand where his work revolves around the underlying challenges of public international law with a particular focus on addressing the climate breakdown and the sustainable management of freshwater resources. His current research explores the question of whether the law of state responsibility provides a useful paradigm for addressing global environmental challenges – like climate change – and explores pathways towards cooperative sovereignty and shared responsibility in a changing global order. Bjørn-Oliver has led various interdisciplinary projects revolving around the socio-legal challenges of managing transboundary natural resources and minimising associated risks. He serves on the IUCN World Commission on Environmental Law, is an Associate of the New Zealand Centre for Public Law, and an appointed expert to the Wuhan University China Institute of Boundary and Ocean Studies (CIBOS) International Water Law Academy.

Lucas Lixinski

The Resilience of Identity: Indigeneity and the turn to history in international law

In this paper, I discuss the lack of Indigenous-centric accounts in the turn to history in international law. Considering that one of the main political uses of this turn to history is aimed at exposing, critiquing, and ultimately undoing the harm of colonial encounters (TWAIL, eg), it is somewhat sobering that often, and particularly in Indigenous contexts, this encounter is still told from the perspective of the colonizer. In doing so, it frames Indigenous existence solely from the perspective of victimhood, which is inevitably articulated in a way that denies the agency of Indigenous people



and peoples as historical actors. This paradox showcases the resilience of Eurocentrism in our articulation of international legal projects, and the resilience of Indigenous identity and resistance despite ongoing structural erasure. This paper therefore asks what it might mean epistemologically and methodologically to centre Indigeneity in the turn to history in international law. I am myself non-Indigenous, so I do not aim to offer an “Indigenous view of international legal history”, but rather simply to drive and exploit wedges in scholarship on the turn to history. These wedges might make the field more amenable to attend to the resilience of the subaltern, open the field up to other historical methodologies, and fundamentally query whether we can learn about resilience in the face of external challenges to international legal ordering from the resilience that already exists within international law.

Lucas Lixinski is Professor at the Faculty of Law & Justice, UNSW Sydney. He writes extensively across a range of subfields of international law, particularly international human rights law and international cultural heritage law. He is also recipient of the American Society of International Law’s Certificate of Merit for high technical craftsmanship and utility to scholars and practitioners in 2021. His latest monograph is *Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice* (Cambridge University Press, 2021). He is currently co-editing (with Mattias Ahren, Claire Charters, and Jessie Hohmann) the *Oxford Handbook of Indigenous Peoples and International Law*.

Sharmin Tania

Marginalised Economies in World Trade Law: Re-thinking the History and Making of International Trade Law

World trade laws, constituted of the laws and legal processes of the World Trade Organisation (WTO), governs the trade and economic relationship amongst countries at different stages of economic development. This includes 35 Least Developed Countries (LDCs), whose contribution to the ‘marketplace’ of world trade and global economy is meagre and has not attracted academic attention as to their marginalisation in international economic law discourse. This paper will understand how the marginalisation of LDCs continues by placing them in a subordinate position in the making of trade laws, in negotiation process and in the mainstream legal scholarship of international trade. These countries undoubtedly bear the brunt of COVID-induced economic crisis, Russian aggression over Ukraine in the form of food crisis, climate change and the geopolitical power struggle between developed and emerging developing countries. LDCs’ voices are either unheard or expressed in an apologetic manner for remaining poor despite being recipients of favourable terms and arrangements in the WTO Agreements and piecemeal Decisions. This paper focuses on these marginalised economies by re-thinking the history of international trade law not from the establishment of Bretton Woods System, rather from the imperial laws of the colonial period in Vitoria’s ‘right to trade’ for Europeans as a law of *jus gentium*. In doing so, the paper draws inspiration from the critical international legal theories that unsettled the mainstream narrative of the history and making of



international law and articulates the political economy of world trade law from the standpoint of LDCs.

Sharmin Tania is a lecturer at Curtin Law School, Curtin University. She works in diverse areas of international law, law and development and South Asian law. Sharmin teaches consumer law and policy and equity and has published journal articles in these areas. Sharmin is currently supervising PhD theses on corporations' human rights obligations in Australia's renewable energy sector, and nationality as a human right. She is an editor of the journal *International Trade and Business Law Review*. Sharmin holds a PhD in Law from Macquarie University, and LLM in International Law from the University of Cambridge.

Chair: Jesse Hohmann

Jessie Hohmann is an Associate Professor at the Faculty of Law, University of Technology Sydney. Her work encompasses the material culture, materiality and objects of international law, human rights and the rights of Indigenous Peoples. Her publications include the groundbreaking *International Law's Objects* (Hohmann and Joyce, eds, 2018). Before joining UTS, Jessie was a senior lecturer at Queen Mary, University of London. She holds degrees from the University of Cambridge – where she was a PhD student based at the Lauterpacht Centre – Sydney University, Osgoode Hall (York University) and the University of Guelph.



Panel #22: Resilience through Law-Making and Interpretation

Paper Abstracts and Short Biographies

Rebecca Barber

The Evolving Role of the General Assembly vis-à-vis the Security Council in the Maintenance of Peace

In recent years, the UN Security Council has proved unable to respond to pressing global security crises. The General Assembly has been stepping up, passing robust resolutions including on Syria, Myanmar and Russia/Ukraine, and most recently committing to meet every time a veto is cast in the Security Council.

This article considers the extent to which the General Assembly's recent interventions have altered its role in the UN system, and specifically, its position *vis-à-vis* that of the Security Council. It first reviews the Assembly's powers as described in the UN Charter; then considers the way in which the Assembly has interpreted those powers over time, from its forays into peacekeeping in the 1960s through to more recent responses to crises in Syria, Myanmar and Ukraine. It then elaborates how, in international law, the Assembly's practice shapes its legal powers, and considers what impact the Assembly's recent interventions have had on those powers. The analysis finds that the Assembly's recent interventions have been in line with the Assembly's past practice and squarely within its evolved powers; but that nevertheless, those interventions have shifted the expectations of States – and the status quo – pertaining to the relative roles and responsibilities of the General Assembly and Security Council. The final part of the article proceeds on the assumption that we may now look to the Assembly to intervene more routinely and robustly in global security crises, and considers what – in that case – we should look to the General Assembly to usefully do.

Rebecca Barber is a Senior Research Fellow at the Asia Pacific Centre for the Responsibility to Protect (R2P), University of Queensland. Her research encompasses UN Charter law, international peace and security law, international organisations, state responsibility, international human rights and humanitarian law and the responsibility to protect. Her research on these topics has been published in leading international law journals including the *International and Comparative Law Quarterly*, the *International Review of the Red Cross*, the *Journal of International Peacekeeping*, the *Journal of Conflict and Security Law* and the *Journal on the Use of Force in International Law*, among others. She also writes frequently for online forums including *Just Security* and *EJIL:Talk!*. She serves on the editorial board of the *Journal of International Peacekeeping*. Rebecca has received several national and international awards for her research including the *International and Comparative Law Quarterly's* early career prize (2021), an Australian Legal Research Award (2022) and awards for HDR research excellence from the University of Queensland's Law School (2021) and Faculty of Business, Economics and Law (2022). Rebecca previously had a career in international humanitarian assistance and advocacy, with assignments in Africa, South and Southeast Asia and the Pacific.



Josephine Toop

Supporting Resilience of MEAs and RFMOs: Potential of Global Administrative Law Principles

Given that modern environmental concerns often require cooperative action, a plethora of multilateral environmental agreements (MEAs) and regional fisheries management organizations (RFMOs) have been established. Such ongoing institutions for continued dialogue, monitoring and compliance, and deepening commitments are a necessary part of the solution, and some have enjoyed degrees of success. However, many are not adequately solving the problems they were created to address. Global administrative law, which *inter alia* describes the growth in regulation beyond the state, and the rising, although uneven, appearance of principles familiar from administrative law to accompany it, offers some useful resilience building potential for international environmental law. The author has conducted broad comparative mapping research into the rules of 30 MEAs and RFMOs, looking for the principles of participation, transparency, reason-giving, review, and impartiality, in the rules relating to governing bodies, secretariats, finance, compliance and scientific advisory bodies of these regimes. The author found the principles appearing in the rules to varying extents, which she will explain in this paper, and she analyzed how they appeared to perform some important red light (power checking, justice) and green light (power directing, wisdom) functions. Whilst unlikely to be a panacea, and not necessarily suitable for every area of operation, the author suggests that greater incorporation of these principles in appropriate circumstances may help bolster MEAs and RFMOs by enhancing their effectiveness and legitimacy, so that they can better address ecological concerns and more robustly navigate some of the difficulties that they may face going forward.

Josephine Toop (LLB, BA(Hons), LLM (Hons), PhD) is a recent doctoral graduate of the University of Canterbury | Te Whare Wānanga o Waitaha, currently working towards publishing her research. In the past, Josephine has worked as a legal practitioner, lecturer, and for the Aarhus Convention Secretariat at the United Nations Geneva office, supporting particularly the Aarhus Convention Compliance Committee and the Task Force on Public Participation in Decision-Making. Her PhD concerned global administrative law principles in multilateral environmental agreements (MEAs) and regional fisheries management organizations (RFMOs). She undertook comparative mapping of the rules of 30 MEAs and RFMOs to see where and how the principles of participation, transparency, reason-giving, review, and impartiality are in action, and then considered the extent to which these principles may help improve effectiveness and support the legitimacy of these regimes.

Ash Stanley-Ryan

The UN Secretariat, the Drafting of the Genocide Convention, and the Progressive Development of International Law

This paper, guided by the travaux préparatoires, analyses the UN Secretariat's participation in the drafting of the Genocide convention. The Secretariat draft, a so-



called “maximum programme”, proposed several major progressive developments of international law. The inclusion of “cultural genocide”, the proposed establishment of an international criminal court, the prohibition of reservations, and the concept of universal jurisdiction were points of discomfort for delegates, in no small part because they encroached upon the principle of sovereignty and the notion that states, and states alone, created international law. This discomfort drove the Ad Hoc Committee to reformulate the draft convention, which was significantly revised again by the Legal Committee before its adoption. The most progressive of the Secretariat’s proposals did not survive the drafting process, but their echo is seen in several future legal developments, including the 1951 advisory opinion of the International Court of Justice on the Genocide Convention, and the eventual establishment of the International Criminal Court. The Secretariat’s draft helped to socialise international criminal justice as a component of the post-war architecture. Analysis of the travaux also reveals an interesting thematic inversion: between 1948 and 2005, the Secretariat found itself increasingly advocating for exceptions to the prohibition against the use of force, particularly as concerns atrocity crimes. This analysis is supplemented by research into archival materials of the United Nations from 11 December 1946 to December 1947. This paper is part of a wider examination of how the UN Secretariat contributes to the progressive development of international law.

Ash Stanley-Ryan is a Teaching Assistant at the Geneva Academy of International Humanitarian law and Human Rights, and a PhD candidate in international law at the Geneva Graduate Institute. His doctoral research examines the United Nations Secretariat as an actor in the creation and interpretation of international law. Its core hypothesis is that the United Nations Secretariat is an oscillating actor, whose efforts to influence international law have both strengthened and weakened the Charter framework. Prior to his doctoral studies, Ash was part of the editorial team of the *International Review of the Red Cross*, a peer-reviewed academic journal produced by the ICRC’s legal division. Ash previously served as the student editor-in-chief of the *New Zealand Journal of Public and International Law*. He is admitted to the New Zealand bar and has worked for the ICRC, the United Nations, and the New Zealand Ministry of Foreign Affairs and Trade.

Nish Perera and Angad Keith

The identification of customary international law remains a difficult and controversial endeavour. The utility and futility of customary international law as a source of international law continues to be debated amongst practitioners and academics. Amongst its many contributions to the development of international law, the International Court of Justice decisions, including *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (*Nicaragua*), continues to guide international lawyers’ understanding of how to identify customary international law.

As the international rules-based order faces increasing pressure in new (and some not-so-new) ways, this paper will interrogate the resilience of the customary law-making process amidst the many new and evolving ways, States have begun to express their views on international binding obligations. The paper will revisit the



decades old debate of the threshold necessary to identify that a rule of customary international law exists and apply this threshold to more recent expressions of *opinio juris* and state practice.

The paper will then consider the implications of these findings for the application of rules of customary international law to emerging issues, including to new and developing technologies.

Nish Perera's current work focuses on cyber, security treaties, and Australia's ICJ intervention in Ukraine's case against Russia. She is DFAT's legal advisor to the UN Open-Ended Working Group on Cyber, and works very closely with DFAT's Office of the Pacific in relation to implementation and negotiation of security treaties. She also tutors international law at the Australian National University.

Before joining DFAT, Nish worked in the Attorney-General's Department's Office of International Law, where she worked across a variety of practice groups, including human rights and refugee law, environmental law, and trade law. Prior to joining the public service, Nish worked as a refugee lawyer with Asylum Access Malaysia, where she mainly represented clients from Afghanistan, Iran and Somalia. This variety of experience across a number of areas of international law enables her to look at general international law issues and consider how those issues affect discrete topics.

Nish holds a Master of Laws (Hons) from Columbia Law School, where she was a Fulbright Scholar and was the recipient of the Edwin Parker Prize for Excellence in International Law. She also holds a Bachelor of Arts/Bachelor of Laws (Hons I) from the Australian National University, where she was a National Merit Scholar.

Angad Keith's current work focuses on cyber, lethal autonomous weapons systems and the *Arms Trade Treaty*. He is DFAT's legal advisor to the Australian Delegation to the UN Cybercrime Convention negotiations. He also tutors international law at the Australian National University.

Before joining DFAT, Angad worked in the Attorney-General's Department's Office of International Law, where he worked across a variety of practice groups, including cyber law, international trade and investment law, and general public international law. Prior to joining the Australian Public Service, Angad worked as a Senior Associate at the Supreme Court of Victoria, assisting Judges with a range of matters including interlocutory hearings, property law, and corporate law.

Angad holds a Master of Laws (with First Class Honours) from Melbourne Law School, during which time he was a Member of the Editorial Board of the *Melbourne Journal of International Law*. Angad also holds a Bachelor of Laws / Bachelor of Engineering from the University of Technology, Sydney.

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