



THE UNIVERSITY OF  
**SYDNEY**

# International Law 2018 – The Year in Review

Presented by Sydney Centre for International Law  
7<sup>th</sup> Annual Conference

## PROGRAM



## Friday 22 February 2019

**Venue:** Sydney Law School, Common Room, Level 4, New Law Building (F10),  
Eastern Avenue, Camperdown  
The University of Sydney

CPD points for full day attendance: 7.5



## LOCATION

Sydney Law School,  
Common Room, Level 4,  
New Law Building (F10),  
Eastern Avenue, The  
University of Sydney





# PROGRAM

8.45am - 9.00am	Registration
9.00am - 9.15am	Opening and Welcome from Centre Co-Directors: <b>Professor Chester Brown</b> and <b>Ms Irene Baghoomians</b> (University of Sydney)
9.15am - 10.00am	<b>Session 1:</b> <b>Keynote Address – Professor Aoife Nolan</b> (University of Nottingham), <i>"Human Rights and the Risks and Opportunities of (Economic) Crisis"</i> <u>Chair:</u> <b>Professor David Kinley</b> (University of Sydney)
10.00am - 11.15am	<b>Session 2: Major International Law Cases in 2018</b> <u>Speakers:</u> <b>Dr Kate Parlett</b> (20 Essex St, London), <i>"The 2018 ICJ Judgments in Costa Rica v Nicaragua and Bolivia v Chile: The Court's Approach to Evidence"</i> <b>Dr Alison Pert</b> (University of Sydney), <i>"A Review of Australian Cases Involving Questions of International Law in 2018"</i> <b>Dr Simon Brinsmead</b> (Office of International Law, AGD), <i>"Australia's Involvement in International Disputes in 2018"</i> <u>Chair:</u> <b>Associate Professor Emily Crawford</b> (University of Sydney)
11.15am - 11.30am	Morning tea
11.30am - 12.45pm	<b>Session 3: Developments in International Environmental Law in 2018</b> <u>Speakers:</u> <b>Associate Professor Ed Couzens</b> (University of Sydney), <i>"Developments at the International Whaling Commission Meeting of 2018"</i> <b>Professor Afshin Akhtar-Khavari</b> (Queensland University of Technology), <i>"The ICJ's Judgment on Compensation for Environmental Damage in Costa Rica v Nicaragua"</i> <b>Sarah Lothian</b> (University of Sydney), <i>"Developments in BBNJ Negotiations"</i> <u>Chair:</u> <b>Professor Tim Stephens</b> (University of Sydney)
12.45pm - 1.30pm	<b>International Law Literary Lunch – Richard Flanagan</b> , Winner of the Man Booker Prize for 2014 for <i>"The Narrow Road to the Deep North"</i> In Discussion with <b>Professor Chester Brown</b> (University of Sydney)



<b>1.30 – 2.45pm</b>	<b>Session 4: Developments in General International Law in 2018</b> <u>Speakers:</u> <b>Dr Rowan Nicholson</b> (University of Sydney), <i>“Developments in Statehood and the Recognition of States”</i> <b>Dr Martin Jarrett</b> (University of Mannheim), <i>“Issues of State Responsibility in the Downing of MH17”</i> <b>Professor Fleur Johns</b> (UNSW), <i>“Developments in International Legal Scholarship”</i> <u>Chair:</u> <b>Professor Ben Saul</b> (University of Sydney)
<b>2.45 - 4.00pm</b>	<b>Session 5: Developments in International Criminal Law in 2018</b> <u>Speakers:</u> <b>Dr Emma Palmer</b> (Griffith University), <i>“The ICC’s Moves into the Asia-Pacific”</i> <b>Dr Maria Elander</b> (La Trobe University), <i>“Developments in the ECCC”</i> <b>Sam Hartridge</b> (UNSW), <i>“The Afghanistan investigation and the possibility of prosecuting US soldiers in the ICC”</i> <b>Dr Rosemary Grey</b> (University of Sydney), <i>“Gender Developments in the ICC and ECCC”</i> <u>Chair:</u> <b>Associate Professor Jacqui Mowbray</b> (University of Sydney)
<b>4.00 - 4.15pm</b>	Afternoon Tea
<b>4.15 - 5.30pm</b>	<b>Session 6: Developments in International Economic Law in 2018</b> <u>Speakers:</u> <b>Ashique Rahman</b> (Fietta Law, London), <i>“The Achmea Crisis Engulfing Investor-State Arbitration”</i> <b>Ana Ubilava</b> (University of Sydney), <i>Reform of the ICSID Arbitration Rules</i> <b>Paul Schofield</b> (DFAT), <i>“UNCITRAL’s Consideration of the Reform of Investor-State Dispute Settlement”</i> <u>Chair:</u> <b>Professor Luke Nottage</b> (University of Sydney)
<b>5.30 – 6.30pm</b>	Cocktail reception for conference participants



## SPEAKERS/CHAIRS

(in alphabetical order)

### **Afshin Akhtar-Khavari, Queensland University of Technology**

Afshin Akhtar-Khavari is a professor at QUT Law School where he is also Director of Research. He has co-authored books and journal articles dealing with a range of international law issues. He writes at the interface of international environmental law, science, and philosophy. His last two book projects centred on law and ecological restoration and he recently published an edited collection, with Benjamin Richardson, titled *Ecological Restoration Law*. He is currently working on projects relating to wetlands restoration and international law. Akhtar-Khavari was a lead author for one of the chapters in the 2018 land degradation and restoration report of the Intergovernmental Platform on Biodiversity and Ecosystem Services. He is currently Co-Chair of the Research Committee of the IUCN Academy of Environmental Law.

### **Irene Baghoomians, The University of Sydney**

For over two decades, Irene Baghoomians has worked in the areas of public interest and human rights litigation, policy and research. Irene has worked at the Australian Law Reform Commission, the Department of the Prime Minister and Cabinet and prior to her departure for New York was a legal policy advisor at the Race Discrimination Unit of the AHRC (1998-2000). In New York, she studied for an LLM at Columbia University Law School (2000- 2001) and was designated as a human rights fellow and upon graduation was the recipient of another Columbia University Law School Human Rights fellowship which enabled her to work at the Center for Constitutional Rights (CCR) for two additional years as a staff attorney afterwards. At CCR, she worked on human rights cases litigated under the Alien Torts Claims Act and civil rights statutes including Guantanamo Bay detainees cases until her return to Australia in 2004. She is currently a Senior Lecturer at the University of Sydney Law School and teaches International Human Rights Law and Public International Law. Irene is also the coordinator of the Social Justice Clinic B Unit of Study. Since February 2018, she has been a co-director of the Sydney Centre for International Law.

### **Simon Brinsmead, Office of International Law, Attorney General's Department**

Dr Simon Brinsmead is a Principal Legal Officer in the Office of International Law, Attorney-General's Department (Australia). As co-leader of small teams of international lawyers, he is responsible for the provision of advice to the Australian Government across all aspects of public international law, with a particular focus on international trade law, international investment law, jurisdiction, immunities and international organizations. Simon has also advised on international environmental, human rights and sea law. He is experienced in preferential trade negotiations and international dispute settlement, including investor-State and WTO dispute settlement. Simon previously practiced competition and regulatory law with King & Wood Mallesons in its Sydney offices. He was recently a Visiting Scholar at Xiamen University School of Law. Simon holds Bachelor degrees in Economics and Law from the Australian National University, and a Masters in Law (International Law) from the University of New South Wales. In 2018, his PhD in Law was awarded summa cum laude by the University of Bern, Switzerland.



### **Chester Brown, The University of Sydney**

Professor Chester Brown is Professor of International Law and International Arbitration at the University of Sydney Law School, and the Co-Director of the Sydney Centre for International Law. He is also a Barrister at 7 Wentworth Selborne Chambers, Sydney, and an Overseas Associate of Essex Court Chambers, London, and Maxwell Chambers, Singapore. He teaches and researches in the fields of public international law, international dispute settlement, international arbitration, international investment law, and private international law. He also maintains a practice in these fields, and has been involved as counsel in proceedings before the International Court of Justice, the Iran-United States Claims Tribunal, inter-State and investor-State arbitral tribunals, as well as in inter-State conciliation proceedings and international commercial arbitrations.

### **Ed Couzens, The University of Sydney**

Ed is an Associate Professor of Environmental Law at the University of Sydney Law School, which he joined in 2015 from the University of KwaZulu-Natal in Durban. His research interests are generally in biodiversity conservation, both terrestrial and marine, and in issues concerning alien invasive species, migratory species and trade in species. He is particularly interested in teaching and researching on the relationship between international and national law. More specifically, he has a strong interest in the conservation of whales – he has attended six meetings of the International Whaling Commission as a member of the South Africa delegation.

### **Emily Crawford, The University of Sydney**

Dr Emily Crawford is a senior lecturer and an associate of the Sydney Centre for International Law (SCIL). Previously at the Law Faculty at the University of New South Wales, Emily completed her Arts and Law degrees before working as a researcher at the Australian Broadcasting Corporation, before returning to UNSW to undertake her PhD. Her doctoral thesis on the disparate treatment of participants in armed conflicts was published by Oxford University Press in 2010.

Emily has taught international law and international humanitarian law, and has delivered lectures both locally and overseas on international humanitarian law issues, including the training of military personnel on behalf of the Red Cross in Australia. A member of the International Law Association's Committee on Non-State Actors, as well as the NSW Red Cross IHL Committee, Emily's most recent research project examined major developments in the conduct of armed conflicts in the 21st century, such as cyber warfare, targeted killings, and the increasing presence of civilians directly participating in armed conflicts. The research project was published in 2015 by Oxford University Press as *Identifying the Enemy: Civilian Participation in Armed Conflict*.

### **Maria Elander, La Trobe University**

Maria Elander is a lecturer at La Trobe Law School. Her research is in the broader field of international criminal justice with a focus on the Khmer Rouge Tribunal, and engages with theories in cultural and feminist legal studies. Her monograph, *Figuring Victims in International Criminal Justice, the Case of the Khmer Rouge Tribunal*, was published in 2018 by Routledge. She is currently working on a project on the visual culture of international criminal justice and a collaborative project on the spatialities of transitional justice.



### **Richard Flanagan**

Richard Flanagan was born in Tasmania in 1961. His novels *Death of a River Guide*, *The Sound of One Hand Clapping*, *Gould's Book of Fish*, *The Unknown Terrorist*, *Wanting* and *The Narrow Road to the Deep North* have received numerous honours and are published in 42 countries. He won the Man Booker Prize for *The Narrow Road to the Deep North* in 2014.

### **Rosemary Grey, The University of Sydney**

Rosemary's research focuses on gender & international criminal law, particularly the prosecution of gender-based crimes in the International Criminal Court (ICC) and Extraordinary Chambers in the Courts of Cambodia (ECCC). She has consulted and interned for key organisations in the international criminal justice field, including Amnesty International, Women's Initiatives for Gender Justice, the International Bar Association, and the ICC.

Before joining Sydney Law School in 2018, she completed a postdoctoral fellowship at the University of Melbourne, where she co-taught the International Criminal Justice Clinic, an initiative of Melbourne Law School and Amnesty International. She also spent time as a visiting scholar at the Grotius Centre for International Legal Studies (University of Leiden) and PluriCourts (University of Oslo).

Her PhD, titled *Prosecuting sexual and gender violence crimes in the International Criminal Court* was completed at the University of New South Wales in 2015. She uses feminist methods in international law, doctrinal analysis, and interviews.

### **Sam Hartridge, University of New South Wales**

Sam Hartridge is a Doctoral Candidate and Teaching Fellow at the University of New South Wales. Sam is currently engaged in research projects on international and domestic criminal law, and international humanitarian law.

### **Martin Jarrett, The University of Mannheim**

Dr Martin Jarrett is a senior lecturer at the University of Mannheim, Germany. His research profile is focussed on international investment law and comprises numerous articles, book chapters, and a forthcoming monograph on investor misconduct to be published by Cambridge University Press.

### **Fleur Johns, University of New South Wales**

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



**David Kinley, The University of Sydney**

Professor David Kinley holds the Chair in Human Rights Law at the University of Sydney Law School. He is also an Academic Panel member of Doughty Street Chambers in London, a member of the Australian Council for Human Rights, and was a founding member of Australian Lawyers for Human Rights. He is currently on the Faculty of Oxford/George Washington Universities' International Human Rights Law Summer School and has previously held teaching positions at Cambridge University, ANU, University of New South Wales, Washington College of Law, American University, and Paris 1 (La Sorbonne). He was also the founding Director of the Castan Centre for Human Rights Law at Monash University (2000-2005). David was a Senior Fulbright Scholar in 2004, based in Washington DC, and the Herbert Smith Visiting Fellow at the Faculty of Law, University of Cambridge in 2008. He has also held visiting positions at the universities of Edinburgh, Geneva, Pretoria, Queen's University Belfast, Sciences Po, Paris and the South Pacific (Vanuatu), and has been invited to lecture at leading law schools worldwide, including the Chinese Academy of Social Sciences, City University of Hong Kong, Columbia, Copenhagen, Duke, Georgetown, George Washington, Harvard, Hong Kong University, Humboldt, the LSE, the Max Planck Institute, McGill, NYU, New Delhi, Nottingham, Osgoode Hall, Oxford, the Raoul Wallenberg Institute, Sheffield, Stanford, Tilburg, Toronto, Trinity College Dublin, Tulane, Tsinghua, UCLA, Virginia and Yale. He has written and edited eleven books and more than 100 articles, book chapters, reports and papers.

**Sarah Lothian, The University of Sydney**

Sarah Louise Lothian is a PhD Candidate at the University of Sydney Law School. Sarah's thesis will examine the legal framework required under a new BBNJ Agreement to protect marine biodiversity in areas beyond national jurisdiction. Sarah has completed a combined Bachelor of Arts/Law (Honours) degree at the University of Sydney, a Masters degree in Maritime Law (With Distinction) at the University of Nottingham and a Masters degree in Family Law at the College of Law Sydney. Sarah is currently a member of the NSW Bar.

**Jacqueline Mowbray, The University of Sydney**

Jacqueline Mowbray joined the University of Sydney Law School in 2008. She is a graduate of the Universities of Queensland (BA LLB (Hons)), Melbourne (LLM) and Cambridge (LLM (Hons) PhD). Jacqueline has practised as a solicitor with Freehills in Melbourne and Barlow Lyde & Gilbert in London, and she teaches on the European Masters program in human rights, which is taught at the University of Sarajevo, Bosnia-Herzegovina. Her particular area of interest is international law and legal theory, with a focus on international human rights law. She is currently working on a number of projects relating to international law and language policy, and the position of linguistic minorities under international law. Jacqueline also teaches in the area of commercial law and international commercial transactions.





**Rowan Nicholson, The University of Sydney**

Rowan Nicholson completed his doctorate at the University of Cambridge in 2017. In the past he has worked as a legal practitioner in Australia and as the senior associate to Professor James Crawford; at present he lectures at Sydney Law School and is one of the incoming co-directors of the Sydney Centre for International Law. His monograph, *Statehood and the State-Like in International Law*, will be published by Oxford University Press in 2019. His current research focuses on international legal history and theory.

**Aoife Nolan, The University of Nottingham**

Aoife Nolan, LL.B (Dublin), PhD (EUI), joined the School of Law as Professor of International Human Rights Law in 2012. On 30 November 2016, Aoife was elected as an independent expert to the Council of Europe's European Committee of Social Rights, the leading European monitoring mechanism on economic and social rights. She is also Director of the Human Rights Law Centre's Economic and Social Rights Unit. From 2015-2018, Aoife co-directed the Rights and Justice Research Priority Area, the world's largest cluster of rights and justice scholars, involving over 700 members from 22 different University centres. From 2013-15, she was Academic Lead of the interdisciplinary University of Nottingham Children and Childhood Network and the Nottingham Summer School on Child Rights. In December 2017, Aoife was appointed to the Scottish First Minister's Advisory Group on Human Rights Leadership. She is an Academic Expert member of Doughty Street Chambers.

**Luke Nottage, The University of Sydney**

Dr Luke Nottage is Professor of Comparative and Transnational Business Law at the University of Sydney Law School, specialising in arbitration, contract law, consumer product safety law and corporate governance, with a particular interest in Japan and the Asia-Pacific. He is founding Co-Director of the Australian Network for Japanese Law (ANJEL) and Associate Director of the Centre for Asian and Pacific Law at the University of Sydney. He is also Managing Director of Japanese Law Links Pty Ltd. ([www.japaneselawlinks.com](http://www.japaneselawlinks.com)).

**Emma Palmer, Griffith University**

Dr Emma Palmer is a Lecturer at Griffith Law School, Brisbane. She was awarded her PhD for her thesis, *'International Criminal Law in Southeast Asia: beyond the International Criminal Court'*, from UNSW Law in 2017. A manuscript based on that PhD will be published by Cambridge University Press. She has been a named Research Assistant for two Australian Research Council (ARC) Discovery Projects at UNSW Law: "*Evaluating civil society participation before international criminal tribunals: the amicus curiae and the rights of the defence*" (DP140101347) and "*Combating sexual violence against women post-conflict through 'transformative' reparations: problems and prospects*" (DP140102274), for which she worked on the Extraordinary Chambers in the Courts of Cambodia case study. Emma worked as a senior investment analyst at Macquarie Bank between 2006 and 2011, where she was responsible for coordinating private equity investments, having received Bachelor degrees in Law and Commerce in 2006. Emma is 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, corporations and commercial law, infrastructure governance, criminal law, gender issues, and norm adaptation in the Asia-Pacific region.



**Kate Parlett, 20 Essex Street, London**

Kate specialises in public international law and international arbitration. She acts for States and private entities on issues including land and maritime boundaries, investment treaty and contract disputes, human rights, law of the sea, State responsibility, treaty obligations, immunities, environmental law, sanctions and international crimes.

Kate has acted as advocate and counsel in a number of disputes before the International Court of Justice. Kate is a member of the UK Attorney General's Specialist Public International Law B Panel of Junior Counsel and the Commonwealth Secretariat's Consultant Panel on oceans and natural resources.

Kate acts as counsel in investment arbitration, involving claims under treaties and contracts, across sectors including energy and natural resources, construction, transportation, and telecommunications, in Asia, Europe, and Latin America.

Kate has a doctorate and a masters degree in public international law from the University of Cambridge. She is widely published, particularly in international dispute settlement. Kate has taught public international law, international investment and commercial arbitration and international human rights law at a number of universities in Europe and Australia.

**Alison Pert, The University of Sydney**

Dr Alison Pert lectures at the University of Sydney in public international law, international law and the use of armed force, and international humanitarian law. She has practised as a lawyer in government and in the private sector in London, Papua New Guinea and Australia, and has represented Australia at international organisations including Unidroit and UNCITRAL, and in treaty negotiations. She is the author of *Australia as a Good International Citizen* (Federation Press, 2014) and co-author of *International Humanitarian Law* (CUP 2015, with Emily Crawford). She is also responsible for supervising the student interns at the Sydney Centre for International Law and their preparation of domestic and international case summaries for the Australian Year Book of International Law.

**Ashique Rahman, Fietta LLP**

Ashique is an Australian solicitor and Counsel at Fietta LLP.

He represents private clients and sovereign States on a broad range of contentious and non-contentious public international law matters, including arbitral proceedings brought under investment treaties. Ashique has acted as counsel in multiple arbitrations under the ICSID, ICC, LCIA and UNCITRAL Rules.

Ashique holds a BSC from the University of New South Wales, an LLB from the University of Sydney and an LLM in public international law from the same institution. Prior to joining Fietta LLP, Ashique was an associate at a leading public international law firm in London. He has also worked at a UK "Magic Circle" firm, a "Big Four" accounting firm and at a refugee and human rights law NGO.

**Ben Saul, The University of Sydney**

Ben Saul is Challis Chair of International Law at the University of Sydney; Chair of Australian Studies at Harvard University; and an Associate Fellow of Chatham House, London.



**Paul Schofield, Department of Foreign Affairs and Trade**

Paul Schofield is the Director of the Investment and Services Law Section in the Trade and Investment Law Branch of Australia's Department of Foreign Affairs and Trade. Since joining the Department in 2005 he has worked on a wide range of multilateral, regional and bilateral trade and investment issues. For example, he has been lead negotiator for the investment chapters in various FTA negotiations and has also represented Australia in several WTO disputes. In addition, he has served as Economic Counsellor at the Australian Embassy in Seoul and as Chief of Staff to the Special Coordinator of the Regional Assistance Mission to Solomon Islands (RAMSI). Prior to this Paul worked in the Office of International Law at the Attorney-General's Department. He started his career working as a corporate lawyer in both Brisbane and London. Paul graduated from Commerce/Law at the University of Queensland and has a Master of Laws (specialising in international law) from University College London.

**Tim Stephens, The University of Sydney**

Tim Stephens is Professor of International Law and Australian Research Council Future Fellow at the University of Sydney. He is President of the Australian and New Zealand Society of International Law. Tim 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.

**Ana Ubilava, The University of Sydney**

Ana Ubilava is a PhD student at the University of Sydney Law School and an Executive Coordinator of the Australian Network for Japanese Law (ANJEL). Her area of research is the role of amicable settlements in treaty-based investor-state disputes, and in particular, the investor-state mediation.