



THE UNIVERSITY OF
SYDNEY



International Law: The Year in Review

Sydney Centre for International Law (SCIL) – 6th Annual Conference

Friday 23 February 2018

Sydney Law School

Common Room, level 4

University of Sydney, Camperdown Campus

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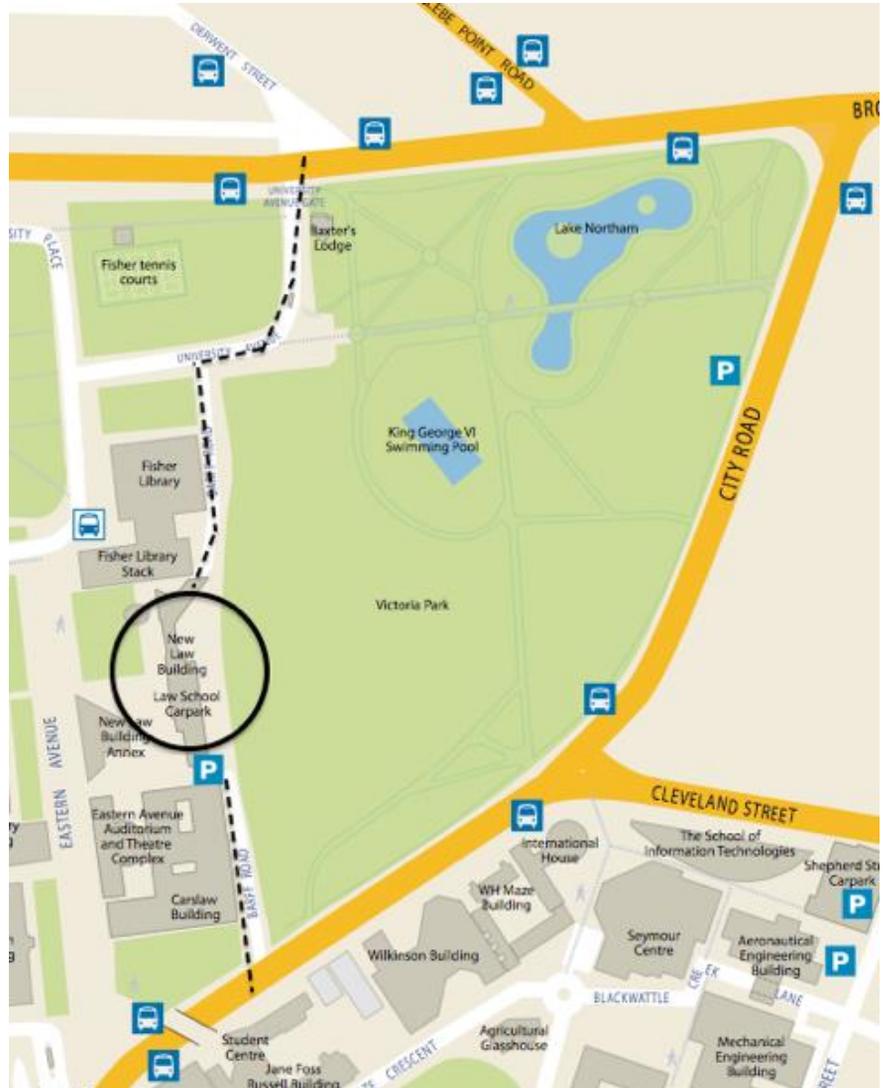
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LOCATION

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





8.45am - 9.00am	Registration
9.00am - 9.15am	Opening and Welcome from Centre Co-Directors: Professor Chester Brown and Ms Irene Baghoomians (University of Sydney)
9.15am - 10.00am	Session 1: Keynote Address – Senator Ivana Bacik , Reid Professor of Criminal Law, (Trinity College Dublin, The University of Dublin) “Marriage Equality and Abortion Rights in Ireland; Using International Law and Litigation to Achieve Progressive Social Change” Chair: Professor Simon Rice (University of Sydney)
10.00am - 10.30am	Morning Tea
10.30am - 11.30am	Session 2: Major International Law Cases in 2017 <u>Speakers:</u> Judith Levine (Permanent Court of Arbitration), “The Bangladesh Accord Arbitrations” Professor Natalie Klein (University of New South Wales) “Conciliation under Article 298 of UNCLOS between Timor-Leste and Australia (Timor-Leste v Australia)” Dr Alison Pert (University of Sydney), “A Review of Cases involving Australia relating to Questions of International Law in 2017 (Domestic and International)” <u>Chair:</u> Professor Chester Brown (University of Sydney)
11.30am - 12.30pm	Session 3: Treaty Making in 2017 <u>Speakers:</u> Patricia Holmes (Department of Foreign Affairs and Trade), “Free Trade Negotiations after the Trans-Pacific Partnership” Tim Wright (International Campaign Against Nuclear Weapons), “Treaty on the Prohibition of Nuclear Weapons” Justin Whyatt (Department of Foreign Affairs and Trade), “Negotiation of Treaty on the Protection of Biodiversity beyond National Jurisdiction” <u>Chair:</u> Dr Rayner Thwaites (University of Sydney)
12.30pm - 1.30pm	International Law Literary Lunch - Professor Peter Greste (UNESCO Chair of Journalism and Communications, University of Queensland) In Discussion with Ms Irene Baghoomians (University of Sydney) Professor Peter Greste appears by arrangement with Claxton Speakers International



1.30pm - 2.30pm	<p>Session 4: Developments in International Human Rights Law, Humanitarian Law and Criminal Law in 2017</p> <p><u>Speakers:</u></p> <p>Professor Sarah Williams (University of New South Wales), “African States and the ICC: The issue of actual or threatened withdrawal”</p> <p>Madeline Gleeson (University of New South Wales), “Offshore processing of asylum seekers and the US refugee swap deal”</p> <p>Mark Ierace SC (The Public Defenders, NSW), “Returning Foreign Fighters and International Criminal Law”</p> <p><u>Chair:</u> Associate Professor Jacqueline Mowbray (University of Sydney)</p>
2.30pm - 3.30pm	<p>Session 5: New Technologies and International Law</p> <p><u>Speakers:</u></p> <p>Associate Professor David Leary (University of Technology Sydney), “Technology: An Existential Threat to International Law?”</p> <p>Kobi Leins (University of Melbourne), “Let Slip the Drones of War?”</p> <p>Dr Rebecca Connolly (University of Sydney), “The Fragmentation of International Law, and the Challenges Posed by Advances in Technology”</p> <p><u>Chair:</u> Associate Professor Ed Couzens (University of Sydney)</p>
3.30pm - 4.00pm	Afternoon Tea
4.00pm - 5.15pm	<p>Session 6: Developments in International Economic Law in 2017</p> <p><u>Speakers:</u></p> <p>Professor Andrew Mitchell (University of Melbourne), “Update on WTO Proceedings re Plain Packaging”</p> <p>Ashlee Uren (Attorney-General’s Department), “Proposal before UNCITRAL Working Group on an Investment Court System”</p> <p>Professor Luke Nottage (University of Sydney), “Ramifications of NZ Resiling from ISDS: A Run-Around the Region”</p> <p><u>Chair:</u> Professor Vivienne Bath (University of Sydney)</p>
5.15pm – 5.30pm	<p>Conference Closing</p> <p>Centre Co-Directors: Professor Chester Brown and Ms Irene Baghoomians (University of Sydney)</p>
5.30pm - 6.30pm	Cocktail reception for conference participants



Ivana Bacik, Trinity College Dublin

Senator Ivana Bacik, LLB, LLM (Lond), BL, FTCD, is Reid Professor of Criminal Law, Criminology and Penology at Trinity College Dublin, a Senior Lecturer and Fellow of Trinity College Dublin, and a barrister. She is a Labour Party Senator for Dublin University (elected 2007, and re-elected 2011 and again in 2016), and was Deputy Leader of Seanad Eireann 2011-16. Ivana has written and published extensively on criminal law, criminology, human rights, constitutional law and related matters, and has a long track record of campaigning on civil liberties, penal reform and feminist issues. She was Editor of the Irish Criminal Law Journal from 1997-2003 and co-authored a major report on gender discrimination in the legal professions in Ireland (Gender InJustice, 2003). Her other publications include *Kicking and Screaming: Dragging Ireland into the Twenty-First Century* (O'Brien Press, 2004); and she is co-editor (with Mary Rogan) of *Legal Cases that Changed Ireland* (Clarus Press, 2016)".

Irene Baghoomians, University of Sydney

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

Vivienne Bath, University of Sydney

Vivienne Bath is Professor of Chinese and International Business Law at the University of Sydney Law School, where she teaches private international law. She is also Director of the Centre for Asian and Pacific Law and Director of Research at the China Studies Centre. She has published widely on Chinese law with a focus on investment and commercial law. Her most recent publication in the area of private international law is 'Overlapping Jurisdiction and the Resolution of Disputes before Chinese and Foreign Courts' (2015-2016) 17 *Yearbook of International Private Law* 111-150 (November 2016).

Chester Brown, University of Sydney

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



Rebecca Connolly, University of Sydney

Dr Rebecca Connolly is a Visiting Faculty member of the Sydney Law School. Rebecca specialises in international law, particularly in the areas of environment, trade and technology. Her research focuses on the conflicts of jurisdiction in international law, the proliferation of international courts and the development of international governance in relation to new technology. Rebecca was awarded her PhD from Sydney Law School in 2015 on the conflict of jurisdiction in relation to trade disputes involving agricultural biotechnology products. Rebecca also holds a Master of Laws from the University of Sydney and a Bachelor of Laws (First Class Honours) awarded in 2002. Rebecca has taught as a guest lecturer at the Harvard Kennedy School of Government and the Harvard Faculty of Arts, as well as at Sydney Law School. Rebecca is a guest editor of the *International Journal of Technology and Globalisation* for a special issue on Biotechnology and Law. Prior to commencing her academic studies, Rebecca worked for a number of leading Sydney law firms specialising in environmental law and litigation.

Ed Couzens, University of Sydney

Ed Couzens joined the University of Sydney Law School in early 2015 from the School of Law, University of KwaZulu-Natal, Durban, South Africa, where he lectured for 14 years and held the position of Associate Professor from 2009. He is an attorney of the High Court, South Africa; and holds the degrees of BA Hons LLB (from the University of the Witwatersrand), LLM Environmental Law (awarded jointly by the Universities of Natal and Nottingham), and PhD (from the University of KwaZulu-Natal).

Madeline Gleeson, University of New South Wales

Madeline Gleeson is a lawyer and Senior Research Associate at the Andrew and Renata Kaldor Centre for International Refugee Law. She holds a Master in International Law from the Graduate Institute of International and Development Studies in Geneva, Switzerland, which she completed after being awarded the prestigious John Monash scholarship in 2012. Madeline also holds a Bachelor in International Studies and Bachelor of Laws with First Class Honours from the University of New South Wales, and a Diploma of Political Studies from the Institut d'Études Politiques in Aix en Provence, France. Madeline has extensive experience working with forcibly displaced people around the world. She has worked on statelessness, refugees, human trafficking, labour migration and land grabbing with the Jesuit Refugee Service in Cambodia, and with the United Nations High Commissioner for Refugees and the International Catholic Migration Commission in Geneva.

Peter Greste, University of Queensland

Peter Greste is a journalist with 25 years' experience as a foreign correspondent. He covered the civil war in Yugoslavia and elections in South Africa as a freelance reporter, before joining the BBC as its Afghanistan correspondent in 1995. He went on to cover Latin America, the Middle East and Africa for the BBC where he worked from 2006-2011. That year he won a Peabody Award for a BBC documentary on Somalia before joining Al Jazeera as its East Africa correspondent. In December 2013 he was covering Egypt on a short three-week assignment when he was arrested on terrorism charges. After a trial widely dismissed as a sham, he was convicted and sentenced to seven years in prison. In February the following year, after intense international pressure, he was deported under a presidential decree. As a result of the letters he wrote from prison in the defense of freedom of the press, he won a Walkley Award in Australia in 2014, and Royal Television Society and Tribeca Disruptive Innovator's Awards in 2015. He has also been awarded the International Association of Press Club's Freedom of Speech Award; and the Australian Human Rights Commission Medal.



Patricia Holmes, Australian Department of Foreign Affairs and Trade

Patricia Holmes is a career Diplomat with the Australian Department of Foreign Affairs and Trade. She is currently Assistant Secretary, Trade and Investment Law Branch in the Office of Trade Negotiations, a position she has held since February 2015. Ms Holmes was Australia's Ambassador to Argentina, with concurrent non-resident accreditation to Paraguay and Uruguay, from November 2011 to December 2014. Prior to her appointment to Argentina, Ms Holmes was Assistant Secretary, FTA Legal Counsel Branch, a position she held since April 2010. Ms Holmes has served previously in Geneva WTO (Counsellor 2006-2009), Papua New Guinea (First Secretary 1998-2000) and Vanuatu (Third, later Second, Secretary 1994-1996). She has also served as a WTO Panellist. Ms Holmes holds a Bachelor of Science with a Bachelor of Law (Hons) degree from Macquarie University; a Graduate Diploma in Legal Studies from the University of Technology, Sydney; a Masters of Arts in Foreign Affairs and Trade and a Masters of Laws in Environmental Law from the Australian National University. Ms Holmes was admitted to the Bar of New South Wales and the Australian Capital Territory in 1992.

Mark Ierace SC The Public Defenders, NSW

Mark Ierace SC has practised as an international criminal lawyer in the UN International Criminal Tribunal for the former Yugoslavia, leading the team that prosecuted the commander of the Bosnian Serb forces that perpetrated the siege of Sarajevo. He has a Masters of International Law from Sydney University and from 2009 to 2012 was a Senior Visiting Fellow in International Criminal Law at the University of New South Wales, where he taught that subject. He has been a barrister since 1981, specialising in criminal law, both as a prosecutor and as defence counsel. He has practiced as a private barrister, in-house counsel for the Commonwealth Director of Public Prosecutions, counsel assisting the NSW Police Integrity Commission and as a Public Defender. He received silk in 1999. He is a member of the NSW Sentencing Council and has been the Senior Public Defender since 2007.

Natalie Klein, University of University of New South Wales

Dr. Natalie Klein is a Professor at UNSW Faculty of Law, Sydney, Australia. She was previously at Macquarie University where she served as Dean of Macquarie Law School between 2011 and 2017, as well as Acting Head of the Department for Policing, Intelligence and Counter-Terrorism at Macquarie in 2013-2014. Professor Klein teaches and researches in different areas of international law, with a focus on law of the sea and international dispute settlement. Professor Klein is the author of *Dispute Settlement and the UN Convention on the Law of the Sea* (Cambridge University Press, 2005) and *Maritime Security and the Law of the Sea* (Oxford University Press, 2011). She provides advice, undertakes consultancies and interacts with the media on law of the sea issues. Prior to joining Macquarie, Professor Klein worked in the international litigation and arbitration practice of Debevoise & Plimpton LLP, served as counsel to the Government of Eritrea (1998-2002) and was a consultant in the Office of Legal Affairs at the United Nations. Her masters and doctorate in law were earned at Yale Law School and she is a Fellow of the Australian Academy of Law.



David Leary, University of Technology Sydney

With a wide range of research interests Associate Professor David Leary broadly describes his research as “Law at the frontiers of science and technology”. He is best known internationally for his work relating to the law surrounding bioprospecting and the commercialisation of marine biotechnology. His work has focused in particular on the legal status of biotechnology developed from the biodiversity of extreme environments such as the deep sea in areas beyond national jurisdiction, the Arctic and Antarctica. Other areas of research interest include nanotechnology, synthetic biology, renewable energy and more recently the regulation of drones. Associate Professor Leary teaches undergraduate and postgraduate courses in Public International Law, Law of the Sea, International Environmental Law and Private International Law at the University of Technology Sydney. Prior to entering academia he had extensive experience as a lawyer in private practice and as an in house counsel for a public company.

Kobi Leins, University of Melbourne

Kobi Leins is a PhD candidate at the Law School at the University of Melbourne. Leins earned her Bachelor of Arts (Hons) and Bachelor of Law at Monash University (Australia). In 2003, she was admitted to practice as a Barrister and Solicitor of the Supreme Court of Australia. Her professional experience includes working for the United Nations, the International Committee of the Red Cross, and as a commercial litigator. Kobi is currently undertaking research on whether the use of nanotechnology enhanced or based weapons is prohibited or limited in an armed conflict, with a focus on the adequacy of article 36 weapons’ review for nanomaterials. Her broader interest is in the governance of new and emerging technology more broadly.

Judith Levine, Permanent Court of Arbitration

Judith Levine is Senior Legal Counsel at the Permanent Court of Arbitration in The Hague, an intergovernmental organisation currently administering 130 disputes amongst states, IGOs and/or private parties. Recently Judith served as the Registrar in the South China Sea arbitration, tribunal secretary in the Bangladesh Accord arbitrations, and assists tribunals in some of the world’s largest investor-state and commercial cases. She has represented the PCA at UN climate conferences and in 2011-2012 was the PCA Representative in Mauritius. From 2016-2017 Judith was a visiting lecturer on climate change disputes at King’s College London and is currently a visiting fellow at Sydney University’s Centre for International Law. Prior to joining the PCA in 2008, Judith practised in New York for five years in the arbitration group of White & Case. She has previously worked as a clerk at the International Court of Justice, adviser to the Australian Attorney-General, associate at the High Court of Australia and lecturer in contract law at UNSW.

Professor Andrew Mitchell, University of Melbourne

Andrew is Professor at Melbourne Law School, Australian Research Council Future Fellow, Director of the Global Economic Law Network, a member of the Indicative List of Panelists to hear WTO disputes, and a member of the Energy Charter Roster of Panelists. He has previously practised law with Allens Arthur Robinson (now Allens Linklaters) and consults for States, international organisations and the private sector. Andrew has taught law in Australia, Canada, Singapore, and the US and is the recipient of four major grants from the Australian Research Council and the Australian National Preventive Health Agency. He has published over 130 academic books and journal articles and is a Series Editor of the Oxford University Press International Economic Law Series, an Editorial Board Member of the *Journal of International Economic Law* and a General Editor of the *Journal of International Dispute Settlement*. He has law degrees from Melbourne, Harvard and Cambridge and is a Barrister and Solicitor of the Supreme Court of Victoria.



Jacqueline Mowbray, University of Sydney

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

Luke Nottage, University of Sydney

Dr Luke Nottage is Professor of Comparative and Transnational Business Law at the University of Sydney Law School, specialising in arbitration, contract law, consumer product safety law and corporate governance, with a particular interest in Japan and the Asia-Pacific. He is founding Co-Director of the Australian Network for Japanese Law (ANJeL) and Associate Director of the Centre for Asian and Pacific Law at the University of Sydney. He is also Managing Director of Japanese Law Links Pty Ltd. Luke has or had executive roles in the Australia-Japan Society (NSW), the Law Council of Australia, the Australian Centre for International Commercial Arbitration (ACICA), and the Asia-Pacific Forum for International Arbitration. He has contributed to several looseleaf commentaries and made numerous media appearances and public Submissions to the Australian government, especially regarding arbitration and consumer law reform. Luke was admitted as a barrister and solicitor in New Zealand in 1994 and in NSW in 2001. He has consulted for law firms world-wide as well as ASEAN, the European Commission, OECD, UNCTAD, UNDP and the Japanese Government.

Alison Pert, University of Sydney

Dr Alison Pert lectures in International Law and the Use of Armed Force at the University of Sydney. She also teaches public international law at post-graduate and undergraduate level. Her doctoral thesis on Australia's record as a good international citizen was published by Federation Press in 2014. After her Bar exams Alison spent five years in Papua New Guinea working in the Eastern Highlands Provincial Government and subsequently in the Department of Justice of the National Government. She returned to the UK to undertake her pupillage – one with (then) Professor Rosalyn Higgins – and a Master's Degree at University College, London, specialising in international law. Alison worked in the Attorney-General's Department, working in constitutional, international, and international trade law areas. She represented Australia at international organisations including Unidroit and the Hague Conference on Private International Law, and at the diplomatic conference at which the Conventions on International Financial Leasing and International Factoring were adopted. She then spent several years in private practice, mainly in commercial litigation, maintaining her interest in international law and lecturing in international trade law at ANU.



Simon Rice, University of Sydney

Immediately before joining Sydney Law School, Simon was a professor of law, and director of law reform and social justice, at the ANU College of Law. He has previously been a lecturer in the University of NSW Law Faculty 1989-1995 where he was director of clinical programs, and a senior lecturer in the Division of Law at Macquarie University from 2005-2007. He has won a number of teaching awards, most recently receiving a Citation for Outstanding Contribution to Student Learning at ANU in 2015. After a period in private commercial practice he worked as a poverty lawyer at Redfern Legal Centre in Sydney and co-founded Macarthur Legal Centre. He was principal solicitor and director of Kingsford Legal Centre while director of clinical programs at UNSW. He has practised extensively in poverty law in community legal centres, particularly anti-discrimination law. Simon has also trained and advised a wide range of businesses, agencies and NGOs, and has consulted to NGOs on organisational management and strategic planning. He has consulted on and conducted training courses in human rights, legal aid and legal education in Indonesia, Vietnam and China.

Rayner Thwaites, University of Sydney

Dr Rayner Thwaites is ARC Discovery Early Career Researcher in the University of Sydney Law School. His research project, Conditional citizenship: Revocation's Implications for Australians (No. DE160101123) is a comparative study of contemporary law on deprivation of citizenship status, focussing on Australia, Canada, New Zealand, the United Kingdom and the United States, and analysing the interaction between domestic and International law on nationality. Rayner's research concerns comparative public law as between common law jurisdictions. His particular interests are the relationship between different disciplines of public law: administrative, constitutional and international law, and between rights instruments and their wider legal context. His main substantive areas of research are citizenship, immigration and national security, and in particular the nexus between them. Rayner is the author of, among other publications, *The Liberty of Non-Citizens: Indefinite Detention in Commonwealth Countries* (Hart Publishing, 2014).

Ashlee Uren, Attorney-General's Department

Ashlee Uren is a Legal Officer in the Office of International Law, Attorney-General's Department. Ashlee currently practices in the areas of international trade, investment, economic and environment law. Ashlee holds a Bachelor of Laws and a Bachelor of Arts majoring in International Relations from the University of Western Australia in Perth, where she was recipient of the Ciara Glennon Scholarship and the Geoff Adjuk Memorial Prize. Ashlee was admitted as a Solicitor of the ACT Supreme Court in December 2014.

Sarah Williams, University of New South Wales

Sarah is a Professor at the University of New South Wales. She was the Dorset Fellow in Public International Law at the British Institute of International and Comparative Law (from 2008 - 2010), a Senior Legal Researcher at the UK Foreign and Commonwealth Office (from 2006 - 2007) and a Lecturer at Durham Law School, University of Durham (from 2003 - 2008). Sarah has acted as a consultant to the European Commission, the British Red Cross, the International Federation of the Red Cross and the British Institute of International and Comparative Law. Her main research areas include international law, in particular international criminal law, international humanitarian law and international disaster law. Sarah's book, on Hybrid and Internationalized Criminal Tribunals, was published in 2012. Her current research includes two projects funded by the Australian Research Council: (1) on evaluating the role of the amicus curiae in international criminal justice; and (2) transformative reparations for sexual and gender based violence.



Justin Whyatt, Department of Foreign Affairs and Trade

Justin Whyatt is the Assistant Secretary (Legal Adviser), Sanctions, Treaties and Transnational Crime Legal Branch at the Department of Foreign Affairs and Trade. Justin's branch is responsible for advice on law of the sea issues. This includes leading negotiations for a new treaty on biodiversity beyond national jurisdiction, as well as DFAT's engagement in the maritime boundary conciliation with Timor-Leste under UNCLOS. Justin has previously served as Director of the Sea Law, Environment Law and Antarctica Section, Counsellor (Political) at the Australian Embassy in Washington DC, Director of the Middle East Section, and Third and later Second Secretary at the Australian Embassy in Phnom Penh. Justin has worked on a variety of legal issues during his DFAT career including law of the sea, use of force, international humanitarian law, terrorism, sanctions and transnational crime. Justin holds a Bachelor of Laws (Honours) and Bachelor of Arts from the University of Queensland.

Tim Wright, International Campaign Against Nuclear Weapons

Tim Wright is Asia-Pacific Director of the International Campaign to Abolish Nuclear Weapons (ICAN), which won the Nobel Peace Prize in 2017 "for its work to draw attention to the catastrophic humanitarian consequences of any use of nuclear weapons and for its ground-breaking efforts to achieve a treaty-based prohibition of such weapons". He helped establish the campaign in 2006 and spent more than a decade advocating for the negotiation of a global ban on nuclear weapons. On 7 July 2017, 122 nations voted to adopt the historic UN Treaty on the Prohibition of Nuclear Weapons, laying the legal foundations for a nuclear-weapon-free world. Tim studied law and arts, with a major in international relations, at the University of Melbourne.