



Australian and New Zealand
Society of International Law

28TH ANZSIL ANNUAL CONFERENCE:

*INERTIA OR INNOVATION? RESHAPING
INTERNATIONAL LAW FOR A COMPLEX FUTURE*

PROGRAM

Welcome to the 28th Annual Conference of the Australian and New Zealand Society of International Law

About the conference

How can we reshape international law in order to respond to and engage with our complex future? Recent developments have presented distinct challenges to the effectiveness and legitimacy of international law in the form of populism, polarisation and pandemics. More systemically, the architecture of international law – its processes, institutions and values – is being challenged by environmental change on a scale that has precipitated the beginning of a new geological epoch: the Anthropocene. Our future is increasingly complex, and that complexity is found in every area of international law. The response of institutions and processes to recent and current challenges has been characterised at times by inertia or innovation or, in the case of the WTO, for example, both. At the 28th ANZSIL Conference we encourage participants to reflect on whether, and if so, how, international law has been, is currently being and could be reshaped for our complex future.

Conference organising committee

- > Professor Karen Scott (*Chair*), ANZSIL President, University of Canterbury
- > Associate Professor Nengye Liu, Macquarie University
- > Associate Professor Caroline Foster, University of Auckland
- > Dr Mostafa Naser, Edith Cowan University
- > Associate Professor Umair Ghori, Bond University
- > Associate Professor Esmé Shirlow, The Australian National University
- > Dr Anna Hood, University of Auckland
- > Dr Eve Massingham, University of Queensland
- > Ms Jennifer Cavenagh, Australian Department of Foreign Affairs and Trade
- > Ms Ashley Rogge, ANZSIL Secretariat, The Australian National University

ANZSIL gratefully acknowledges the financial and other support for the 28th Annual Conference and the ANZSIL Postgraduate Workshop provided by:

- > The Commonwealth Attorney-General's Department
- > The Australian Department of Foreign Affairs and Trade
- > The New Zealand Ministry of Foreign Affairs and Trade
- > ANU College of Law, The Australian National University

OVERVIEW OF SESSIONS

DAY 1: WEDNESDAY 30 JUNE 2021

TIME (AEST)	SESSION
11am-12.30pm	Conference Opening Plenary- Presidents Panel: Indigenous Voices in International Law
2pm-3:30pm	Panel 1: Innovation in International Trade Law
2pm-3:30pm	Panel 2: Future to the Back - Narratives in International Law and History
4pm-5:30pm	Panel 3: Command Responsibility, Australian War Crimes in Afghanistan, and the Brereton Report
4pm-5:30pm	Panel 4: Binding advisory opinions? Re-shaping procedure and substance in inter-state dispute settlement
6pm-7pm	The Annual Kirby Lecture (hosted by CIPL- virtual attendance for attendees)

DAY 2: THURSDAY 1 JULY 2021

TIME (AEST)	SESSION
11am-12.30pm	Keynote: Professor Hilary Charlesworth AM FASSA
2:30pm-4pm	Panel 5: Ensuring respect for international humanitarian law in a complex future: building on and harnessing innovation
2:30pm-4pm	Panel 6: From International to Transnational Environmental Law: innovations in biodiversity law and governance for the Anthropocene
4:30pm-6pm	Panel 7: Innovation in Climate Law
4:30pm-6pm	Panel 8: Innovative Legal Persons in International Law
6pm onwards	Social drinks/activities (arranged at the convenience of local participants)

DAY 3: FRIDAY 2 JULY 2021

TIME (AEST)	SESSION
10:30am-12pm	Panel 9: Reshaping International Law in a time of Populist Backlash
10:30am-12pm	Panel 10: Overcoming UN Security Council Paralysis: The Role of the UN General Assembly in Preventing and Responding to Mass Atrocity Crimes
2pm-3:30pm	Panel 11: Due Diligence and International Law
2pm-3:30pm	Panel 12: The Future of International Law through a Queer Lens
4pm-5:30pm	ANZSIL Trivia Quiz

DAY 4: MONDAY 5 JULY 2021

TIME (AEST)	SESSION
11am-12.30pm	Keynote: Professor Antony Anghie
2pm-3:30pm	Panel 13: COVID-19 and its Impact on International Law
2pm-3:30pm	Panel 14: Innovation in IHL
4pm-5:30pm	Panel 15: Biodiversity, Botanicals and Fresh Water
4pm-5:30pm	Panel 16: Innovation in Human Rights Law
6pm-7:30pm	Panel 17: Armed Conflict and the Protection of the Natural Environment

DAY 5: TUESDAY 6 JULY 2021

TIME (AEST)	SESSION
11am-12.30pm	Panel 18: Innovation in International Investment Law
11am-12.30pm	Panel 19: International Law-making in a Complex World
2pm-4pm	Year in Review
4pm-5:30pm	ANZSIL AGM
6pm-7:45pm	Closing Panel - 15 Glimpses of James Crawford: An ANZSIL Tribute

RELATED ACTIVITIES

WEDNESDAY 7 JULY 2021: POSTGRADUATE WORKSHOP

TIME	SESSION
8:45am - 10:15am	International Order: Governance mechanisms Donald Rothwell (<i>Chair</i>) Ciara Finnegan, Rebecca Barber, Abida Sultana, Richard Ogetii, Injy Johnstone
10:30am - 11:45am	Privacy, Property, Human and Health Daniella Simone (<i>Chair</i>) Vannessa Ho, Yohannes Ayalew, Christopher Nyinevi, Ali Latash
12:45pm - 2:00pm	IHL and ICL Eve Massingham (<i>Chair</i>) Helen Stamp, Simon Levett, Alessandro Silvestri, Silvina Sánchez Mera
2:15pm - 4:00pm	Legal Protections for Nature and the Environment Nengye Liu (<i>Chair</i>) Ethan Beringen, Todd Berry, Frances Anggadi, Bruno Arpi

EXTENDED ANZSIL PANELS (to be held at a later date)

DATE/TIME	SESSION
Wednesday 14 July 1pm - 2:30pm	Panel 20: 'Nothing about us without us': Incorporating lived experiences of displacement in international law scholarship Tamara Wood (<i>Chair</i>) <ul style="list-style-type: none">• Rifaie Tammas• Tristan Harley• Susan Harris Rimmer• Katerina Teaiwa• Tina Dixson
TBC	Panel 21: New Books Panel <ul style="list-style-type: none">• Cait Storr• Monique Cormier• Lucas Lixinski• Alison Duxbury

PROGRAM SCHEDULE

DAY 1: WEDNESDAY 30 JUNE 2021

TIME (AEST)	SESSION		
11am – 12:30pm	<p>CONFERENCE OPENING PLENARY: PRESIDENT'S PANEL</p> <p>Indigenous Voices in International Law</p> <p>Karen Scott , ANZSIL President (<i>Chair</i>), University of Canterbury</p> <p>Claire Charters, Auckland Law School</p> <p>Megan Davis, University of New South Wales</p> <p>Fleur Te Aho, University of Auckland</p> <p>Asmi Wood, The Australian National University</p>		
12:30pm – 2pm	Break		
2pm – 3:30pm	<table border="0"> <tr> <td style="vertical-align: top;"> <p>PANEL 1</p> <p>Innovation in International Trade Law</p> <p>Mostafa Naser (<i>Chair</i>)</p> <p>Genevieve Wilkinson Using human rights to harness innovation and reform anti-counterfeiting regimes</p> <p>Umair Ghori The Evolving Role of Export Controls in a Complex World: An International Trade Law Perspective</p> <p>Monique Egli Costi Regional economic governance through innovative means: The case of managed funds passporting in the Asia-Pacific region</p> </td> <td style="vertical-align: top;"> <p>PANEL 2</p> <p>Future to the Back - Narratives in International Law and History</p> <p>Cait Storr (<i>Chair</i>) Critical Minerals: Australia and Extractive Industry in Treaty Negotiations over Resource Rights in Antarctica, the Seabed and Outer Space, 1958-1991</p> <p>Anna Hood International Legal Narratives Surrounding te Tiriti o Waitangi and the Treaty of Waitangi</p> <p>Guy Fiti Sinclair Cold War Narratives of International Organisations</p> <p>Ntina Tzouvala Invested in Whiteness: The <i>von Pezold</i> Arbitral Award</p> </td> </tr> </table>	<p>PANEL 1</p> <p>Innovation in International Trade Law</p> <p>Mostafa Naser (<i>Chair</i>)</p> <p>Genevieve Wilkinson Using human rights to harness innovation and reform anti-counterfeiting regimes</p> <p>Umair Ghori The Evolving Role of Export Controls in a Complex World: An International Trade Law Perspective</p> <p>Monique Egli Costi Regional economic governance through innovative means: The case of managed funds passporting in the Asia-Pacific region</p>	<p>PANEL 2</p> <p>Future to the Back - Narratives in International Law and History</p> <p>Cait Storr (<i>Chair</i>) Critical Minerals: Australia and Extractive Industry in Treaty Negotiations over Resource Rights in Antarctica, the Seabed and Outer Space, 1958-1991</p> <p>Anna Hood International Legal Narratives Surrounding te Tiriti o Waitangi and the Treaty of Waitangi</p> <p>Guy Fiti Sinclair Cold War Narratives of International Organisations</p> <p>Ntina Tzouvala Invested in Whiteness: The <i>von Pezold</i> Arbitral Award</p>
<p>PANEL 1</p> <p>Innovation in International Trade Law</p> <p>Mostafa Naser (<i>Chair</i>)</p> <p>Genevieve Wilkinson Using human rights to harness innovation and reform anti-counterfeiting regimes</p> <p>Umair Ghori The Evolving Role of Export Controls in a Complex World: An International Trade Law Perspective</p> <p>Monique Egli Costi Regional economic governance through innovative means: The case of managed funds passporting in the Asia-Pacific region</p>	<p>PANEL 2</p> <p>Future to the Back - Narratives in International Law and History</p> <p>Cait Storr (<i>Chair</i>) Critical Minerals: Australia and Extractive Industry in Treaty Negotiations over Resource Rights in Antarctica, the Seabed and Outer Space, 1958-1991</p> <p>Anna Hood International Legal Narratives Surrounding te Tiriti o Waitangi and the Treaty of Waitangi</p> <p>Guy Fiti Sinclair Cold War Narratives of International Organisations</p> <p>Ntina Tzouvala Invested in Whiteness: The <i>von Pezold</i> Arbitral Award</p>		
3:30pm – 4pm	Networking / Break		
4pm – 5:30pm	<table border="0"> <tr> <td style="vertical-align: top;"> <p>PANEL 3</p> <p>Command Responsibility, Australian War Crimes in Afghanistan, and the Brereton Report</p> <p>Carmel O'Sullivan (<i>Chair</i>)</p> <p>Douglas Guilfoyle Command responsibility before the International Criminal Court</p> <p>Joanna Kyriakakis Command responsibility and Australian federal criminal law</p> <p>Melanie O'Brien The Brereton Report and its implications for complementarity</p> </td> <td style="vertical-align: top;"> <p>PANEL 4</p> <p>Binding advisory opinions? Re-shaping procedure and substance in inter-state dispute settlement</p> <p>Nilufer Oral (<i>Chair</i>)</p> <p>Massimo Lando Deciding disputes by way of advisory opinions? Eastern Carelia after Mauritius/Maldives</p> <p>Rowan Nicholson Making sense of the distinction between 'binding' and 'authoritative' in Mauritius/Maldives</p> <p>Tara Davenport The Role of Advisory Opinions in Climate Change and Environmental Law Litigation: Problems and Prospects after Mauritius/Maldives</p> </td> </tr> </table>	<p>PANEL 3</p> <p>Command Responsibility, Australian War Crimes in Afghanistan, and the Brereton Report</p> <p>Carmel O'Sullivan (<i>Chair</i>)</p> <p>Douglas Guilfoyle Command responsibility before the International Criminal Court</p> <p>Joanna Kyriakakis Command responsibility and Australian federal criminal law</p> <p>Melanie O'Brien The Brereton Report and its implications for complementarity</p>	<p>PANEL 4</p> <p>Binding advisory opinions? Re-shaping procedure and substance in inter-state dispute settlement</p> <p>Nilufer Oral (<i>Chair</i>)</p> <p>Massimo Lando Deciding disputes by way of advisory opinions? Eastern Carelia after Mauritius/Maldives</p> <p>Rowan Nicholson Making sense of the distinction between 'binding' and 'authoritative' in Mauritius/Maldives</p> <p>Tara Davenport The Role of Advisory Opinions in Climate Change and Environmental Law Litigation: Problems and Prospects after Mauritius/Maldives</p>
<p>PANEL 3</p> <p>Command Responsibility, Australian War Crimes in Afghanistan, and the Brereton Report</p> <p>Carmel O'Sullivan (<i>Chair</i>)</p> <p>Douglas Guilfoyle Command responsibility before the International Criminal Court</p> <p>Joanna Kyriakakis Command responsibility and Australian federal criminal law</p> <p>Melanie O'Brien The Brereton Report and its implications for complementarity</p>	<p>PANEL 4</p> <p>Binding advisory opinions? Re-shaping procedure and substance in inter-state dispute settlement</p> <p>Nilufer Oral (<i>Chair</i>)</p> <p>Massimo Lando Deciding disputes by way of advisory opinions? Eastern Carelia after Mauritius/Maldives</p> <p>Rowan Nicholson Making sense of the distinction between 'binding' and 'authoritative' in Mauritius/Maldives</p> <p>Tara Davenport The Role of Advisory Opinions in Climate Change and Environmental Law Litigation: Problems and Prospects after Mauritius/Maldives</p>		
5:30pm – 6pm	Break		
6pm – 7pm	<p>THE ANNUAL KIRBY LECTURE IN INTERNATIONAL LAW</p> <p>International Law and the Provocations of the Digital</p> <p><i>Hosted by the Centre for Public and International Law (CIPL), ANU College of Law</i></p> <p>Fleur Johns FASSA, University of New South Wales</p>		

DAY 2: THURSDAY 1 JULY 2021

11am – 12:30pm

KEYNOTE

The Art of International Law

Hilary Charlesworth AM FASSA, Melbourne Law School / The Australian National University

Andrew Byrnes (*Chair*)

12:30pm – 2:30pm

Break

2:30pm – 4pm

PANEL 5

Ensuring respect for international humanitarian law in a complex future: building on and harnessing innovation

Annabel McConnachie (*Chair*)

Marnie Lloyd

Challenges in the application of the obligation to ensure respect for IHL – foreign fighting as an example

Yvette Zegenhagen

Common Article 1 and counter-terrorism legislation: challenges and opportunities in an increasingly divided world

Sarah McCosker

Navigating expectations for humanitarian law diplomacy by third States not party to an armed conflict

Eve Massingham

Hollywood and the laws of war: the role of the entertainment industry in preventing war crimes

PANEL 6

From International to Transnational Environmental Law: innovations in biodiversity law and governance for the Anthropocene

Erika Techera (*Chair*)

Hannah Harris & Michelle Lim

Transnational Forestry Law: Legal solutions to end deforestation in a telecoupled world

Paul Govind & Nengye Liu

Is Australia's Environment Protection and Biodiversity Conservation Act sufficient to protect the Antarctic ecosystem?

Shawkat Alam

The Political Economy of Transnational Forest Regulation

4pm – 4:30pm

Networking / Break

4:30pm – 6pm

PANEL 7

Innovation in Climate Law

Jessie Hohmann (*Chair*)

Bjørn-Oliver Magsig

Cooperative sovereignty: The mainspring of state responsibility for climate change

Tanzim Afroz

Climate-Development Integrated Approach: A Challenge or Appeasement Under International Law?

PANEL 8

Innovative Legal Persons in International Law

Alison Duxbury (*Chair*)

Robert McCorquodale

Corporations, Human Rights and Reshaping International Law

Esmé Shirlow

International Law and the Unitary State: Inertia or Innovation?

Catherine Renshaw

Governments-in-exile: statehood, sovereignty and exception

Alberto Costi

Of Partnerships and Monoliths: Challenges of Transboundary Threats to Multilateralism

6pm onwards

SOCIAL ACTIVITIES: Local engagements

Locations: TBC (multiple)

PROGRAM SCHEDULE

DAY 3: FRIDAY 2 JULY 2021

10:30am – 12pm	<p>PANEL 9</p> <p>Reshaping International Law in a time of Populist Backlash</p> <p>Nengye Liu (<i>Chair</i>)</p> <p>Peter Danchin Problematising the Backlash against International Law and Institutions</p> <p>Imogen Saunders Navigating the Backlash against the WTO: Responses to the Appellate Body Crisis and the Rise of RTAs</p> <p>Jolyon Ford & Shruti Rana A Global Backlash against the Multilateral Human Rights System?</p> <p>Jeremy Farrall The Future of the UN Security Council</p>	<p>PANEL 10</p> <p>Overcoming UN Security Council Paralysis: The Role of the UN General Assembly in Preventing and Responding to Mass Atrocity Crimes</p> <p>Jennifer Trahan (<i>Chair</i>)</p> <p>Yasmine Nahlawi UNSC Paralysis and the Abuse of the Veto: Syria, A Case Study</p> <p>Rebecca Barber The Powers of the UNGA in the UN Charter in relation to Human Rights and International Peace and Security</p> <p>Michael Ramsden The Quasi-Judicial Function of the General Assembly in Mass Atrocity Response</p> <p>Andrew Carswell Re-Examining the UNGA's Uniting for Peace Resolution</p>
12pm – 2pm	Break	
2pm – 3:30pm	<p>PANEL 11</p> <p>Due Diligence and International Law</p> <p>David Brightling (<i>Chair</i>)</p> <p>Caroline Foster Global Regulatory Standards: Due Regard and Due Diligence as Foundations for International Cooperation</p> <p>Natalie Klein Informal Law-Making: Providing Substance to Due Diligence and Due Regard Obligations?</p> <p>Penelope Ridings Due Diligence: A Topic for the International Law Commission?</p>	<p>PANEL 12</p> <p>The Future of International Law through a Queer Lens</p> <p>Robert McLaughlin (<i>Chair</i>)</p> <p>Tamsin Paige & Joanne Stagg Queer approaches to international adjudication</p> <p>Claerwen O'Hara Dissensus, Diversity and the Future of International Law: Rethinking Ideas of 'Consensus' from a Queer Perspective</p> <p>Laura-Jane Maher The Impossibility of Justice: Hearing Antigone in <i>Love v Commonwealth of Australia</i>, <i>Thoms v Commonwealth of Australia</i> [2020] HCA 3</p>
4pm – 5:30pm	ANZSIL Trivia Quiz	

DAY 4: MONDAY 5 JULY 2021

11am – 12:30pm	KEYNOTE Rights, Development, Solidarity: Contending visions of International Law and Global Justice Antony Anghie , National University of Singapore Faculty of Law / Asian Society of International Law Anna Hood (<i>Chair</i>)	
12:30pm – 2pm	Break	
2pm – 3:30pm	PANEL 13 COVID-19 and its Impact on International Law Umair Ghori (<i>Chair</i>) Muhammad Zaheer Abbas The COVID-19 Pandemic and Trade-Related Security Exceptions: An Analysis of the Flexibility under International Law Andrea Lucas How can international law address non-communicable diseases in the response to COVID-19? Harry Aitken COVID-19 and the evolution of UN negotiations on cyber and international law Alberto Alvarez-Jimenez Covid-19 and the Excuse of Necessity in Customary International Law	PANEL 14 Innovation in IHL Eve Massingham (<i>Chair</i>) Patrick Leisure The Martens Clause, Global Pandemic, and the Law of Armed Conflict Shannon Maree Torrens Appeasing Tyrants, Superpowers and those Pursuing the Greater Good - The Metamorphosis and Revelation of International Criminal Law: 2021 and Beyond Shiri Krebs Blind Eye in the Sky: Speaking Law to Mass Publics Sina Etezazian Necessity, Proportionality, and the Use of Defensive Force against Un-attributable Attacks by Non-State Actors
3:30pm – 4pm	Networking / Break	
4pm – 5:30pm	PANEL 15 Biodiversity, Botanicals and Fresh Water Kate Smith (<i>Chair</i>) Ruby Mynihan Magsig The UN Economic Commission for Europe Environmental Regime: Its Impact on International Environmental Law and the Law of Freshwater Resources Jessie Hohmann International Law and Botanic Gardens: Institutional Interconnections of Inertia or Innovation? Joanna Mossop The new BBNJ Treaty – A case study in the tension between innovation and inertia	PANEL 16 Innovation in Human Rights Law Shannon Maree Torrens (<i>Chair</i>) Daniel Joyce Platforms as Infrastructure: Emerging Forms of Global Governance Gabrielle Simm, Thomas Mulder & Sarah Williams Regime Interaction in Global Health Emergencies: Covid-19 and Rohingya Refugees in Bangladesh Tess Kluckow Human rights protections in time of emergency
5:30pm – 6pm	Break	
6pm – 7:30pm	PANEL 17 Armed Conflict and the Protection of the Natural Environment Yvette Zegenhagen (<i>Chair</i>) Clementine Rendle Updated Guidelines on the Protection of the Natural Environment in Armed Conflict Marja Lehto The ILC Draft Principles on the Protection of the Environment in Relation to Armed Conflict Nguyen Hong Thao Applying international law for the protection of the natural environment in context	

PROGRAM SCHEDULE

DAY 5: TUESDAY 6 JULY 2021

11am – 12:30pm	PANEL 18 Innovation in International Investment Law Rhianna Benjamin (<i>Chair</i>) Rafael Tamayo-Álvarez Are New Generation Investment Treaties A Narrative Shift? Jonathan Bonnitcha The impact of investment treaties on domestic governance: a mixed-method study Fifi Junita National Interest in Australian Foreign Investment: The Need to Shift from State Centricism to Constructivism in the Transnational Governance Regime Matthew Windsor Policy Space in International Economic Law: Poisoned Chalice or Prefigurative Potential?	PANEL 19 International Law-making in a Complex World Bill Campbell (<i>Chair</i>) Margaret Young & Emma Nyhan Australia and the International Court of Justice: Lessons from the Archives Sanja Dragic Stories from the Letters of Withdrawal from International Treaties Malcolm Jorgensen The Jurisprudence of the Rules-Based Order: Innovating Norms of Global Conduct Consistent but Not Binding Under International Law
12:30pm – 2pm	Break	
2pm – 4pm	ANZSIL Year in Review Karen Scott, ANZSIL President (<i>Chair</i>), University of Canterbury Sue Robertson , Attorney General's Office, Australia Jennifer Cavenagh , DFAT, Australia Victoria Hallum , MFAT, New Zealand Kim Laurenson , Crown Law New Zealand	
4pm – 5:30pm	ANZSIL AGM	
6pm – 7:45pm	CLOSING PANEL - 15 Glimpses of James Crawford: An ANZSIL Tribute Anne Orford (<i>Chair</i> , Melbourne Law School) Laurence Boisson de Chazournes , University of Geneva/Matrix Chambers Bill Campbell , Australian National University Hilary Charlesworth , Melbourne Law School Emily Crawford , University of Sydney Caroline Foster , University of Auckland Douglas Guilfoyle , UNSW Canberra Victoria Hallum , MFAT, New Zealand Stephanie Ierino , Attorney General's Department, Australia	Sir Ken Keith , Victoria University of Wellington Juliette McIntyre , University of South Australia Matthew Neuhaus , Australian Ambassador to The Netherlands Jacqueline Peel , Melbourne Law School Penelope Ridings , University of Auckland Philippe Sands , University College London/Matrix Chambers Margaret Young , Melbourne Law School