

LAUTERPACHT CENTRE NEWS



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What role for international law in cyberspace?

Does international law apply in cyberspace? LCIL Director Eyal Benvenisti discusses the issues involved.

Does international law apply in cyberspace?

The meeting last June's meeting of the '2016–2017 UN Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security' (GGE) reached a dead end. The GGE failed to endorse even the simple premise that international law applies to cyberspace. The Group, which had been [given the mandate](#) by the UN General Assembly to study 'how international law applies to the use of information and communications technologies by States' will not be able to fulfil its mission.

This disappointing development surfaces a debate that has been lurking for quite a while. Although a previous GGE (the [2012/2013 GGE](#)) did endorse the premise that international law was applicable in cyberspace, and even acknowledged that international law was 'essential to maintaining peace and stability and promoting an open, secure, peaceful and accessible [information and communication technology] environment', other states, most notably China and Russia, have proposed an alternative approach. Together with several other states, they have twice proposed '[codes of conduct](#)' that implicitly denied the formal applicability of international law and instead invited 'each state voluntarily subscribing to the code' to make certain 'pledges'.

Does international law apply to cyberspace? Is it legitimate to extend existing customary and treaty norms to cover issues of cybersecurity, such as

the free flow of information and free access to it, and the protection of users' privacy? For many, a positive answer is self-evident. As the experts who produced the Tallinn Manuals on the International Law Applicable to Cyber Warfare (2013) and to Cyber Operations (2017) explained, 'cyberspace' is not located in outer space or in an imaginary fifth dimension but in infrastructure located in states' territories and operated by human beings subject to state authority and responsibility. As Martha Finnemore and Duncan Hollis [recently noted](#), 'States can and do control cyberspace when it suits them—and often with a heavy hand'. Cyber activity can produce harms that are similar in nature if not in magnitude to offline activity. What reason there is to deny the extension of international law to state action and inaction with respect to cyberspace?

For some die-hard positive lawyers, this almost self-evident proposition that international law governs cyberspace, might seem too hasty: cyberspace, they would say, is a unique dimension and not enough state practice has accumulated with respect to it, certainly no *opinio juris*. This response reminds me of the curious decision by the International Law Commission back in the early 1990s to exclude 'confined aquifers' (underground lakes that have no access to an international river or a lake) from the definition of an 'international watercourse' that is subject to international regulation (see the [1994 ILC Resolution on Confined Transboundary Groundwater](#)). The reasoning behind the decision

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1940s postcard showing the Canadian city of Trail, with the smelter operated by COMINCO in the background. This factory was the subject of a cross-boundary environmental pollution arbitration in the late 1930s (public domain via Flickr user blizzy63).

– the dearth of state practice with respect to such aquifers – left hydrologists and environmentalists puzzled about the logic of international law.

Such a conservative position puts a severe damper on the evolution of international law and its ability to adapt to new challenges, particularly when the pace of technological change is so swift. Without resorting to abstract reasoning that extracts generalised principles from discrete cases, using analogies and distinctions to assess the compatibility of precedents, and moral conviction and economic insights as guides, the evolution of international law would not have been possible. Basic doctrines in international law, such as state responsibility for cross-boundary environmental harm (as in the momentous [Trail](#)

[Smelter arbitration](#)), or indeed the doctrine of state responsibility in general, and even the principle of *pacta sunt servanda* would not have seen the light of day. This is also true for the Common Law. Every first-year student in a Tort Law class realizes the power of abstraction when reading how a suit by woman who drank from a bottle containing the remains of a snail was developed – inspired by the idea of good neighbourliness – into a general theory of negligence ([Donoghue v Stevenson](#), 1932).

[How to conceptualise cyberspace?](#)

However, it is not only a myopic legal perfection that animates this conservative position. The insistence on cyber-specific state practice that reflects an *opinio juris* touches upon a critical challenge for international regulation: how much of ‘cyberspace’

is 'international' and which parts of it are domestic? In fact, there is a fundamental disagreement as to the distinction between elements of or practices in cyberspace that are 'international' and hence subject to international law, and those that remain within the internal affairs of states and therefore are subject to domestic jurisdiction.

For example, while in the American view, questions related to the architecture of communication protocols and their distributional consequences (e.g., the question of '[net neutrality](#)'), and the question of internet governance should remain a matter for US law or even for private regulation, other countries regard them as requiring collective decision-making and therefore are calling for '[international governance of the Internet](#)'. It is also not clear whose 'internal' space is relevant. While the free flow of online information is a matter of constitutionally protected speech for the US, other countries, most notably China and Russia, insist on their sovereign discretion to protect their 'internal affairs' against information that could 'undermin[e] their political, economic and social stability.' (sect. 2(3) of the 2015 suggested [code of conduct](#)). Most states regard surveillance of on-line communications as subject only to [domestic law constraints](#), with minimal protection for the privacy of foreigners. Private actors, including internet giants such as Facebook and Google, stake an even stronger claim. Invoking their private nature and their contractual relations with their users, they expect to be exempted from any public law

discipline and endorse a private, lawless cyberspace.

But the interface between the international and the internal realms is not new for international law. And lawyers could confidently navigate this distinction even when addressing new technological challenges. Also here, a measured exercise in abstraction and analogy could find parallels between the law regulating the physical space and that which applies to cyberspace. For example, it is not too much of a stretch to regard the recently announced plan by the Chinese government to [prohibit individual access to VPNs](#) (which enable people in China to evade the 'Great Chinese Firewall' and reach foreign contents and service providers without government interference) as an infringement of the internationally-protected freedom of information. Claims for an internationally protected right to privacy from foreign surveillance are [asserted with much confidence](#). ICANN, the regime for internet governance, has acknowledged its public nature by adopting accountability disciplines and accommodating non-US stakeholders.

[Cyberspace as a common resource?](#)

Perhaps the most intriguing and momentous question relates to the conceptualisation of the vast amounts of data that are generated by cyberspace communications and stored in private and public data banks, as an object of ownership and use: Should this data be treated as private property, as the property of communities and states, as the property of the individuals who volunteer the information, or as a type of global commons governed by international

Data flows easily across state boundaries – should it be seen as a shared international resource? (Image: user geralt, used under a CC0 1.0 licence via Pixabay).

law? This is a question for domestic law – who owns the data, who has access to it – but at the same time, it is also a question of international law.

Much of the data is privately owned, much also resides in state-owned servers. But the data has also cross-country sources and effects. Again invoking the analogy from water resources law, the definition of ownership under domestic law, whether private or public, should not preclude the characterisation of data as shared under international law, just as the private ownership of a well or a stream according to state law does not detract from the status of the entire international river of which the stream is part as shared under international law. What is important, from the point of view of international law, is that the state's duties towards its neighbours are fulfilled.

From the perspective of international law, the question is therefore whether data generated or stored within a state's territory should be regarded as a national resource to be freely disposed of by the state, or regarded as fully or partly shared, entitling other states and foreign actors to a fair opportunity to access it. The prevailing assumption seems to be that questions of ownership of and access to data are subject only to domestic regulation, and that international law is silent on these questions, just as was the case with respect to international rivers. Before issues of scarcity and pollution necessitated concerted regional efforts and international regulation, they used to be governed only by the riparians' domestic laws. Have we reached a turning point which calls for global attention, if not regulation?

Data *usage* does not create a question of scarcity. It is like daylight, in that one user does not detract from others' benefit. But *access* to data does raise questions of scarcity, both absolute and relative. *Absolute scarcity* is created when individuals have no access to crucial bits of information, for example about governmental policies affecting them, or about the sharing of their personal information with other users. Unlike access to sunlight, access to data banks is mediated by public and private actors and some users will remain blindfolded when they are denied full access. *Relative scarcity* results if the price of access is exorbitant leading to unequal opportunities or if certain providers enjoy shorter routes to reach users (e.g., the problem of net neutrality). Imagine that only the affluent could afford sunlight or could enjoy longer exposure to solar energy than others. Indeed, claims have already been made against Facebook and Google for acting as '[the new colonial powers](#)'.

Beyond scarcity, there is the challenge of maintaining data security against deliberate efforts



Walkathon in support of net neutrality organised by the Free Software Movement Karnataka, India (Viggy Prabhu, used under a CC-BY-SA 4.0 licence via Wikimedia Commons).

to misuse or pollute the databases and undermine their utility, or to manipulate the distribution of information and thereby affect users' preferences. The rise of '[separate ideological bunkers](#)' has unexpected consequences, such as the ubiquity of 'fake news' which thrive when the global marketplace of ideas becomes fragmented.

It is by now clear that Big Data – raw digital information – has become the driver of economic growth, indeed the [fuel of the future](#). Access to Big Data is already the key to economic success. For that very reason, the markets for data are already thriving. They are also subject to manipulation. The business model of Facebook and Google, for example, is based on selling users' data to advertisers, and to maximize their gains, these giants might try to manipulate their services (see the [recent announcement](#) by the European Commission of the imposition of a €2.4bn fine on Google for exploiting its virtual monopoly to promote its shopping service). Big Data has also become a potent tool of governance, both domestic and international. Significant amounts of data are accumulated and stored by public authorities who use them for various public purposes. Questions of transparency, privacy and access arise here as well.

While some databases are purely local, containing, for example, information about the inhabitants of a specific municipality or the local fans of a soccer team, most databases are likely to consist of data collected from numerous local and foreign sources. Again, just as in the case of freshwater, there are local

brooks and there are mighty international rivers. The private and public data banks are the vessels that store humanity's data.

I can only briefly outline the case for treating data as a globally shared resource, akin to a giant global lake or river of knowledge. The data has accumulated over years by the input of billions of users, domestic and foreign alike. Each click, like each drop of rain filling up a reservoir, adds to immense reservoirs of human knowledge. Technology and innovation, no doubt spurred by the inspiration of individuals, is the product of the accumulated experience and wisdom of generations. The accumulated data not only provides insights to people's preferences but it also holds the key for learning about our health and our nature, for ensuring equal access to local and global markets, for monitoring national and international public authorities, for participating in their decision-making processes, and for developing our personalities and our futures. Immense social benefits are likely to accrue from scientific research of this data, and discoveries await the tapping of these reservoirs of human knowledge. There will be ways to benefit from it all, even without undermining economic incentives, or risking the infringement of trade secrets, user privacy or national security.

Impeded or unequal access to data infringes our rights as individuals. It also undermines our ability to sustain our sense of community and our social cohesiveness. As John Stuart Mill presciently noted, '...it is from political discussion and collective political action that one whose daily occupations concentrate his interests in a small circle round himself learns to feel for and with his fellow-citizens, and becomes consciously a member of a great community' [see [here](#), pp. 10–11].

This is why questions of ownership under domestic law cannot detract from the overriding concern and applicability of international law. In addition to international human rights law, it is also the general principle of **good neighbourliness**, a principle that inspired the evolution of international water law during the previous century, that call upon states to acknowledge their responsibility toward humanity and treat the access to data, by citizens and foreigners alike, as a matter of international concern and governed by international law. The duties that arise include duties to ensure access (subject to certain restrictions on economic, privacy or security grounds) and the duty to correct new and old market failures and to combat deliberate efforts to pollute the data.

Pelicans in the Danube Delta, Romania. The Danube is an important international watercourse, flowing through 10 European countries. (Image by users Goliath/Gikü, used under a CC-BY 1.0 licence via Wikimedia Commons).



News @ the Lauterpacht Centre

New link corridor unites Lauterpacht Centre buildings

In May this year, work began on a new link corridor to unite the Lauterpacht Centre buildings at no. 5 and no. 7 Cranmer Road. After several months of building work, the link corridor has now been completed, in time for a new influx of visitors. During the same project, the kitchen and toilet facilities in Bahrain House were upgraded. The new link should result in improved communications between the two buildings and a freer flow of people around the Centre. A moveable soundproof partition was also installed in the Finley Library, allowing the room to be completely isolated without restricting access to the new link corridor.

The link corridor will be officially opened on 1 December in a ceremony with the new Vice-Chancellor of the University, Professor Stephen Toope.



Top right: the light and airy new corridor, gives views of the Centre gardens Below: The building works in progress, as viewed from Bahrain House and looking towards 5 Cranmer Road.



An LCIL Cambridge International Lawyers Archive? A scoping exercise

At the Lauterpacht Centre we frequently see people carry heavy books and bulky folders, but this summer we witnessed an exercise of a totally different order. Mrs Gabrielle Earnshaw, a professional archivist from Canada, Dr Robin McCaig, an international legal historian, and Mrs Jenny Byford, Sir Eli Lauterpacht's long-time secretary, studied and packed over 350 boxes of material, exploring whether this might be the beginning of an LCIL Cambridge International Lawyers Archive.

The idea for such an archive has existed for a while. In 2006, Sir Eli wrote: *"The establishment of an archive has long been on the list of things that I have had in mind for the Centre ... I have a 55-year accumulation of documents at Herschel Road which I would like to see placed in such an archive. ... In principle, I would be very happy to hand it over for safe-keeping and ultimate use by researchers."* Over the years, the

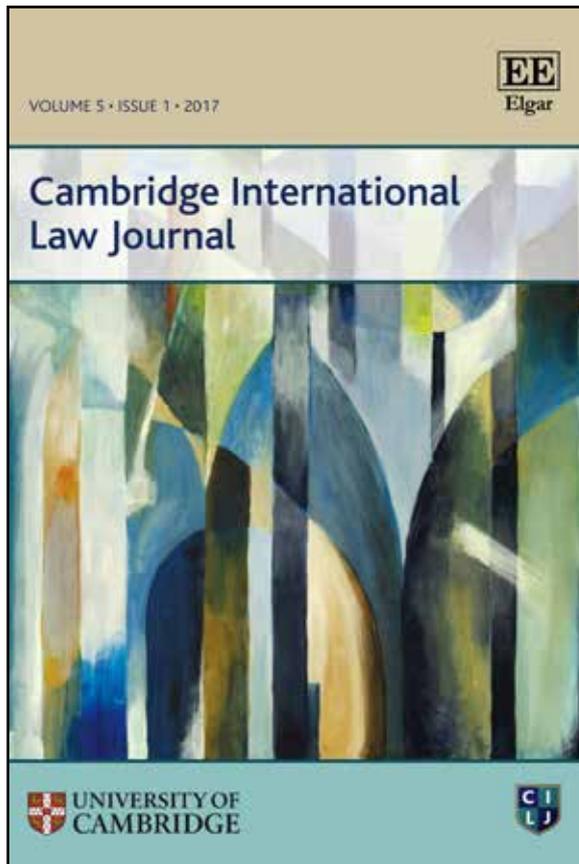
Centre has received papers of the late Professors Clive Parry, Derek Bowett and Robert Jennings. Sir Eli left an extraordinary collection of unpublished work.

Under the leadership of Gabrielle Earnshaw, who has extensive experience in setting up archives, the team made a preliminary inventory of the papers and explored options for accommodating a potential archive. They were particularly impressed by the world-class facilities of the Cambridge University Library. The vision is to create an archive that could provide a home for the papers of significant international lawyers with a strong connection to Cambridge. All we need now is £250,000 for cataloguing the papers.

LCIL wishes to thank Gabrielle, Robin and Jenny for their extremely hard work (physically and emotionally) and is grateful to the Lauterpacht family for the close collaboration.

Left to right: Jenny Byford, Gabrielle Earnshaw and Robin McCaigh. During the scoping exercise, they unearthed many intriguing items, including these walkie-talkies from the early 1980s and a collection of tuna tins that Sir Eli used for teaching.





Cambridge International Law Journal seeks editors!

The *Cambridge International Law Journal* (CILJ) (formerly the *Cambridge Journal of International and Comparative Law*) is a double-blind peer-reviewed journal run by members of the postgraduate community at the Faculty of Law. Assisted by its distinguished Academic Review Board, it selects and publishes high quality contributions by both established and young academics in the fields of International and European Union law. The CILJ publishes two issues per year; one general and one primarily based on our annual conference. In 2017 the Journal will continue to build on its successful collaboration with Edward Elgar Publishing which commenced last year.

For the 2017/18 academic year, we are looking to recruit editors to assist in the production of the Journal. Joining the CILJ editorial team offers Cambridge graduate students a unique opportunity to gain experience in the field of academic publishing. This includes reviewing articles, copy-editing, blog-posting and managing submissions.

The CILJ occasionally organises other events for its editors and for the wider Cambridge community. The opportunity to work on the editorial team of a well-renowned academic law journal will be of great value for a future career in academia or legal practice.

Every year in Lent Term, the CILJ organises a conference on current topics in International and EU law. Recent keynote speakers include former President of the International Court of Justice, Dame Rosalyn Higgins, former President of the European Court of Human Rights, Dean Spielmann and Judge Christopher Vajda of the Court of Justice of the European Union.

If you are interested in becoming an editor, please send your CV and a cover letter (one page) explaining your motivation to editors@cilj.co.uk. If you would like to be involved in the website, CILJ blog or the conference, please make a note of this in your covering letter. If you do not express a preference to join one of the specialist teams, or you are not appointed to the team of your preference, you will be considered for appointment in one of the general editorial teams.

The deadline for applications is midnight on **Wednesday 18 October 2017**. It is not necessary to be undertaking postgraduate studies in the specific areas of International or EU law. Previous editing experience is desirable but not essential as full training will be provided.

We also welcome high quality submissions from all doctoral candidates, which will be subject to a double-blind peer review. Please use the online submission form on our website.

Ya Lan Chang & Richard Clements
Editors-in-Chief CILJ 2017–2018

More information: <http://www.e-elgar.com/cilj>



People @ the Lauterpacht Centre

Jorge Viñuales elected Chairman of the Compliance Committee of the UN-ECE Protocol on Water and Health

At its fourteenth meeting, in March 2017, the Compliance Committee of the UN-ECE Protocol on Water and Health elected Professor Jorge E. Viñuales, Harold Samuel Chair of Law and Environmental Policy and a Fellow of the Lauterpacht Centre for International Law as its Chairman for the next triennium.

The Protocol was signed in 1999 by thirty-six States of the pan-European region with the aim to ensure access to water and sanitation through the improvement of water management and the prevention, control and reduction of water-related



disease. The Protocol adopts a hybrid structure combining inter-State obligations with provisions relating to access to water.

The Compliance Committee was established by the Meeting of the

Parties in order to review compliance with State obligations under the Protocol. It consists of nine independent experts, appointed by the Meeting of the Parties on the proposal of one Member State, and acting on a pro bono basis. The Committee can receive submissions from Member States, referrals from the Secretariat or communications from the public relating to cases of potential non-compliance with the obligations of the Protocol.



Henning Grosse Ruse-Khan appointed to a Readership

Lauterpacht Centre Fellow Henning Grosse Ruse-Khan has been promoted to Reader in the Faculty of Law, University of Cambridge, with effect from 1 October 2017.

Dr Grosse Ruse-Khan is a Reader in Intellectual Property Law at the Faculty of Law at the University of Cambridge and a Fellow at King's College, where he teaches IP law and WTO law, as well as Co-Director of the Centre for Intellectual Property and Information Law (CIPIIL). He also holds positions at the Max Planck Institute for Innovation and Competition in Munich (Germany) and the Centre for International Sustainable Development Law (McGill University, Montreal). For 2016 and 2017, he has been elected as Distinguished Senior Fellow at Hanken School of Economics, Helsinki (Finland). He has published widely in peer-reviewed international academic journals, NGO policy papers and research handbooks. His monograph on intellectual property in the wider context of international law, *The Protection of Intellectual Property in International Law*, was published by Oxford University Press in 2016.

Fellows' news



On 18 August, LCIL Honorary Fellow Professor **Philip Allott** delivered the first Walther Schücking Lecture, instituted by the Christian-Albrechts-Universität in Kiel, Germany, in honour of a former director of the University's Institute for International Law. Professor Allott's lecture, 'Beyond War and Diplomacy. A Giant Step for Mankind' was followed by a two-day workshop. During the workshop entitled 'Towards Utopia: Rethinking International Law', young scholars from many countries engaged with Philip's new book *Eutopia*, and his other revolutionary writings.



Lorand Bartels' paper 'The UK's WTO Schedules' was published in 12 *Global Trade and Customs Journal* 3 (2017).



Eyal Benvenisti was elected to Member, Israel Academy of Sciences and Humanities in June 2017 and Member, Institut de Droit International. In July, he gave a Special Course at the Xiamen Academy of International Law, China, titled 'Contemporary Challenges to the Law of Global Governance'. Eyal's recent publications include: 'The Missing Argument: The Article that Changed the Course of History?' 111 *AJIL Unbound* (2017), pp. 31–35; 'Sovereignty and the Politics of Property', 18 *Theoretical Inquiries in Law* 447 (2017); 'Embracing the Tension between National and International Human Rights Law: The Case for Discordant Parity', 15 *I-CON* 36 (2017) (with Alon Harel); and *Between Fragmentation and Democracy: The Role of National and International Courts* (with George W. Downs) (CUP, 2017).



Ed Cavanagh has been made an Associate Fellow at the Institute of Commonwealth Studies. His publications this year include: 'The Atlantic Prehistory of Private International Law: Trading Companies of the New World and the Pursuit of Restitution in England and France, 1613–43', 41 *Itinerario* 3 (2017); and 'Prescription and Empire from Justinian to Grotius', 60 *Historical Journal* 2 (2017). Ed is currently organising a workshop in Cambridge around the idea of 'Law and Empire in the Longue Durée', which will take place at Downing College in late March 2018.



Megan Donaldson's lead article 'The Survival of the Secret Treaty: Publicity, Secrecy and Legality in the International Legal Order' is forthcoming in 111 *American Journal of International Law* (2017). She draws

on archival sources to examine the evolution of the norm of treaty publication in American, British and French practice over the last century.



Joanna Gomula was invited to speak on: 'World Trade and Environmental Protection: Recent Jurisprudence' at the University of Bocconi in Milan (March 2017). In March she also chaired a panel on 'International Arbitration in Times of Transition' at the Cambridge International and European Law Conference, organised by the *Cambridge International Law Journal*. Joanna organised the first meeting of the Subgroup on Post-Judgment Procedures of the ILA Committee on the Procedure of International Courts and Tribunals, which took place at the Lauterpacht Centre on 21 June 2017. Joanna's article on 'The Legal Effect of Appellate Body Rulings in the WTO Dispute Settlement System' was published in Russian in 3 *International Justice (Международное правосудие)* 19 (2016).



Henning Grosse Ruse-Khan's recent publications include: 'From TRIPS to FTAs and back: Re-conceptualising the Role of a Multilateral Intellectual Property Framework in a TRIPS-plus World', *Netherlands Yearbook of International Law* (forthcoming 2017); 'Patentability of Pharmaceutical Inventions Under TRIPS: Domestic Court Practice as a Test for International Policy Space' in Bryan Mercurio & Daria Kim (ed.), *Contemporary Issues in Pharmaceutical Patent Law* (Routledge, 2017), pp.9–46 (with Roberto Romandini) [an earlier version is available online as **Max Planck Institute for Innovation & Competition Research Paper No. 16-02**]; 'The Principle of Integration in WTO/TRIPS jurisprudence', in Marie-Claire Cordonier Segger and C.G. Weeramantry (ed.) *Sustainable Development Principles in the Decisions of International Courts and Tribunals, 1992–2012* (Routledge, 2017), pp. 398–424; and 'Relation of Intellectual Property Rights to Trade, Investment and Anti-Trust Rules' (with Beatriz Conde Gallego) pp.526–529; 'Fair Use and Compulsory Licensing' pp.529–531; 'Toward Ceilings and Graduation of Intellectual Property Obligations' pp.534–538, all in Thomas Cottier and Krista Nadakavukaren Schefer (ed.), *Elgar Encyclopedia of International Economic Law* (Edward Elgar, forthcoming 2017).



Odette Murray's essay 'Challenging the Presumption of "Non-Responsibility" of Member States of International Organizations' appeared in Samantha Besson (ed.) *International Responsibility – Essays in Law, History and Philosophy* (Genève/Zurich/Bâle: Schulthess, 2017), pp. 221–244.

People



Surabhi Ranganathan's article 'Nuclear Weapons and the Court' was published in 111 *AJIL Unbound* (2017), pp. 88–95.



Andrew Sanger's recent publications include: 'UK Government Cannot Hide from Complicity in Human Rights Abuses', 76 *Cambridge Law Journal* 2 (2017), pp. 223–227; and 'Decisions of British Courts on Questions of Public International Law', 86 *British Yearbook of International Law* (2015), pp. 197–251.



Jorge E. Viñuales was appointed Chairman of the Compliance Committee of the UNECE/WHO-Europe Protocol on Water and Health (see p. 12). He was also involved in the drafting of a Global Environment Pact, on the initiative of the French government, which will be presented to the General Assembly by French President E. Macron in September.

Jorge's recent publications include: 'The Paris Agreement on Climate Change: Less is More' 59 *German Yearbook of International Law* (forthcoming 2017) [a concise version of this article appeared in the *Boletim da Sociedade Brasileira de Direito Internacional* – 100th anniversary issue]; 'La Protección Ambiental en el Derecho Consuetudinario Internacional' 69 *Revista Española de Derecho Internacional* 2 (forthcoming 2017); 'International Investment Proceedings: Converging Principles?' (Universita di Roma: Gaetano Morelli Lectures, 2017); 'Investor Diligence in Investment Arbitration: Sources and Arguments' 32 *ICSID Review-Foreign Investment Law Journal* (2017), pp. 346–370.

With J. Depledge, D. Reiner and E. Lees, Jorge guest-edited an issue of *Climate Policy* ('Climate Policy After the 2015 Climate Conference', 17 *Climate Policy* 1 (2017)). He also recorded lectures on 'Environmental Protection in Customary International Law' and 'The International Law of Climate Change after the Paris Agreement' for the UN Audiovisual Library on International Law [both available at http://legal.un.org/avl/lv/vinuales_EL.html], and taught the course 'General Introduction to Public International Law', UN Regional Courses on International Law (Latin America and the Caribbean), 24–25 April 2017.



Stephen Wertheim revised his book manuscript, which examines how U.S. officials and intellectuals planned American global political-military supremacy during World War II. He submitted two journal

articles, one on the fashioning of the concepts of internationalism and isolationism and another arguing that the United Nations was originally conceived as a vehicle for the projection of American power. He presented papers at the Cambridge American History Seminar and the Summer Institute of the Society for Historians of American Foreign Relations. In May, he co-organised a workshop, held at King's College, called 'Conceptual History Between the Archive and the Database'. In addition, he published essays on contemporary international affairs in *Foreign Affairs*, *The New York Times*, and *The Washington Post*. Stephen will be on leave starting in October 2017 as he takes up a full-time lectureship at Birkbeck College, but he plans to return to his research fellowship at LCIL and King's College, Cambridge next summer.



Rumiana Yotova was invited to join Thomas More Chambers as academic door tenant in January. She was invited as a Visiting Professor at McGill in March/April 2017 where she worked with Professor Bartha Knoppers on a joint project on the right to benefit from science. Rumiana and Professor Knoppers gave a talk on their article on 24 May at the Lauterpacht Centre.

Rumiana was commissioned to write an expert report for the Nuffield Council on Bioethics on "The Regulation of Genome Editing and Human Reproduction under International Law, EU Law and Comparative Law", which will be published on the website of the Council later this year. She delivered a lecture on the topic at an expert workshop on genome editing in Tübingen University in July.

Rumiana's article on the 'Challenges in the Identification of "The General Principles of Law Recognized by Civilized Nations": the Approach of the International Court' was accepted for publication by the *Canadian Journal of Comparative and Contemporary Law*. Her book chapter on 'Balancing Economic Objectives and Social Considerations in the New EU Investment Agreements: Commitments v Realities' in Barnard et al. (ed.), *A European Social Union After the Crisis* is due to be published by Cambridge University Press in September. Rumiana also published a case note on 'The Principles of Due Diligence and Prevention in International Environmental Law' in the *Cambridge Law Journal* and a book review in the *Leiden Journal of International Law*. She was awarded a CRASSH Early Career Fellowship.

Hellos and goodbyes...

We are happy to welcome the following new members of staff to the Lauterpacht Centre:



Emilie Fitzsimons is a British Red Cross Research Fellow on the joint British Red Cross/International Committee of the Red Cross (ICRC) project on customary international humanitarian law. Before this, Emilie worked as a fee-earner in the corporate department of Baker & McKenzie in Luxembourg, and within the Abuses in Counter-Terrorism team at Reprieve, where she undertook research and drafted memoranda relating to the legality of US drone strikes under international law, as well as the treatment of Guantanamo Bay detainees. Emilie holds an LLM in international law from UCL, and a double degree in French and English Law from the University of Strasbourg in partnership with the University of Leicester. She is fluent in English and French, and is proficient in Spanish.



Dr Edward Cavanagh and **Dr Claire Fenton-Glynn** were appointed Fellows of the Lauterpacht Centre in January 2017.

Edward is a research fellow at Downing College, Cambridge, offering lectures and supervisions for the Faculty of History. He is a historian of legal thought and empires. His PhD focused on the development of international legal thought within imperial and colonial contexts from the era of Justinian to the era of Grotius.

Claire's research lies in the field of human rights and the protection of children. She has published on a wide range of issues including intercountry adoption, international surrogacy, and cross-border child protection, as well as children's rights under the European Court of Human Rights. At the core of this research is the interaction between international and regional human rights instruments and domestic law, and the way in which these frameworks can be used to implement children's rights.

...but we are sorry to say some goodbyes as well:



Cédric Apercé joined the Lauterpacht Centre in January as a British Red Cross Research Fellow on the joint British Red Cross/International Committee of the Red Cross (ICRC) project on customary international humanitarian law. He left in April to join VERTIC (the Verification Research, Training and Information Centre) as a Legal Officer for the National Implementation Measures Programme, working on the national implementation of obligations in the Biological Weapons Convention, the Chemical Weapons Convention and UNSCR 1540.



Michael Carrel returned to the Lauterpacht Centre in March, as acting Team Leader on the joint British Red Cross/International Committee of the Red Cross (ICRC) project on customary international humanitarian law while Natàlia Ferreira de Castro was on leave. He left the Centre in July 2017.



Jake Rylatt left the Lauterpacht Centre in September 2017, after three years working as a Research Assistant attached to the Legal Tools for Peace-Making project. He is also a College Research Associate of Wolfson College, University of Cambridge. He has left to begin a pupillage at Number 5 Chambers in London.



Christina Rozeik will leave the Lauterpacht Centre at the end of November 2017, after nearly 2 years working as the Communications Co-ordinator. She will remain in Cambridge, working as an Ethnographics Conservator (Research Assistant) at the Museum of Archaeology and Anthropology, and hopes to remain in touch with the world of international law by returning for coffee at the Lauterpacht Centre from time to time!

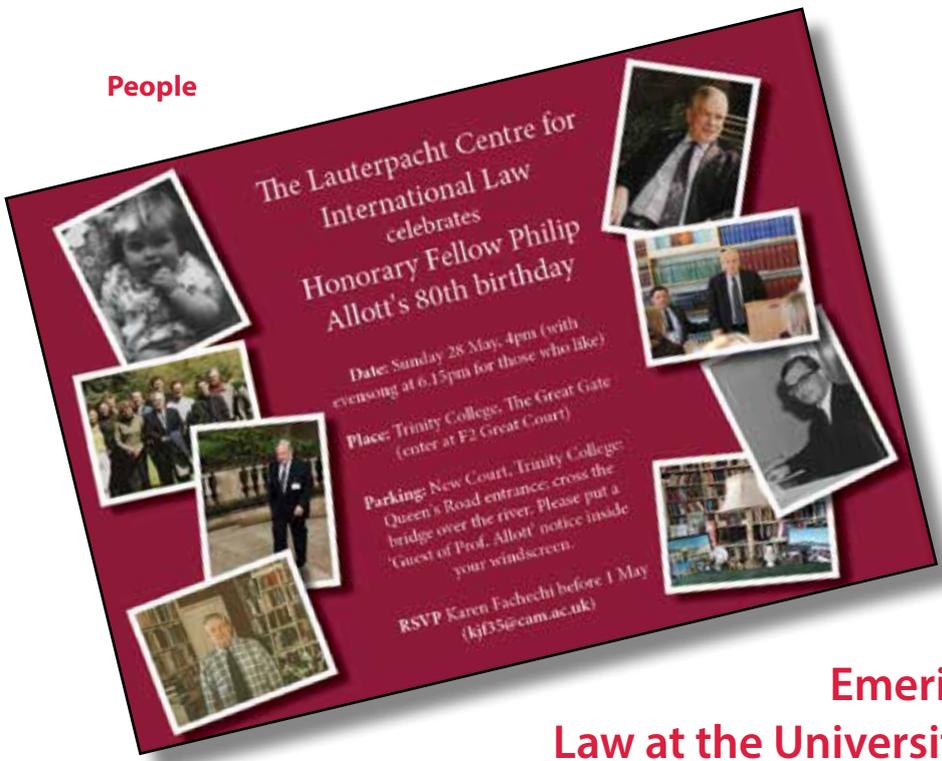


Donáta Szabó left the Centre in August 2017, having worked since 2016 as a researcher on Dr Veronika Fikfak's ESRC-funded project 'What price for human rights?'

Happy 80th birthday to Professor Philip Allott!

On 29 May 2017, Philip Allott, Professor Emeritus of Public International

Law at the University of Cambridge, Fellow of Trinity College and an Honorary Fellow of the Lauterpacht Centre, celebrated his eightieth birthday. Philip has been a dear friend to the Lauterpacht Centre since its foundation, and we were delighted to host a birthday celebration for him at Trinity College.

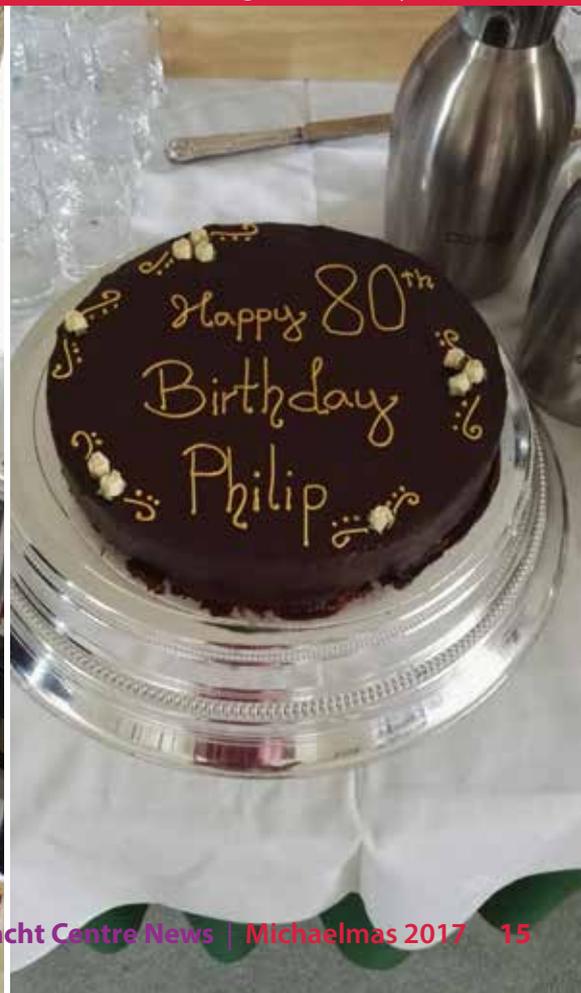


Below: birthday celebrations in Professor Allott's rooms at Trinity College. Left to right: LCIL Deputy Director Michael Waibel, LCIL Fellow Karen Lee, Squire Law Librarian Lesley Dingle, LCIL Director Eyal Benvenisti, and Professor Allott.





Top: Professor Allott with LCIL Deputy Director Sarah Nouwen. Bottom left: Professor Allott cuts his birthday cake, watched by LCIL Fellows Brendan Plant and Federica Paddeu; right: the birthday cake.



Research @ the Lauterpacht Centre



Language of Peace wins Jus Gentium Research Award

Language of Peace – created by the ESRC-funded **Legal Tools for Peace-Making project** team in collaboration with the UN Mediation Support Unit and PASTPRESENTFUTURE – has won the 2017 *Jus Gentium*

Research Award for its contribution to ‘enhanc[ing] scholarship and open access to legal information’.

The award is bestowed annually by the International Legal Research Interest Group of the American Society of International Law (ASIL); *Language of Peace* was selected to be this year’s winner among several candidates in a vote by the Interest Group, which has around 600 members. ASIL President Lucinda A. Low announced the award on 13 April 2017 at the ASIL Annual Assembly in Washington, DC. The commemorative plaque was presented following the Assembly by Peter L. Roudik, Co-Chair of the International Legal Research Interest Group, to Andrea Varga on behalf of the Legal Tools for Peace-Making project, alongside Michael Felber and Michael Fromm of PASTPRESENTFUTURE.

The project welcomes comments on how the research tool could be further improved: if you have any suggestions, please let us know by sending an e-mail to legaltoolsproject@lcil.cam.ac.uk.

Top: the *Jus Gentium* commemorative plaque presented to the Legal Tools for Peace-Making project team. Bottom, left to right: Peter Roudik, Michael Felber, Andrea Varga, and Michael Fromm at the award ceremony held during the ASIL Annual Assembly.





A *gacaca* court in Rwanda, a traditional mechanism to promote communal healing and reconciliation that the Rwandan government adopted and adjusted to provide accountability following the genocide. Photo: Elisa Finocchiaro, used under a CC BY-NC 2.0 licence via Flickr.

Sarah Nouwen and Adam Branch win School support for *Rethinking Transitional Justice from African Perspectives*

The School of the Humanities and Social Sciences has awarded Dr Sarah Nouwen (Lauterpacht Centre) and Dr Adam Branch (POLIS) crucial seed funding for *Rethinking Transitional Justice from African Perspectives*, a multidisciplinary, international, collaborative research and advocacy programme that seeks to establish a new foundation for transitional justice in Africa.

This new research programme is innovative in what it addresses, and in how it does so. The programme aims to make the practice of transitional justice more relevant to the needs of (post-)conflict societies by scrutinising its very foundations. Drawing on law, politics, development studies, anthropology, history, gender studies, international

relations and ecological studies, the investigators examine what goals transitional justice seeks to achieve and propose new tools to meet those objectives. The programme also seeks to develop new ways for collaboration among scholars and activists in universities in the Global North and South. Research and advocacy have always been shaped by a legacy of imbalanced power relations and injustice. This programme confronts this legacy head-on, so that procedures can be developed through which global policies are shaped by, and made accountable to, those who are most affected by those policies. This programme's experiences could make Cambridge University a leader in a new way of engaging in collaborative transnational research, in transitional justice and beyond.

Legal Histories Beyond the State works-in-progress seminar

LCIL Fellow Megan Donaldson introduces a new series of works-in-progress seminars that aim to bring together researchers in the many fields that connect with the history of international law.

There is increasing interest in the history of international law, and its intersections with global and international history, imperial history and the history of political thought. The Lauterpacht Centre collaborates with the Centre for History and Economics (based at Magdalene College and King's College, Cambridge, and the Faculty of Arts and Sciences, Harvard University), and the Cambridge Centre for Political Thought, on the 'Legal Histories beyond the State project', which aims to strengthen and enrich the work being pursued in these disparate fields, but also test the limits of existing perspectives and lay the foundations for more fluid and productive interactions between them.

The first initiative under the auspices of the project, a works-in-progress seminar, ran in Lent–Easter 2017, and will continue in 2018. The work presented addressed topics as diverse as the way in which eighteenth-century prisoners of war, prison administrators and diplomats argued for their status and entitlements as prisoners of war, to the circulation of law in and between networks linking the Ottoman Empire, Anglo-Dutch empire and the Muslim sultanates of the Malay peninsula.

Discussion in each seminar focuses not only on the intricacies of each topic – although there are often surprising connections made between scholars working on quite disparate subjects – but on more general theoretical and methodological questions. We are interested, for example, in how legal border-crossing, including the migration of people, ideas and objects across time and place, reshapes our sense of what a history of law needs to address. Legal doctrines and concepts, like jurisdiction and sovereignty, are deeply intertwined with the history of political thought; but legal ideas are also exchanged in informal contexts, and created, appropriated and interpreted by figures who might be marginal to much intellectual history, and beyond the focus of existing histories of international law. Openness to work in history and political thought helps challenge what international lawyers often take to be the bounds of the history of the discipline, but also allows lawyers to contribute to larger debates about how law shapes social and political orders, and their change over time.

Further information about the Project:
<http://www.lcil.cam.ac.uk/projects/legal-histories-beyond-state>

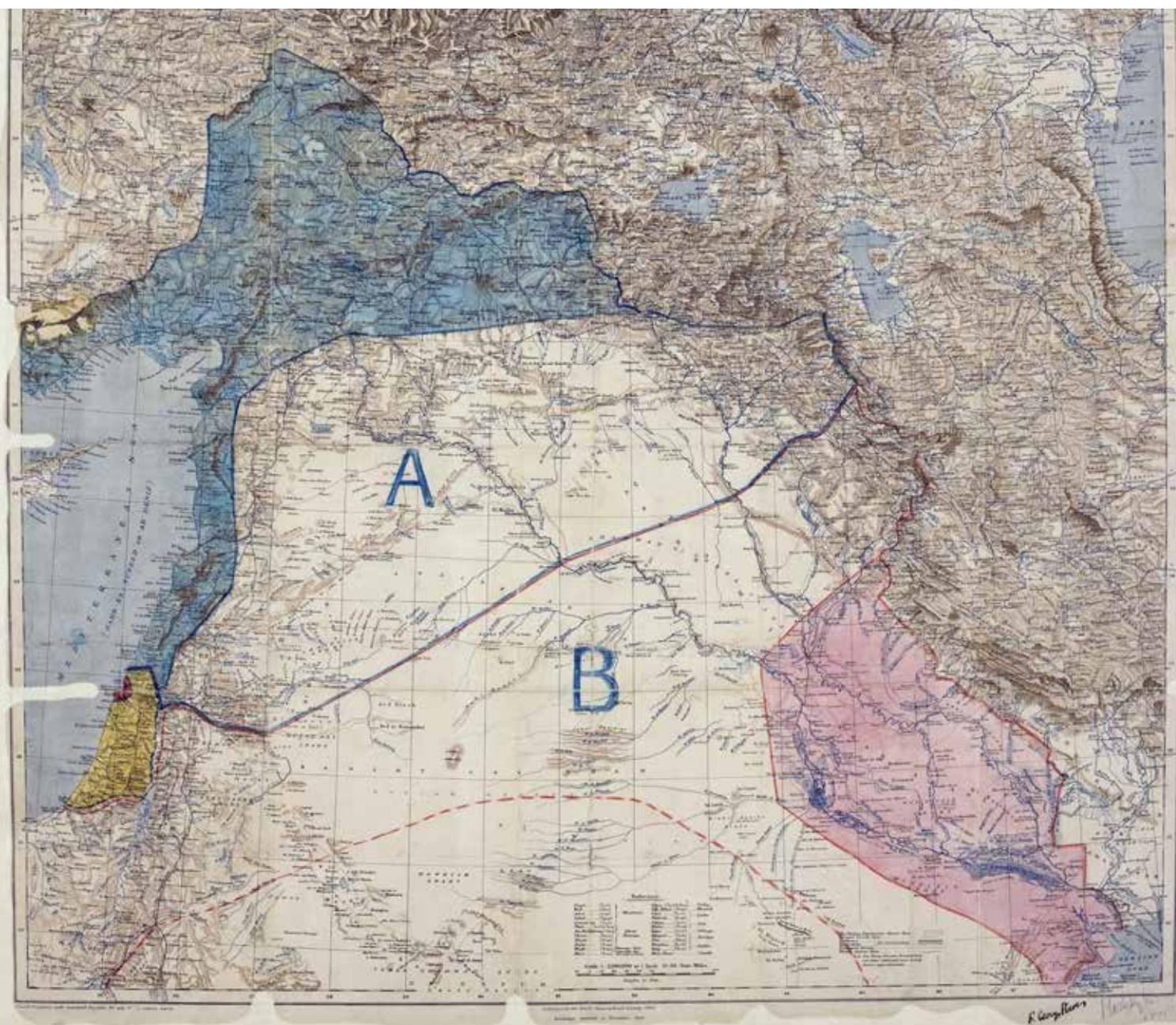


Image: Map of Sykes–Picot Agreement, signed by Mark Sykes and François Georges-Picot, 8 May 1916. National Archives MPK1/426, public domain.

BRCs/ICRC Customary IHL project

The research team for the project on customary international humanitarian law (IHL) of the British Red Cross and the International Committee of the Red Cross (ICRC) are grateful for yet another successful year at their academic home in the Lauterpacht Centre. This project, which in June 2017 celebrated its 10th anniversary at the Centre, provides extensive and geographically diverse information in the field of international humanitarian law (IHL) by up-dating the **award-winning ICRC online Customary IHL Database** with new practice.

The Database covers national practice of States from all over the world, from Afghanistan to Zimbabwe, as well as practice found in international materials. The research team at the Lauterpacht Centre focuses on national practice, while researchers based at Laval University in Canada have, since 2014, been updating practice found in international materials.

The Database contains the 161 rules of customary IHL identified in the ICRC's 2005 Customary IHL Study and the practice underpinning these rules. It covers a wide range of topics, including issues of current debate, for example the obligation to respect and protect **medical personnel, units and transports**. The aim of the online Customary IHL Database is to provide accurate and extensive information in the field of customary IHL and to make this information readily accessible to people and institutions interested in, or dealing with, IHL and armed conflict.

Given that the formation of customary law is a continuous process, the Database needs to be updated regularly in order to achieve its aim. The work of the research team thereby allows the users to monitor current practice in the area of IHL.

The 2016–2017 academic year saw several personnel changes in the research team based at the Lauterpacht Centre. The team was pleased to welcome Cédric Apercé, who worked on the project for three months, as well as Hannah Maley and Emilie Fitzsimons. Dr Michael Carrel, who had been the team leader for a number of years, returned to lead the project for almost four months while Natália Ferreira de Castro was on sabbatical leave. The team said farewell to Emmanette Viney, who was with the project for eight months. The team also celebrated the fifth anniversary of Natália (team leader), the third anniversary of Jolien Quispel and Jana Panakova, and the second anniversary of Claudia Maritano with the project.

Further information about the Project:

<http://www.lcil.cam.ac.uk/projects/customary-international-humanitarian-law-project>

ICRC Database:

<https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>



The Customary International Humanitarian Law project research team.
From left to right: Emilie Fitzsimons, Hannah Maley, Jolien Quispel, Jana Panakova, Claudia Maritano, and Natália Ferreira de Castro.

Legal Tools for Peace-Making project

Following the successful launch of the **Language of Peace research tool** in December at the UN Headquarters in New York, the **Legal Tools for Peace-Making project team** turned its attention to disseminating information on the tool to as broad an audience as possible. Their efforts in this regard were aided not only by a £16,000 ESRC Impact Acceleration grant, but also by the fact that the research tool quickly achieved recognition, becoming the 2017 recipient of the ASIL International Legal Research Interest Group's *Jus Gentium* Research Award (see p. 16).

The Impact Acceleration grant enabled a Research Assistant, Ms Emma Wilson, to join the project on a temporary basis, and the team set out to publicise the research tool through two main avenues.

On the one hand, the project team focused on online publicity in order to reach the broadest possible audience and to ensure that anyone wishing to conduct research on peace agreements – whether academics or practitioners – has knowledge of, and access to, the tool. As a result of these efforts, the research tool has also been added to various online resource collections, most notably the **international section** of the Guide to Law Online at the Library of Congress, as well as the 'International Peace and Security' **research guide** of the Peace Palace Library. Reflecting the close cooperation with the UN's Mediation Support Unit (MSU), the **UN Peacemaker website** has linked to *Language of Peace* as well.

On the other hand, the project team took the opportunity presented by the grant to bring more in-depth information on the research tool to practitioners who are particularly likely to use *Language of Peace*. Mr Jake Rylatt and Ms Andrea Varga of the team held tailored workshops

in Brussels and Washington, D.C., conducting interactive trainings on how to use the research tool's functionalities with the **European Institute of Peace (EIP)**, the **European External Action Service (EEAS)** and other European institutions, as well as a wide cross-section of the Organization of American States (OAS), including the **Secretariat for Legal Affairs**, the **Inter-American Commission on Human Rights** and the **Peace Fund**. The workshops also involved presentations on a selection of case studies prepared with the help of the research tool, indicated by the participants to be the most relevant for them, such as process issues and territorial disputes. In keeping with the tradition of seeking expert feedback – in earlier stages of development this was gained from the project's academic and practitioner advisory boards – these workshops also provided an excellent opportunity to gather further comments on how the project's outputs could be further developed to ensure maximum utility for practitioners.

Beyond dissemination efforts, the team has been making progress on the project's three main outputs. While the launch of the research tool has marked the culmination of several years of work, peace agreements continue to be concluded around



The Legal Tools for Peace-Making project team.
From left to right: Tiina Pajuste, Jake Rylatt, Marc Weller, Mark Retter, and Andrea Varga.

the world and unearthed by the project team or flagged by the UN MSU. Accordingly, the team has been adding further agreements to *Language of Peace*, and exchanging information on them with the UN MSU as part of their collaboration. Meanwhile, the 26 main issue headings used for categorisation in *Language of Peace* form the basis for 26 separate case studies, several of which have already been completed. Throughout the year, the team continued to prepare case studies on a range of different topics, such as transitional justice, human rights, and socio-economic issues. Last, but not least, cross-cutting issues in peace settlement practice that go beyond the limits of a single case study – such as the legal status of intra-state agreements or the role of non-state

actors – are addressed as part of an overarching conceptual study. This study is to be published as an edited volume, intended to serve as a handbook for academics and practitioners interested in how international law interacts with peace settlements. The book proposal for the volume was recently finalised and the project team is currently in discussions with Cambridge University Press, where they hope to publish the book.

Further information about the Project:
http://www.lcil.cam.ac.uk/legal_tools/about-legal-tools-peace-making-project

Language of Peace research tool:
<http://www.languageofpeace.org>

A glimpse through the revolving door

The Lauterpacht Centre has had a long and fruitful relationship with Cambridge University Press. *Lauterpacht Centre News* spoke to Finola O'Sullivan, CUP's Executive Publisher, Law, about working with the Centre over the last 20 years.

Lauterpacht Centre News: What is your first memory of the Centre?

Finola O'Sullivan: My first memory is of the community of Lauterpacht Centre people. I came to Cambridge in 1997 and first walked through the doors in 5 Cranmer Road on a Friday morning, just as [former Director] John Dugard was leaving to go the Hague. So my first introduction to the Lauterpacht Centre was in the kitchen for John's mugging! In the 20 years that I have been coming here, there have been many, many handshakes and business cards and visiting fellows, students, staff, teachers, directors of this centre – visitors who have come for one week, one month, people who've stayed all summer ... and we've gone on at Cambridge University Press to find many new author relationships and books have sprung from an encounter in 5 Cranmer Road.

At that time, and for the early years of my arrival, James Crawford was the Director here, the Whewell chair and the law Syndic. The Syndicate is the publishing board of the University of Cambridge, and we've always had a lawyer as one of the members. I give great credit to the many skilful books that James' eye over the law publishing programme brought at that time.

When I look back on the early years, I also think of the marvellous intelligence that can be picked up here. I think of the Centre as a revolving door: people come and go, and many come back. Often just one spark of a conversation at lunchtime or while here for the Lauterpacht Lectures often can lead to something later on.

I certainly know that I picked up some interesting intelligence during my time here. One of the most seminal pieces of intelligence was from [former Director] Daniel Bethlehem, who alerted us to the fact that the World Trade Organization in Geneva were looking for a publisher. This was in the late 1990s, and Cambridge University Press has gone on to work with that organisation, the WTO, for 15 years. International trade and investment law of course is today a huge part of the PhD programmes and the research projects that come to this university, but I like to think that that intelligence

was quickly given to us here, and I'm very grateful for that. Geneva then took me on a walkabout when I was there – it's a wonderful city and one of the pleasures of my life at Cambridge University Press has been getting to know Geneva – and in my wanderings around, I looked into UNHCR. One particular small project at the ICRC, which was then simply a monograph with an author who was working there, led to an introduction to their customary international humanitarian law study, and in 2005, Cambridge University Press published that study. It was published in two volumes – volume 1: rules, volume 2: practice – and I'm very pleased to say that in time we have kept the rules in print, but of course the practice has long been out of date. And today, at the Lauterpacht Centre, that study is continuing as the customary international humanitarian law practice updating, now partly funded by the British Red Cross, as well as the International Committee in Geneva. Cambridge has gone on to publish the ICRC's journal. So we're very proud of the synergies between current projects here – not all of them published by Cambridge University Press – and ongoing relationships in IHL.

Coming right up to date, we're also pleased to be in discussion about one of the outputs of the Centre's Legal Tools for Peace-Making project, which will be a book, which hopefully Cambridge University Press will be publishing within the next two years.

We do have to recognise the heritage of the Lauterpacht [Centre] itself, and the jewel in the crown of course is the International Law Reports. That series was set up by Hersch [Lauterpacht] in 1919, a pivotal moment in our history. Although



international law had been part of our portfolio since the 1940s, Cambridge University Press later bought from Sir Eli his publications list Grotius Publications. That directly led to my job: minutes of our Press Syndicate show in the 1960s that it was thought that law and some other subjects were too specialised for a university press, so after the 1946 McNair Cambridge Studies in International and Comparative Law, there was a kind of period of dormancy, and then the great shot in the arm was the purchase by Cambridge University Press of Grotius in the mid-1990s. And with that came wonderful things like ILR, and indeed Malcolm Shaw's book and other books. So there's a kind of legacy of the wisdom of Eli in signing many young authors of that time which has led to treasures in our book list today. Eli was a great publisher: he had a great eye for forthcoming subjects, he had a great eye for upcoming people. All around the world, as recently as in Israel this year, I meet people who remember that he gave them a chance. So the list today is informed by that. However, as with everything, we've gone on to grow it.

The Hersch Lauterpacht Memorial Lectures, which are published by us every year, have also been a tremendous introduction for me. So I have fond memories in particular of Tom Franck when he came to give his lectures, Martti Koskenniemi and other giants in the field. Moving forward, then, in more recent times I've been delighted to work with other Directors – Charlotte Ku, Marc Weller and Eyal Benvenisti, himself a long-term Cambridge University Press book author, today. One of my happiest memories of this building would be in 2010, when the European Society of International Law was here, and a young person called Sarah Nouwen was one of the organisers. I still remember standing on the first floor here and looking out into the garden and seeing all these young people mixing with older people, and I think that is the heart of what's good about this place: it is a network, a community. And I think that belonging to this community, we are all richer.

LCN: Another way that Cambridge University Press supports the Centre is through its sponsorship of our Friday lecture programme.

FO'S: Yes. And that's a great opportunity for visitors. I've been amazed to find people coming on the train from Nottingham, just to attend the Friday lecture. Of the team of editors that I work with – Kim Hughes and Tom Randall, and Rebecca O'Rourke, in journals – one of us tries to put our face in the door here on a Friday because of the opportunities to meet visiting scholars from all over the world. We're certainly proud to sponsor that event every Friday.

LCN: Is this a way for you also to find out about other research, to make new connections?

FO'S: Yes, absolutely. I certainly think some of the Americans who come here have projects that maybe we wouldn't have heard about otherwise. I would also credit connections with the PluriCourts project in Oslo from Geir Ulfstein's time at this Centre. There is a deep connection with the University of Melbourne and visitors here from there. (I feel as I go on that I'm going to be not mentioning people that I should be mentioning!) So I like to think that there's a map of international law hotspots around the world, and Cambridge is certainly one of the hearts of it. And we are very proud as an old publishing house to be right up there at the forefront of future research that's coming through the Lauterpacht Centre today.

LCN: One of the ways that you're at the forefront of technology is the Cambridge Law Reports platform, which publishes the ILR and ICSID reports.

FO'S: Yes, indeed. When I first came here, none of our books were ebooks, but today almost all our titles are. It's really wonderful that we are a global press with access to our titles on an institutional platform and/or to devices. We aim to publish everything simultaneously in print and digitally.

LCN: Where is the field going? What are the 'hot' areas of international law publishing?

A growing field is history of international law, and we have recently signed the Cambridge History of International Law, which will be edited by Randall Lesaffer from Tilburg. And guess where I first met Randall? Here as a visitor! So all roads lead back to Cranmer Road.

Other rising fields include investment law... and the confluence between constitutional law and international law is also a growing area. And many of the collaborations that we see around the world are on that. And I also think that scholarship in Europe is on the rise. When I first came here, scholars in Germany wrote in German, and now we are increasingly getting English language applications from them. South America is another centre which is growing an author base, as are Canada and Australia. So my job is in some ways to coordinate the publishing for law across our different regional emphases and lists. We don't do everything in every market, but our monograph series and our projects in IHL, trade law, general theory and history of international law are sold everywhere. The subject is in some ways fragmenting, but we publish over 100 titles, easily, in any year on international law.



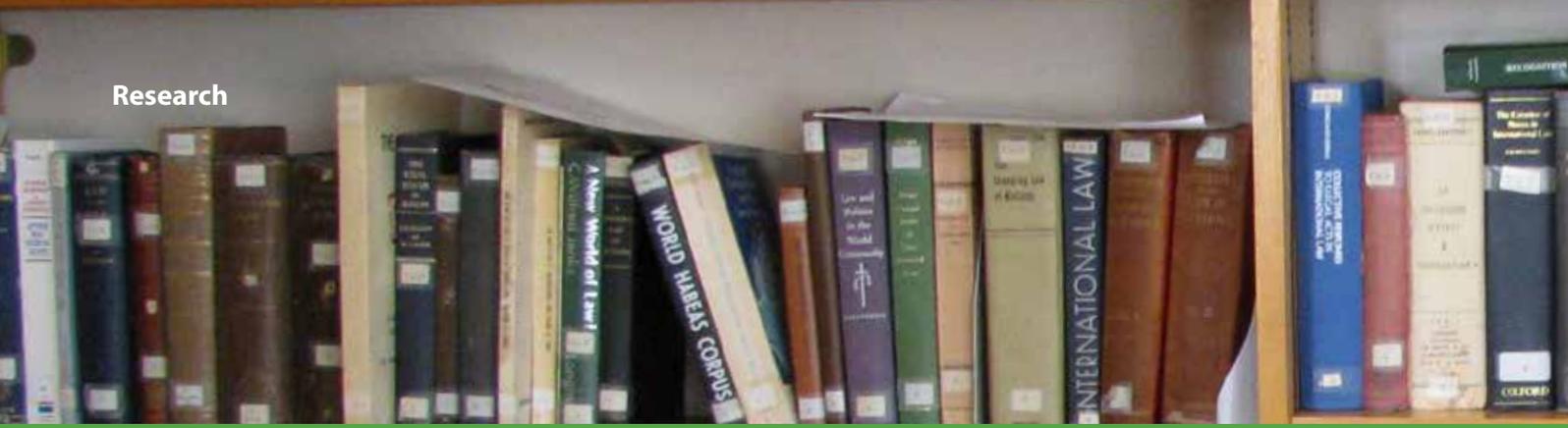
Finola O'Sullivan with the Lauterpacht Centre's founder Sir Elihu Lauterpacht, at the European Society for International Law's conference in Cambridge, 2010

I've just remembered one very interesting moment in the time of being here, which is the Cambridge Companion to International Law, which James Crawford and Martti Koskenniemi edited – that also was great fun. And I think fun is the word: if you don't enjoy collaboration and research and writing then what's the point? But it is also a commercial activity of course, we do have to not lose money on what we publish! I think that international law seems to certainly be all over the place these days. It was wonderful that we bought Grotius – the list – and that it came to a point where today of the law lists, international law is more than half our revenue. It's the largest subject within the law list, and within Cambridge University Press, law is within the top five subjects now, alongside history and medicine. So we're very proud of the legacy.

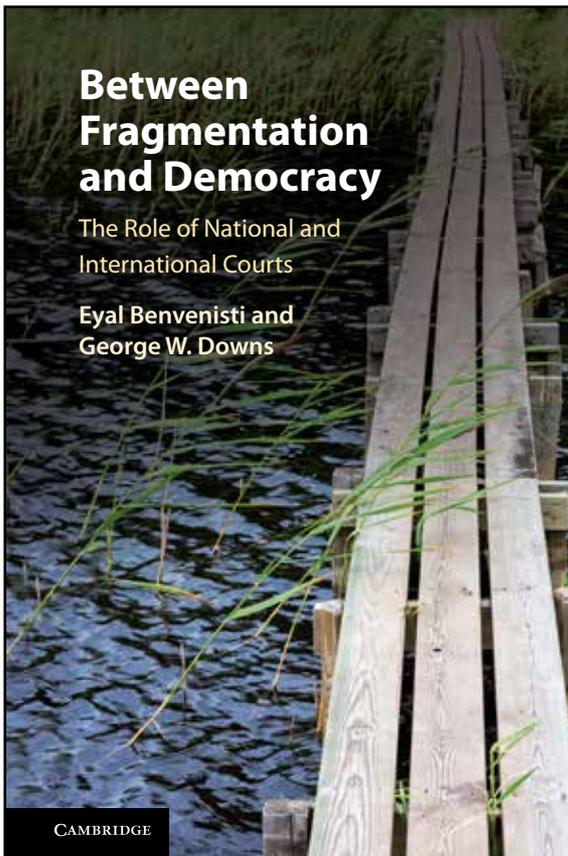
We are growing our book portfolio, having just become the publisher partner for the American Society of International Law this year, and we're very proud of that association. And obviously the connections here with Washington were part of the early years of building that relationship.

And it is teamwork – I think we certainly regard the Lauterpacht Centre as part of our family and we of yours. So, today at the Centre we have Karen Lee and Maria Netchaeva working on ILR, with Christopher Greenwood as co-editor with Karen Lee of the series. And we have many other projects in the building, so we like to think that we have a special relationship, being from the same university.

I really feel that it was wonderful to have met some of the older generation: Philip Allott, and many giants of international law, whom people from around the world speak of. I've arrived at a mid-point in my career, and it's been wonderful to see how the Centre has also grown, into two buildings now, and it's probably a much more professional place than it was at the start. It's certainly a jewel in the crown within the Faculty – we all envy you having this lovely building! It is a very Cambridge place.



Recent publications

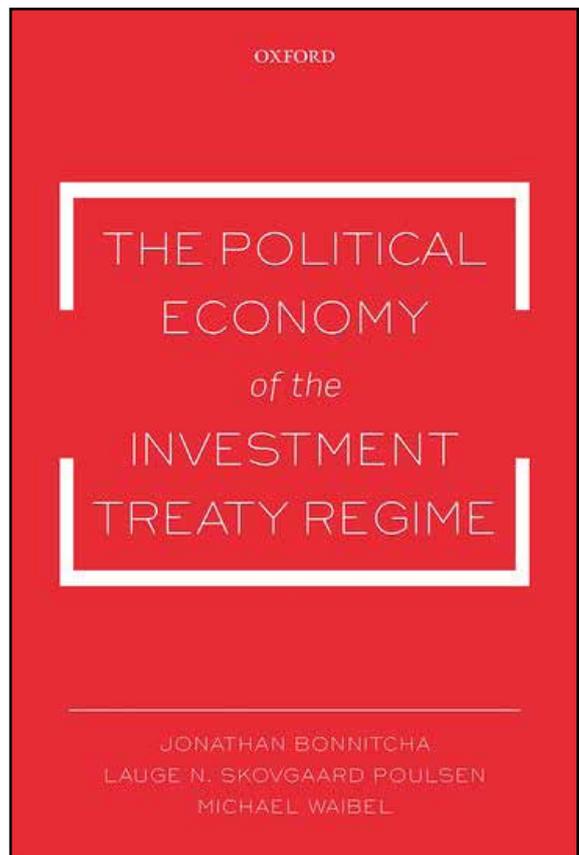


This book offers a comprehensive understanding of how new global sources of democratic deficits increasingly deprive individuals and collectives of the capacity to protect their interests and shape their opportunities. It also considers the role of the courts in mitigating the effects of globalization and the struggle to define and redefine institutions and entitlements. This book is an important resource for scholars of international law and international politics, as well as for public lawyers, political scientists, and those interested in judicial reform.

More information:
<https://www.cambridge.org/core/books/between-fragmentation-and-democracy/40CE421C0C44F5004B257105EB69F8D1>

Eyal Benvenisti and George W. Downs, *Between Fragmentation and Democracy: the role of national and international courts* (Cambridge University Press, 2017); ISBN 9781108236607

Between Fragmentation and Democracy explores the phenomenon of the fragmentation of international law and global governance following the proliferation of international institutions with overlapping jurisdictions and ambiguous boundaries. The authors argue that this problem has the potential to sabotage the evolution of a more democratic and egalitarian system and identify the structural reasons for the failure of global institutions to protect the interests of politically weaker constituencies.



Jonathan Bonnitcha, Lauge N. Skovgaard Poulsen and Michael Waibel, *The Political Economy of the Investment Treaty Regime* (Oxford University Press, 2016); ISBN 9780198719540

Investment treaties are some of the most controversial but least understood instruments of global economic governance. Public interest in international investment arbitration is growing and some developed and developing countries are beginning to revisit their investment treaty policies. *The Political Economy of the Investment Treaty Regime* synthesises and advances the growing literature on this subject by integrating legal, economic, and political perspectives. Based on an analysis of the substantive and procedural rights conferred by investment treaties, it asks four basic questions. What are the costs and benefits of investment treaties for investors, states, and other

stakeholders? Why did developed and developing countries sign the treaties? Why should private arbitrators be allowed to review public regulations passed by states? And what is the relationship between the investment treaty regime and the broader regime complex that governs international investment?

Through a concise, but comprehensive, analysis, this book fills in some of the many “blind spots” of academics from different disciplines, and is the first port of call for lawyers, investors, policy-makers, and stakeholders trying to make sense of these critical instruments governing investor-state relations.

More information:

<https://global.oup.com/academic/product/the-political-economy-of-the-investment-treaty-regime-9780198719540?cc=gb&lang=en&>

British Yearbook of International Law

The BYIL is one of the oldest English-language periodicals in international law.

It was established in 1920, in the wake of World War I, by founders who believed that international law was ‘a living force’, but in dire need of renewal and re-examination ‘in the light of modern developments’. The first Editor was Cyril M Picciotto, a barrister and one time Whewell Scholar (Cambridge), and the Editorial Committee comprised Sir Erle Richards (then Chichele Professor of International Law and Diplomacy, Oxford), Professor A Pearce Higgins (then Whewell Professor of International Law, Cambridge), Sir John MacDonell (Quain Professor of Comparative Law, University College London), Sir Cecil Hurst (then

Principal Legal Adviser in the Foreign Office), and E A Whittuck, Esq (formerly lecturer at Oriel College, Oxford, and a keen scholar of international law).

Since the first volume, in 1920–21, the Yearbook has continued to draw on an Editorial Committee, and address an audience of both scholars and practitioners. The Yearbook is currently under the editorship of Eyal Benvenisti (Director of the Lauterpacht Centre), and Catherine Redgwell (Chichele Professor of Public International Law, Oxford). Its Associate Editors are Megan Donaldson and Andrew Sanger (research fellows at the Centre).

Given that the Yearbook appears in a single annual volume, the editors have come to prioritize substantive scholarship which places current developments in a larger doctrinal or theoretical context. Articles in the Yearbook span all areas of

public international law, from perennial generalist topics like treaties, responsibility, and the peaceful settlement of disputes to more specialist areas such as trade, investment, environmental and human rights law. The Yearbook's annual coverage of decisions in UK courts on public and private international law, and its collection of 'United Kingdom Materials on International Law' offer comprehensive, cross-referenced treatment of the state practice of the United Kingdom, as well as the contribution of British courts to interpreting and applying international law. Now that the Yearbook is in its 87th volume, these materials provide a testament to the founders' recognition that international law is a 'living force': whereas analysis of cases in 1920 dealt with the law of Naval Prize and territorial waters, the most recent volume sees English courts engaging in issues concerning a benefit cap that affects a greater number of women in non-working lone parent households, and whether there is a legal basis for detention in non-international armed conflicts.

The Yearbook's emphasis on scholarship of enduring relevance has meant that it often features major historical studies. Volume 86 (covering 2015), for example, features a **comprehensive, archivally-grounded history of the dispute over Gibraltar** from the Treaty of Utrecht (1713) to the present by Dr Jamie Trinidad (Wolfson College, Cambridge), which draws on this history to evaluate arguments currently made by the parties, as well as a **major article by Professor Andrew Dickinson** (Oxford) that traces the development of the adjudicatory jurisdiction of the English courts between the seventeenth and twentieth centuries. Dickinson's research suggests that the 'principles' of presence and submission, which are central tenets of English

private international law, are lacking in historical support, as well as being unsatisfactory in principle. This focus on history continues in volume 87 (covering 2016), which will include a conceptual history of recognition in the work of British international lawyers, c.1800–1950s, by Martin Clark (doctoral candidate, London School of Economics).

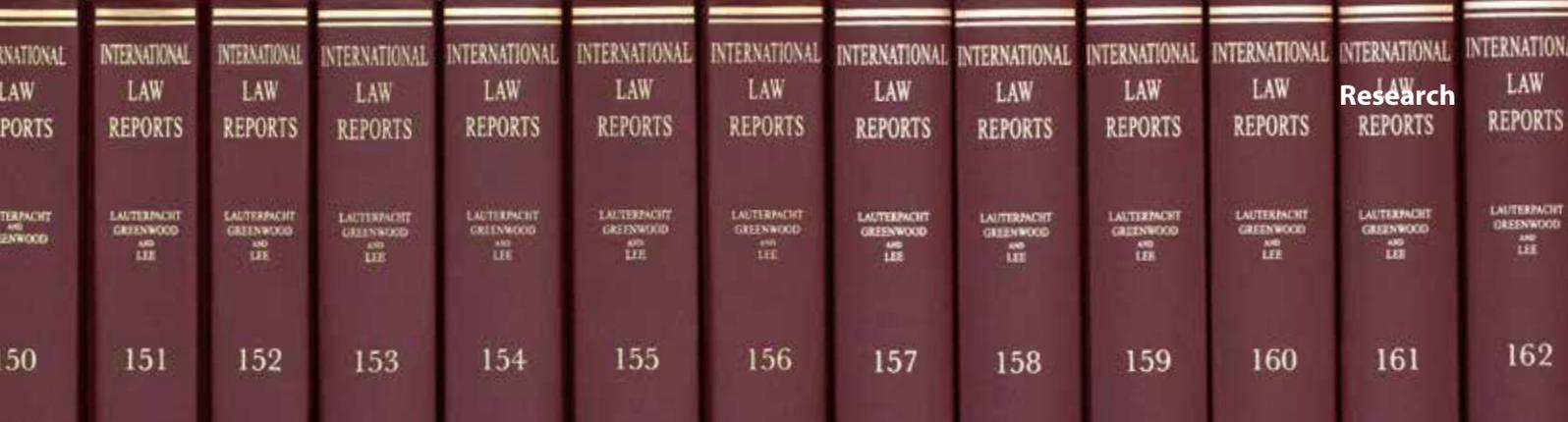
In keeping with the Yearbook's close attention to British practice, volume 87 will feature a symposium on the Iraq Inquiry and its Report. Contributions address not only the Report's significance for international legal doctrine and the legality of the war in Iraq, but also broader perspectives opened up by the Report, such as use of intelligence and legal advice in decision-making within government; the role of British and other parliaments in authorising use of force; and the role of the media both at the time of the Iraq war and in the aftermath of the Iraq Inquiry Report itself. This range of contributions allows for a wide-ranging reflection on how international law works, not only in the upper echelons of government, but in legislatures and the public domain.

As part of the Yearbook's own process of renewal, it now welcomes submissions of articles, review essays and book reviews on a rolling basis, **via ScholarOne**. Proposals for review essays and book reviews should be sent to the Book Review Editor, **Dr Philippa Webb**. Article submissions are peer-reviewed by at least two experts, and decisions are typically made within 6–8 weeks from submission. The print volume is produced annually but articles may be copy-edited, type-set and posted online under Oxford University Press' 'Advance Access' system well before the print edition is produced.

Megan Donaldson

Gibraltar, the subject of a comprehensive dispute history by Dr Jamie Trinidad in the British Yearbook of International Law volume 86. Image: user ayala, used under a CC-BY-SA 3.0 licence via Wikimedia commons.





The International Law Reports

The International Law Reports have been reporting the decisions of national and international courts and tribunals on issues of public international law for over eighty years.

The International Law Reports have been reporting the decisions of national and international courts and tribunals on issues of public international law for over eighty years. When the series started, under the name of the Annual Digest, it was possible to fit all of the relevant decisions for a two year period into a single volume. It is a mark of how international law has developed in the succeeding years that we now publish six volumes a year (vols 167–172 will have been published in 2017) to enable the series to capture the full range of judgments and awards on issues of international law from the increasing number of international courts and tribunals while expanding our coverage of national judgments. As well as still being available online from Justis, the series is also now available electronically via **Cambridge Law Reports**.

The range of international tribunals covered in vols 167–172 includes arbitration tribunals, the International Court of Justice, the European Court of Human Rights, the Court of Justice of the European Union, the International Criminal Court, the Inter-American Court of Human Rights, the African Court on Human and Peoples' Rights, the East African Court of Justice, the United Nations Human Rights Committee and the World Trade Organization. These volumes also include judgments from the courts of Australia, Belgium, Brazil, Canada, England, Italy, Poland, Slovenia, South Africa, Uganda and the US.

Details of the contents of the latest published volume, ILR 170, **can be found online**. A Consolidated Index and a Consolidated Table of Treaties for vols. 1–160 were published in July 2017.

Volume 174, which was delivered to our publishers, Cambridge University Press, in July 2017, contains the 2013 order and 2014 judgment of the International Court of Justice in *Whaling in the Antarctic* (Australia



Karen Lee and Maria Netchaeva.

v. Japan), the Grand Chamber judgments of the European Court of Human Rights in *Murray v. Netherlands* and *Hutchinson v. United Kingdom*, and the views of the United Nations Human Rights Committee in *Ilyasov v. Kazakhstan* and *Leghaei v. Australia*. It also contains decisions from the courts of Austria (*Swiss National Bank Immunity*), the Czech Republic (*Conflict of International Treaty Obligations* and *Popper's Villa*), England (*Al Attiya* and *R (Bashir)*) and Estonia (*Non-Profit Associations Act*).

Any recommendations of cases for publication would be welcome, particularly from jurisdictions which may have been neglected in the past. We would be grateful if you could send any such recommendations to Maria Netchaeva (ilreditorial@cambridge.org), our ILR Editorial Assistant.

Christopher Greenwood and Karen Lee

More information: <http://www.icil.cam.ac.uk/publications/international-law-reports>



View of the International Court of Justice, The Hague. Photo by Flickr user rvr, used under a CC-BY 2.0 licence.

Workshop on 'Authorities' in International Dispute Settlement

On 20 March 2017, the Centre hosted a workshop organised by Michael Waibel and Damien Charlotin, and funded by Michael Waibel's British Academy Rising Star Engagement Award. Twenty participants examined the use of 'authorities' in international dispute settlement and the ways of empirically studying this topic.

Participants had been selected following a call for papers. The event gathered young scholars and established academics from all over the world, with a view to sharing best practices and experiences in studying international law empirically.

All participants were committed to clarify the use of 'authorities' in international dispute settlement, and the various lessons that can be learned from studying them. The emphasis was not only on the definition of these 'authorities' – a subject that led to much debate during the workshop – but also on the empirical methods that can be used in studying international dispute settlement. Among others, participants learned about corpus linguistics, network analysis and citation analysis.

Over three sessions, participants discussed and commented papers on:

- The relationship between the International Court of Justice and the International Law Commission (Omri Sender)
- The use of 'general principles' in the ICJ's jurisprudence (Marija Đorđeska)

- The references to human rights instruments and cases in investment disputes (Silvia Steiniger)
- The use of scholarship by ICJ judges (Sondre Torp Helmersen)
- The differences between adjudicators in trade and investment disputes (Joost Pauwelyn)
- The different meanings of the term 'precedent' in the jurisprudence of the ICJ (Medhi Belkahlia)
- The citations to external authorities in trade and investment disputes (Niccolò Ridi)
- The use of arguments from authority in the ICJ jurisprudence (Damien Charlotin); and
- The references to arbitral awards in ICJ jurisprudence (Vladislav Lanovoy).

The organisers would also like to thank all other participants (Wolfgang Alschner, Odile Amman, Danae Azaria, Michael Becker, Daniel Behn, Eyal Benvenisti, Lorenzo Gasbarri, Zuzanna Godzimirska, Lan Nguyen, Luíza Leão Soares Pereira) for their helpful comments and contributions to the debate. A productive workshop concluded with a dinner at Jesus College.

Michael Waibel



Discussion at the 'Human Rights After Brexit' workshop.

Human Rights After Brexit: the future of human rights in the UK

On 23 March 2017, the Lauterpacht Centre for International Law, in collaboration with the Centre for Public Law, held a British Academy workshop entitled 'Human Rights after Brexit: the Future of Human Rights in the UK', organised by Dr Veronika Fikfak, fellow and director of studies at Homerton college.

The workshop, funded by a British Academy Rising Star Award, sought to address the recent developments, both from a public law and international law perspective. Its aim was to provide a platform for new voices – 9 young scholars – to discuss their ideas about the potential future of human rights in the UK with senior scholars. Each young scholar presented their work and then discussed it with other participants and senior academics, who provided feedback for their work.

The first panel discussed human rights after Brexit, and was led by Professor Sionaidh Douglas-Scott, a barrister and the Anniversary Chair in Law and Co-Director at the Centre for law and Society in a Global Context at Queen Mary University London. The first presenter was Leanne Cochrane, PhD candidate at Queen's University Belfast, whose paper 'The

complexities of human rights and constitutional reform' sought to assess what kind of space human rights might occupy in the UK's unique and complex constitutional framework in the future. Dr Joelle Grogan, lecturer in law at Middlesex University, then presented a paper entitled 'Accidental Protection and Inadvertent Violation', presenting a picture of the future of certain vulnerable categories of human rights in the UK in the post-Brexit landscape. Finally, Niall O'connor, PhD candidate at Girton college, Cambridge, discussed the future of employment law and social rights after Brexit in a paper entitled 'Uncharted waters: the Future Direction of Fundamental Social Rights'.

The second panel's focus was on the rethinking of the role of the courts and referenda in the UK, and was led by Professor Alison Young, fellow at



Participants continued discussions over coffee at the 'Human Rights After Brexit' workshop.

Hertford College, Oxford. The first speaker was Thomas Fairclough, PhD candidate at Gonville and Caius college, Cambridge, who discussed the Human Rights act repeal and the potential of the common law in replicating the protections of the HRA in its absence in his paper 'The Reach of Common Law Rights: a Principled Approach to Rights' Identification'. Dr Katie Boyle, senior lecturer at the University of Roehampton, presented a paper called 'Constitutional referendums' which examines the operation of deliberative democracy at both the micro and macro level in connection with the recent referendum on Brexit. Finally, Omer Keskin, PhD candidate at the University of Lausanne, explained how referendums work in Switzerland and how international could be used to improve popular initiatives in a paper entitled 'Swiss legal order – domestic backlash'.

The third and final panel was led by Dr Stephanie Palmer, fellow at Girton college, Cambridge, and discussed alternative perspectives addressing the future of human rights. The first speaker was Dr David Barrett, lecturer in law at Nottingham Trent University, who presented a paper called 'Human rights beyond Courts' which examined

the impact of Brexit on regulatory actors such as the Equality and Human Rights Commission and the Care Quality Commission. Dr Joe Tomlison, lecturer in Public Law at the University of Sheffield, could not be present at the workshop but wrote a paper entitled 'Administrative Justice, Brexit and Human Rights' questioning how Brexit will affect administrative justice and the protection of human rights in the administrative process, which he presented later through a podcast. Finally, Dr Stuart Wallace, fellow at Homerton college, Cambridge, discussed the Government's decision to derogate from the European Convention on Human Rights in situations arising from military actions abroad in his paper 'Doctor Derogation Love'.

Overall, the workshop was a success, and received a lot of positive feedback from the young scholars, who saw it as a great opportunity to discuss their work and receive feedback from three respected senior scholars. All the discussions are available as podcasts through the University of Cambridge's website: <https://sms.cam.ac.uk/collection/2459211>.

Veronika Fikfak

Nationalism and Self-Determination in the Horn of Africa

Is self-determination passé? Not in the Horn of Africa, an area of the world where self-determination has led to unprecedented outcomes. On 22 and 23 May 2017, a group of almost twenty scholars with an interest in the Horn of Africa came together in Cambridge to discuss the continued albeit changing relevance of nationalism and self-determination in Eritrea, Ethiopia, Somalia, South Sudan and Sudan.

On the basis of papers by Mulugeta Gebrehiwot, Sally Healy, Peter Chonka, Alex de Waal, Paulos Tesfagiorgis and Sarah Nouwen, and comments by Sarah Vaughan, Jason Mosley, Eddie Thomas, Surabhi Ranganathan and Dawit Mesfin, they discussed various meanings of self-determination, tensions within the concept, and its relationship to nationbuilding, statebuilding and peacemaking. In most of these cases, the international law on self-determination followed, rather than guided. However, the experiences of this region with

nationalism and self-determination provide relevant insights for that law, and beyond. It is the plan to capture these experiences in a special issue of the *Journal of Eastern African Studies* that Alex de Waal and Sarah Nouwen are currently putting together. The workshop is a product of Nouwen's stay as Senior Fellow at the World Peace Foundation in Boston and was funded by the World Peace Foundation and Nouwen's ESRC grant for 'Peacemaking: What's Law Got to Do With It?' and her British Academy Rising Star Engagement Award.

The Hargeisa War Memorial, a monument commemorating Somaliland's attempt to form a breakaway independent republic during the Somali Civil War. Photo by Flickr user joepyrek, used under a CC-BY-SA 2.0 licence.



LCIL Fellows' work-in progress seminar with Benedict Kingsbury

Why do we travel the world to get feedback on our papers, but fail to solicit such input from our most direct colleagues? The answer is probably that we are all so busy teaching, doing admin and trying to get some research done that, apart from the informal discussions during the famous coffee time, there sometimes seems to be little time for organised engagement with each other's work.

The arrival of a fresh and enthusiastic 'outsider' can hold up a mirror and show how bizarre this is, given that we are blessed with the world's best colleagues. Our relatively new and still very fresh director, Eyal Benvenisti, did just that, strengthened by his colleague and friend Professor Benedict Kingsbury. On 29 and 30 May 2017, they organised a workshop in which LCIL fellows presented work in progress and commented on each other's work.

It was a revelation. Megan Donaldson took us to the days in which the League of Nations debated Ethiopia's potential membership. My paper moved us to present-day South Sudan, identifying provisional lessons from its independence for the law on self-determination. Surabhi Ranganathan moved us to the deep sea bed to introduce us to the phenomenon of underwater land grabbing. Henning Grosse Ruse-Khan conceptualised a right to regulate to protect public health, whereas Veronika Fikfak theorised the European Court of Human Rights's approaches to damages. Edward Cavanagh went back to the

English courts between 1891 and 1919 dealing with Mozambique, De Beers and Southern Rhodesia, while Andrew Sanger explained how modern-day corporations benefit from the structure of public international law. Michael Waibel zoomed in on one particular type of company, credit rating agencies, and how they had obtained and then lost quasi-immunity under US law. Fernando Bordin discussed the 'makeshift authority' of the International Court of Justice and the International Law Commission to identify rules of general international law. We ended with a discussion of Eyal Benvenisti's thinking about a big project on information as a global concern. With his encyclopaedic and ordering mind, Benedict Kingsbury pushed us in new directions, and closer to each other.

Apart from shared interests, parallel arguments and possibilities for collaboration, we discovered that we need not travel far to get brilliant feedback (as long as Benedict Kingsbury remains willing to travel to us!).

Sarah Nouwen

Polymetallic nodules on the deep seabed; exploitation of these minerals has been controlled since 1994 by the International Seabed Authority. Photo by user Abramax, used under a CC-BY-SA 3.0 licence via Wikimedia commons.

The four seasons in the life of a PhD student visiting the Lauterpacht Centre

Ömer Keskin reflects on his time as a Visiting Scholar at the Lauterpacht Centre.

I arrived in Cambridge in July 2016. Before leaving Switzerland – where summers are not really great either – friends had told me that, by going to the UK in summer, I would miss out on it. My friends were wrong. Admittedly, in the first few days of my stay, there were rain showers every now and then, but it was also tropically humid and very warm!

Also very warm was the welcome I got by the members of the Lauterpacht Centre. At my first 11 am coffee break I had the possibility to get to know the lovely people affiliated to the Centre. They were very interested not only in my professional but also in my personal background. I highly appreciated this human and familial side of the Centre throughout my entire stay. In the course of my stay, I quickly noticed how valuable these coffee breaks are. They are good occasions to get to know people over a good cup of coffee or tea and exchange ideas with others about subjects concerning one's research. I was always happy returning to my desk with fresh ideas after having had stimulating conversations with senior academics who gladly shared their thoughts on a problem about which I was racking my brain the entire morning.

The first thing one does notice when arriving at the Centre is its facilities. The law library's collection of books and materials is breath-taking. Getting access to them online from one's desk is easy. Equally impressive is the setting of the Centre itself. Eminent professors and experts of international law had come here to teach, to find answers to difficult questions and to discuss problems of various fields of international law. The premises at the Cranmer Road 5-7 have history and one can sense it. If only the walls of the Centre could tell us more about what they have witnessed over the years! Personally,

I felt that the Centre and the history linked to it is a source of inspiration from which one can only benefit while conducting research on questions of international law.

Although working on my research project at the Centre, in the beginning of my stay, I reserved quite some time for getting to know both the University and the City of Cambridge. Besides touristic activities, such as punting on the Cam, Cambridge has a lot to offer. For example, it is possible to have a picnic during summer evenings while enjoying a Shakespeare's play in the garden of a college or

A Thanksgiving celebration in Bahrain House, complete with turkey. Photos: Ömer Keskin.





Views from a Visitor: some of Ömer's photos from his time at the Centre – including the mug received by all departing Visitors (top left). Photos: Ömer Keskin.

have a casual croquet game with fellow researchers at the Centre's beautiful garden at lunch time. Though there is not an obligation for visiting fellows to become a member of a college, just by visiting the Centre, one can wholly immerse oneself in the campus life as regular members of the University do.

In contrast to the summer during which University life is generally slow-paced, the start of a term marks a new cycle at the University as well as at the Centre. With the arrival of the students there is noticeably more activity on the campus. The same holds true for the Centre. During terms, Friday Lectures give the opportunity to listen to renowned experts of international law of various fields pointing at current problems and discussing possible solutions. Another enriching format offering a place to share ideas were the Peregrine Talks. At these events, that are of the type of a brown bag seminar, visiting fellows are given the possibility to hold a short lecture about their own research and get

feedback for their work from fellow researchers. The Friday Lectures and the Peregrine Talks both constitute great formats that allow not only taking an intellectual break from one's daily work but also show new aisles of reflection that might be interesting for one's own research.

The beginning of the Michaelmas term came at a time of my stay where I shifted my priorities and focused fully on working on my research project. An occasional diversion was thus welcome. Aside from the spontaneously organised dinners at one of the numerous gastropubs of Cambridge, I can think of two personal highlights in the period of time leading to Christmas. First, I had the possibility to cook my first ever turkey with Tomoko Kakee and Donovan Wood to celebrate Thanksgiving at the Centre. Second, the Christmas formal dinner of the Centre bringing together the entire international law community at Cambridge was a worthy conclusion of the year 2016.



A game of croquet in the Lauterpacht Centre gardens. Photo: Ömer Keskin.

Returning for the Lent term, my last term at the Centre, I was already sad knowing that I had to leave soon in a few months. However, when that moment came I knew that things came to a full circle in that I had taken a big leap towards accomplishing my research project while fully cherishing what life in Cambridge has to offer. For visiting PhD students, the Centre provides a framework or an anchor respectively. Yet, visiting PhD students have the

freedom to manage their time and are thus enabled to find the right balance for them. For this and many other things, the Centre is a wonderful place to which, I hope, I can return one day.

Ömer Keskin was a Visiting Fellow at the Centre between July 2016 and April 2017. He currently is a PhD candidate at the University of Lausanne.

Along the borders of international law: a story

Harum Mukhayer, a current international law PhD student at the University of Cambridge, talks about her research into 'shared territorial sovereignty'.

Imagine you lived in an area. A geographic space with defined parameters: stretching from the west facing banks of The Seasonal River to the foothills before the start of The Lake. This area houses comfortably your family and the 12,000 members of your community as it has your forefathers and their ancestors before them. It is not only the land of your ancestral descent, but it is a land collectively shared with the communities in the east facing banks of The Seasonal River and your neighbours whose dominion starts at the Foothills of the mountain range and extends to The Lake.

Yours is a community with a refined sense of responsibility based on a defined and collectively endorsed set of rules and customs. Networks of transport and commerce that are established through continuous use reinforce 12,000–40,000 years of your community's economic, social and legal ties. Although partially documented, these ties are governed by the legal reality of your uncodified rules and customs: the pillars on which your rights are upheld, and justice system is rooted.

Now imagine your elected Community Leader (an elder of accepted rank and wisdom) receives an announcement from The Administration (some many, many miles from your geographically defined point of spatial reference). She presents the announcement to the Community; it reads something like this:

'The Administration wishes to announce that in the interests of Your Community and Everyone Else, to preserve national security and integrity a new boundary will be delimited. Starting from Point A marked by the thalweg of The River and ending

200 miles West. Because this area is characterised by aridity of soil and climate, The Administration will dig two wells and negotiate a border crossing agreement to allow access to The Lake.'

Twenty months pass, no boreholes are constructed and the announcement appears seemingly redundant. You have continued access to The Lake and The Seasonal River. Relations with your neighbouring community continue as usual. The proposed boundary, which would dissect Your Community in half hasn't really taken effect. That is, until it did. The Administration has mobilised Border Guards, Rangers, or Mounted Police as a specialised extension of the National Armed Forces

with discretionary power to protect the borders as defined by The Administration in its Announcement.

The boreholes remain unconstructed, Your Community is divided, and trade routes and commerce are disturbed in addition to all the inconveniences that accompany a militarised border.

Of course, I'm being intentionally abstract in this example. Although this is a fictional Boundary Story, it could easily be the story of the Métis, Assiniboine, Lakota and Blackfeet Confederacy whose territory extends across the Medicine Line between the United States and Canada, the Indian Communities whose ancestral homes straddle the border between Honduras and Ecuador, the people of the Bakassi Peninsula and the delimitation of the Nigeria–Cameroon border or the Misseriya–Dinka and the notoriously obtuse boundaries of the Abyei Area between Sudan and South Sudan.

Yes, States must have defined borders and territorial integrity, but this cannot be allowed to prevail at the expense of the collective integrity of peoples, tribes and First Nations whose integrity and territory predates the state.

My PhD will further develop the ideas expressed in this short narrative. In particular I develop a theoretical framework under which an international legal system, mainly oriented to states, may accommodate claims to territorial sovereignty by indigenous peoples or tribes. My claim is that territorial sovereignty over land can be shared, and in fact always has been. I draw on the US doctrine of



tribal sovereignty and present examples of where tribes and indigenous peoples act as pre-colonial as well as post-colonial effectivities. I rely on international case law to demonstrate why and how our current approach to territorial sovereignty is problematic and fundamentally flawed. For this purpose, the Abyei Arbitration case presents a prime example.

I make the case for 'shared territorial sovereignty' through three distinct bodies of international law literature: law on territorial sovereignty and boundary delimitation; self-determination, minority rights and rights of indigenous and tribal peoples; and law on shared and transboundary resources. I see my PhD as theoretically contributing to the body of international legal research on sovereignty, territoriality and boundary disputes. In practice, I hope my research will contribute to the development of an

international legal system that is truly representative of all Nations, and not only limited to states.

I write this story on the 316th day since the start of my PhD in 2016. It is a work in progress. In the process of my continued work on this topic I am grateful for Professor Benvenisti's guidance and supervision, and the invaluable feedback of my first year examiners Dr Surabhi Ranganathan and Dr Kate Miles.

Harum Mukhayer is a PhD Candidate at the Faculty of Law and currently a visiting Doctoral Student at the Harvard Law School. She completed her LLM in Natural Resources Law at Centre for Energy Petroleum Mineral Law and Policy (CEPMLP), and worked with the United Nations for 7 years in Sudan, South Sudan and Somalia. She traces her descent from Northern Sudan and is a member of Pembroke College.

The 49th parallel at Waterton Lake, looking East along a cleared strip of land that marks the Canada–US border. The historic territory of the Blackfoot Confederacy straddled this border. Photo by user Traveler100, used under a CC-BY-SA 3.0 licence via Wikimedia commons.



Events @ the Lauterpacht Centre



Michaelmas term's Friday lectures began on 6 October when Professor Georg Nolte (Humbolt University Berlin) spoke on the topic 'Recent developments in international law and in the ILC: in sync?'

Sir Hersch Lauterpacht Memorial Lectures

This is an annual three-part lecture series given in Cambridge to commemorate the unique contribution to the development of international law of Sir Hersch Lauterpacht. Most lectures are subsequently published.

The 2018 lectures will be given by Professor Sundhya Pahuja (Melbourne) on 6–8 March 2018, with a Q&A session on Friday 9 March.

Legal Histories Beyond the State seminars

The Legal Histories Beyond the State project (see pp. 18–19) holds a regular work-in-progress (WIP) seminar for junior and early-career researchers who are engaged in work in which legal, international and global histories interact.

Forthcoming speakers for Michaelmas 2017 include Dr Ziv Bohrer (Bar-Ilan) on 'Transnational conflicts: a new kind of war?', and Dr Kate Miles (Cambridge) on 'Constructing international law: property, commerce and "expectations".'

Friday lunchtime lectures

During the University term, the Centre holds lunchtime lectures on topical issues in international law given by leading academics and practitioners. Lectures take place on a Friday from 1–2pm, with a sandwich lunch provided at the Centre from 12:30pm.

Forthcoming speakers for Michaelmas 2017 include Professor Andrea Bianchi (Graduate Institute Geneva), Professor Dino Kritsiotis (Nottingham), Helmut Aust (Freie Universität Berlin), Phoebe Okowa (QMUL) and Robert McCorquodale (BIICL).

For the full events programme, including Friday lectures, see:

<http://www.lcil.cam.ac.uk/events>

The Friday lecture series is kindly sponsored by Cambridge University Press.



The Lauterpacht Lectures 2017: towards a global private law?

In March this year, Professor Anne Peters delivered the 2017 Hersch Lauterpacht Memorial Lectures. Former Visiting Fellow León Castellanos Jankiewicz reviews the series.

When Hersch Lauterpacht began his doctorate in London, he was flummoxed by the neglect of private law in his discipline. Despite the widespread borrowing of private law concepts in international law, Lauterpacht noted in his dissertation that there was hardly a question of greater theoretical or practical importance to which less systematic attention had been paid. His study, which culled from state practice to prove his point, was published to great acclaim in 1927 as *Private Law Sources and Analogies in International Law*. Ninety years later, Professor Anne Peters has revisited this issue under a contemporary lens in her Lauterpacht Memorial Lectures.

The problem has evolved considerably over the years. In his book, Lauterpacht advocated the use of private law ingredients to understand, frame, and ultimately delimit public power, thus rebutting the positivist theory of self-sufficiency. Arnold McNair, who was Lauterpacht's doctoral advisor, must have approved of his pupil's method: an expert in English contract law, he once remarked that international law should, from time to time, 'get a good drench from the spirit of the common law'. Today, however, private actors are fulfilling public duties through international agreements, further complicating the legal landscape.

Around the world, an increasing number of private entities are harnessing international legal frameworks to carry out public functions, a phenomenon which is inverse to the one Lauterpacht described. Corporations often exercise governmental authority

on behalf of states to deliver global public goods. Other times, they are tasked by international organisations to provide public services. Although formulated decades ago, the questions underpinning Lauterpacht's enquiry are therefore still relevant: how to negotiate the shifting boundaries between public and private law? Moreover, how do these spheres interact with international law? Finally, can private law become a vehicle for global governance?

Professor Peters' lectures took these questions as their starting point. For instance, the title of her series, 'Privatisation Under and Of Public International Law', suggests that the conduct of both states and non-state actors involved in privatisations is governed by international law. Crucially, it also gestures towards

the enormous influence wielded by corporations on the international plane. With this in mind, she offered a sustained reflection on whether private actors can forward the international rule of law.

Professor Peters identified three counter-trends that have recurred in recent decades: the privatisation of state services under the purview of international law, an increased reliance on corporations by international organisations, and the growing role of private actors in global governance. The first and second trends involve the subordination of businesses to public oversight in the traditional sense, so they are conceptually less problematic. More counterintuitive is the third phenomenon whereby global markets and multinational corporations are 'shaping the substance and structure' of international law, according to Peters.

As private actors increasingly engage in law making, law application and law enforcement, Peters urged that the public-private distinction should be maintained to delimit competences and ensure accountability. To this end, the state and private enterprises have distinct roles. In the field of human rights, for instance, delegation does not relieve states from the responsibility to ensure indiscriminate access to outsourced services. To this must be added the obligation of the state to guarantee the quality of these services. In this vein, Anne Peters follows the view articulated in the UN Guiding Principles on Business and Human Rights, according to which failure by states to satisfy these obligations may carry legal consequences.



Professor Anne Peters.

Overall, the role of municipal law in enforcing global standards is important to bear in mind. For instance, Professor Peters considers that transnational corporations should not be directly bound by international human rights law. In keeping with the above-mentioned distinction, she explained that companies are primarily accountable to states. This is a sensible approach, for rather than espousing the adoption of international rules that are difficult to enforce, it emphasises accountability at the national level, where it matters most. By highlighting the mediating potential of domestic law, Anne Peters offers a powerful means to achieve public and private governance closest to the

people concerned. Hersch Lauterpacht would have approved.

Audio and video recordings of the lectures are available online:

- **Part 1:** <http://sms.cam.ac.uk/media/2455212>
- **Part 2:** <http://sms.cam.ac.uk/media/2455233>
- **Part 3:** <http://sms.cam.ac.uk/media/2455267>

Dr León Castellanos Jankiewicz is a Max Weber Fellow, European University Institute. He was a Visiting Fellow at the Lauterpacht Centre between January and July 2017 and a Visiting College Research Associate at Wolfson College, Cambridge until August 2017.

Life @ the Lauterpacht Centre

A round-up of life in Cranmer Road, in pictures.



Top and left: a surprise Easter egg hunt organised by Visiting Fellow Sophia Henrich was rounded off with a delicious tea. Below: the Centre's summer party in June 2016. Bottom left: a dragonfly caught visiting the gardens in Bahrain House.





Above left: Visiting Fellow Max Brunner honing his building skills with boxes of wafers at coffee time... Above and right: the Cambridge University team practising for the Jessup Moot in February. Centre: Visiting Fellow Ran Guo was victorious in not one, but two sports during his year-long stay at the Centre – as a rower in the Town Bumps, and at Comberton Badminton Club. Bottom: the Visiting Fellows were treated to a candlelit dinner at Pembroke College formal hall in February, hosted by Dr Sarah Nouwen.





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