Australian and New Zealand
Society of International Law

29TH ANNUAL ANZSIL CONFERENCE:

INTERNATIONAL LAW AND GLOBAL INTER-CONNECTEDNESS

PROGRAM

About the conference

The events of 2020 and 2021 continue to emphasize that human inter-connectedness is both granular and uneven. If discussions about international law and globalisation in the 1990s and early 2000s focused on high-minded issues of economic integration and (selective) mobility, the COVID-19 pandemic has reminded us of the reality of our physical inter-connectedness as well as the importance of groups such as 'essential workers' for the continuing functioning of societies, domestic and international. The escalating climate crisis underscores our inter-connectedness with the environment; a connection that has profoundly shifted and is signaled with the recognition of the Age of the Anthropocene. Simultaneously, forms of inter-connectedness previously taken for granted, such as the global and regional mobility of individuals, goods and services, are facing unprecedented challenges.

These contexts pose significant questions for international law, international lawyers and international legal institutions. At the same time, they offer unique opportunities for re-making the international legal order. At the 29th ANZSIL Conference we encourage participants to reflect on whether and how international law shapes, undermines and re-makes inter-connectedness on a global scale.

We invite participants at the 29th ANZSIL Conference to re-evaluate the role of international law as a force in different forms of social, political and even biological connections including, for example, physical processes that tie us together, emerging regionalisms, border crossings, and transnational solidarities, exemplified by the rise of a global Black Lives Matter movement or Indigenous internationalisms.

ANZSIL Council

- Professor Karen Scott, President, University of Canterbury
- Dr Anna Hood, ANZSIL Vice President, University of Auckland
- Ms Amelia Telec, Vice President, Attorney General's Department
- Dr Monique Cormier, Treasurer, Monash University
- Dr Stacey Henderson, Secretary, University of Adelaide
- Dr Madelaine Chiam, La Trobe University
- Dr Felicity Gerry QC, Barrister (London/Melbourne)
- Associate Professor Jessie Hohmann, University of Technology Sydney
- Associate Professor Joanna Mossop, Victoria University of Wellington
- Associate Professor Esmé Shirlow, Australian National University
- Ms Jennifer Cavenagh, Australian Department of Foreign Affairs and Trade

Conference organising committee

- Professor Karen Scott (*Co-Chair*), University of Canterbury
- Dr Anna Hood (*Co-Chair*), University of Auckland
- Dr Madelaine Chiam (*Co-Chair*), La Trobe University
- Dr Shiri Krebs, Deakin University
- Dr Stacey Henderson, University of Adelaide
- Mr John Morss, Deakin University
- Associate Professor Ntina Tzouvala, Australian National University
- Ms Jennifer Cavenagh, Australian Department of Foreign Affairs and Trade
- Ms Ashley Rogge, ANZSIL Secretariat, The Australian National University

Postgraduate Workshop organisers

- Associate Professor Ntina Tzouvala, Australian National University
- Dr An Hertogen, University of Auckland

ANZSIL gratefully acknowledges the financial and other support for the 29th Annual Conference and the ANZSIL Postgraduate Workshop provided by:

- The Centre for International and Public Law and the ANU College of Law, Australian National University *(Co-sponsor)*
- The Commonwealth Attorney-General's Department
- The Australian Department of Foreign Affairs and Trade
- The New Zealand Ministry of Foreign Affairs and Trade
- Springer Publishing

OVERVIEW OF SESSIONS

DAY 1: THURSDAY 30 JUNE 2022

TIME (AEST)	SESSION
9:15am-9:45am	Welcome and Conference Opening
9:45am-11:15am	Panel 1: Interconnectedness – Disruptions and Traditions
9:45am-11:15am	Panel 2: Reflections on the regional and the global in light of the 2021 Pacific Islands Forum Declaration on the Preservation of Maritime Zones
9:45am-11:15am	Panel 3: Human Rights, Mobility and Immobility
11:15am-11:45am	Morning Tea
11:45am-1pm	Panel 4: Futures of International Criminal Law
11:45am-1pm	Panel 5: Practising International Law in Australia and New Zealand: 'In Conversation' Panel with International Law Practitioners
11:45am-1pm	Panel 6: The Laws of Outer Space and Interconnectedness
1pm-2:15pm	Lunch and ANZSIL Interest Group Meetings (IPSIG, HTILG, GSIL)
2:15pm-4pm	Panel 7: Climate Change
2:15pm-4pm	Panel 8: Making the international, domestic – Military discipline, good order, war crimes & accountability in 2022
2:15pm-4pm	Panel 9: Interconnectedness – Trade and Infrastructure
4pm-4:30pm	Afternoon Tea
4.30pm-5:30pm	Keynote: E. Tendayi Achiume, Alicia Miñana Chair in Law, University of California, Los Angeles School of Law
6pm-7pm	The Annual Kirby Lecture on International Law: Why It's Time to Terminate the TRIPS Agreement Anne Orford, Melbourne Laureate Professor and Michael D Kirby Chair of International Law at Melbourne Law School.

DAY 2: FRIDAY 1 JULY 2022

TIME (AEST)	SESSION
9am-10:30am	Panel 10: Gender, Sexuality and Inter-connectedness in International Law
9am-10:30am	Panel 11: Human Machine Interconnectedness: Artificial Intelligence and International Law – Legal and Ethical Dimensions
9am-10:30am	Panel 12: Dispute Settlement
10:30am-11am	Morning Tea
11am-12pm	Keynote: Tommy Koh, Professor NUS, Ambassador-at-large, Singapore Ministry of Foreign Affairs
12pm-1.30pm	Lunch and AGM (AGM to start at 12.30pm)
1:30pm-3pm	Panel 13: Non-Militarisation of the Antarctic Treaty Area: Managing Global Pressures and Regional Challenges
1:30pm-3pm	Panel 14: Peace and Security I
1:30pm-3pm	Panel 15: Interconnectedness – Systems and Patterns
3pm - 4pm	Afternoon Tea & ANZSIL Interest Group Meetings (OIELG, IELIG)
4pm-5:30pm	30 Years of ANZSIL – in Conversation with (Past) ANZSIL Presidents
7pm onwards	Conference Dinner - Old Parliament House, Canberra

DAY 3: SATURDAY 2 JULY 2022	
TIME (AEST)	**SESSION**
9:30am-11am	Panel 16: Peace and Security I
9:30am-11am	Panel 17: Inter-connectedness and the Law of the Sea
11am-11:30am	Morning Tea
11:30am-1pm	Year-in-Review and Conference Close

RELATED ACTIVITIES

WEDNESDAY 29 JUNE 2022: POSTGRADUATE WORKSHOP	
TIME	**LOCATION**
8:45am - 5:15pm	Liz Allen Meeting Room (7.4.5), ANU College of Law

DAY 1: THURSDAY 30 JUNE 2022

TIME (AEST)	SESSION(S)		
8:30am – 9:15am	*Conference Registration*		
9:15am – 9:45am	**Welcome and Conference Opening**		
9:45am – 11:15am	**Panel 1: Interconnectedness – Disruptions and Traditions** ***Hybrid Panel*** *Third World Approaches to International Law: A Cognitive Turn* Shiri Krebs, Deakin University *The Problem of Disarmament* Anna Hood, University of Auckland *Insularity and International Law: Inter-connectedness in Disconnect* Nadia Kornioti, University of Central Lancashire (online) *Recovering the Radical Tradition* Tor Krever, University of Warwick **Chair: Ntina Tzouvala, Australian National University**	**Panel 2: Reflections on the regional and the global in light of the 2021 Pacific Islands Forum Declaration on the Preservation of Maritime Zones** ***Hybrid Panel*** Clement Yow Mulalap, Legal Advisor, Permanent Mission of the Federated States of Micronesia to the United Nations Victoria Hallum, International Legal Advisor, Legal Division, MFAT, New Zealand (online) Nilifur Oral, International Law Commission (online) Frances Anggadi, University of Sydney Toby Hanson, Australian Attorney-General's Department **Chair: Tim Stephens, University of Sydney**	**Panel 3: Human Rights, Mobility and Immobility** ***Hybrid Panel*** *Mobility and Immobility in the Era of COVID-19: An International Human Rights Examination* Fiona McGaughey, University of Western Australia and Mary Anne Kenny, Murdoch University *Human Rights and Extradition: A Tale of Two Cases* Holly Cullen, University of Western Australia and Amy Maguire, University of Newcastle, Australia (online) *A Centenary of Multilateral Response to Forced Displacement: A TWAIL Review* Samuel Berhanu Woldemariam, University of Newcastle, Australia *Australia on the United Nations Human Rights Council: Progress or Performativity?* Amy Maguire, University of Newcastle, Australia and Fiona McGaughey, University of Western Australia (online) **Chair: Sarah Joseph, Griffith Law School**
11:15am – 11:45am	*Morning Tea*		

11:45am – 1pm	**Panel 4: Futures of International Criminal Law** **Hybrid Panel** *Introduction: The Futures of International Criminal Justice* Emma Palmer, Griffith Law School *Unlawful Human Experimentation in the Wake of Trials under Control Council Law No 10 at Nuremberg, in the Rome Statute for the ICC and at the Extraordinary Chambers in the Courts of Cambodia* Edwin Bikundo, Griffith Law School *Testing Knowledge: Weapons Reviews of Autonomous Weapons Systems and the International Criminal Trial* Eve Massingham, University of Queensland and Simon McKenzie, Griffith Law School (online) *Discussion: Early Career Researching and Writing in International Criminal Law* Martin Clark, La Trobe Law School, Shannon Maree Torrens, International and Human Rights Lawyer and Natalie Nunn, University of Tasmania **Chair/ Discussant: Gabrielle Simm, Melbourne Law School**	**Panel 5: Practising International Law in Australia and New Zealand: 'In Conversation' Panel with International Law Practitioners** **Hybrid Panel** Tracey Epps, International trade consultant in Wellington, NZ Kate Eastman AM SC International Human Rights Silk Damien van der Toorn–Partner of Lexbridge Elana Geddis – Nominated Arbitrator, Mediator and Conciliator under the Law of the Sea **Chair/ Moderator: Felicity Gerry QC, International Criminal Silk (London and Melbourne**	**Panel 6: The Laws of Outer Space and Interconnectedness** *The role of astronauts as 'envoys of humankind'* Melissa de Zwart, Flinders University (online) *Intergalactic Interconnectedness and Sustained Human Presence in Space* Stacey Henderson, Adelaide Law School *Developing the normative framework for military space activities to maintain space's role in global interconnectedness* Duncan Blake, UNSW Canberra **Chair: Danielle Ireland-Piper, Bond University**
1pm – 2:15pm	***Lunch and Interest Group Meetings (IPSIG, HTILG, GSIL)***		

2:15pm – 4pm	**Panel 7: Climate Change** ***Hybrid Panel*** *Advancing Synergies between trade law and climate law* Gilliam Moon, UNSW *Reconsidering interconnection between the UNFCCC and the Antarctic Treaty System under the Anthropocene* Hitomi Kimura, Otsuma Women's University, Tokyo (online) *The Exchange of Law Among Nations Through Climate Change Litigation* Natasha Affolder, Allard School of Law, UBC and Godwin E.K. Dzah, Osgoode Hall Law School (online) **Chair: Stacey Henderson, Adelaide Law School**	**Panel 8: Making the international, domestic – Military discipline, good order, war crimes & accountability in 2022** ***Hybrid Panel*** *The difficulty with enforcement: practical issues challenging IHL accountability in armed conflict* Joshua Liddy, Department of Defence, Australia *The duty to act – the impact of moral, ethical, and political influences upon IHL and disciplinary compliance* John Devereux, TC Beirne School of Law (online) *Autonomous Systems, Superior Orders and Manifest Unlawfulness: Is there a Duty to Disobey?* Brendan Walker-Munro, University of Queensland *The New Zealand Approach to Enforceability of the Laws of Armed Conflict* CMDR Kelly Ashton, New Zealand Defence Force **Chair: Lauren Sanders, TC Beirne School of Law**	**Panel 9: Interconnectedness – Trade and Infrastructure** ***Hybrid Panel*** *What Infrastructure's Connections Reveal about International Law* Emma Palmer, Griffith Law School *Global Developments in Foreign Investment Screening: Interdisciplinary Perspectives* (online) Phillip McCalman, University of Melbourne Laura Puzzello, Monash University Tania Voon, Melbourne Law School and Andrew Walter, University Melbourne *Institutionalizing the trade-labour nexus in free trade agreements* Yueming Yan, Singapore Management University (online) *Promoting Linkages between Gender Issues and International Trade Law* Pallavi Kishore, Jindal Global Law School *Cross-border: African Cooperation at a Crossroad?* Cristiano d'Orsi, University of Johannesburg **Chair: Esmé Shirlow, Australian National University**
4pm – 4:30pm	*Afternoon Tea*		
4:30pm – 5:30pm	**Keynote** *Race, Empire and Borders* *Online* E. Tendayi Achiume, Alicia Miñana Chair in Law, University of California, Los Angeles School of Law **Chair: Anna Hood, University of Auckland**		

6pm – 7pm	**The Annual Kirby Lecture on International Law** *Why It's Time to Terminate the TRIPS Agreement* *Hybrid* Anne Orford, Melbourne Laureate Professor and Michael D Kirby Chair of International Law at Melbourne Law School		
DAY 2: FRIDAY 1 JULY 2022			
9am – 10:30am	**Panel 10: Gender, Sexuality and Inter-connectedness in International Law** ***Hybrid Panel*** *The University Women of Europe Equal Pay Complaints under the European Social Charter: Evaluating a Transnational Litigation Strategy* Holly Cullen, University of Western Australia *Getting Women in the Room is a Start, Not an End Goal* Tamsin Phillipa Paige, Deakin Law School Stacey Henderson, Adelaide Law School Joanne Stagg, Griffith Law School and Deakin Law School *The Inter-American Court of Human Rights' Interpretation of Gender-Identity and Sexuality Non-Discrimination Rights* Valeria Cosini, Australian National University *Humanity Worth Defending? Accountability for Queer and Trans Persons Under International Criminal Law* Vinod Bal, Assistant Policy Advisor, Te Piringa - Faculty of Law, University of Waikato (online) **Chair: Claerwen O'Hara, La Trobe Law School**	**Panel 11: Human Machine Interconnectedness: Artificial Intelligence and International Law – Legal and Ethical Dimensions** ***Hybrid Panel*** A moderated panel discussion examining challenges for AI regulation, how AI challenges our commitment to fairness and the rule of law, autonomous military systems and the implications of military AI on the interpretation and application of international law. Simon Chesterman, National University of Singapore (online) Edward Santow, University of Technology Sydney Lauren Sanders, TC Bernie School of Law Netta Goussac, Lexbridge Lawyers, Canberra **Moderator/ Chair: Sarah McCosker, Lexbridge Lawyers, Canberra**	**Panel 12: Dispute Settlement** ***Hybrid Panel*** *Contract-based investor-state arbitration and the political economy of corruption* Jonathan Bonnitcha, UNSW *Connected by the Sea, Divided by Law: Small States and strategic UNCLOS litigation* Douglas Guilfoyle, UNSW Canberra *Implications of the Waitangi Tribunal finding that the CPTTP electronic commerce chapter breached the Crown's obligations under Te Tiriti o Waitangi* Jane Kelsey, University of Auckland (online) *Global Inter-connectedness Through the Perspective of Judicial Dialogue on Human Rights* Silviana Cocan, Université de Montréal (online) **Chair: Jennifer Cavenagh, DFAT, Australia**
10:30am-11am	*Morning Tea*		

11am-12pm	**Keynote** *UNCLOS at 40: Prospect and Retrospect* *Online* Tommy Koh, Professor NUS, Ambassador-at-large, Singapore Ministry of Foreign Affairs **Chair: Karen N. Scott, University of Canterbury, NZ**		
12pm – 1:30pm	***Lunch and AGM*** ***AGM to start at 12.30pm sharp***		
1:30pm – 3pm	**Panel 13: Non-Militarisation of the Antarctic Treaty Area: Managing Global Pressures and Regional Challenges** *The Antarctic Treaty System and Non-Militarisation of Antarctica; Current Challenges and Future Prospects* Jeffrey McGee, University of Tasmania *The History of ADF involvement in the Australian Antarctic Territory in light of Article I of the Antarctic Treaty* Shirley Scott, UNSW Canberra *1982 – 2022: The Falklands/ Malvinas armed conflict and the Antarctic Treaty System* Bruno Arpi, University of Tasmania *Inspection, Verification, Compliance, and Reporting in the Antarctic Treaty System* AJ Press, University of Tasmania and Jeffrey McGee, University of Tasmania **Chair: Karen N. Scott, University of Canterbury, NZ**	**Panel 14: Peace and Security I** *Of War and (International Economic) Law* Kathryn Greenman, University of Technology Sydney *Extraterritoriality and the Interconnectedness of Borders, Crime, and Citizens – Criminal Jurisdiction over extraterritorial conduct in China, Japan and South Korea* Danielle Ireland-Piper, Bond University *The efficacy, legitimacy and legality of non-binding norms in the development of IHL* Emily Crawford, University of Sydney Law School *The Importance of Reinforcing the Prohibition of the Use of Force through the Prosecution of Crimes of Aggression Committed against Ukraine* Carrie McDougall, University of Melbourne **Chair: Shiri Krebs, Deakin University**	**Panel 15: Interconnectedness – Systems and Patterns** ***Hybrid Panel*** *Vaccine Inequity through the Lens of International Human Rights Law* Sarah Joseph, Griffith Law School *The Inter-Connectedness of Human Rights Violations in Genocide* Melanie O'Brien, University of Western Australia *Theorising 'consumer' under International Law: A TWAIL Perspective* Sawmiya Rajaram, Jindal Global Law School (online) **Chair: Alison Duxbury, Melbourne Law School**
3pm – 4pm	***Afternoon Tea & ANZSIL Interest Group Meetings (OIELG, IELIG)***		

4pm – 5:30pm	**President's Panel** **30 Years of ANZSIL – in Conversation with (Past) ANZSIL Presidents** ***Hybrid Panel*** Philip Alston, NYU Hilary Charlesworth, International Court of Justice Campbell McLachlan, Te Herenga Waka - Victoria University of Wellington Andrew Byrnes, UNSW Anne Orford, Melbourne Law School Timothy Stephens, University of Sydney Karen N. Scott, University of Canterbury, NZ **Chair: Madelaine Chiam, La Trobe Law School**	
7pm (door and bar opens at 6pm)	*Conference Dinner* Old Parliament House, Canberra	

DAY 3: SATURDAY 2 JULY 2022

9.30am – 11am	**Panel 16: Peace and Security II** ***Hybrid Panel*** *A Peaceful Nuclear-Powered Submarine? How AUKUS will test the International Legal Framework on Nuclear Security* Monique Cormier, Monash University *The Law of Neutrality after the Falklands War?* Rob McLaughlin, ANCORS, University of Wollongong and Australian National University *Responding to International Crimes Committed in Ukraine: From the ICC to Universal Jurisdiction* Shannon Maree Torrens, International and Human Rights Lawyer (online) *Cooperating through the General Assembly to end Serious Breaches of Peremptory Norms of International Law* Rebecca Barber, University of Queensland (online) **Chair: Douglas Guilfoyle, UNSW Canberra**	**Panel 17: Inter-connectedness and the Law of the Sea** *Fish, the Environment and Conservation in the Law of the Sea* Zsofia Korosy, UNSW *Marine Pollution beyond National Jurisdiction: Navigating Fragmentation and Connection* Karen N. Scott, University of Canterbury, NZ *Geneva Declaration on Human rights at Sea: An Endeavour to Connect Law of the Sea and International Human Rights Law* Natalie Klein, UNSW *The Role of Implementing Agreements in the Evolution of the Law of the Sea* Joanna Mossop, Te Herenga Waka – Victoria University of Wellington **Chair: Camille Goodman, ANCORS, University of Wollongong**

11am – 11.30am	*Morning Tea*
11.30am – 1pm	**Year-in-Review and Conference Close** Kim Laurenson, Crown Law, New Zealand (online) Victoria Hallum, MFAT, New Zealand (online) Anais Kedgley Laidlaw, MFAT, New Zealand Jesse Clarke, AG's Department, Australia Marie-Charlotte Mckenna, DFAT, Australia **Chair: Andrew Byrnes, UNSW**

Panel #1: Interconnectedness – Disruptions and Traditions

Ntina Tzouvala, Shiri Krebs, Anna Hood, Nadia Kornioti, Tor Krever

Included Paper Abstracts and Short Biographies

Ntina Tzouvala (Chair), Australian National University

Ntina joined the ANU College of Law as a Senior Lecturer in July 2020 and was promoted to Associate Professor in January 2022. Prior to this appointment she was an ARC Laureate Postdoctoral Fellow at Melbourne Law School. She obtained her PhD from Durham Law School (UK) in 2016 and she also worked as a lecturer at the same institution.
Her work focuses on the political economy, history and theory of international law. She is especially interested in historical materialism, deconstruction, feminist and queer legal theory. Her first monograph, Capitalism as Civilisation: A History of International Law, was published by Cambridge University Press in late 2020. Her book was awarded the 2022 ASIL Certificate of Merit for a preeminent contribution to creative scholarship, it was shortlisted for the Deutscher Prize and was awarded a honourable mention in the context of the 2021 Sussex Prize in International Theory. Her work has also appeared in leading journals, including the European Journal of International Law, the Leiden Journal of International Law and the UCLA Law Review.

Shiri Krebs, Deakin University

Third World Approaches to International law: A Cognitive Turn

This paper analyses the influence of new insights gained from cognitive sciences on third world approaches to international law (TWAIL). Cognitive or behavioural sciences broadly refer to the study of mental processes involved in acquiring and processing information, as well as judgments and decision-making processes. Cognitive studies are often aimed at explaining cases where mental processes work poorly; for example, when people adopt erroneous judgements or are influenced by diverse biases. Behavioural studies are generating significant changes in the theoretical infrastructure of international law, through confirming, enriching, or disproving assumptions long held (explicitly or implicitly) in different approaches to international legal theory. The new literature sheds light on non-rational decisions and exposes numerous cognitive biases affecting international legal decision-making processes. Viewed from this perspective, behavioural insights are particularly relevant for the development of TWAIL literature, providing scientific methodologies to test theoretical contributions and critical analysis. While cognitive and behavioural studies are not foreign to the development of TWAIL, their impact on the theoretical foundations of TWAIL have only been explored in a rudimentary fashion. With few exceptions, international legal theory – TWAIL included – has long failed to explicitly address the cognitive–behavioural assumptions of theoretical approaches. In light of the rapidly growing influence of cognitive-behavioural studies in international legal literature and the scant attention paid to its implications for international law theories, this paper fills this gap in the literature by shedding light on an under-explored sphere in contemporary TWAIL scholarship.

Shiri Krebs is an Associate Professor of Law at Deakin University, and Co-lead, Law and Policy Theme, at the Australian Government Cyber Security Cooperative Research Centre (CSCRC). She is also an affiliated scholar at Stanford University's Center for International Security and cooperation (CISAC). Krebs' research focuses on behavioral approaches to international law, including the effects of predictive and visual technologies on legal decision-making, at the intersection of law, science and technology. Her scholarship has been published at leading legal journals (e.g. the Harvard National Security Journal), and has been supported by a number of research grants. Her publications granted her several awards, including, most recently, the David D. Caron Prize (American Society of International Law, 2021), the Vice-Chancellor's Early Career Researcher Award for Career Excellence (Deakin University, 2019), the 'New Voices in international Law' recognition (American Society of International Law, 2016), and the Franklin Award in International Law (Stanford University, 2015). Krebs has taught in a number of law schools, including at Stanford University, University of Santa Clara, and the Hebrew University of Jerusalem, where she won the Dean's award recognizing exceptional junior faculty members. She earned her Doctorate and Master Degrees from Stanford Law School, as well as LL.B. and M.A., both magna cum laude, from the Hebrew University of Jerusalem.

Anna Hood, University of Auckland

The Problems of Disarmament

Between World War I and the 1970s, there was a strong belief in many parts of the international community that the key to international peace and security lay in general and complete disarmament (GCD) and great efforts were put into advancing this agenda. For most of the last 50 years there have been few efforts to engage with the ideal of GCD. However, since 2016, arms of the United Nations (including the Secretary-General) as well as a number of academics, have sought to revive the concept. In many respects this is refreshing and encouraging. After decades of the disarmament agenda being dominated by either asymmetric, hegemonic initiatives (coercive disarmament measures) or piecemeal initiatives that do little to advance peace and security in a holistic sense (humanitarian disarmament), the idea of returning to an ambitious disarmament programme is enticing. Further, geopolitically conditions are ripe for a broadening of the disarmament agenda.

There are, however, myriad complexities, tensions and paradoxes embedded in the concept of GCD. My presentation will seek to explore the challenges and puzzles that plague GCD including: how GCD would fit with doctrines of statehood and sovereignty that are dependent on the possession of weapons; the idea that weapons can be a source of insecurity as well as security; the social, cultural and symbolic roles weapons play in international legal life; and the issue of whether GCD is likely to decrease violence in the international system or simply shift the source and targets of it.

Anna Hood is a senior lecturer at the University of Auckland. Her academic research draws on historical and critical approaches and focuses primarily on international law and security, international law and disarmament, and international law in Aotearoa New Zealand. Anna has a BA/LLB (hons) from the University of Melbourne, an LLM (International Legal Studies) from NYU and a PhD from the University of Melbourne. She currently holds a Marsden Fast Start Grant for her work on disarmament law.

Nadia Kornioti, University of Central Lancashire

Insularity and International Law: Inter-connectedness in Dis-connect

Islands are characterised by an ‘apparent paradox, between isolation and linkage’, and historians, geographers and international relations experts alike have long-recognised the particular role insularity plays as a factor impacting regional and global power-dynamics. And yet, in the realm of international law, where territoriality is of paramount importance in determining and describing international law’s primary subjects – the sovereign States – the peculiar existence of islands is rarely given any particular thought, except for in regard to the Law of the Sea. In other areas of international law insularity appears to be overlooked as a factor, even though it does have an impact on the experience, the livelihood and the priorities of island populations in the Anthropocene. In that regard, the paper juxtaposes the phenomena of global warming and island immigration reception and detention, so as to illustrate how despite their apparent dis-connectedness, island-ness constitutes an ‘invisible’ form of inter-connectedness in international law. Through a cross-disciplinary approach and a brief survey of the different roles islands hold globally, as continents, island-states or peripheral entities, the paper seeks to evaluate whether international law should develop concrete tools and mechanisms that would aim at taking into account the specific needs of island-entities and populations, ultimately raising the question of whether there is a need for international lawyers to re-evaluate their position vis-à-vis island-entities more broadly.

Nadia Kornioti holds an LLB from the University of Leicester, UK and an LLM in Public International Law from University College London, UK, while she has just submitted her PhD thesis, which assesses the armed violence between the ethnic Greek and ethnic Turkish communities of the Island of Cyprus from 1958 to 1968, from an interdisciplinary perspective, at the University of Central Lancashire (UCLan), UK. At the moment she holds the position of Associate Lecturer at the Cyprus Campus of the University of Central Lancashire (UCLan Cyprus), while she has had previous working experience with a number of international, regional and Cypriot institutions. She is also a qualified but non-practising Advocate in the Republic of Cyprus. Deriving from her earlier experience, research interests include general Public International Law, with an emphasis on International Humanitarian Law, Human Rights, Cypriot Public Law, Legal History and Theory, Refugee and Migration Law, and Memory Studies. She also has a long-term interest in the ways the law interacts (or not) with the Social Sciences and the Humanities, in theory and in practice.

Tor Krever, University of Warwick

Recovering the Radical Tradition

Some years ago, Benita Parry indicted European Marxism for its neglect of liberation theory and the role of Marxist theory in revolutionary practices in anti-colonial insurrections. The horizons of the Western international legal academy have of course traditionally been even more circumscribed, largely neglecting the field's colonial origins altogether. While the work of critical scholars in recent years, such as those associated with Third World Approaches to International Law, has done much to centre colonialism and anti-colonial struggle in the history of the field, this work largely continues to reproduce a history shorn of the role of the radical anti-capitalist tradition. This paper argues that in doing so, the recent recovery of the Third World in international legal history reproduces the metropolitan disregard of Third-World Marxisms and the tendency to disown radical liberation discourses criticised, in the context of European Marxism, by Parry. Drawing on the example of the 1966 Tricontinental Conference in Havana, Cuba, the paper seeks to recover the radical anti-capitalist strand of the Third World movement, revealing a much more fractured and contested Third World movement than is often presented by international legal historians. What is lost, the paper asks, in the current disciplinary myopia? A recovery of the radical tradition, the paper argues, opens up new understandings of the relationship between international law and anti-imperial struggle in the 20th century and beyond.

Tor Krever is Assistant Professor at the University of Warwick School of Law. His current research focuses on the relationship between anti-imperialism and international law. He is also working on a materialist history of maritime piracy and the ideology of free trade in international legal thought. He received his PhD from LSE.

Panel #2: Reflections on the regional and the global in light of the 2021 Pacific Islands Forum Declaration on the Preservation of Maritime Zones

Tim Stephens, Clement Yow Mulalap, Victoria Hallum, Toby Hanson, Nilufer Oral, Frances Anggadi

On 6 August 2021, Pacific Islands Forum Leaders issued the Declaration On Preserving Maritime Zones In The Face Of Climate Change-Related Sea-Level Rise (PIF Declaration), declaring that their maritime zones, and rights and entitlements flowing from those zones, would be maintained notwithstanding the effects of sea-level rise.

Chaired by Professor Tim Stephens, this discussion-style panel showcases the different perspectives of participants (including those involved in the negotiation of the PIF Declaration) on the development and significance of the Declaration. In line with the conference theme, participants will consider the connection between this regional political declaration and global processes (eg the effects of climate change, discussions at the International Law Commission, the 'universal' law of the sea).Yasmin Nahlawi will examine the response of the UNSC to the Syrian conflict, and the legally abusive use of the veto.

- Clement Yow Mulalap will focus on the background to sea-level rise and international law as a legal issue
- Victoria Hallum will discuss the development and negotiation of the PIF Declaration.
- Toby Hanson will focus on the substantive elements of the PIF Declaration.
- Nilufer Oral will look at the connection between the PIF Declaration and the ILC topic on sea-level rise and international law.
- Frances Anggadi will discuss the connection between the (regional) PIF Declaration and the (universal) law of the sea

Short Biographies

Tim Stephens is Professor of International Law at the University of Sydney Law School. He teaches and researches in public international law, with his published work focussing on the international law of the sea, international environmental law and international dispute settlement.
Clement Yow Mulalap, hailing from the island of Wa'ab in the Federated States of Micronesia, is an international law consultant who specializes in international environmental law (particularly climate change law and biodiversity conservation law), the law of the sea, and international Indigenous law, with several articles and chapters published on those matters. Among other responsibilities, he is currently the Legal Adviser for the Permanent Mission of the Federated States of Micronesia to the United Nations and has represented the Federated States of Micronesia in various multilateral fora, including meetings for the UNFCCC and UNCLOS, as well as engagements with the International Law Commission on the topic of sea-level rise in relation to international law.
Victoria Hallum is Chief International Legal Adviser at the New Zealand Ministry of Foreign Affairs and Trade where she leads the teams advising on all aspects of international law. She has had diplomatic postings to the UN in New York and Paris where she was deputy head of mission at the New Zealand Embassy and Permanent Delegate to UNESCO. She has also led the Legal team at Maritime New Zealand, which is New Zealand's maritime regulator and compliance agency.
Toby Hanson is Principal Legal Officer in the Office of International Law at the Australian Attorney-General's Department where he works as a legal adviser for the Pacific Maritime Boundaries Project and the Resilient Boundaries for the Blue Pacific Project.
Nilüfer Oral is Director of the Centre of International Law at the National University of Singapore, a member of the UN International Law Commission and Co-chair of the Study Group on Sea-level rise in relation to international law. She advised the Turkish Foreign Ministry on matters related to the law of the sea and was a climate change negotiator for the Ministry (2009 – 2016). She appeared before the International Tribunal for the Law of the Sea. Nilufer Oral is a Distinguished Fellow of the Law of the Sea Institute at Berkeley Law; Senior Fellow of the National University of Singapore Law School; and Honorary Research Fellow at University of Dundee. She is a member of the Steering Committee of the IUCN World Commission on Environmental Law. She has published numerous articles edited several books, and has spoken at many international conferences.

Frances Anggadi is a PhD Candidate at the University of Sydney Law School and Visitor at the Australian National University, researching State practice relevant to understanding the legal impacts of climate change on maritime zones. She previously worked at the Australian Attorney-General's Department (2003-2020) serving in various roles including as Principal Legal Officer in the Office of International Law advising across all areas of public international law, and as legal adviser for the Pacific Maritime Boundaries Project (2016-2019).

Panel #3: Human Rights, Mobility and Immobility

Sarah Joseph, Fiona McGaughey, Amy Maguire, Mary Anne Kenny, Holly Cullen, Samuel Berhanu Woldemariam

The aim of this proposal is to have a dedicated international human rights law panel in the ANZSIL conference, entitled: Human Rights, Mobility and Immobility to respond to the conference theme of 'International Law and Global Interconnectedness'. We examine questions of mobility and immobility – seeing them as inherently concerned with movement or lack of movement and encompassing a range of human rights themes including freedom of movement, detention, seeking asylum, migration and forced migration, and extradition. Our analysis is both conceptual and applied and we also use mobility as a proxy for progress in international human rights law.

We examine well-established legal principles and apply them to both historical and contemporary issues of concern, such as COVID-19. The panel embodies global interconnectedness and the benefits of mobility, as we are Australian, Canadian, Ethiopian and Irish, with expertise across human rights and migration law in a number of jurisdictions and a wealth of human rights practice and scholarship. As such, we draw on diverse epistemologies and methodologies. Questions we pose include: to what extent can international human rights law allow for restricted or forced mobility? How does a TWAIL analysis inform our understanding of mobility and immobility? Has Australia demonstrated mobility in its compliance with international human rights obligations? Do domestic and regional courts live up to their promises to protect the rights of mobile individuals? Can international human rights law protect interconnectedness and mobility for women and migrants? Does international human rights law demonstrate mobility in dealing with contemporary challenges?

Included Paper Abstracts

Fiona McGaughey & Mary Anne Kenny

Mobility and Immobility in the Era of COVID-19: An International Human Rights Law Examination

The COVID-19 pandemic has demonstrated our interconnectedness at local and global levels and has fostered renewed interest in human rights. Concomitantly, Governments have enforced frequent and sometimes extended restrictions on movement, limiting our connectedness. The pandemic has brought to prominence this power of States to control mobility, both internationally and within countries through restrictions on freedom of movement, travel restrictions, and border closures. States have relied on 'security' frameworks (likening the virus to an attack). The international human rights framework has been deeply tested - it allows for permissible limitations on human rights where required, but remains subject to varying domestic implementation. Globally, women, refugees and migrants have been disproportionality impacted by measures to control the spread of the virus and restrict mobility. As part of this securitisation, we have seen national responses marked by the increased use of confinement, and unconventional forms of detention, in order to 'secure' the general population, such as quarantine ships and other places for sanitary confinement for migrants, and a surge in informal shelters to warehouse people. The securitisation of public health policy has contributed to measures that have redefined borders and increased securitisation of internal and external borders; broadened who is responsible for managing borders; and further contributed to the securitisation of migration, presenting migration as a threat to public health. In this paper, we: examine relevant international human rights law; discuss how restrictions have impacted on these groups; and identify broader international human rights law lessons learnt from the pandemic.

Holly Cullen & Amy Maguire

Human Rights and Extradition: A Tale of Two Cases

Extradition results from human mobility, where those accused of crimes are located in a State other than that which seeks to prosecute them. It is a form of transnational law, regulated by treaties and domestic legislation. In recent decades, international human rights law has placed constraints on States from extraditing in some circumstances, notably where the death penalty could be imposed. However, the impact of international human rights law has proved to be limited. This is true both in terms of protecting the rights of the accused and the rights of victims of crime. For example, the United States' application to extradite Julian Assange from the United Kingdom demonstrates how the principle of comity restricts human rights protection of the accused. The English court declined to examine fully claims that Assange faces violations of his human rights if tried in the United States, deciding that such claims could be resolved in the trial itself. It thereby deferred to the American courts on the application of human rights. Conversely, in the case of Malka Leifer's extradition to Australia, the process was drawn out over such a long period as to disregard the rights and interests of the alleged victims of crime whose complaints form the basis for the prosecution. In this

paper we explore these two case studies to reveal the contemporary human rights implications of extradition, in relation to both individuals subject to extradition and victims of crimes, to open discussion for how states could mitigate or prevent rights violations.

Samuel Berhanu Woldemariam

A Centenary of Multilateral Response to Forced Displacement: A Twail Review

2021 marked the centenary of the international community's formal engagement with forced displacement that began in 1921 under the auspices of the League of Nations. Initiated as an ad-hoc arrangement to respond to the Russian refugee crisis of the 1920s, the engagement gradually expanded in scope to accommodate additional groups of displaced persons and developed into a full-fledged mechanism to respond to forced displacement at the international level. Although States were hesitant to provide their full support at the start, the growing realisation of the utility of appointing an international actor to handle a phenomenon that would otherwise need to be handled by the States themselves, provided the incentive for gradual State support. This resulted in a progressive normative and institutional development culminating in the adoption of the 1951 Refugee Convention as the governing international law norm on refugees and the creation of the United Nations High Commissioner for Refugees ('UNHCR') as the leading institutional framework. However, despite a century old engagement at the international level, the scope of contemporary forced displacement remains alarming both in terms of the number of forcibly displaced persons and in the asymmetrical global responsibility sharing. The COVID-19 pandemic and the resultant restrictions on movement further introduced an additional equation into an already complex matrix. Using Third World Approaches to International Law (TWAIL) as its lens, this article reflects on, and reviews the history of, the international response to forced displacement.

Amy Maguire & Fiona McGaughey

Australia on the United Nations Human Rights Council: Progress or Performativity?

Our global interconnectedness is reflected in United Nations (UN) human rights instruments recognising 'the inherent dignity and of the equal and inalienable rights of all members of the human family' (Universal Declaration of Human Rights). The primary multilateral human rights body, the UN Human Rights Council (HRC), established by Resolution 60/251 in 2006, reaffirmed Charter principles of friendly relations and international cooperation. The HRC comprises 47 member States, elected on the basis of geographical distribution and taking into account their voluntary pledges. We might expect progress on the realisation of those pledges during a member State's term but as we have discussed previously, we may see performativity, rather than performance. Here, we conceptualise progress as a form of mobility or immobility on the part of States, and reflect on Australia's first term on the HRC from 2018-2020.

We propose a case study approach to this ongoing analysis. Five cases are self-selecting, representing the five 'pillars' containing Australia's voluntary pledges: the rights of women and girls; strong democratic institutions; freedom of expression; the rights of Indigenous peoples; and strong national human rights institutions. We select an additional five case studies as areas of global human rights concern in which Australia receives UN commentary (positive or negative): climate change; modern slavery; forced human displacement; rights of LGBTQI+ people; and children's rights. We propose conceptual and methodological solutions for measuring progress during Australia's HRC term – identifying approaches, agendas, mechanisms, and actors that support or hinder progress.

Short Biographies

Fiona McGaughey (PhD, MHumRights, LLB (Hons)) is a senior lecturer in international human rights law at the University of Western Australia and Senior Fellow of the Higher Education Academy. She is a member of UWA's Modern Slavery Research Cluster. Fiona has published widely on human rights topics including UN human rights bodies and mechanisms, NGOs in international human rights law, modern slavery, Indigenous rights, international human rights law and COVID, and human rights pedagogies. She previously worked in the not-for-profit sector in Ireland and Australia in research and policy roles related to human rights and equality. Her book on NGOs and the UN Human Rights System was published by Routledge in 2021.

Amy Maguire (PhD, LLB (Hons), BA) is Deputy Head of School (Research Training) at the University of Newcastle Law School. She is the founding co-Director of the Law School's Centre for Law and Social Justice. Amy conducts research across a number of topical international law and human rights issues, including climate change and human rights, human rights institutions, refugee rights, Indigenous rights, international criminal law and capital punishment. Amy has published widely in highly-regarded journals and edited books, is frequently sought as an expert commentator in Australian and international media. She has

received multiple awards for her research and teaching. Amy is the top ranked international law contributor to The Conversation website, with over 812,000 readers of her 66 articles. Amy's research has been influential on parliamentary inquiries, including the 2016 report into Australia's advocacy for the abolition of the death penalty and the 2022 report on a proposed religious discrimination bill. In 2018, Amy was one of four scholars chosen to represent the Australian and New Zealand Society of International Law at the Four Societies Conference in Tokyo.
Mary Anne Kenny (LLM, LLB(Hons), BJuris) is an Associate Professor of Law at Murdoch University. She teaches and researches in the areas of refugee law, migration and human rights. Her expertise lies in the intersection of refugee law and mental health and she is currently working on research projects with the Mental Health and Suicide Prevention Group at UniSA. She was previously the Director the Centre for Human Rights Education at Curtin University. Mary Anne was the Chair of the Law Reform Commission of WA from 2009-2012. She has been appointed to national government advisory boards to provide independent advice regarding refugee policy and detention. She has been a legal practitioner for almost 30 years
Holly Cullen is an Adjunct Professor of Law at the University of Western Australia, having been Professor of Law from 2010-2016. She is also a member of the Modern Slavery Research Cluster at UWA. She teaches law and law & society units at UWA, Murdoch University and Deakin University. Previously, she was Reader in Law at Durham University and Deputy Director of the Durham European Law Institute from 1998-2006, also serving as Acting Director in 2003-2004. She was a member of the International Law Association's research committee on Non-State Actors in International Law and of the Advisory Group for the Child Labor Research Initiative at the University of Iowa Human Rights Center. She is the author of The Role of International Law in the Elimination of Child Labor (Brill, 2007). She is co-editor with Joanna Harrington and Catherine Renshaw of Experts, Networks and International Law (Cambridge University Press, 2017) and co-editor, with Philipp Kastner and Sean Richmond, of The Politics of International Criminal Law (Brill, 2021). She has researched and written on the European Social Charter for over 20 years, including research funded by the Arts & Humanities Research Council (UK).
Samuel Berhanu Woldemariam (PhD, LL.M, LL.B) is a lecturer at Newcastle Law School. He researches areas of public international law including human rights, forced displacement, diplomatic immunities and privileges and the operation of international organisations. Samuel previously worked as a Legal Officer at the International Legal Affairs Department of the Ethiopian Foreign Ministry and represented Ethiopia in various bilateral and multilateral forums. He has published on forced human displacement and the situation of internally displaced persons in the IGAD region with the Melbourne Journal of International Law and the Journal of the African Union Commission on International Law respectively. Samuel writes comments and op-eds on topical issues in international law and international relations. These articles can be accessed at The Conversation and Australian Outlook.

Panel #4: Futures of International Criminal Law

Gabrielle Simm, Emma Palmer, Edwin Bikundo, Simon McKenzie, Eve Massingham, Martin Clark, Shannon Torrens, Natalie Nunn

The process of investigating and prosecuting international crimes demonstrates the interconnectedness of international law with global politics, environments, technology, and personal and community harms. Scholars have observed how international criminal law serves to reveal and silence different histories and experiences, while projecting particular "futures" after conflict and atrocities that rest on assumptions about the connection between justice and societies. This panel promotes an edited volume, Futures of International Criminal Justice, published by Routledge this year, with papers introducing the volume and presenting example chapters. We request that it be held on 1 July 2002, 20 years after the date that the Rome Statute of the International Criminal Court entered into force.

The collection identifies and discusses problems and opportunities for the theory and practice of international criminal justice. The International Criminal Court and project of prosecuting international atrocity crimes have faced multiple challenges and critiques. In recent times, these have included changes in technology, the conduct of armed conflict, the environment, and geopolitics. The mostly emerging contributors to the collection draw on diverse socio-legal research frameworks to discuss proposals for the futures of international criminal justice. These include addressing accountability gaps and under-examined or emerging areas of criminality at, but also beyond, the International Criminal Court, especially related to technology and the environment. The book discusses the tensions between universalism and localisation, as well as the regionalisation of international criminal justice and how these approaches might adapt to dynamic organisational, political and social structures, at the ICC and beyond.

Included Paper Abstracts and Short Biographies

Gabrielle Sim (Chair), Melbourne Law School

Gabrielle Simm teaches international law at Melbourne Law School. Her research interests include socio-legal approaches to international law, especially peacekeeping, disasters, and humanitarian aid. She is the author of Sex in Peace Operations (CUP 2013) and co-editor of People's Tribunals and International Law (CUP 2018) with Andrew Byrnes. Before entering academia, she worked as an international lawyer at the Attorney-General's Department and Department of Foreign Affairs and Trade in Canberra and as a refugee lawyer at Victoria Legal Aid in Melbourne.

The Discussant will offer remarks about the book, its main themes, and relationship to the conference themes concerning interconnectedness and international law. They will propose some questions for the panel, before opening the floor for a wider discussion about the multiple pasts and futures of international criminal justice, perhaps with reference to the anniversary of the entry into force of the Rome Statute and current events.

Emma Palmer, Griffith Law School

Introduction: The Futures of International Criminal Justice

International criminal justice has promoted the prosecution of individuals for crimes against humanity, war crimes, genocide, and aggression by courts with some international involvement. Yet the prominence of other mechanisms for responding to these crimes, and emerging crimes, continues to evolve, while the focus and structure of the ICC and other international criminal tribunals remains subject to debate and reconsideration. This chapter examines the concepts of 'futures' and 'newness' in relation to international criminal law. It introduces the other contributions to this volume and their themes, highlighting how international criminal justice responds to tensions involving universalism and localisation, technological and environmental change, and the non-linear effects of 'justice' and its mechanisms.

Emma Palmer is a Senior Lecturer at Griffith Law School, Queensland. Emma's books Adapting International Criminal Justice in Southeast Asia: Beyond the International Criminal Court (CUP) and The Amicus Curiae and International Criminal Justice (co-authored, Hart) became available in 2020 and a co-edited collection Futures of International Criminal Justice (Routledge) has just been released. Emma was awarded her PhD from UNSW Law in 2017, where she was a Research Assistant for two Australian Research Council (ARC) Discovery Projects. Between 2006 and 2011, while completing her Masters in Law, Emma worked as a senior investment analyst at Macquarie Bank working on private equity infrastructure investments. She received Bachelor degrees in Law and Commerce in 2006. Emma has been admitted as a lawyer in New South Wales and is a Director for Women's Legal Service NSW. Her research interests include international criminal law, international humanitarian law, human rights and

social justice, transitional justice, infrastructure governance, gender issues, and norm adaptation in the Asia-Pacific region.

Edwin Bikundo, Griffith Law School

Unlawful Human Experimentation in the Wake of the Trials under Control Council Law No 10 at Nuremberg, in the Rome Statute for the International Criminal Court and at the Extraordinary Chambers in the Courts of Cambodia

On 16 November 2018, the Extraordinary Chambers in the Courts of Cambodia in Judgement of Case 002/02 were satisfied that there was sufficient evidence to establish both the actus reus and the mens rea necessary to constitute the crime against humanity of murder with regard to surgical experimentation. In arriving at this decision, the ECCC relied on, among other things, the Medical Case decided at Nuremberg. However, in the Medical Case unlawful medical experiments were classified both under crimes against humanity and under war crimes. Moreover, under the Rome Statute for the International Criminal Court unlawful medical experiments are only criminalised as war crimes. What is more, they are not explicitly included under the rubric of crimes against humanity even though at Nuremberg the same offence was classified both as a war crime and as a crime against humanity. This chapter explores the twists and turns in the historical development of the law on unlawful medical experimentation in order to outline a clearer future for defining an approach to better understanding the contours of this crime.

Edwin Bikundo is a Senior Lecturer at the Griffith Law School, Griffith University, Australia. He is Co-Editor of the Routledge Law Book Series: *TechNomos: Law, Technology, Culture* and book Reviews Editor of the *Griffith Law Review*. His work has appeared in *The Netherlands Yearbook of International Law*, the *Asia Pacific Journal of Ocean Law and Policy*, *Law Culture and the Humanities*, *The International Criminal Law Review*, *Law and Literature*, *The Oxford Journal of Legal Studies*, *Law and Critique*, the *Journal of the Philosophy of International* Law, *The Oxford Handbook of International Criminal Law*, and elsewhere. e.bikundo@griffith.edu.au. ORCID iD: 0000-0003-1897-5968.

Eve Massingham, University of Queensland and Simon McKenzie, Griffith Law School

Testing Knowledge: Weapons Reviews of Autonomous Weapons Systems and the International Criminal Trial

A recurring theme of the debate about the development and use of autonomous weapon systems (AWS) into the future is how to ensure accountability for their use. There is a fear that in the future an AWS might be involved in a serious violation of international law but that no one could be held responsible for that violation. This has led many scholars to propose ways to bridge the perceived gap between the decisions of the operator of the system and targets selected by the device.

The chapter contributes to this debate by considering how the legal obligation on States to carry out a weapons review links with the high threshold that has been set for individual criminal responsibility for crimes triable before the International Criminal Court (ICC). It shows the importance of testing in the development and acquisition of AWS and how testing, and its documentation through legal review, is an important way of promoting accountability for the use of AWS.

Eve Massingham is a Senior Research Fellow with the School of Law, The University of Queensland. Eve's current research focuses on the diverse ways in which the law constrains or enables autonomous functions of military platforms, systems and weapons. She is the co-editor of *Ensuring Respect for International Humanitarian Law* (Routledge, 2020) and she has published a number of book chapters and journal articles in the fields of international humanitarian law and international law and the use of force.

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.

Martin Clark, Melbourne Law School, Shannon Maree Torrens, Lexbridge Lawyers and Natalie Nunn, Lexbridge Lawyers

Early Career Researching and Writing in International Criminal Law

This 'paper' will take the form of a short discussion between the book's ECR editor Martin Clark, and two ECR chapter contributors, Dr Shannon Maree Torrens and Natalie Nunn. It will provide a special opportunity to focus on the writing and editing process in contemporary international law scholarship. Using Torrens' chapter on the ICC's 'deciding' processes on Afghanistan and Palestine, and Nunn's chapter on AI decision-making in war, Clark, Torrens and Nunn will discuss the process of contributing to an edited book. They will reflect on choosing a topic, 'carving out' a standalone piece from an in-progress or recently completed PhD, and the chapter writing process: how to plan, research, write, respond to feedback, and finalise a book chapter. They will also touch on broader ECR topics like balancing PhD work and other ECR obligations in writing and publishing, and developing a specialised area of research. It will be of particular interest to ECRs/younger scholars at ANZSIL, those thinking about putting together an edited volume of their own, as well as established scholars interested in better supporting their own PhD students and ECRs in general.

Martin Clark is a *Modern Law Review* Postdoctoral Scholar and Visiting Fellow at the Institute for International Law and the Humanities (IILAH) at Melbourne Law School. He was Lecturer in Law at the University of Tasmania from 2020–21 (where he remains an Adjunct Lecturer) and a JD Teaching Fellow at MLS in 2021. He was awarded his PhD in Law from the London School of Economics and Political Science in May 2020, where he was a Judge Rosalyn Higgins Scholar and Modern Law Review Scholar. His work focuses mostly on the history of legal thought, international law and public law. He is an assistant editor at the London Review of International Law, and Web Assistant at the Modern Law Review. His work has been published in the *British Yearbook of International Law* and the *Leiden Journal of International Law*, and he was an assistant editor on Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (OUP, 2016). His book, *Eating the World: A Global History of Law and Commodities* with Dr Yoriko Otomo is forthcoming with Counterpress.

Shannon Maree Torrens is an Australian international criminal and human rights lawyer and expert on legal responses to mass atrocities, focusing on the prosecution of crimes against humanity, war crimes and genocide. Her PhD, which was completed at the University of Sydney Law School focused on international criminal law. Shannon has worked at the UN international criminal courts and tribunals for the former Yugoslavia (ICTY), Rwanda (ICTR), Sierra Leone (SCSL) and Cambodia (ECCC). She has also worked as a legal advisor for the Marshall Islands Permanent Mission to the UN, working on the country's engagement with the International Criminal Court (ICC) through the Assembly of States Parties to the Rome Statute. Shannon has also worked with the UN Food and Agriculture Organisation, the United Nations Children's Fund (UNICEF), the World Food Programme and at the Australian Embassies to Italy and the Holy See (the Vatican).

Natalie Nunn is a PhD candidate researching the implications of autonomous weapon systems for the application and development of arms control law. Natalie is currently engaged as a consultant to the International Committee of the Red Cross and as an adviser to Lexbridge Lawyers. Natalie has previously worked as both an advisor and supervisor for the Kalshoven Grieks Forum, overseeing research on specific projects involving issues of international humanitarian law. Prior to this she worked with the Australian Permanent Mission to the United Nations in New York, the Coalition for the International Criminal Court, the International Service for Human Rights and the United Nations Assisted Tribunal for the Khmer Rouge.

Panel #5: Practising International Law in Australia and New Zealand: 'In Conversation' Panel with International Law Practitioners

Felicity Gerry QC, Tracey Epps, Kate Eastman, Elana Geddis, Damien van der Toorn

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 being done in the private sector. This panel aims to bring together a number of leading international law practitioners from across Australia and New Zealand, to discuss their experiences of practising international law across a diverse range of substantive areas in international law and for different kinds of clients. Ranging from general public international law to international trade law, investment arbitration, international human rights law and international criminal law, their experience includes working at the private bar; in private law firms, for governments; for international organisations; for non-government organisations—as well undertaking pro bono work. Among other things, their work practice includes providing advice, undertaking litigation and advocacy, conducting negotiations, managing projects and providing training and capacity-building.

We envisage the panel as a facilitated discussion, with each speaker addressing a number of questions from the moderator, rather than necessarily a set presentation. Through this combination of speakers we aim to create a dynamic 'in conversation' session that should 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.

Panel #6: The Laws of Outer Space and Interconnectedness

Danielle Ireland-Piper, Melissa de Zwart, Stacey Henderson, Duncan Blake

Satellites for global communications, for Earth observation and for position, navigation and timing have all facilitated strategic stability, the modern conveniences we all enjoy and our inter-connectedness. Research and development, initially undertaken to support space activities, are the genesis of many of our most useful technologies on Earth. Astronauts who, from outer space, have been inspired by the 'overview effect' have returned to emphasise our inter-connectedness. The largest projects in the space domain have, of necessity, involved multi-national cooperation, as is the case on the ISS, and as would likely be the case for human habitation beyond Earth. The legal frameworks for all these space activities, though, have been strained by the increasingly congested, contested and competitive nature of the space domain, and arguably the frameworks fail to account for foreseeable space activities in our not too distant future. This panel will explore whether international law is keeping pace with current and anticipated activities by astronauts, in respect of human habitation off Earth and by military forces, and will invite the audience to consider what this means for humanity's inter-connectedness.

Included Paper Abstracts and Short Biographies

Danielle Ireland-Piper (Chair), Bond University

Danielle Ireland-Piper is Associate Professor at Bond University, Australia. She has a PhD from the University of Queensland and an LLM from the University of Cambridge, where she was a Chevening Scholar. Danielle is the author of Extraterritoriality in East Asia: Extraterritorial Criminal Jurisdiction in China, Japan, and South Korea (Edward Elgar, 2021) and Accountability in Extraterritoriality: A Comparative and International Law Perspective (Edward Elgar, 2017) as well as publications on public international law, space law, human rights law, transnational criminal law, and comparative constitutional law. Danielle also has prior experience in government roles and in private legal practice. She was Associate to the Hon. Chief Justice Susan Kiefel during her Honour's time on the Federal Court.

Melissa de Zwart, Flinders University

The role of astronauts as 'envoys of humankind'

The Outer Space Treaty requires States Parties to regard Astronauts as 'envoys of [hu]mankind' (Article V). States are required to 'render to them all possible assistance in the event of accident, distress, or emergency landing on the territory of another State Party'. The Rescue and Return Agreement articulates further details regarding the nature of these obligations, but shifts the terminology to 'personnel of a spacecraft'. The Moon Agreement goes further and deems each person on the Moon to be both an 'astronaut' for the purposes of Article V and 'personnel of a spacecraft' within the meaning of the Rescue and Return Agreement. In the modern age of commercial spaceflight and space tourism, what do these concepts really mean? Is there some residual value in the concept of an envoy of humankind and how would such a concept apply to the expansion of human missions to the Moon and beyond? Do the same considerations apply to commercial missions?
This paper will consider the legal concept of astronaut and place this in the context of the aspirational perception of astronauts, addressing its evolution across the development of crewed missions, to current day space tourists. It will consider if there is a practical reason to retain a legal concept of astronaut and if such a concept contributes to a peaceful conception of human engagement with the space domain.

Melissa de Zwart is Professor (Digital Technology, Security & Governance) Jeff Bleich Centre for the US Alliance in Digital Technology, Security & Governance. Professor de Zwart is a thought-leader in the area of law and technology and has a strong international profile in the fields of internet law and the regulation of access to and uses of outer space. Melissa has published widely on the commercial and military uses of space, with a particular focus on the relationship between civilian and military technological development, and the international and domestic regulation of outer space.
She previously served as Dean of the Adelaide Law School, University of Adelaide (2017-2021), and Chair of the Council of Australian Law Deans. She is currently the Deputy Chair of the Space Industry Association of Australia, Board Member of the Australian Academy of Law, Board Member of the Australia and New Zealand Space Law Council, Member of the International Institute of Space Law and a Lieutenant in the Royal Australian Navy (Reserve).

Stacey Henderson, University of Adelaide

Intergalactic Interconnectedness and Sustained Human Presence in Space

There are now multiple space programs around the world, funded by both state space agencies and private companies, seeking to establish permanent human habitats in space. While there is plenty of focus on the science and technology necessary to turn the once only imagined human habitation of space into a reality, little attention has been paid to the laws that will apply to future human space habitats and those who establish and inhabit them.
International space law never contemplated human habitation beyond the Earth. The existing international space law regime was created at a time when few States had space capabilities, let alone private or commercial actors. Existing laws and policies are far more concerned with regulating space activities connected to Earth-based actors than with the regulation of future space habitats and the humans who will inhabitant them. With human habitats planned for the Moon and Mars within decades, it is crucial to consider and develop legal and governance frameworks for human space habitats before humans are stuck in a cycle of indentured servitude on another planet.
This paper focusses on the protection of human participants in future off-Earth human habitats and explores how international law can facilitate (or impede) their ongoing connection to Earth. It explores how international law can account for and regulate the different actors with their different forms of inter-connectedness, and considers the impact that off-Earth human habitats may have on shaping and developing international law and ensuring ongoing inter-connectedness on an intergalactic scale.

Stacey Henderson is a Lecturer at Adelaide Law School, The University of Adelaide. She is an early career researcher whose research focuses on the protective capacity of law, including international law generally, responsibility of States, and governance of outer space and space technology particularly in the context of off-Earth human settlement.

Duncan Blake, UNSW Canberra

Developing the normative framework for military space activities to maintain space's role in global interconnectedness

If we take 'peace' to encompass global strategic stability and growing interconnectedness, then military space activities have played a pivotal role in facilitating peace dividends since WWII. Space-based intelligence, surveillance and reconnaissance (ISR) has provided strategic warning, especially in respect of nuclear ballistic missiles. Space-based communications have enabled deployed forces to operate at great distance, supporting the potentiality or reality of the US, as global hegemon, enforcing the rules-based global order. The Global Positioning System (GPS), a US military initiative, and its Chinese, EU and Russian counterparts, enable the operators to understand where its forces are at all times, and facilitates precision strikes (including potentially nuclear strikes), when and if necessary. These capabilities were predominantly strategic in nature and not inconsistent with the peaceful uses of outer space. Other benefits to interconnectedness have been derived from military research and development.
Operation Desert Storm in 1991 in Iraq demonstrated the operational and even tactical benefits of integrating space infrastructure into warfighting. China, recognizing the significant operational advantage that the US has, by virtue of its space infrastructure, developed and tested an anti-satellite (ASAT) in 2007, although the US and USSR had both experimented with counterspace weapons prior to this. The development, testing and fielding of counterspace weapons has since proliferated to encompass kinetic ASAT, high altitude nuclear detonations and associated electromagnetic pulses, stalking and physical interference, electronic warfare, and cyber operations.
In the face of the increasingly contested nature of space, leaders have called for the development of the normative framework. While the *Outer Space Treaty* and other space-specific treaties may not have specifically and expressly encompassed hostile activities in the space domain comprehensively, other areas of international law apply. This paper will discuss recent challenges to the normative framework applicable to military space activities, efforts to develop the framework, and the prospects of their success.

Duncan Blake is a lecturer at UNSW Canberra where he lectures on space activities, law, policy and strategy. He is also a PhD candidate at the University of Adelaide completing research on reconciling legal incongruence in the application of disparate areas of law to military space activities. Duncan previously served full-time as a legal officer in the RAAF for 22 years and continues to do so regularly in a Reserve capacity.

Panel #7: Climate Change

Stacey Henderson, Hitomi Kimura, Gillian Moon, Natasha Affolder, Godwin Dzah

Included Paper Abstracts and Short Biographies

Stacey Henderson (Chair), Adelaide Law School

Stacey Henderson is a Lecturer at Adelaide Law School, The University of Adelaide. She is an early career researcher whose research focuses on the protective capacity of law, including international law generally, responsibility of States, and governance of outer space and space technology particularly in the context of off-Earth human settlement.

Hitomi Kimura, Otsuma Women's University, Tokyo

Reconsidering interconnection between the UNFCCC and the Antarctic Treaty System under the Anthropocene

The status quo of the Antarctic Treaty System (ATS) faces the recent rapid and drastic environmental changes due to climate change, of which impact is already visible, and face challenges to respond to the era of Anthropocene based on Great Acceleration and Planetary Boundary. So far, the ATCM has been less vocal and proactive regarding climate change compared to the Arctic Council (Scott and Zwaag, 2020), since the Antarctica is uniquely protected and managed apart from the global system (Stephen, 2018) and is relatively unaffected by human activity without indigenous people. The original idea and design of the ATS under which human activity does not affect the environment (Myhre, 1986) fits well into the era of Anthropocene and provide useful lessons such as on the Common Heritage of Mankind (CHM) and human-nature relationship for other regimes, which struggle to balance human alteration of environment and its conservation on one hand, but on the other hand, lacks interconnection and interrelationships with the globe, Arctic region, UNEP (Rothwell, 2020) and, in particular, UNFCCC (Williams, 2020). The paper tries to assess the role of the Protocol on Environmental Protection to the Antarctic Treaty, the Committee for the Environmental Protection and environmental protection regime under the era of Anthropocene from the perspective of interconnection with other regimes outside the ATS, in particular the UNFCCC, to strengthen resilience of the ATS under the Anthropocene.

Hitomi Kimura is an Associate Professor in international and domestic environmental law at Otsuma Women's University, Tokyo. Her research covers the implementation of international/domestic environmental law, and climate law. She also worked in Institute for Global Environmental Studies as a researcher/fellow, taught foreign students at Graduate School of the University of Tokyo, as part-time lecturer, stayed at Aix-Marseille University and the University of Sydney Law School, as short visiting. She serves as Chair of Outreach Committee of ASIANSIL and member of Outreach Committee of JSIL and Research Director of Society of International Business and Legal Studies. Her recent publication and presentation include; "Addressing Climate-Induced Displacement: The Need for Innovation in International Law" in Craik et al. (eds.). *Global Environmental Change and Innovation in International Law* (CUP, 2018); "Role of non-State Actors in the Paris Agreement and Development of International Law", *Australian International Law Journal*, Vol.25 (2018); Presentation on "Polar Governance for the Blue Earth: Messages from COP15 on Biodiversity and COP26 on Climate", 14th Polar Law Symposium 2021 (2021); "Nature-based Solutions as key to strengthen climate-biodiversity nexus under the Anthropocene in the Polar Region?", 8th Frontiers in Environmental Law Colloquium (2021).

Gillian Moon, UNSW Law & Justice

Advancing synergies between trade law and climate law

While much has been written about actual or anticipated restraints imposed by WTO law on domestic climate change mitigation action, less attention has been given to identifying and asserting 'climate-useful' rights contained in the WTO agreements or to exploiting synergies between the two bodies of international law. This paper will, firstly, describe ways in which stronger pressure by willing Members for compliance with certain rules in WTO law, including the rules governing export subsidies, could support global efforts to reduce greenhouse gas emissions. It will also describe options for cross-institutional cooperation which could bring domestic mitigation measures and WTO rules into greater alignment. For example, more direct and expansive involvement by the ISO in UNFCCC-led pathways for reducing emissions could support subsequent domestic adoption of stricter, yet WTO law compliant, technical regulations on emissions, as well as enhance harmonisation and equivalence. The paper will also explore a range of mitigation provisions which could be added to existing preferential trade agreements. Finally, the paper will discuss

ways in which Members might utilise the cooperative arrangements offered under Article 6 of the Paris Agreement to bring jointly adopted domestic mitigation measures into greater alignment with WTO rules.

Gillian Moon is Senior Visiting Fellow in the School of Law & Justice at UNSW and an Associate at the Australian Human Rights Institute. Previously a Senior Lecturer at UNSW Law, she specialises in the intersections between international economic law, climate law, human rights law and development. Current research relates to Australia's use of fossil fuel export subsidies, international standards on disclosure of climate-related financial risk, climate provisions in preferential trade and investment agreements, the intersections between WTO law disciplines and arrangements under Article 6 of the Paris Agreement, and climate litigation utilising international economic law.

Natasha Affolder, Allard School of Law, UBC and Godwin E.K. Dzah, Osgoode Hall Law School

The Exchange of Law Among Nations Through Climate Change Litigation

Climate change litigation continues to bash holes in the view of domestic legal systems as hermetically sealed units. It disrupts narratives about how international law shapes and is shaped by non-international law. Climate cases are inspired by litigation elsewhere, actively fostered by transnational advocacy communities, and the decisions themselves reveal a developing transjudicial dialogue on climate change. This paper takes a close look at practices of transjudicialism in climate change litigation, both visible and less visible dimensions of these practices. In so doing, it seeks to disrupt some default patterns of studying the spread of law. By problematizing the practices of 'finding' influential climate law cases, measuring their citation and impact, and assuming their directions of influence, we set out to remove some of the blinders that prevent us from seeing how climate change litigation from the Global South might challenge and transform the rest of the world.

Natasha Affolder is a Professor at the Allard School of Law, University of British Columbia. Her scholarship spans a wide range of substantive areas including international law, law and sustainability, transnational law, and climate law. Her recent work has sought to reveal and to challenge the marginalization of environmental law in legal practice and scholarship and to creatively expand the methods for studying environmental law and its global movements. She is the recipient of numerous awards including, most recently, the 2019 Richard Macrory Prize for the Best Article published in the *Journal of Environmental Law*. Professor Affolder's research appears in leading law reviews including the *American Journal of International Law*, the *Leiden Journal of International Law*, *Transnational Environmental Law*, and the *Journal of Environmental Law*.

Godwin E. K. Dzah is Provost's Postdoctoral Fellow at the Osgoode Hall Law School, York University, Canada. His teaching and research interests are in the areas of international environmental law, sustainable development and Third World Approaches to International Law. He has political science and law degrees from the University of Ghana, Ghana School of Law, Harvard Law School, and recently received a doctoral degree in law from the Peter A. Allard School of Law, University of British Columbia. His research has been nationally and internationally recognized, including been a two-time recipient of the John Peters Humphrey Fellowship awarded by the Canadian Council on International Law. His present research engagements intersect with climate law, transnational law, the politics of international law, sustainability and Indigenous legal systems.

Panel #8: Making the international, domestic – Military discipline, good order, war crimes & accountability in 2022

Lauren Sanders, Joshua Liddy, John Devereux, Brendan Walker-Munro, Kelly Ashton

The Report of the Inspector-General of the Australian Defence Force Inquiry (the Brereton Report) into allegations of war crimes committed by ADF forces in Afghanistan was, somewhat prophetically, released on the 70th anniversary of the commencement of the Nuremburg Tribunals. The Brereton Report was one of many similar inquiries conducted by nations that constituted the International Security Assistance Force (ISAF) into their own conduct during the Afghan conflict. This development demonstrates a shift from the Nuremburg Tribunals – often criticised for representing 'victor's justice' – to an increase in transparency and accountability for compliance with IHL in today's interconnected world. Accountability and transparency in the application of IHL is influenced by social, moral and often political factors. The conduct of this Inquiry and its political and public aftermath demonstrated that each of these interconnected and external factors can influence how military discipline, good order and war crimes accountability

This panel will offer multiple perspectives on the state of accountability in Australia for breaches of IHL; and in light of the ongoing action following the Brereton Report, generally reflect upon the changing expectations of the military discipline system; and the current state of war crimes legislation in Australia.

Joshua Liddy (Department of Defence / Australian National University PhD candidate) will discuss the concept of a 'domestic law of armed conflict' at the practical aspects of enforcing war crimes offences conducted in a conflict environment. John Devereux (University of Queensland) will consider developments in accountability in terms of Australian war crimes and discipline law legislation and the duty to act, following recent ADF ethical doctrine development. Brendan Walker-Munro (University of Queensland) will discuss concepts of liability with regards to autonomous military systems from a criminal accountability perspective. CDR Kelly Ashton (New Zealand Defence Force Legal Service) will discuss the updated New Zealand Defence force Laws of Armed Conflict Manual, and its status as an enforceable order; talking to the challenges that such an approach to IHL and ICL brings (pending border restrictions).

Included Paper Abstracts and Short Biographies

Lauren Sanders (Chair), The University of Queensland

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, whose current research focus is on the application of export control, arms trade and sanctions regimes relevant to the export and brokering of trusted autonomous military systems and associated technology. Her broader research and teaching interests include international criminal law, international humanitarian law and domestic counter-terrorism law. Her doctoral studies were in international criminal law accountability measures.
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 CDF commendation for aiding in the reform of the summary discipline system.
She 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. She is also the Managing Director of public international law firm, International Weapons Review.

Joshua Liddy, Department of Defence

The difficulty with enforcement: practical issues challenging IHL accountability in armed conflict

This presentation will look at the law that applies to the use of lethal force by Australian Defence Force members during armed conflict. It is generally accepted that it is lawful for combatants to use force, including lethal force, in the course of armed conflict. When ADF members deploy overseas, they take with them the ADF's disciplinary code: the *Defence Force Discipline Act 1982* (Cth) (DFDA). As the DFDA is the primary body of law that applies to ADF members, it follows that Australian domestic law must allow for the use of lethal force by combatants when engaged in armed conflict. Therefore, there exists in Australia a domestic law of armed conflict (DLOAC). DLOAC derives from three legal bases: the war prerogative, the criminal law and that part of international law that has been incorporated into Australian domestic law (be it legislation or the common law). DLOAC provides the legal basis for the use of force, the limits on how that force can be used and a legal basis for attributing individual criminal liability for breaches. The law must also have universal application, in that it applies not only to ADF members but also to enemy forces.

Finally, DLOAC has wider application than international humanitarian law or the international law of armed conflict because it must also apply when rules of engagement more restrictive than international law requires, and deaths of persons not protected by the international law, such as situations of friendly fire.

Wing Commander Joshua Liddy is a Senior Prosecutor in the Office of the Director of Military Prosecutions. As a RAAF Legal Officer, he has served in a broad range of roles including as a Base and Wing Legal Officer, Prosecutor, Legal Policy Officer and as a Legal Officer on deployment, most recently as the Senior Legal Officer for Headquarters Joint Task Force 633. In 2015 – 2018, he served as the RAAF Exchange Officer in the Directorate of Operations and International Law, Headquarters United States Air Force, in the Pentagon. More recently he has served the Senior Legal Advisor to the Head of Military Strategic Commitments and the Deputy Director of Military Administrative and Discipline Law. Wing Commander Liddy is also a PhD candidate at ANU, researching the application of Australian discipline law to armed conflict.

John Devereux, University of Queensland

The duty to act – the impact of moral, ethical and political influences upon IHL and disciplinary compliance

This presentation will analyse current developments in terms of imposition of positive duties upon military personnel for IHL compliance and the implications for the enforcement of those duties under military discipline law Having regard to the recent development in ADF doctrine, such as the release of the ADF foundational doctrine on Ethics – released largely in response to the findings of the Brereton Report – as well as recent legislative change to the *Defence Force Discipline Act* creating an offence relating to the failure to perform a duty, this talk seeks to use the Australian example to demonstrate how other influences, such as politics, morality and ethics, impact the development of military legislation and consequently, IHL compliance and ultimately accountability.

John Devereux is Professor of Common Law and a Barrister of the High Court of Australia and the Supreme Court of Queensland. A Rhodes Scholar, Professor Devereux has worked as a lawyer in a variety of contexts including as a Defence Force Magistrate, a Barrister, as a consultant to a multi-national law firm, a Law Reform Commissioner for Queensland, a legal member of the Social Security Appeals Tribunal and the legal member of the Health Quality and Complaints Commission.
Professor Devereux currently serves as a Member of the Administrative Appeals Tribunal. He has published widely in the fields of tort law. criminal law and medical law. His work has been cited by the High Court and by Law Reform Commissions.
Professor Devereux is an Honorary Fellow of the Australasian College of Legal Medicine. Professor Devereux has served with the Australian Defence Force in the Australian Army (infantry) and in the Air Force (legal category). He has seen active service in Iraq and Afghanistan, and was awarded a Bronze Star by the United States of America.

Brendan Walker-Munro, University of Queensland

Autonomous Systems, Superior Orders and Manifest Unlawfulness: Is there a Duty to Disobey?

The recent development of the next generation of "drones" featuring some form of artificial intelligence or machine learning – the autonomous military system or AMS – has fuelled speculation about who the law ought to hold responsible for any negligence or malfeasance in their use. In a scenario recently posted by the Australian War College, an Air Force pilot relies on sensor information and artificial intelligence assessments provided by AMS which led to an (ultimately unlawful) order to attack a target. If that story played out in real life, what disciplinary liability should that ADF member face for their actions: do AMS fundamentally challenge the circumstances in which Defence Force members should disobey unlawful orders? Would disciplinary liability be assigned differently if the pilot was from another host jurisdiction?

Brendan Walker-Munro is a Senior Research Fellow with the Law and the Future of War research group at the University of Queensland. Prior to academia he worked in a variety of investigative and enforcement roles across Commonwealth and State governments, and holds current appointments as a Member of Queensland's Councillor Conduct Tribunal as well as the Disciplinary Panel of CPA Australia.
Dr Walker-Munro holds a Juris Doctor with Distinction from the University of Southern Queensland and a PhD from Swinburne University.

Commander Kelly Ashton, New Zealand Defence Force

The New Zealand approach to Enforceability of the Laws of Armed Conflict

The New Zealand Defence Force has recently re-issued its Laws of Armed Conflict (LOAC) doctrine, updated and aligning the New Zealand approach to LOAC also taking into account the recent experiences from contributing to coalition operations in Iraq and Afghanistan. This doctrine has also been updated having regard to the outcomes of the recently released Report of the Government Inquiry into Operation Burman, being the New Zealand Defence Force contribution to combat operations in Afghanistan. Part of the update to this doctrine has included an obligation for all NZDF members to comply with the contents of this newly released LOAC Manual. In this presentation, Brigadier Ferris will discuss the basis for this approach and the challenges that this order presents in complying with LOAC.

Commander Kelly Ashton joined the Royal New Zealand Navy in January 2005, gained her Supply Charge Qualification in 2008 and transferred to Defence Legal Services shortly thereafter. She was promoted to her current rank in September of 2020. She is currently working with the Ministry of Defence in the Regulatory Policy Group. The group will be focusing on the introduction of the legislation establishing the Office of the Inspector General of Defence.
CDR Ashton has deployed and worked alongside a number of coalition partners, including the Combined Maritime Forces (primarily CTF 152) and NATO (specifically ISAF). She has held a number of Defence Legal Service appointments throughout the New Zealand Defence Force, including at the strategic Headquarters New Zealand Defence Force (HQNZDF), the operational Headquarters of Joint Forces New Zealand (HQJFNZ) and in direct support of tactical commanders of the Navy, Army, Airforce, and Special Forces. These roles required specialist advice to New Zealand Defence Force leadership on matters ranging from discipline to international humanitarian law, international human rights law, the negotiation and execution of international agreements and arrangements, the lawful basis for the use of force, and aid to the civil power as they relate to operational outputs across all 5 domains.
CDR Ashton has appeared on behalf of the Crown in the Court Martial and the Court Martial Appeal Court of New Zealand. Her academic qualifications include a Master of Laws from The University of Auckland and a Bachelor of Arts in Psychology with Honours and a Bachelor of Science in Geology from Victoria University of Wellington. She was admitted as a Barrister and Solicitor of the High Court of New Zealand in February 2009.

Panel # 9: Interconnectedness – Trade and Infrastructure

Esmé Shirlow, Emma Palmer, Phillip McCalman, Laura Puzzello, Tania Voon, Andrew Walter, Yueming Yan, Pallavi Kishore, Cristiano d'Orsi

Included Paper Abstracts and Short Biographies

Esmé Shirlow (Chair), Australian National University

Esmé Shirlow teaches and researches in the fields of public international law, international dispute settlement, and international investment law and arbitration. Esmé is admitted as a Solicitor in the Australian Capital Territory and trained as a civil and commercial mediator in England. She maintains a practice in the field of international law, and has been involved as an advisor to parties to investment treaty claims and in proceedings before the International Court of Justice, and has served as an assistant to a number of investment treaty tribunals. Prior to joining the ANU, she worked in the Australian Government's Office of International Law.
Esmé completed her PhD as a Dickson Poon Scholar at King's College London, for which she was awarded the King's Elsevier Outstanding PhD Thesis Prize. She completed her LL.M. at the University of Cambridge, where she was awarded - among other prizes - the BRD Clarke Prize for Best Overall Performance in the LL.M. and the Clive Parry Prize for Best Result in International Law, as well as the Whewell Scholarship in International Law. Esmé completed her LL.B.(Hons) and a B.A. at the Australian National University.

Emma Palmer, Griffith Law School

What Infrastructure's Connections Reveal about International Law

Transportation infrastructure provides for human inter-connectedness. Recent events, including the delivery of vaccines and food distribution, reconfirm that it underpins many states' development and economic goals – and intersects human society with environments. Given its strategic importance and expense, infrastructure has also been the focus of geopolitically significant regional strategies, including the Belt and Road Initiative and the European Commission's EUR300 billion Global Gateway. As the effects of COVID-19 continue, governments have reduced resources for investment, but propose mega-infrastructure projects to offer crucial stimulus to support economic recovery. Transportation projects like roads and railways are material objects that offer complex questions for international law, especially when projects cross borders or involve environmental damage or human rights violations. They are long-term and long-distance, with varying impacts upon closer and further populations across the construction and life of the asset. This paper extends a recent infrastructural 'turn' in the humanities toward international law. It draws on insights from new materialism to analyse the entanglements between transportation infrastructure, peoples and environments, and international law. These relationships are both fragmented and contingent. However, there is a pattern to this contingency that foregrounds funding "gaps", investment protections, and risk assessments – and devalues or misses certain impacts and human/non-human inter-connectedness.

Emma Palmer is a Senior Lecturer at Griffith Law School, Queensland. Emma's books Adapting International Criminal Justice in Southeast Asia: Beyond the International Criminal Court (CUP) and The Amicus Curiae and International Criminal Justice (co-authored, Hart) became available in 2020 and a co-edited collection Futures of International Criminal Justice (Routledge) has just been released. Emma was awarded her PhD from UNSW Law in 2017, where she was a Research Assistant for two Australian Research Council (ARC) Discovery Projects. Between 2006 and 2011, while completing her Masters in Law, Emma worked as a senior investment analyst at Macquarie Bank working on private equity infrastructure investments. She received Bachelor degrees in Law and Commerce in 2006. Emma has been admitted as a lawyer in New South Wales and is a Director for Women's Legal Service NSW. Her research interests include international criminal law, international humanitarian law, human rights and social justice, transitional justice, infrastructure governance, gender issues, and norm adaptation in the Asia-Pacific region.

Phillip McCalman, University of Melbourne, **Laura Puzzello**, Monash University, **Tania Voon**, Melbourne Law School and **Andrew Walter**, University Melbourne

Global Developments in Foreign Investment Screening: Interdisciplinary Perspectives

Investment across country borders represents an important form of global interconnectedness. Yet inward foreign investment is being increasingly subject to approval and screening processes under domestic law:

in additional countries (through the creation of new national and supranational procedures), in additional sectors (eg through expanding definitions of critical technology and critical infrastructure), and on additional grounds, typically related to national security. This phenomenon predates the COVID-19 pandemic but has been exacerbated by it. These global developments raise numerous questions for international economic law (eg regarding the extent to which these domestic laws are consistent with the relevant international investment agreements) as well as international relations, political science, and economics. Working as an interdisciplinary team, we map these developments by identifying trends and patterns within and across different countries and consider two main questions:

- What are the political and economic drivers of evolving inward investment screening laws and policies?
- What are the political, economic and legal consequences and implications of these shifts, including with respect to international investment law and broader international arrangements?

The proposed paper forms part of an Australian Research Council Discovery Project that will include in-depth case studies on Australia, China, Mexico and the United States.

Phillip McCalman is a Professor of Economics at the University of Melbourne, specialising in international trade. He has been an academic at the University of California at Santa Cruz and Resident Scholar at the International Monetary Fund. He has also held visiting positions at Princeton University and Columbia University, and has provide advice to the Asian Development Bank, World Bank and the World Trade Organisation.

Laura Puzzello is a Senior Lecturer of Economics in the Monash Business School, Monash University. She has a PhD in Economics from Purdue University, and a Master of Arts in Development Economics from the University of Sussex. Her primary area of research is International Trade. In this field, she has been interested in understanding the effects of trade on growth, welfare, volatility and the environment. Her more recent work focuses on foreign investment screening policy and its economic effects in a broader interdisciplinary ARC-funded project that also aims to explore the political and legal consequences of screening. Her work has been published in leading international journals including the *American Economic Review*, the *Journal of International Economics,* and the *Journal of Applied Econometrics*.

Tania Voon is Professor and former Associate Dean (Research) at Melbourne Law School, The University of Melbourne. She was previously a Legal Officer in the WTO Appellate Body Secretariat. She has practised law with King & Wood Mallesons and the Australian Government Solicitor and taught law at the National University of Singapore, Chinese University of Hong Kong, Georgetown University, the University of Western Ontario, the University of British Columbia, and several Australian universities. Tania undertook her LLM at Harvard Law School and her PhD at the University of Cambridge. She is on the Roster of Panelists for the Energy Charter Treaty and the WTO Indicative List of Panelists. She is also on the list of arbitrators under Article 304(4) of the Trade Agreement between the European Union, Colombia, Peru and Ecuador. Her publications include *Cultural Products and the World Trade Organization* (Cambridge: Cambridge University Press, 2007) and *Regulatory Autonomy in International Economic Law: The Evolution of Australian Policy on Trade and Investment* (Edward Elgar, UK, 2017). She has provided expert advice and training to entities such as the Australian Department of Foreign Affairs and Trade, the WTO, the WHO, UNCTAD, Telstra, and the McCabe Centre for Law and Cancer.

Andrew Walter is Professor of International Relations in the School of Social and Political Sciences, University of Melbourne. He has M.Phil. and D.Phil. degrees from Oxford University. His previous academic positions were at Oxford University and the London School of Economics and Political Science. He has published widely on the political economy of international money, finance, wealth and investment and their governance among and within countries. His most recent book is *The Wealth Effect: How the Great Expectations of the Middle Class Have Changed the Politics of Banking Crises* (Cambridge University Press, 2019, with Jeffrey Chwieroth), which won the *XXVth Stein Rokkan Prize for Comparative Social Science Research* in 2020, awarded jointly by the European Consortium of Political Research and the International Science Council, Paris, as well as the Best Book in International Political Economy award in 2021 by the International Studies Association. His current research projects include: the politics of wealth and financialisation and its implications for politics, financial and climate policy; the international governance of financial regulation and of foreign investment. He is part of an interdisciplinary ARC-funded research project on the rising securitisation of foreign investment policy and its political, economic and legal consequences.

Yueming Yan, Singapore Management University

Institutionalizing the trade-labour nexus in free trade agreements

The COVID-19 crisis has caused a systematic disruption of labor resources and stagnant economy, which draws our attention to the trade-labor nexus. As an important aspect of human interconnectedness, trade-labor relations tie workers worldwide to the development of international economic order, exemplified by the rise of trade agreements with labor commitments. Despite the debate on the inclusion of labor standards in trade agreements to ensure workers' fundamental rights, one can clearly observe that an increasing number of states are developing this practice in their recent free trade agreement (FTA)-making processes. While commentators have provided thorough studies of the typology and effectiveness of labor provisions developed by distinct states, there is still a lack of a consolidated assessment of the institutional frameworks for ensuring the compliance of these labor clauses. This paper attempts to provide such an assessment. First, it investigates whether there is a need to build a compliance mechanism within FTAs for provisions aiming at improving working conditions. It then illustrates the existing institutional options and exams their actual and potential effects. Finally, it makes suggestions on institutional design with a view to better implementing the labor commitments in FTAs. It argues that an effective oversight of enforcing labor principles demands an increased involvement of third parties (such as private entities) in the process and that a properly designed labor-compliance mechanism in FTAs complements those within the International Labor Organization context and bilateral labor cooperation agreements.

Yueming Yan is a Visiting Assistant Professor at the Yong Pung How School of Law, Singapore Management University. Her teaching and research areas include international investment and trade law, international dispute resolution, Belt & Road Initiative, comparative law and empirical legal studies. Her articles have appeared in Oxford's *Journal of International Economic Law* and in the edited collections published by Routledge. Yueming has engaged in many training programs for government officials from around the world and instructed sessions on managing international investment treaty commitments and exploring innovative mechanisms for multi-party dispute resolution. She is also the Founder of the Transnational Law Frontiers (TNLF), a non-profit organization for junior legal scholars to exchange thoughts, conduct interdisciplinary studies, and enhance research and presentation skills. Yueming received her Ph.D. in law degree from McGill University (Canada), LL.M. degree from Xiamen University (China) and LL.B. degree from Zhongnan University of Economics and Law (China).

Pallavi Kishore, Jindal Global Law School

Promoting Linkages between Gender Issues and International Trade Law

International law recognises the importance of gender issues in various conventions. This article examines the interface between gender issues and international trade law. With the Joint Declaration on Trade and Women's Economic Empowerment at the WTO Ministerial Conference in 2017, gender issues in trade have come to the forefront. Like other social issues, gender issues impact and are impacted by trade. This article analyses the arguments for and against the linkage of gender issues with international trade law such as universality of gender concerns, gender equality, sustainable development, neutrality, sufficiency, and exclusivity of international trade law, lack of connection between trade and gender, importance of cultural norms, detrimental consequences for women, and protectionism.
It also suggests ways in which gender concerns can be taken into account in international trade law such as interpretation of existing WTO law in dispute settlement, modification of WTO law, and use of non-WTO law, among others.
These suggestions are not fool-proof guarantees of improvement in the condition of women worldwide but a call for countries to come together to seriously consider and act on the interface between gender issues and international trade law. It is hoped that gradually, (recognition of) the linkages between trade and gender will benefit women. Countries will have to take concrete steps, including in the cultural and social domain, if they want to end discrimination against women. These suggestions regarding linking gender and trade are meant to supplement these steps.

Pallavi Kishore is Professor and Assistant Director, Centre for International Trade and Economic 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.

Cristiano d'Orsi, University of Johannesburg

Cross-border: African Cooperation at a Crossroad?

In a period of global crisis, as the one through which we are living, the vision of an integrated Africa with borders serving as bridges for development, growth and peace has increased the need for cross-border cooperation.
To do so, in 2014 the Assembly of the African Union, adopted the African Union Convention on Cross-Border Cooperation (Niamey Convention). To date, it has not entered into force yet, because only five countries (out of the 15 required by its article 15), have ratified it. One question that arises is whether it is a coincidence that these five countries are all members of the Economic Community of West African States. As such, my work investigates how the AU has dealt with challenges of cross-border co-operation before the adoption of the Niamey Convention and how the adoption of this convention will ease its tasks.
I investigate whether and at what level the Niamey Convention provides a support mechanism to the implementation of the African Continental Free Trade Area by increasing cross-border relations. In this regard, the Agreement Establishing the African Continental Free Trade Area, entered into force in May 2019 has, as a specific object (article 4), cooperation in several fields, including "customs matters". Cooperation in Africa, through the lenses of the AU, is reshaping the relations among sovereign states in the continent. My work sheds light on such attempts of increased collaboration that envisages "galvanizing and uniting in action all Africans and the Diaspora around the common vision of a peaceful, integrated and prosperous Africa" (Agenda 2063).

Cristiano d'Orsi is a Senior Research Fellow and Lecturer at the South African Research Chair in International Law (SARCIL), Faculty of Law, University of Johannesburg. He holds a Laurea (BA (Hon) equivalent, International Relations, Università degli Studi di Perugia, Perugia); a Master's Degree (Diplomatic Studies, Italian Society for International Organization (SIOI), Rome); a two-year Diplôme d'Etudes Approfondies (Master of Advanced Studies equivalent, International Relations (International Law), Graduate Institute for International and Development Studies, Geneva); and a Ph.D. in International Relations (International Law) from the same institution. In addition, Cristiano did post-doctoral studies at the University of Michigan Law School (Hugo Grotius Fellow) and at the Centre for Human Rights, University of Pretoria. Cristiano's research interests mainly focus on the legal protection of asylum-seekers, refugees, migrants and IDPs in Africa, on African Human Rights Law, and, more broadly, on the development of Public International Law in Africa.

Panel # 10: Gender, Sexuality and Inter-connectedness in International Law

Claerwen O'Hara, Holly Cullen, Tamsin Paige, Stacey Henderson, Joanne Stagg, Valeria Coscini, Vinod Bal

This panel explores the relationship between international law and human inter-connectedness through the lens of gender and sexuality. Traversing different topics in different areas of international law, from the network of feminist and union alliances upon which a recent cluster of complaints to the European Committee of Social Rights were built, to the way an assumed inter-connectedness of 'gendered' experiences in the field of Women, Peace and Security can obscure diversity, the three papers offer important insights into the role of international law in producing groups and groupings of people. Further, the papers showcase the aims of the ANZSIL Gender, Sexuality and International Law Interest Group to promote inclusive and intersectional research into international law with a focus on gender and sexuality.

Included Paper Abstracts and Short Biographies

Claerwen O'Hara (Chair), La Trobe Law School

Holly Cullen, University of Western Australia

The University Women of Europe Equal Pay Complaints under the European Social Charter: Evaluating a Transnational Litigation Strategy

In 2020, the European Committee of Social Rights (the Committee) issued merits decisions on a cluster of 15 complaints brought by NGO University Women of Europe (UWE). The cluster attacked deficiencies in implementing equal pay by all states which had accepted the Social Charter's collective complaints procedure. The complaints involved coordination of all UWE national member organisations plus local equality bodies. The European Trade Union Confederation made important supporting arguments during the complaints process. The complaints were therefore built on a network of alliances across Europe. The complaints can be counted as only a partly successful litigation strategy. The decisions highlighted near-universal failings in pay transparency and closing the gender pay gap. Following the decisions, the Committee issued new detailed guidance on how it would evaluate the performance of Social Charter member states on equal pay. This guidance will apply to all 47 states parties, not just those which allow collective complaints. However, UWE failed in some of its claims and there is room for follow-up complaints. The decisions, therefore, should be only the first step in a strategy of using Social Charter provisions to highlight failings on pay equity. Future complaints should be more targeted attacks on the policy weaknesses in each state, supported by a stronger research base. They should also, following the manifesto *Feminism for the 99%*, be targeted on issues such as horizontal job segregation that create structural inequality, and should build alliances beyond relatively privileged women to include marginalised groups such as migrant women.

Holly Cullen an Adjunct Professor of Law at the University of Western Australia, having been Professor of Law from 2010-2016. She is also a member of the Modern Slavery Research Cluster at UWA. She teaches law and law & society units at UWA, Murdoch University and Deakin University. Previously, she was Reader in Law at Durham University and Deputy Director of the Durham European Law Institute from 1998-2006, also serving as Acting Director in 2003-2004. She was a member of the International Law Association's research committee on Non-State Actors in International Law and of the Advisory Group for the Child Labor Research Initiative at the University of Iowa Human Rights Center. She is the author of *The Role of International Law in the Elimination of Child Labor* (Brill, 2007). She is co-editor with Joanna Harrington and Catherine Renshaw of *Experts, Networks and International Law* (Cambridge University Press, 2017) and co-editor, with Philipp Kastner and Sean Richmond, of *The Politics of International Criminal Law* (Brill, 2021). She has researched and written on the European Social Charter for over 20 years, including research funded by the Arts & Humanities Research Council (UK).

Tamsin Phillipa Paige, Deakin Law School, **Stacey Henderson**, Adelaide Law School, and **Joanne Stagg**, Griffith Law School and Deakin Law School.

Getting Women in the Room is a Start, Not an End Goal

After substantial lobbying by feminist and peace organisations, the existence of gendered harms and importance of considering gender in post-conflict processes had been recognised in international law, particularly through the adoptions of a series of women, peace and, security resolutions – starting with

Resolution 1325 of the UN Security Council in 2000. In this paper, we examine constructions of gender and female roles in conflict and post conflict processes under international law. First, we critique the use of the word "gender" as a euphemism for "women" in the Women Peace and Security resolutions and other international law documents. We argue that this equation is problematic since it positions "gender" as a factor of othering, one which simultaneously acknowledges non-cis male people as participants in processes and positions them as non-normative in those processes. It treats cis men as neutral and ungendered and treats their needs as normative. It also often means that the inclusion of "gender" (as a code for women) erases non-binary or non-cis gender people from discussions, since discussing cis women's concerns is often seen as sufficient acknowledgment of "gender" in international discourse. Second, we discuss instances in international agreements and legal processes in which women's participation and concerns have been treated as fulfilment of considerations of gender. We also examine how women are often configured in particular roles as a result of such positioning in international law, in particular in post-conflict roles, where women are often seen as fulfilling gendered roles as peace-bringers. Finally, we problematise the use of "gender" as "women" in combat situations and peace processes. In particular, we examine how essentialising women as non-combatants, as victims of combat based sexual violence, or as peace-bringers (the mothers, whores, or victims framework) obscures the more complex roles of women in conflicts. By gendering women as nurturant peacekeepers, not only do we marginalise women combatants (and other combatants who are not cisgender men), we risk minimising or erasing harms caused by women who commit atrocity crimes (such as in Rwanda) or who are active participants in breaches of international law, such as participants in the atrocities at Abu Ghraib. 7

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.

Stacey Henderson is a Lecturer at Adelaide Law School, The University of Adelaide. She is an early career researcher whose research focuses on the protective capacity of law, including international law generally, responsibility of States, and governance of outer space and space technology particularly in the context of off-Earth human settlement.

Joanne Stagg is a lecturer in the Griffith Law School at Griffith University, in Queensland. In addition to teaching core Torts and Contract courses, she designed and teaches Gender and the Law. Her current research interests include issues around law, gender and medicine. She is being lured into the international law community via research collaborations based on applying queer and feminist theory to queer issues and to the UN's Women, Peace and Security agenda.

Valeria Coscini, Australian National University

The Inter-American Court of Human Rights' Interpretation of Gender-Identity and Sexuality Non-Discrimination Rights

This paper explores the diversity and interpretation of cases decided by the Inter-American Court of Human Rights on the grounds of gender-identity and sexuality non-discrimination rights. The Inter-American Court of Human Rights has decided four of these cases. While small in number, especially when compared to the higher number of cases decided by the United Nations Human Rights Committee and the European Court of Human Rights, the IACHR cases display a nuanced and comprehensive interpretation in a range of diverse contexts. The cases explore rights claims on parenting and caregiving, pension rights, employment discrimination and acts and investigations of sexual torture by state agents. There are three essential aspects of IACHR's interpretation of non-discrimination rights explored in this paper. First, the IACHR has recognised that gender-identity and sexuality stereotypes and assumptions underpin discriminatory actions by states. Second, the IACHR has highlighted the power that the perceptions of others may play in discriminatory actions, whether or not those perceptions match the reality of an applicant's self-determination. Third, rights violations occur whenever discrimination is part of a reason for a decision or action, it does not need to be the main or a significant factor. These aspects can be compared to the non-discrimination jurisprudence on sexuality and gender-identity by the UNHRC and ECHR, highlighting the significant contribution of the IACHR in this field.

Valeria Coscini is a PhD candidate at the Australian National University. She is currently undertaking a thesis on sexuality and gender-identity rights in human rights jurisprudence at the regional and international level, using three principles developed from theoretical and empirical literature to assess it. Prior to commencing her PhD Valeria worked for legal aid and in commercial banking.

Vinod Bal, Assistant Policy Advisor, New Zealand Police

Humanity Worth Defending? Accountability for Queer and Trans Persons Under International Criminal Law

In February 2017, an "anti-gay purge" was unleashed by Chechnya. At least 150 persons, targeted due to their homosexuality were arrested and subjected to sexual violence, torture and extrajudicial killing. Many victims were held for weeks without access to legal counsel. Left without food and water, they were electrocuted and beaten. Some survived, others succumbed to the fatal effects of torture. The persecution of queer and trans persons is a trend of history. From Roman codes prescribing execution to Nazi Germany's extermination homosexuals, queer and trans persons have been persecuted since antiquity through to present.
However, what is subject to debate is if international criminal law provides accountability for the victims of this harm. This paper will consider this problematique. In doing so, it argues that "gender" as prescribed within Article 7(3) of the Rome Statute can be expanded to include persecutory acts against queer and trans persons. This is as, it is within the power of the International Criminal Court (ICC) to conflate sexual orientation and gender. Recent case law that supports this supposition will be discussed. The paper will then argue, as a corollary, that queer and trans persons are "universally recognised" as benefactors of international law thus bringing them within the ambit of Article 7(h)'s (of the Rome Statute) protection. Recent developments in diplomacy will be posited to provide credence to this point. The central thesis of this paper, that queer and trans persons are provided accountability under international criminal law, is therefore proved.

Vinod Bal is an emerging scholar and commentator with research interests in LGBTQIA+ rights within the international legal framework. He graduated with a Bachelor of Laws with Honours (First Class) and a Bachelor of Social Sciences (Political Science and Sociology) from the University of Waikato. He is an Assistant Policy Advisor at the New Zealand Police where he works on transnational criminal issues. Alongside this, he is the Diversity, Equity and Inclusion Advisor for Inspiration Education, New Zealand's largest social enterprise education organisation and the co-founder and advocacy lead of Adhikaar Aotearoa, a New Zealand-national charity that advocates for LGBT+ people of colour. Through this role, he has worked and advised various New Zealand Government ministries and local government on LGBT+ policy and legal matters. Internationally, he is working with human rights organisations to advocate for better national laws regarding LGBT+ individuals, and greater protection of this group within the international legal framework. He has worked and studied across three continents in fields including commercial law, policy, diversity and inclusion, human rights, anti-human trafficking and international trade unionism.and inclusion, human rights, anti-human trafficking and international trade unionism.

Panel # 11: Human Machine Interconnectedness: Artificial Intelligence and International Law – Legal and Ethical Dimensions

Sarah McCosker, Simon Chesterman, Edward Santow, Lauren Sanders, Netta Goussac

Over the past decade there have been major technological advances in the fields of artificial intelligence (AI), particularly machine learning, which have significant implications for the application and interpretation of international law. The impact on the connection between humans and machines is being felt across different domains, from autonomy in weapons used in armed conflict, to the development of cyber capabilities and tools for information warfare, to decision-support systems that impact enjoyment of human rights.

The growing complexity of human-machine interfaces raises questions for the way we think about global 'interconnectedness' in the 21st century. It also poses challenges for international regulation and normative development, as well as domestic regulation—with these things occurring at different speeds in different countries.

Moderated by Lexbridge Partner Dr Sarah McCosker, the panel will be a facilitated discussion drawing together experts who are exploring issues regarding AI and international law from different vantage points. Professor Simon Chesterman will examine challenges for regulation of AI—drawing on some questions examined in his recent book, We the Robots: Regulating Artificial Intelligence and the Limits of the Law. Edward Santow will discuss how the rise of AI challenges our commitment to fairness and the rule of law, and how we should respond. Lauren Sanders will discuss the application of legal and regulatory regimes to defence industry and brokering of trusted autonomous military systems and associated technology during their design. Netta Goussac will discuss the implications of military AI on the interpretation and application of international law.

Included Paper Abstracts and Short Biographies

Sarah McCosker (Chair), Lexbridge Lawyers

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 intergovernmental instruments and the relationships between international law and diplomacy. Sarah has also previously worked as an international law adviser for the ICRC 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. 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. Her current work includes a focus on new technologies and the challenges for IHL and human rights law, including in the context of arms control.

Simon Chesterman, National University of Singapore

International regulation of AI is both essential and impossible: essential because the global reach of technology limits the ability of any one state to meaningfully prevent or mitigate potential harms on its own; impossible because universal standards for these emerging technologies are unworkable and probably undesirable. This presentation will discuss the need for regulation at different levels (self-regulation, national, international) and the diverse objectives of regulation (managing risk, drawing red lines, preserving the legitimacy of public authority. In addition to these questions of who should regulate and why, a further question to examine is when regulation should be adopted. At an early stage of technological development, controls are possible but not enough is known about the potential harms to warrant slowing development; by the time those harms have become apparent, control has become costly and slow. Fortunately, many of the near-term challenges posed by AI concern how to apply existing norms to new activities. These are technical problems but require agreement on the applicable norms, the ability to attribute actions to states or other legal entities, and consequences sufficient to encourage or compel compliance.

Simon Chesterman is Dean and Provost's Chair Professor of the National University of Singapore Faculty of Law and Senior Director of AI Governance at AI Singapore. He is also Editor of the *Asian Journal of International Law* and Co-President of the Law Schools Global League. Educated in Melbourne, Beijing, Amsterdam, and Oxford, Professor Chesterman's teaching experience includes periods at the Universities of Melbourne, Oxford, Southampton, Columbia, and Sciences Po. From 2006-2011, he was Global Professor and Director of the New York University School of Law Singapore Programme.
Professor Chesterman is the author or editor of twenty-one books, including *We, the Robots? Regulating artificial intelligence and the limits of the law* (OUP, 2021*); Law and Practice of the United Nations* (with Ian Johnstone and David M. Malone, (OUP, 2016); *One National Under Surveillance* (OUP, 2011); *You the People* (OUP, 2004); and *Just War or Just Peace*? (OUP, 2001). He is a recognized authority on international law, whose work has opened up new areas of research on conceptions of public authority – including the rules and institutions of global governance, state-building and post-conflict reconstruction, the changing role of intelligence agencies, and the emerging role of artificial intelligence and big data.

Edward Santow, UNSW

Artificial intelligence is powerful, but can we make it fair?

The unprecedented rise of artificial intelligence is creating a quiet revolution in how we make decisions. In domains as diverse as financial services, policing and recruitment, we are handing ever-greater responsibility to machines to make decisions that can change our lives. This can make decision making more efficient and data-driven, but it can also challenge some fundamental principles about how consequential decisions are made.
While the promise of AI is for the rough edges of human prejudice and irrationality to be smoothed out, it is increasingly clear that AI systems can also have the opposite effect. That is, these systems can learn from, bake in and sometimes obscure precisely these problems. The result can be unfair decisions made at scale.
So, what is the solution? In any society committed to human rights and the rule of law, accountability is vital in ensuring that decisions are accurate, fair and comply with the law. This means improving the way AI systems are designed, and building the capability of the humans responsible for their operation to ensure that those systems operate as intended, and in accordance with our liberal democratic values.

Edward Santow is Industry Professor - Responsible Technology at the University of Technology Sydney (UTS). Ed leads UTS's new initiative on building Australia's capability on ethical artificial intelligence. Ed's areas of expertise include human rights, technology and regulation, public law and discrimination law.
From 2016-2021, Ed was Australia's Human Rights Commissioner, where he led the Commission's work on AI and new technology; refugees and migration; human rights issues affecting LGBTI people; national security; and implementing the Optional Protocol to the Convention Against Torture.
Ed is a Fellow of the Australian Academy of Law, a Visiting Professorial Fellow at the University of New South Wales (UNSW), a member of the World Economic Forum's Global Future Council on Human Rights and the Fourth Industrial Revolution, and serves on a number of boards and committees. In 2009, Ed was presented with an Australian Leadership Award, and in 2017, he was recognised as a Young Global Leader by the World Economic Forum. Ed previously served as chief executive of the Public Interest Advocacy Centre and was a Senior Lecturer at UNSW Law School, a research director at the Gilbert + Tobin Centre of Public Law and a solicitor in private practice.

Lauren Sanders, International Weapons Review

IHL by design

The considerations relating to the legal compliance of novel technologies present new challenges for designers and for States intending to field these technologies in armed conflict: IHL compliance during capability design. When functions that engage IHL rules are built into new capabilities by industry, particularly those that incorporate autonomous functionality, prior to the acquisition of a new capability by a State, there are legal obligations – as well as business efficiencies – that dictate that the capability requires inputs during the design process to address IHL compliance objectives. This talk intends to highlight some of the challenges presented by this issue, while also outlining how approaching novel technology development incorporating IHL considerations during the design process can enhance compliance with IHL more generally.

Lauren Sanders is the Managing Director of public international law firm International Weapons Review, which specialises in international law relevant to the weapon review of new weapons, means and methods of warfare including autonomous and AI enhanced systems. She is also a Senior Research Fellow with

the TC Beirne School of Law, The University of Queensland in the Law and Future of War project.
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 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 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.

Netta Goussac, Lexbridge Lawyers

The drivers for adoption of artificial intelligence (AI), including machine learning technologies, by militaries (or other armed actors) are clear: greater efficiency in gathering, sorting, or selecting vast amounts of information; the ability to project one's force into spaces that have previously been denied; the capacity to safeguard, augment or reallocate finite human and material resources; the strategic or tactical advantage over an adversary. Defence-related AI applications also carry implications for the interpretation and application of international law relevant to military operations, including international humanitarian law, international human rights law, international criminal law, the law on the use of force, and the law on state responsibility for internationally wrongful acts.
Netta argues that there is no obvious legal vacuum, rather a lack of clarity on the applicable standards and a prompt to revisit assumptions about how international law obligations are to be fulfilled. Netta presents key questions raised by the adoption of AI, for example, how to reliably predict the functioning of AI systems; how to assess the lawfulness of AI systems' design and use in advance of employment; and how users may need to adjust their roles or behaviour when working with AI systems in order to maintain the level of control or responsibility required by law. For some, these questions point to legal uncertainty that requires resolution. Netta will discuss possible actions, including learning lessons from recent discussions of autonomous weapons, and implementing measures to improve transparency, explainability and traceability in military AI systems.

Netta Goussac is a Special Counsel with Lexbridge. Netta has worked as an international lawyer for over a decade, including for the International Committee of the Red Cross and the Australian Government's Office of International Law. Her principal fields of expertise are international humanitarian law, international disarmament law, the international law on the use of force, international criminal law, and security and counter-terrorism law.
Netta has particular expertise in legal frameworks related to the development, acquisition and transfer of weapons. Netta has provided legal and policy advice related to new technologies of warfare, including autonomous weapons, military applications of artificial intelligence and cyber and space security. From 2010 to 2013, she participated in the negotiation of the 2013 Arms Trade Treaty, and subsequently worked to promote universal adherence to its standards. She has also been an adjunct lecturer at the Australian National University College of Law Masters of Law programme. Netta holds a Bachelor of Arts and Bachelor of Laws from the University of Western Australia (2006) and a Master of Laws specialising in international law from the Australian National University (2009).

Panel # 12: Dispute Settlement

Jennifer Cavenagh, Jonathan Bonnitcha, Douglas Guilfoyle, Jane Kelsey, Silviana Cocan

Included Paper Abstracts and Short Biographies

Jennifer Cavenagh (Chair), DFAT, Australia

Jonathan Bonnitcha, UNSW

Contract-based investor-state arbitration and the political economy of corruption

Arbitration is a common method for resolving disputes under contracts between state actors and private entities – for example, disputes under contracts relating to mining projects or large scale infrastructure developments. This paper examines the ways in which the law and practice of international arbitration intersects with, and facilitates, corruption in contracts between state actors and private entities. A specific focus is the role and limits of domestic courts across multiple jurisdictions that exercise oversight functions – including courts that are called on to set aside or to enforce arbitral awards.
Using recent high-profile cases as examples – including *P&ID v Nigeria*; *Mozambique v Credit Suisse (Tuna Bonds)* and *TCC v Balochistan* – the paper identifies tensions between the underlying political economy of corruption and the law and practice of international arbitration. These tensions include:

- The presumption of confidentiality in contract-based arbitration;
- Tribunals' practice in confining themselves to issues raised by the parties; and
- Arbitrators' tendency to see the state as a unitary actor, rather than a site of political contestation between groups.

In response to these pathologies, the paper makes a qualified argument against the use of arbitration to resolve disputes arising under government contracts. It also proposes new approaches to courts' oversight powers that can reduce the risk of corruption.

Jonathan Bonnchita is a Senior Lecturer in the Faculty of Law and Justice at UNSW. His research examines foreign investment governance. Much of his research focuses on investment treaties – a subject on which he has published two research monographs and many articles. His research also examines other systems of investment governance, including investor-state contracts, national investment laws, national investment dispute management agencies and relevant international principles, such as the UN Guiding Principles on Business and Human Rights. Much of his research is inter-disciplinary, drawing on perspectives from the disciplines of economics and political science.
From 2022 to 2025 Jonathan is working on an ARC Discovery Project: 'China's Belt and Road Initiative: A New Model of Economic Governance?'. He is leading the research stream of this project on investor-state contracting. Beyond academia, Jonathan is a Senior Associate with the International Institute for Sustainable Development.
Prior to joining UNSW, Jonathan lived in Myanmar, where he worked as an advisor to the Myanmar Government on investment governance. For several years he also worked for the Australian Attorney General's Department, as a member of the team that successfully defended a multi-billion dollar challenge to Australia's tobacco plain packaging laws brought under an investment treaty.

Douglas Guilfoyle, UNSW Canberra

Connected by the Sea, Divided by Law: Small States and strategic UNCLOS litigation

International law is characterized by the tension between formal and substantive equality. Beneath formal equality, international law may structure and reproduce hierarchies making States unequal under law. There are thus small states and great(er) powers: rule-takers and rule-makers. It is a commonplace that non-state actors engaged in asymmetrical conflicts against states may use legal argument for strategic ends ("lawfare" or "strategic litigation"). Less frequently discussed is the extent to which strategic litigation may be a "weapon of the weak" for small states as well.
If formal equality has little substantive effect in levelling the playing field between small States and greater powers, why has small-state strategic litigation been such a recurrent feature of modern international relations? What do small states hope to achieve by it, how frequently do they succeed, and what account for success or failure? Can such litigation be used to forge connection: to create constituencies and mobilize solidarities?
In addressing these questions, this paper will draw on the use of strategic UNCLOS litigation by small(er) states through case studies including *Mauritius v UK* (2015); *Philippines v China* (2016); *Timor Leste v Australia* (PCA 2018); and the 2021 establishment of the Commission of Small Island States on Climate

Change for the purpose of seeking an advisory opinion from the International Tribunal on the Law of the Sea.
This paper argues that the anticipated outcome of such proceedings is not immediate compliance by greater powers. Rather the objective is to delegitimize their position and mobilize international support for applicants.

Douglas Guilfoyle is Professor of International Law and Security at UNSW Canberra and an Australian Research Council Future Fellow (2022-2025). He was a DFAT Visiting Legal Fellow in 2020-2021. His principal areas of research are maritime security, the international law of the sea, international courts and tribunals, and the history of international law. He is the author of Shipping Interdiction and the Law of the Sea (2009) and International Criminal Law (2016). His research work is informed by his consultancy to various government and international organisations. He was previously a Professor of International Law at Monash University, and a Reader in International Law at University College London. During his graduate studies at the University of Cambridge he was a Chevening and then a Gates scholar.

Jane Kelsey, University of Auckland

Implications of the Waitangi Tribunal finding that the CPTTP electronic commerce chapter breached the Crown's obligations under Te Tiriti o Waitangi

For over 30 years Māori have challenged the authority, process and substance of international "trade" agreements negotiated by the Crown, in secret, on behalf of New Zealand as violating Māori rights and the Crown's obligations under Te Tiriti o Waitangi/The Treaty of Waitangi.
In 2015 nine groups of Māori lodged a claim with the Waitangi Tribunal that the Trans-Pacific Partnership Agreement (TPPA) breached the Crown's Tiriti/Treaty obligations. The claim had several stages, including a mediation agreement that a new Māori entity would be established to exercise "effective influence" in every stage of negotiations.
In the final phase of the claim, the Tribunal found that the electronic commerce chapter of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) breached fundamental Māori rights over matters fundamental to their identity.
This paper examines how the Western conceptualisation of data as a private commodity of commercial value and a protected property right, made enforceable through the CPTPP e-commerce chapter, conflicts with the Māori worldview of the digital domain and data and precludes adoption of Tiriti-compliant regimes of Māori data sovereignty and data governance. It then reflects on the Tribunal's finding that the e-commerce chapter breached the Crown's Tiriti/Treaty obligations, and the implications for future negotiations and reviews of existing agreements, including the CPTPP, and the Crown's approach to trade negotiations more generally.

Jane Kelsey is a recently retired Professor of Law at the University of Auckland, New Zealand, where she specialised in international economic law and law and policy. She has law degrees from Victoria University of Wellington, Oxford University, Cambridge University and a PhD from the University of Auckland. Jane has critically monitored many negotiations, most recently the Trans-Pacific Partnership Agreement (TPPA), Regional Comprehensive Economic Partnership, Trade in Services Agreement, World Trade Organization Joint Statement Initiatives, and the New Zealand United Kingdom FTA, with a focus on services, investment, digital trade and other regulatory issues. She has written numerous books, academic articles and technical reports, addressed international conferences, briefed governments and affected sectors, and run training workshops on related matters for government officials, legislators, trade unions, and civil society.
Jane also has also worked extensively on Te Tiriti o Waitangi/The Treaty of Waitangi and has given evidence for Māori in several Waitangi Tribunal claims. Most recently, she was the claimants' expert throughout the five-year long Wai-2522 claim that the TPPA breached the Crown's obligations under Te Tiriti. She is currently technical adviser to the claimants establishing a new body to exercise "effective influence" over trade policy and negotiations.

Silviana Cocan, Université de Montréal

Global Inter-connectedness Through the Perspective of Judicial Dialogue on Human Rights

This paper deals with judicial dialogue as a tool enhancing inter-connectedness, within a context where judicial bodies face comparable legal issues, while often interpreting analogue legal rules, especially in the field of human rights.
Judicial dialogue can be defined as a spontaneous practice that consists in referring to decisions or international instruments that are external sources to the system in which the international court has to exercise its power of interpretation.

In the field of international human rights law, it can be seen as an interpretive technique using a comparative approach, allowing on one side, to reach common interpretations of the substance, the meaning and the scope of conventional and customary rules; on the other side, to highlight divergent jurisprudential positions on matters that show no consensus or reveal strong contrary interpretations. Thus, judicial dialogue reflects global inter-connectedness between universal and regional systems protecting human rights and shows substantial interdependence between legal orders since it can emerge on one side, between international courts; on the other side, between international courts and domestic tribunals, contributing to the emergence of transjudicial communication that can strengthen the rule of law.

Silviana Cocan is currently a lecturer and a Mitacs Elevate postdoctoral research fellow (2020-2022) at the *Université de Montréal* Faculty of Law. She holds a joint double doctoral degree in international law from *Université Laval* Faculty of Law (Québec, Canada) and the Faculty of Law and Political Science of the University of Bordeaux (France) after defending her thesis under joint supervision. The subject of her thesis was the dialogue between international bodies protecting human rights while illustrating this spontaneous practice with the example of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Her doctoral thesis was published in December 2020 by *LGDJ-Lextenso Éditions* after obtaining the Louis Joinet Thesis Prize from the Francophone Institute for Justice and Democracy. Her thesis was also awarded the Thesis Prize of the Québec Society of Comparative Law. As reflected in her publications and delivered presentations, her research interests focus on public international law, international human rights law, comparative law and international refugee and migration law.

Panel # 13: Non-Militarisation of the Antarctic Treaty Area: Managing Global Pressures and Regional Challenges

Karen Scott, Jeff McGee, Shirley Scott, Bruno Arpi, AJ Press

From its creation, management of military tension was at the heart of the Antarctic Treaty System (ATS). The 1959 Antarctic Treaty was formed during the Cold War to manage the risk that the Antarctic region might be used to base or test nuclear weapons, or become a site for superpower proxy conflict. The Treaty commences by prohibiting any military activities and making explicit commitments to use the region only for peaceful purposes, but leaving open a role for the military in supporting Antarctic science and other peaceful activities. The ATS now faces a new set of global geopolitical tensions. There are also new drivers of change through technological developments in science, communications systems, satellites, ocean sensing, and military technologies. These geopolitical tensions and technological developments have sparked concern that equipment in Antarctica could be now (or in the near future) re-purposed between scientific and military uses. This raises questions about operation of the non-militarisation provisions of the Treaty in the 21st century. This panel explores these challenges and the legal developments that might be required to respond. McGee will outline the non-militarisation provisions of the ATS, emerging geopolitical tensions, and technological developments that interface with these. Scott will explain the history of Australian Defence Force in Antarctic region. Arpi will explain the success of the ATS in managing risk that the 1980s Falkland/Malvinas conflict would spill into Antarctica. Press and McGee will examine the role which the inspection and reporting obligations of the ATS can play in managing non-militarisation in Antarctica.

Included Paper Abstracts and Short Biographies

Karen N. Scott (Chair), University of Canterbury, NZ

Karen N Scott is a Professor of Law at the University of Canterbury in New Zealand, 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 80 edited books, journal articles and book chapters in these areas. Karen is a University Proctor, and she 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.

Jeffrey McGee, University of Tasmania

The Antarctic Treaty System and Non-Militarisation of Antarctica: Current Challenges and Future Prospects

Antarctica is commonly perceived as immune from military competition, but prior to the Antarctic Treaty forming in 1959, there was a small but significant history of military activity in the Antarctic region. The early cold war period of the 1950s also brought significant prospect that the Antarctic region might be used for basing nuclear weapons, nuclear weapons testing - or become a site of superpower proxy conflict- particularly in the Antarctic peninsula area. In 1959, the Antarctic Treaty parties therefore ensured that Article 1 of the treaty contained an explicit commitment that all activities of a military nature in the region would be prohibited. The role for the military in Antarctica was limited to supporting peaceful activities, such as Antarctic science. However, concern has recently arisen that some technologies now deployed within the Antarctic Treaty region (particularly telescopes, ground station receivers and ocean sensors) might be 'dual use', in the sense of being able to be easily re-purposed between scientific and military capabilities. Such dual-use equipment in Antarctica could be re-purposed to support military activities outside the Antarctic Treaty area—on land, in the oceans, and even in space. This situation presents a significant new challenge to the non-militarization provisions of the Antarctic Treaty System that was perhaps unanticipated when the Antarctic Treaty was formed. This paper will explain this current challenge for the Antarctic Treaty System and possible paths forward.

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

Shirley Scott, UNSW Canberra

The History of ADF involvement in the Australian Antarctic Territory in light of Article I of the Antarctic Treaty

Antarctica is governed by the Antarctic Treaty System, founded on the 1959 Antarctic Treaty. According to Article I(1) of the Antarctic Treaty, Antarctica is to be used for peaceful purposes only. `There shall be prohibited, inter alia, any measure of a military nature, such as the establishment of military bases and fortifications, the carrying out of military manoeuvres, as well as the testing of any type of weapons'. Paragraph 2 clarifies that this does not prevent the use of military personnel or equipment for peaceful purposes.
There is a long history of military personnel being involved in Antarctica, in part because of their logistical capabilities. There has in recent years been growing awareness of the security implications for Australia of what happens in the Southern Ocean and on the Antarctic continent. Drawing in part on archival research, this paper will trace the history of the involvement of the Australian Defence Forces, in light of the wording of article I and the activities of other Antarctic actors.

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 ed with Charlotte Ku (Edward Elgar, 2018).

Bruno Arpi, University of Tasmania

1982-2022: The Falklands/Malvinas armed conflict and the Antarctic Treaty System

2022 marks forty years since the Falklands/Malvinas armed conflict between Argentina and the United Kingdom (UK) in the South Atlantic region. Although this 10-week conflict occurred outside the Antarctic Treaty Area, it created unprecedented challenges for the governance of the region. For the first time since the adoption of the Antarctic Treaty in 1959, the Antarctic Community faced an international armed conflict between two original signatories to the Antarctic Treaty and key actors in the Antarctic Treaty System (ATS) which put at risk the stability of the region. However, despite the external geopolitical tensions arising from this international conflict, the ATS successfully managed to avoid the region becoming the scene or object of international discord and allowed Argentina and the UK to continue to cooperate in their Antarctic affairs. The armed conflict did not resolve the sovereignty dispute in the region between Argentina and the UK, however, it has influenced regional governance. The aim of this presentation is to assess what were (and still are) the implications of the 1982 Falklands/Malvinas armed conflict for the ATS. While the continuing legacy of the Falklands/Malvinas sovereignty dispute still influences Antarctic governance, the presentation concludes by highlighting the ability of the ATS to foster and maintain peace, security, and stability in Antarctica, and to insulate Antarctic governance from external geopolitical tensions.

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 (Australia). He holds a Master of Law (LL.M) degree from the University of Copenhagen (Denmark) and he graduated as a Lawyer (Abogado) at the Universidad Nacional de Rosario (Argentina) where he has been teaching Public International Law since 2017. He is a member of the Standing Committee on the Humanities and Social Sciences (SC-HASS) of the Scientific Committee on Antarctic Research (SCAR).

AJ Press and Jeffrey McGee, University of Tasmania

Inspection, Verification, Compliance, and Reporting in the Antarctic Treaty System

The 1959 Antarctic Treaty stated that Antarctica "*shall continue for ever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord"*. Its Article 1 "*prohibits any*

measures of a military nature" but allows for the use of military personnel and equipment for scientific or peaceful purposes. The treaty has specific provisions for verification of, and compliance with, its non-militarisation, nuclear weapons and nuclear waste provisions. The treaty has a specific provision for the free inspection without notice "*of all areas of Antarctica*" and all facilities therein, including ships and aircraft. The treaty also provides that inspections may be carried out by "*aerial observation*". Similar inspection provisions have been carried over into other instruments of the Antarctic Treaty System (ATS), including fisheries and environmental compliance.
This paper explores the technological developments that have been made since the negotiation of the Antarctic Treaty and how these relate to the inspection regimes of the ATS. It explores relevant discussion about "dual use" technologies; 'transparent oceans'; the proliferation of satellites and their related 'on-ground' technologies; and the increasing use of remotely operated equipment for scientific purposes. The paper will discuss how the Antarctic Treaty System has responded to these developments, and opportunities for enhanced inspection, verification, reporting and compliance practices in the ATS.

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.

Panel #14: Peace and Security I

Shiri Krebs, Kathryn Greenman, Danielle Ireland-Piper, Emily Crawford, Carrie McDougall

Included Paper Abstracts and Short Biographies

Shiri Krebs (Chair), Deakin University

Shiri Krebs is an Associate Professor of Law at Deakin University, and Co-lead, Law and Policy Theme, at the Australian Government Cyber Security Cooperative Research Centre (CSCRC). She is also an affiliated scholar at Stanford University's Center for International Security and cooperation (CISAC). Krebs' research focuses on behavioral approaches to international law, including the effects of predictive and visual technologies on legal decision-making, at the intersection of law, science and technology. Her scholarship has been published at leading legal journals (e.g. the Harvard National Security Journal), and has been supported by a number of research grants. Her publications granted her several awards, including, most recently, the David D. Caron Prize (American Society of International Law, 2021), the Vice-Chancellor's Early Career Researcher Award for Career Excellence (Deakin University, 2019), the 'New Voices in international Law' recognition (American Society of International Law, 2016), and the Franklin Award in International Law (Stanford University, 2015). Krebs has taught in a number of law schools, including at Stanford University, University of Santa Clara, and the Hebrew University of Jerusalem, where she won the Dean's award recognizing exceptional junior faculty members. She earned her Doctorate and Master Degrees from Stanford Law School, as well as LL.B. and M.A., both magna cum laude, from the Hebrew University of Jerusalem.

Kathryn Greenman, University of Technology Sydney

Of War and (International Economic) Law

In 2006, David Kennedy argued that war and law have merged so that war is a legal institution and legal and military professionals are 'speaking the same language'. This common language has 'lubricated' war, as law has become a 'tool of strategy for soldiers, statesmen, and humanitarians alike'. As a result, argued Kennedy, responsibility for war is diffused. When Kennedy argued that law and war have merged, he was referring to the law on the use of force and international humanitarian law as well as the regulation of, for example, 'the mobilization of men, [and] the financing of arms and logistics'. Through an analysis of recent arbitral practice addressing the protection of foreign investments during conflict, this paper considers what might look different if we brought international economic law into the analysis of law's relationship with war. The paper will argue that while international investment law seems to offer greater scope for contesting and holding the state responsible for war, it is also requires and legitimates a certain kind of violence from the state and the restraint and responsibility that it provides for serve economic order rather than any other social interests. The paper will conclude by reflecting on what international law's role in the unequal distribution of protection in war and its prioritisation of the management of conflict within certain states as part of a project of global economic ordering can tell us about the forms of inter-connectedness that are enabled and undermined by international law's different fragmented regimes.

Kathryn Greenman is a lecturer in law at the University of Technology Sydney (UTS). Prior to joining UTS, Kathryn was a researcher at the Amsterdam Center for International Law at the University of Amsterdam and a Kathleen Fitzpatrick Visiting Doctoral Fellow with the ARC Laureate Program in International Law and a fellow at Melbourne Law School. Kathryn was awarded her PhD from the University of Amsterdam in May 2019. Kathryn's research is interested in the interrelation between the economic and the humanitarian in international law. Her work touches upon state responsibility, international investment law and international humanitarian and human rights law. More widely, Kathryn is interested in the relationship between international law and imperialism, critical international legal history, and feminist and postcolonial approaches to international law. Her work has been published in the Leiden Journal of International Law, the International Journal of Refugee Law and the Nordic Journal of International Law. Her first monograph, *State Responsibility for Rebels: The History and Legacy of Protecting Investment Against Revolution*, was published by Cambridge University Press in 2021.

Danielle Ireland-Piper, Bond University

Extraterritoriality and the Interconnectedness of Borders, Crime, and Citizens – Criminal Jurisdiction over extraterritorial conduct in China, Japan and South Korea

Jurisdiction is a central legal concept in both international and domestic law. Human and economic interconnectedness across borders means nation states are now more likely to assert extraterritorial jurisdictional authority, particularly in the context of criminal activity. This raises questions as to the

boundaries of llegal authority. Consequently, exercises of extraterritorial jurisdiction shed light on both municipal and international law and the relationship between them. East Asia is a region of global significance, both economically and geopolitically, and therefore the approach to extraterritorial jurisdiction by countries in East Asia is of international significance. Despite this, most literature in the English language has focused on European and North American state practice. In that context, this paper, drawing on the author's 2021 book 'Extraterritoriality in East Asia' (Edward Elgar, 2021 – including contributions from Machiko Kanatake, Sandra Gao, and Heetae Bae), considers the exercise of extraterritorial criminal jurisdiction in China, Japan and South Korea.

Danielle Ireland-Piper is Associate Professor at Bond University, Australia. She has a PhD from the University of Queensland and an LLM from the University of Cambridge, where she was a Chevening Scholar. Danielle is the author of *Extraterritoriality in East Asia: Extraterritorial Criminal Jurisdiction in China, Japan, and South Korea* (Edward Elgar, 2021) and *Accountability in Extraterritoriality: A Comparative and International Law Perspective* (Edward Elgar, 2017) as well as publications on public international law, space law, human rights law, transnational criminal law, and comparative constitutional law. Danielle also has prior experience in government roles and in private legal practice. She was Associate to the Hon. Chief Justice Susan Kiefel during her Honour's time on the Federal Court.

Emily Crawford, University of Sydney Law School

The efficacy, legitimacy and legality of nonbinding norms in the development of IHL

Where States have been unable to agree on legally binding instruments over the past 30 years, the development of non-binding norms in IHL have provided an alternative path forward. These soft law instruments can be authoritative statements or restatements of law or guidelines for best practice, providing prompt responses to pressing and emerging issues in armed conflict. This presentation will draw on Emily Crawford's recent publication, 'Non-Binding Norms in International Humanitarian Law' and will ask questions such as what is the history of non-binding norm development in IHL? What are the benefits and drawbacks of soft law instruments and the processes involved in creating them? And can non-binding norms make effective additions to IHL?

Emily Crawford is an Associate 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*.

Carrie McDougall, University of Melbourne

The Importance of Reinforcing the Prohibition of the Use of Force through the Prosecution of Crimes of Aggression Committed against Ukraine

One of the key issues raised by the varying definitions of non-international armed conflict (NIAC) is the threshold of hostilities that distinguishes NIAC from other situations of armed violence. While the notion of 'protracted armed violence' may have emerged as the relevant benchmark under customary international law, this notion in and of itself provides little guidance as to where the relevant tipping point lies. International tribunals have developed a list of indicia to assist with case-by-case assessments – but while this might suggest a systematic approach, in practice, the application of these indicia to the facts has not been detailed, leaving significant room for interpretation. This paper will consider whether qualitative or quantitative assessments that distinguish between a situation of armed violence and a NIAC (i.e. number of victims, number of clashes, frequency of clashes) can be identified. It will also explore the issue that these indicia have been developed for the purpose of ex-post facto analysis, and consider whether a different approach needs to be taken for assessments made at the early stages of a military engagement. State and organisational practice will be reviewed to determine whether States in fact rely on the criteria, and to assess the extent to which factors such as comparative assessments, or pronouncements made by bodies like the International Committee of the Red Cross are relevant. These findings will provide a foundation for the articulation with greater granularity of the threshold of hostilities that distinguishes a NIAC from other situations of armed violence.

Carrie McDougall re-joined Melbourne Law School in 2018, after nearly a decade working for the Department of Foreign Affairs and Trade (DFAT). At DFAT she served first as Assistant Director of the International Law Section, providing advice on the jus ad bellum, international criminal law, international

humanitarian law, the responsibility to protect and the protection of civilians. Carrie regularly represented Australia in international meetings, including the International Criminal Court's Assembly of States Parties, and played a critical role in international negotiations, including those relating to the downing of Flight MH17. Immediately before re-joining the Law School, she served as the Legal Adviser at Australia's Mission to the United Nations in New York. Prior to joining DFAT, Carrie was a Research Fellow at Melbourne Law School, Sessional Lecturer and solicitor. Carrie holds a PhD from Melbourne Law School. She graduated as University Medallist with First Class Honours in Law and Arts from the University of Tasmania. She is admitted as a barrister and solicitor of the Supreme Court of Victoria and the High Court of Australia and is the author of The Crime of Aggression under the Rome Statute of the International Criminal Court (Cambridge University Press, 2nd edition, 2021).

Panel # 15: Interconnectedness – Systems and Patterns

Alison Duxbury, Sarah Joseph, Melanie O'Brien, Sawmiya Rajaram

Included Paper Abstracts and Short Biographies

Alison Duxbury (Chair), Melbourne Law School

Sarah Joseph, Griffith Law School

Vaccine Inequity through the Lens of International Human Rights Law

While vaccines have brought much-needed relief in the global COVID-19 pandemic, their distribution has been massively inequitable. While rich and middle income countries have vaccinated their willing adult populations in 2021, low income countries may not be able to aspire to mass vaccination before 2024 if ever.

This paper will analyse vaccine inequity through the lens of international human rights law, including the human rights compatibility of human rights nationalism and vaccine aid. While it may be unethical for rich countries to have rushed to the front of the vaccine queue, it is difficult to characterise vaccine nationalism per se as a breach of human rights obligations, given that vaccine nationalism fulfils the human rights of a state's own people. There are no coherent principles for balancing national and extraterritorial human rights obligations when they clash.

Sarah argues that the biggest problem with vaccine inequity at the beginning of 2022 remains the scarcity of vaccines. Hence, all States have human rights obligations, both to the people of other states and to their own, to do what they reasonably can to increase global supply, and to not obstruct initiatives that can increase global supply. In that respect, the proposed TRIPS waiver will be discussed, in light of whether there is a human rights obligation for States to support it.

Sarah Joseph is a Professor of Human Rights Law, and commenced at Griffith University in March 2020, where she runs its Postgraduate International Law programs. Prior to her Griffith appointment, Sarah was Professor of Law at Monash University from 2005-2019, and the Director of the Castan Centre for Human Rights Law for those 15 years. Her publications focus on human rights internationally and in Australia, with particular expertise on the International Covenant on Civil and Political Rights, business and human rights, trade and human rights, and issues concerning the media (and social media) and human rights. She has also published in the area of Australian constitutional law.

She has taught human rights courses in Australia, the United States (Washington DC), the Netherlands (Amsterdam), Switzerland (Geneva) and New Zealand (Auckland). She has conducted numerous human rights consultancies, including training programs in Vietnam, Indonesia and Myanmar, and in Australia for the Department of Foreign Affairs and Trade, and courses funded by AusAID (including for Iraqi government officials).

Melanie O'Brien, University of Western Australia

The Inter-Connectedness of Human Rights Violations in Genocide

It is acknowledged that human rights are inter-dependent, inter-connected. This presentation will demonstrate that human rights violations in genocide are also inter-connected. There is a specific pattern of human rights violations that occurs in genocide – a pattern that will help prosecutors and judges determine if genocide has taken place. Based on extensive empirical research of the Armenian Genocide, the Holocaust, the Cambodian Genocide and the Rohingya Genocide, this study has determined this specific pattern, but also found that these specific human rights violations must occur together – hence they are crucial to the genocide. Violations at the end of the genocide process, such as freedom from torture and the right to life, cannot occur without first violations of other rights, such as education and culture, taking place. The rights violations within genocide are all inter-connected because some cannot occur without others, some lead to others, and some work in conjunction with others. This presentation will provide an overview of the specific human rights violations in genocide, and draw attention to the inter-connectedness of rights violations in the genocide process. Examples will be drawn from the case studies of the Armenian Genocide, the Holocaust, the Cambodian Genocide and the Rohingya Genocide.

Melanie O'Brien is Associate Professor of International Law at the University of Western Australia, an award winning teacher of International Humanitarian Law, Public International Law and Legal Research. Her research examines the connection between human rights and genocide; and sexual and gender-based crimes in atrocities. She has conducted fieldwork and research across six continents. Her work on forced marriage has been cited by the International Criminal Court, and she has been an expert consultant

for several UN bodies.
Melanie is President of the International Association of Genocide Scholars' (IAGS) and co-convened the 2017 IAGS Conference at UQ, serving on the Editorial Board of *Genocide Studies and Prevention* 2013-2017. She is an Australian Red Cross WA International Humanitarian Law Committee member, and is on the Editorial Board of *Human Rights Review*. Melanie is an admitted legal practitioner who has previously worked at several Australian universities; the National Human Rights Institution of Samoa; and the Legal Advisory Section of the Officeof the Prosecutor at the International Criminal Court. She is the author of *Criminalising Peacekeepers: Modernising National Approaches to Sexual Exploitation and Abuse* (2017, Palgrave), and her book, *From Discrimination to Death*, will be published in 2022 (Routledge). She tweets @DrMelOB.

Sawmiya Rajaram, Jindal Global Law School

Theorising 'consumer' under International Law: A TWAIL Perspective

While pointing out the inadequacy of contemporary international law in addressing the various forms of alienation, Chimni opined that it is time to find ways to address these alienations on an urgent basis (Chimni 2017: 516). The story of international consumer protection framework is an example of this. While the United Nations Guidelines on Consumer Protection (UNGCP) creates a soft law legal framework for protection of consumers, the question one need to ask is whether this universal framework protects the interests of marginalised consumers or not. Consumer is an heterogeneous category and this heterogeneity should be explored and recognized through the prism of parameters including caste, class, gender and race (Comor 2008:37). Historical analysis proves that there existed laws that conditioned the consumption through these parameters (Trentmann 2016 and Hilton 2009). For example, the South Carolina Act and Breast Tax in India. Hence, just defining consumer as an economic actor is not sufficient, but should see her from an intersectional perspective and beyond the veils of dismal science (Fine and Leopald 2002: 154). The paper explores the existing international consumer framework (UNGCP) and focus on the need for theorizing consumer from a contextual approach that integrates the question of class, caste gender approach to bring in parity.

Sawmiya Rajaram is an Assistant Professor at Jindal Global Law School (JGLS), O.P. Jindal Global University (JGU), India. She had worked in the capacity of LL.M Mentor and LL.M Research Coordinator with the Centre for Post Graduate Legal Studies (CPGLS). She is currently pursuing her PhD from Jawaharlal Nehru University (JNU), India. She previously worked as an International Trade Law Expert for analysing and drafting responses to World Trade Organisation (WTO) on Technical Barriers to Trade (TBT) Notifications. This response is cleared by the Department of Commerce, Government of India and sent to World Trade Organisation (WTO), which effectively becomes India's official position in WTO. She has also worked as a Junior Local Expert (Technical Regulations) in a project run by EU-CITD. Assisted a technical team in conducting 'Gap Analysis' involving comparison of the EU's system of Technical Regulations with that of India's. Interacted with various regulatory agencies, industry bodies and domain experts among other stakeholders from across the country. Contributed towards preparation of a Guide-Book on developing technical regulations in India. Her areas of interests are public international law, consumer protection, international trade law, international environmental law, European technical regulations and IPR.

Panel #16: Peace and Security II

Douglas Guilfoyle, Monique Cormier, Rob McLaughlin, Shannon Maree Torrens, Rebecca Barber

Included Paper Abstracts and Short Biographies

Douglas Guilfoyle (Chair), UNSW Canberra

Douglas Guilfoyle is Professor of International Law and Security at UNSW Canberra and an Australian Research Council Future Fellow (2022-2025). He was a DFAT Visiting Legal Fellow in 2020-2021. His principal areas of research are maritime security, the international law of the sea, international courts and tribunals, and the history of international law. He is the author of Shipping Interdiction and the Law of the Sea (2009) and International Criminal Law (2016). His research work is informed by his consultancy to various government and international organisations. He was previously a Professor of International Law at Monash University, and a Reader in International Law at University College London. During his graduate studies at the University of Cambridge he was a Chevening and then a Gates scholar.

Monique Cormier, Monash University

A Peaceful Nuclear-Powered Submarine? How AUKUS will test the International Legal Framework on Nuclear Security

In September, the AUKUS trilateral security partnership was announced to much fanfare. Its 'first major initiative' would be a nuclear-powered submarine fleet for Australia. The notion that a non-nuclear weapon state like Australia will have nuclear powered vessels in its navy gives rise to a raft of legal and political issues relating to nuclear non-proliferation. Of particular importance is the untested 'legal grey area' in the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the International Atomic Energy Agency (IAEA) safeguards framework. The NPT obliges non-nuclear weapon states not to manufacture or acquire nuclear weapons or nuclear explosive devices and in return they are allowed to develop nuclear energy for 'peaceful purposes' subject to the IAEA monitoring system. Yet, under the safeguards agreements between the IAEA and non-nuclear weapon states, a state party intending to use nuclear material for 'non-peaceful', 'non-proscribed military activities' may withdraw that material from the IAEA verification regime. This 'loophole' is especially relevant for nuclear-powered submarines. On the one hand it is implicitly understood that nuclear-propulsion technology in a naval fleet is for non-peaceful purposes. On the other, there is Brazil, the only other non-nuclear weapon state on a trajectory towards developing nuclear-powered submarines, maintaining (for its own political reasons) that such use of nuclear material is for 'peaceful purposes'.

This paper interrogates the ways that nuclear-powered submarines will test the 'peaceful/non-peaceful' dichotomy in the international nuclear security regime, with potentially serious implications for verification and non-proliferation of nuclear weapons.

Monique Cormier is a Senior Lecturer at Monash University Faculty of Law. Her main research interests are jurisdiction in international criminal law and legal issues relating to nuclear non-proliferation. Recent publications include *The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties* (Cambridge University Press, 2020) and 'Can Australia Join the Nuclear Ban Treaty without Undermining ANZUS?' (co-authored with Anna Hood, *Melbourne University Law Review*, 2020).

Rob McLaughlin, ANCORS, University of Wollongong and Australian National University

The Law of Neutrality after the Falklands War?

The law of neutrality is a foundational, and consequential, rule-set in international law. However, in the post-1945 era, the law of neutrality has often been assessed as defunct, or at least as now being different to what it once was. Part of the challenge to understanding the currency and (evolved?) content of neutrality law in the UN Charter era lays in the fact that since 1945 the political and legal context of many state-against-state conflicts (international armed conflicts, in the nomenclature of the modern law of armed conflict) – such as the First and Second Gulf Wars in 1991 and 2003 – has been overlain by both clear, or claimed, UNSC mandates. This complicates the availability of a 'neutral' relationship between third states and belligerent states due to the UNSC's prerogative powers in respect of international peace and security. Another complication has been the predominance of non-international armed conflicts as compared to international armed conflicts, given that except in rare cases of recognised belligerency, it is

the law on non-interference rather than the law of neutrality that is primarily relevant to governing external state relationships with the internally conflicted state and its adversary rebel group.

This leaves only a handful of international armed conflicts since 1945 where the law of neutrality could be said to have been potentially applicable in its full panoply. Of these conflicts, the 1982 Falklands War is perhaps the most instructive in terms of pointing the way towards the enduring relevance - and if relevant, the evolving shape and content - of the law of neutrality. This suitability as an indicative case study rests upon a range of factors. One is the duration of the war - long enough to require political and legal consideration of neutrality, but neither too short (as with the 6 Day War in 1967) that the machinery of neutrality became irrelevant almost before it could be engaged, nor too long (as with the 1980-1988 Iran-Iraq War) that active considerations of neutrality tended to be lost in the 'normalisation' of the conflict for third states. Another is the fact that the Falklands War included one of the P5 as a belligerent, and thus necessitated more careful attention to issues of neutrality from, amongst others, three of the remaining P5 - France, the USA, and the USSR. Another factor is the naval and expeditionary nature of the conflict, requiring conscious consideration as to the effects of the conflict upon the global commons and the rights of other users of those commons.

The aim of this paper will be to assess five activities carried out by two key 'neutral states' during that conflict in order to assess what this record has to say about the viability and vitality of the traditional law of neutrality, and about its modern content. The five activities examined will be: Weapons sales (France); imposition of sanctions (US); intelligence sharing (US); access to military facilities (US); and cooperation with third state military forces during task force work-ups (US). Each of these acts will be assessed as against both the 1982 Falklands War context, and the traditional law of neutrality, in order to ascertain the implications of the 1982 War for the modern application of this rule-set.

Shannon Maree Torrens, International and Human Rights Lawyer

Responding to International Crimes Committed in Ukraine: From the ICC to Universal Jurisdiction

This paper discusses responses in international criminal law to international crimes that are allegedly being committed in Ukraine, notably war crimes, crimes against humanity and the crime of aggression. Following Russia's invasion of Ukraine on 24 February 2022, the current ICC Prosecutor Karim Khan announced that he was seeking to open an investigation into the current, as well as previous crimes committed in Ukraine including in Crimea and eastern Ukraine that have been subject to a preliminary examination. Khan has said that he will investigate past and present allegations of international crimes including war crimes, crimes against humanity and genocide committed in the territory of Ukraine committed by any individual since 21 November 2013. To proceed with the investigation the Prosecutor must seek the authorisation of the ICC's Pre-Trial Chamber or a state party to the Rome Statute must refer the situation. Due to international support for prosecutions 39 states parties referred the situation. This paper discusses these developments in the context of the evolving conflict. The paper will address the logistical and political challenges for the ICC and the international community in proceeding with prosecutions including the likely lack of cooperation from non-state party Russia and the challenges of collecting evidence during a conflict. This paper further discusses other avenues for justice including hybrid courts and domestic prosecutions through universal jurisdiction whereby states can hold individuals to account for grave crimes. Finally, this paper addresses the important role of Ukraine and Ukrainians, particularly victims, in establishing and collaborating in a justice response.

Shannon Maree Torrens is an international and human rights lawyer admitted in the Supreme Court of NSW. Her PhD thesis, which she completed at the University of Sydney Law School focused on international criminal law. Shannon has worked at the international criminal tribunals and courts for Rwanda (ICTR), the former Yugoslavia (ICTY), Sierra Leone (SCSL) and Cambodia (ECCC). In addition, she has served as a legal advisor for the Marshall Islands Permanent Mission to the United Nations in New York in the UN General Assembly Sixth Committee (Legal), including working with the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC). Shannon has worked as an Editorial Advisor for the Cambodia Law and Policy Journal and with the University of Oslo and the University of New England. Shannon has worked in human rights at Redfern Legal Centre in Sydney and has advised the Wik Indigenous community in Cape York. In addition, she has worked with the UN Food and Agriculture Organisation (FAO), the United Nations Children's Fund (UNICEF), the World Food Programme (WFP) and the Australian Embassies to Italy and the Holy See (the Vatican).

Rebecca Barber, University of Queensland

Cooperating through the General Assembly to end Serious Breaches of Peremptory Norms of International Law

The International Law Commission's (ILC's) 2019 Draft Conclusions on Peremptory Norms of International Law assert that states have an obligation to cooperate to end serious breaches of peremptory norms. While previously the ILC has taken the position that the obligation to cooperate to end serious breaches of peremptory norms 'may reflect the progressive development of international law', in its commentary to the Draft Conclusions, the ILC describes the obligation as 'now recognised under international law'. However, there is no consensus in international law regarding what those peremptory norms are, scare guidance regarding what the obligation to cooperate requires, and scarce guidance regarding how states should use international organisations to fulfil their obligation.

This paper examines the status and nature of the obligation to cooperate, specifically in relation to the prohibition of crimes against humanity and the basic rules of humanitarian law, both of which the ILC has described as peremptory. In particular, it draws on the reference by the International Court of Justice in the Bosnian Genocide Case to the notion of due diligence, to provide substance to the obligation to prevent genocide. It considers how the notion of due diligence can similarly be to used to substantiate the obligation to cooperate, in particular through international organisations. This paper concludes by suggesting a number of specific ways in which states may use the General Assembly to fulfil their obligation to cooperate, including: making recommendations to the Security Council; recommending sanctions; and pronouncing on the illegitimacy of a responsible regime.

Panel #17: Inter-connectedness and the Law of the Sea

Camille Goodman, Zsofia Korosy, Karen Scott, Natalie Klein, Joanna Mossop

2022 marks the 40th anniversary of the United Nations Convention on the Law of the Sea (UNCLOS). In light of this anniversary, this panel reflects on the conference theme of inter-connectedness in the context of UNCLOS. It considers inter-connectedness across multiple levels. The first level is the physical inter-connectedness of the marine environment. The second level is the relationship between UNCLOS and other areas of international law, including international human rights law and regimes dealing with environmental protection. The third level is inter-connectiveness within the regime itself, including between implementing agreements as well as between the different Parts of the Convention. In doing so, this panel aims to highlight the opportunities and challenges that inter-connectedness presents for UNCLOS, and chart pathways forward to promote the success and legitimacy of this regime into the future.

This panel is hosted by the ANZSIL Oceans and International Environmental Law Interest Group.

Included Paper Abstracts and Short Biographies

Camille Goodman (Chair) is a Senior Lecturer at the Australian National Centre for Ocean Resources and Security (ANCORS) at the University of Wollongong, and a Visiting Fellow at the ANU College of Law. From 2005 to 2020, Camille worked at the Commonwealth Attorney-General's Department, providing legal and policy advice to the Australian Government, with a particular focus on law of the sea and international fisheries law. Her first book, 'Coastal State Jurisdiction Over Living Resources in the Exclusive Economic Zone' was published by OUP in November 2021.

Zsofia Korosy, UNSW

Fish, the Environment and Conservation in the Law of the Sea

This paper examines international law's understanding of the inter-connectedness of the marine world through a close examination of what is encompassed by the term 'conservation' in the United Nations Convention on the Law of the Sea (UNCLOS). It does so by studying two Parts of the Convention – Part V, which deals with states' rights and duties in the exclusive economic zone (EEZ), including in relation to conservation of marine living resources; and Part XII, on protection and preservation of the marine environment. It takes as a starting point a historical blindspot of the international law in this area, in which fish were decontextualised and treated as resources separated from the ecosystem of which they form a part. Asking 'when is a fish not part of the environment?', it traces the evolution of ways in which law has given space to developing conceptions of the goals and scope of conservation.

Zsofia Korosy is a postdoctoral fellow in the Faculty of Law & Justice at UNSW, where she completed her PhD in 2021 and where she has taught International Environmental Law and Federal Constitutional Law. Her research focuses on oceans in international law, looking in particular at questions of conservation and environmental protection. She is a member of the management committee of the International Law Association (Australian Branch).

Karen N. Scott, University of Canterbury, NZ

Marine Pollution beyond National Jurisdiction: Navigating Fragmentation and Connection

One of the innovations of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which celebrates its 40th anniversary in 2022, was to establish a general obligation on all states to protect and preserve the marine environment and to take measures to prevent, reduce and control pollution from any source. These obligations apply equally within and beyond national jurisdiction but are highly variable in content and binding effect depending on their source. Most importantly, marine pollution prevention obligations are fragmented across multiple global and regional regimes and institutions. The absence of an overarching regime or institution with a mandate to protect the marine environment beyond national jurisdiction means that the response to new threats is ad hoc and generally uncoordinated. Responses vary from expanding the mandates of existing regimes (such as the London Convention in respect of CO_2 related pollution and, to a lesser extent, marine litter) or to negotiate new treaties (e.g. the negotiation of a plastics treaty, which was formally initiated in March 2022 under the auspices of the UN Environment Assembly). This paper will explore options for navigating and connecting fragmented marine pollution governance, with a particular focus on how the *International legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity beyond national jurisdiction*, currently under negotiation in the UN, might contribute to this effort.

Karen N Scott is a Professor of Law at the University of Canterbury in New Zealand, 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 80 edited books, journal articles and book chapters in these areas. Karen is a University Proctor, and she 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.

Natalie Klein, UNSW

Geneva Declaration on Human rights at Sea: An Endeavour to Connect Law of the Sea and International Human Rights Law

The Geneva Declaration on Human Rights at Sea was officially launched on 1 March 2022. The document was produced by the non-governmental organization, Human Rights at Sea, and drafted by academics and practitioners to respond to increasing concerns about unchecked human rights abuses beyond land territory. There is an undoubted need to prevent human rights violations at sea and to provide redress to victims of such abuses. Connecting the international human rights regime with the law of the sea has been one of many challenges to respond to this issue.
In this paper, I will consider, first, the process and approach in drafting this instrument and the relevance for international lawmaking. While informal agreements (or soft law) are common, the interaction between state and non-state actors challenges traditional understandings of the sources of international law. Second, I will outline the content of the Geneva Declaration and its alignment with existing law of the sea. The jurisdictional complexities that exist in the law of the sea mean that affirming state responsibility is not as straight forward as may be the case on land. Finally, I will briefly address the ways the instrument might contribute to the improved protection of human rights at sea. It may be that the issue is more one of implementation and enforcement, but it is worth understanding how different legal tools and mechanisms may be brought to bear to redress the gross human rights violations occurring across our oceans.

Natalie Klein is a Professor at UNSW Sydney's Faculty of Law, Australia, and an Australian Research Council Future Fellow. Professor Klein commenced her term as President of the Australian Branch of the International Law Association in 2020. She was previously at Macquarie University where she served as Dean of Macquarie Law School (2011-2017), as well as Acting Head of the Department for Policing, Intelligence and Counter-Terrorism at Macquarie (2014-2015). Professor Klein has been a Visiting Fellow at the Lauterpacht Centre for International Law at Cambridge University, a MacCormick Fellow at the University of Edinburgh, and a non-resident Fellow at the Lakshman Kadirgamar Institute in Sri Lanka. Prior to joining Macquarie, Professor Klein worked in the international litigation and arbitration practice of Debevoise & Plimpton LLP, served as counsel to the Government of Eritrea (1998-2002) and was a consultant in the Office of Legal Affairs at the United Nations. Her masters and doctorate in law were earned at Yale Law School and she is a Fellow of the Australian Academy of Law.

Joanna Mossop, Te Herenga Waka – Victoria University of Wellington

The Role of Implementing Agreements in the Evolution of the Law of the Sea

This paper considers asymmetry in the evolution of the United Nations Convention on the Law of the Sea (UNCLOS). Over 300 articles address a raft of issues from maritime zones to dispute settlement. However, more work remained to be done. In 1994 the international community agreed to an implementing agreement on seabed mining, and in 1995 an implementing agreement was concluded for straddling and highly migratory stocks. Both agreements to some extent amended UNCLOS but were concluded relatively quickly.
In 2017 that the General Assembly authorised an Intergovernmental Conference to negotiate a new legally binding agreement under UNCLOS for to the conservation and sustainable use of marine biodiversity beyond national jurisdiction. Three negotiating sessions have been held to date and it is unlikely that an agreement will be reached after a fourth session. Core legal issues are proving impossible to reach agreement on; states are divided on how the new treaty will interact with existing treaties and institutions; and the goal of full participation in the treaty has observers concerned that the final treaty will be ineffective. States are very resistant to moving international law forward in a meaningful way.
I will ask: why has it been so difficult to evolve the law of the sea in an area which clearly requires attention? What are the factors that have prevented the fast resolution of a new implementing agreement? What are the prospects that the new treaty will be effective at resolving the issues facing oceans governance today?

Joanna Mossop is an Associate Professor at Te Herenga Waka – Victoria University of Wellington, and Associate Dean (Research) for the Law Faculty. Her research focuses on the law of the sea, and she has published widely on topics such as maritime security, dispute resolution, conservation of biodiversity, the continental shelf beyond 200 nautical miles and whaling in the Southern Ocean. She has been an observer

on the New Zealand delegation to the IGC for the negotiation of a new treaty for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ). In 2019 the New Zealand Government nominated her to the list of arbitrators and conciliators under UNCLOS. From 2022 she is a principal investigator on a NZ Royal Society Marsden Grant on reimagining ocean law.