

Grotius Centre Newsletter

Autumn 2018



**Universiteit
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Grotius Centre for
International Legal Studies

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Welcome To the Newsletter!



Grotius Centre
for International
Legal Studies



Dear colleagues,

What an exciting year it has been. The new Masters of Laws in Advanced Studies in International Dispute Settlement and Arbitration is off to a flying start. The Summer Schools were a great success. Robert Heinsch and the Kalshoven-Gieskes Forum have launched their new MOOC on International Humanitarian Law. And it is wonderful to see the many other activities all staff have been involved in—congratulations to everyone!

Enjoy the well-deserved holidays!

Professor Eric de Brabandere

Director, Grotius Centre for International Legal Studies



Dear all,

2018 has ended on a high note. Looking over this Newsletter I am reminded of all the amazing ways everyone has continued to explore the frontiers of international law, and the diversity of teaching and research activities everyone has been involved in. It is really wonderful to see.

I hope that you all have a lovely and refreshing holiday break, and I look forward to seeing everyone in the new year!

Professor Carsten Stahn

Coordinator, Exploring the Frontiers of International Law Research Programme, Programme Director (The Hague)

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Catherine Harwood Defends her PhD

On 7 November 2018, Catherine Harwood successfully defended her PhD entitled ‘Navigating Between Principle and Pragmatism: The Roles and Functions of Atrocity-Related United Nations Commissions of Inquiry in the International Legal Order’.

CATHERINE HARWOOD’S time with the Grotius Centre officially came to an end in November with her successful PhD defence.

Hailing from New Zealand, Catherine started her career at the New Zealand Court of Appeal working as a Judge’s Clerk.

Her previous experience with public international law had been minimal. Other than some human rights courses in her undergraduate degree, she had not studied public international law in detail before. Nevertheless, the exposure that she did have to the field sparked her interest and she began looking to further her knowledge and experience.

“I thought a dedicated masters programme was a good way to do that”, she says, and Lei-

den University’s Master of Laws in Advanced Studies in Public International Law looked like an excellent option.

She was fortunate enough to receive a Rotary Vocational Scholarship to pursue the degree, and shortly after left her Wellington home to specialise in peace, justice, and development in The Netherlands.

The LLM triggered her further interest in undertaking a PhD at the Grotius Centre for International Legal Studies, ably supervised by Professors Larissa van den Herik and Carsten Stahn.

While Catherine ultimately settled on commissions of inquiry as the focus of her research, the project she commenced was a little

different.

“The project was initially broader”, she says while reflecting on her five years with the Centre. “It was looking at fact-finding missions more generally”.

In the first year of conducting research, she honed in on commissions of inquiry tasked with examining situations of mass atrocities as a particular subset of fact-finding mechanisms.

“The reason why I found these bodies so intriguing was that there was a quite a number of them that were established, particularly in the UN context”, she says.

“They had a lot of the hallmarks of legal bodies in terms of their composition and the focus of their mandates. Their findings and re-

ports were being utilised by legal actors, as well as political bodies”.

“I wanted to explore what the role and function of these entities was”.

During her PhD, Catherine made connections with other institutions that were also involved in researching fact-finding initiatives and bodies.

“It was great to have so many opportunities to explore my research through conferences and publications, in addition to writing the thesis”, she says.

“I was lucky enough to go to Florence, where Morten Bergsmo was organising a symposium. The output of that got turned into a book”.

“Then, in 2013, Larissa, Carsten, Dov Jacobs and I went to New York to participate in a human rights fact-finding conference at NYU.

“Larissa and I then continued to St Louis in 2015 for another conference on *jus ad bellum*, where commissions of inquiry were also discussed”.

Perhaps through this exposure to other scholars and practitioners, Catherine found that keeping abreast of developments in the field was sometimes challenging.

“I was working in an area where there was so much contemporary development”, she says. “As opposed to doing a PhD on a topic that is more classical, things were changing on the ground all the time”.

“I need to be able to live with the fact that certain aspects of my work might be out of date pretty quickly. But that’s the nature of engaging with something that is of high contemporary relevance”.

The circumstances under which commissions of inquiry are created may well mean that the rapid pace of developments in the field will never change.

“When one of these bodies is established”, Catherine says, “it’s often under circumstances of quite intense attention, both political and

institutional from within the UN and outside”.

“There can be quite a lot of pressure to set these things in motion quickly, and I hope that my the thesis might help guide that decision-making process”.

“I didn’t write the thesis to make specific recommendations about what commissions of inquiry ought to do, but instead take the lie of the land and identify the different choices that mandating authorities and commissions make and the consequences of those choices so that when commissions are being established and implemented, there’s a good understanding of linking the goals of fact finding to the outcomes”.

There is, of course, more work to be done. “I think, personally, inquiry is emerging into its own discrete area of practice”, Catherine remarks.

“One of the limitations of my research was that it was written from an outsider’s perspective. I wasn’t privy to sitting inside a commission. A lot of the information comes from public sources or informal conversations with fact-finding practitioners”.

“What would be great is for someone to build on the valuable work already done by the OHCHR and other entities to give more operational guidance to fact-finding practitioners”.

In January 2019, Catherine moved to New York where she works within the United Nations Office of Legal Affairs in the Division for Ocean Affairs and the Law of the Sea.

But she will look back on her time at the Grotius Centre fondly.

“I really enjoyed collaborating with Leiden colleagues on research”,

she says. “It was a really terrific place to do a PhD”.

Working Papers

The Grotius Working Paper Series gives Leiden academics the possibility to publish English language papers that have been accepted for publication on SSRN, so long as reviewer comments have not been implemented.

Since the Spring 2018 newsletter, the following additional papers have been published in the series:

- > Grotius Centre Working Paper 2018/082-PIL: Larissa van den Herik and Emma Irving, *Due Diligence and the Obligation to Prevent Genocide and Crimes against Humanity*
- > Grotius Centre Working Paper 2018/081-PIL: Eric de Brabandere, *Measures of Constraint and the Immunity of International Organisations*
- > Grotius Centre Working Paper 2018/080-IEL: Eric de Brabandere, *Amicus Curiae (investment arbitration)*
- > Grotius Centre Working Paper 2018/079-IEL: Eric de Brabandere, *(Re)calibration, Standard-Setting and the Shaping of Investment Law and Arbitration*
- > Grotius Centre Working Paper 2018/078-IEL: Eric de Brabandere, *Human Rights Counterclaims in Investment Treaty Arbitration*
- > Grotius Centre Working Paper 2018/077-ICL: Jens Iverson, *Disarming the Trap: Evaluating Prosecutorial Discretion in Preliminary Examinations beyond the False Dichotomy of Politics and Law*



Advanced LLM in International Dispute Settlement and Arbitration

The new Advanced Masters of Laws in International Dispute Settlement and Arbitration has commenced, heralding in a successful start to the 2018-2019 academic year. Ioana Moraru explains what students can expect from this exciting new degree.

THE GROTIUS CENTRE for International Legal Studies of Leiden Law School is offering for the first time an advanced master in International Dispute Settlement and Arbitration (in short “IDSA”). Prof. Eric De Brabandere, Programme Director, describes the master as one which “focuses on public international law, but blends in private law dimensions, equipping graduates with skills for a new legal landscape since the requisite skill sets for private or public arbitration or dispute settlement are merging”.

In its first year, the Advanced Master attracted 15 students with diverse backgrounds from all around the globe. Most students have already an established career in their home countries and the programme offers them a

chance to enter the international law field. “Choosing the new IDSA programme was a no-brainer. I believe this programme appeals to all those who, as I, have a passion for public international law but wish to focus on its most practical facet: litigation”, says Nicolas Bianchi, a current student.

Many of the teaching staff are arbitrators, attorneys-at-law or prominent members of international organizations such as the Permanent Court of Arbitration and the International Court of Justice. This is an incredible added-value to the course, as explained by current student Stephan Kugler: “Being taught not only by academics but mainly by practitioners is without any doubt the outstanding

strength and advantage of this program”. In addition to the theory, the students are trained in professional skills, including drafting arbitral awards and arguing written and oral motions in courses such as Negotiation and Mediation and Legal Writing, Advocacy and Litigation Techniques.

The programme extends beyond the classroom as students have the opportunity to meet the most prominent scholars and lawyers in the field through lectures such as when Dr. Anthea Roberts, a specialist in public international law, investment treaty law and arbitration, and comparative international law, gave a thought provoking lecture on “Is International Law International?” during the opening

of the programme. In addition to receiving invitations to exclusive conferences and seminars such as The Grotius Dialogues Series, The Hague Courts Dialogue Series and The P.R.I.M.E. Finance Annual Conference, the students have the opportunity to visit the International Court of Justice and the Permanent Court of Justice, where they can see the theory dealt with during the courses put in practice.

To sum up the value of the programme in just a few words, Johann von Pachelbel, student, comments: “the programme offers

a priceless insight into the dynamics and functioning of the international legal system through its ambitious curriculum and world renowned lecturers”.

 *Ioana Moraru*

Feeling curious?

If you wish to find out more about the IDSA programme, visit the [programme website](#) or contact the programme coordinators at AdvancedIDSA@LAW.leidenuniv.nl

Heritage Destruction, Human Rights and International Law

From 27 August to 1 September the Grotius Centre organised a summer school on ‘Heritage Destruction, Human Rights and International Law’ in close cooperation with the Leiden-Delft-Erasmus Centre for Global Heritage and Development and the Netherlands Commission for UNESCO. Organised by the inter-faculty team of the Grotius Centre’s Joe Powderly and the Faculty of Archaeology’s Amy Strecker, the summer course is one of the few programmes of its kind, focusing explicitly on cultural heritage protection within international law. The programme brought together a range of professionals, PhD researchers and students involved with or working on issues related to the protection of cultural heritage. The energetic group included participants not only from the field of public international law but also from other disciplines, such as history, architecture, archaeology, philosophy, international relations, and heritage management.

The course provided a comprehensive introduction to the various domains of international law that touch upon the issue of cultural heritage destruction, such as international humanitarian law, international criminal law, human rights and the rights of indigenous peoples, and laws relating to the looting and illicit trade of cultural property. To this end, students heard from a number of experts on cultural heritage law from across the globe, such as Dr. Alessandro Chechi, Dr. Amy Strecker, Dr. Marina Lostal, Dr. Elisa Novic, and Dr. Anna Meijknecht. Other speakers included Grotius staff members Dr. Joe Powderly, Evelien Campfens and Sophie Starrenburg.

The participants also heard from practitioners involved in the prosecution of acts of cultural heritage destruction, such as Dr. William Tomljanovich (formerly of the Office of the Prosecutor of the ICTY) and Gilles Duterte (Senior Trial Attorney at the Office of the Pros-

ecutor of the ICC). This included a visit to the International Criminal Court, where the participants were able to discuss Mr. Duterte’s experiences at the ICC, as he has been closely involved in the Al Mahdi and Al Hassan proceedings at the International Criminal Court concerning the destruction of cultural heritage in Timbuktu, Mali.

Fittingly, the course concluded with a reception and tour of the National Museum of Antiquities in Leiden. Thanks to the success of the first edition, a second edition of the programme will be organised in the summer of 2019.

 *Sophie Starrenburg*



Floris Tan Goes to Strasbourg!

Photo by Flickr user Marius Brede, used under the Creative Commons licence.

In late 2017, PhD candidate Floris Tan spent four months in Strasbourg at the European Court of Human Rights on a study visit. The experience provided exciting insights into his research, which he shared in several publications.

FLORIS TAN, PhD candidate at the Grotius Centre, spent the final four months of 2017 at the European Court of Human Rights in Strasbourg for a study visit. During this time, he worked as a member of the Registry, more specifically in the Directorate of the Jurisconsult. After all formalities had been finalised and after having taken an intensive French language course, Floris travelled to Strasbourg for a plunge into European human rights law, and especially a closer look at the practice of the Court.

The Directorate of the Jurisconsult is currently in the process of publishing a series of Case-Law Guides on each substantive provision of the ECHR, as part of its efforts of

disseminating ECHR knowledge. Floris contributed to this effort by working on and co-authoring the Guide on Article 18 of the ECHR. This under-explored provision until recently led a largely dormant existence, but was re-discovered and effectuated in recent case-law. The provision, which prohibits States from restricting ECHR rights for purposes other than prescribed in the Convention, essentially safeguards against restrictions of rights for ulterior purposes and in pursuit of hidden agendas. By way of example, several States have used their criminal justice systems and their powers of detention to take out political dissidents, detaining them under false pretences – sometimes at tactical moments in order to frustrate

their political ambitions. Such limitations of rights under the guise of legitimate purposes go against the assumption of good faith underlying the Convention, which presupposes that all States share a common goal of reinforcing human rights and the rule of law.

Beyond the shared publication of the [Case-Law Guide](#) with the ECtHR, Floris was also inspired to write about this topic academically. During his stay in Strasbourg, the Grand Chamber of the Court reinterpreted and re-purposed Article 18 as a safeguard for democracy and the rule of law – as Floris argues in an article for the *Goettingen Journal of International Law* (forthcoming December 2018) – and it has clearly taken up a prominent role in

the Court's case-law. Whereas before November 2017, a total of 6 final violations of Article 18 had been found since 1954, since then there have already been 5 violations, amongst them being two very high profile cases. Floris has written about these cases in case notes for the Dutch journal *European Human Rights Cases*, and has written a [blog post](#) on the ECHR Blog on the recent Grand Chamber judgment in *Navalnyy v Russia*, where the Court found that arrests of opposition leader Navalnyy during political manifestations had 'pursued an ulterior purpose within the meaning of Article 18 of the Convention, namely to suppress that political pluralism which forms part of "effective political democracy" governed by "the rule of law"'. This fits well into Floris' prediction in *Go-JIL* that the Court has initiated a 'new dawn' for Article 18, and thereby aims to fulfil its *raison d'être* according to the drafters: to function as

the conscience of Europe, sounding the alarm when totalitarianism resurfaces.

Beyond his specific work on Article 18, Floris also gained valuable insights into the workings of the Court. Working for one of the transversal sections of the Registry provides great insights into the internal functioning of the various sections within the Court (and the huge importance of the Registry for the Court's work), and this was brought to life further through weekly meetings with the Dutch judge and her Registry lawyers. Further, working in Strasbourg really contextualises the institutional functioning of the Court within the Council of Europe. Attending a landmark judgment striking out over 12,000 applications and transferring them to the docket of the Committee of Ministers (CoM) as an issue of execution of judgments (*Burmych v Ukraine*) and a CoM session referring the politically

sensitive Ilgar Mammadov case back to the Court for its view on whether Azerbaijan was required to release a political prisoner pursuant to an earlier judgment, really casts the institutional relationship between the Council and the Court in very concrete terms.

Finally, Floris was able to discuss his PhD topic with practitioners who develop the law in this field, which was both an invaluable contribution and an inspiration to his research.

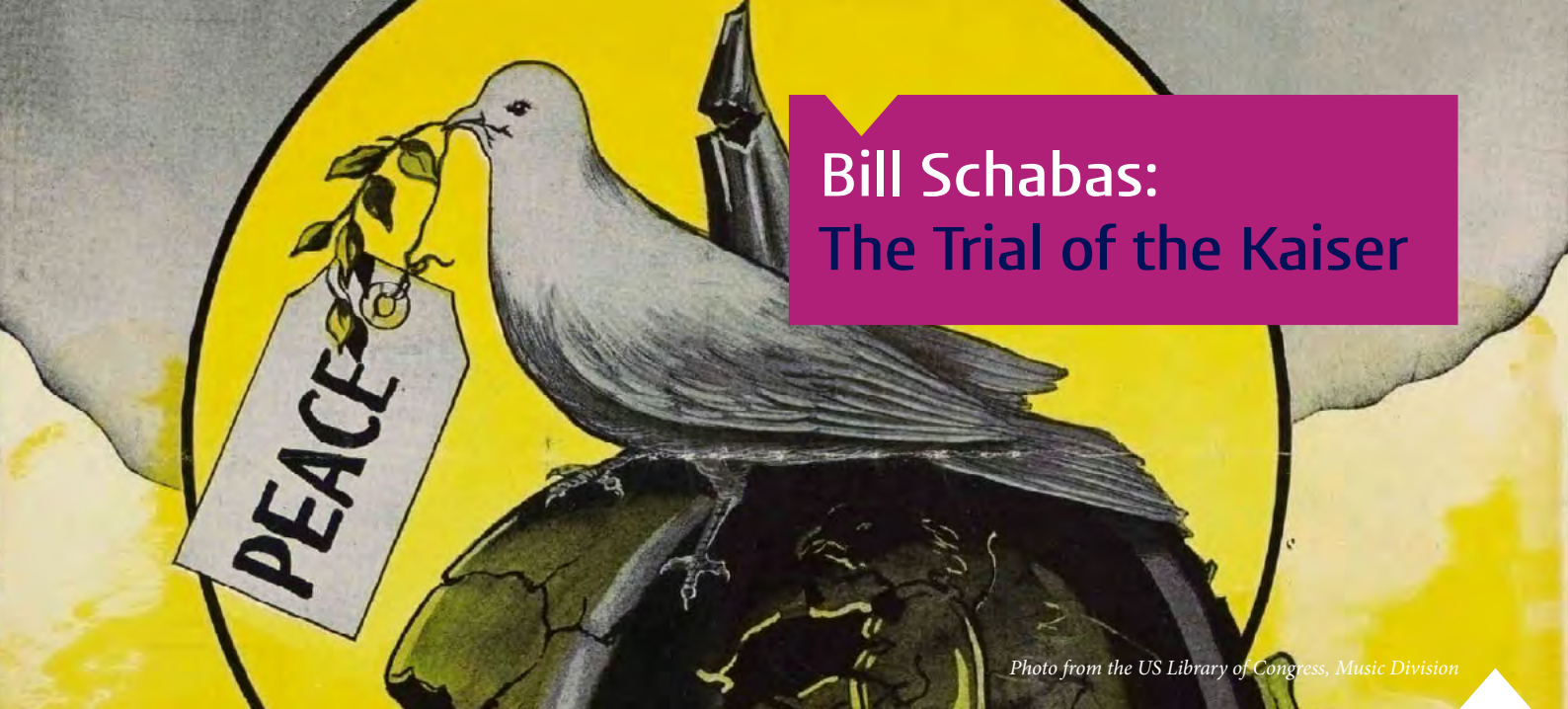
Floris is very grateful to the Grotius Centre, the LUF/Kroese-Duijsters Fund and the ECtHR for the opportunity to spend four months in Strasbourg.

He can recommend it to anyone, and is open to discuss it with anyone interested!

🌸 Floris Tan



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Bill Schabas: The Trial of the Kaiser

Photo from the US Library of Congress, Music Division

Bill Schabas's exciting new book, *The Trial of the Kaiser*, tells the story of the greatest historical trial that never was. He spoke with the Grotius Centre Newsletter about how he came to shed light on this neglected, but dramatic, area of international criminal law history.

THE TRIAL OF THE KAISER is not something commonly taught in lessons on international criminal law. There are no judgments to pour over; no pearls of legal wisdom that can be gleaned from volumes of official records of proceedings. Unlike Nuremberg, classes of students don't sit in dimmed rooms listening in awe to Robert Jackson's historic opening address, captivated by the faces of defendants immortalised on black and white film sitting behind a dock listening through earpieces and pondering the fate awaiting them.

The trial of the Kaiser never happened.

"It was not something that struck me as being of any particular importance", says Professor William Schabas, whose book on the trial

that never was has just been published by Oxford University Press. Why would it? History is littered with examples of individuals never being prosecuted for alleged international crimes.

But then Bill noticed something was happening. Citations were being made to an historic commission that was set up to report on those responsible for the war and the means through which they could be prosecuted.

"The International Criminal Court started citing the Commission on Responsibilities in the decisions on the Bashir Arrest Warrant", he says. "That piqued my interest".

Looking into it further, Bill found that conclusions were being drawn that were not as

simple as they were made out to be.

"Article 227 of the *Treaty of Versailles* was being invoked as the first indication of the removal of immunity of heads of state from prosecution", says Bill. "That never seemed obvious to me".

"The idea that trial represented some major precedent or change also seemed a flawed point, because it was actually the first attempt at international prosecution, ever".

Where did these assumptions come from? What were the arguments to justify the prosecution? And why wasn't there much information readily available?

Bill started visiting archives. The records he found in France, Britain, and America led to

more records, which led to more records. “It was like peeling an onion”, he describes, “I just discovered more and more layers of this”.

“I had never seen any international criminal lawyers cite this material”.

Soon, he was sitting on a mound of thousands and thousands of pages of information about the work of the Commission on Responsibilities, carefully trawling through them to find out just *what* had gone on in the dying days of the Great War.

“The materials are much richer than what we have for the Second World War”. Bill explains. “There’s a lot more to look at than what we had from the UN War Crimes Commission and the London Conference”.

Then there was the political dimension. “I read memoirs, archived papers, diplomatic correspondence”, he says, concluding that “it’s a case where legal history is particularly relevant to our modern day legal problems”.

Writing an accessible, engaging book was the goal from the very beginning of the project. Fortunately, Oxford University Press was on the same wavelength.

On the shelf of a legal library, *The Trial of the Kaiser* immediately looks out of place thanks

“ It was like peeling an onion! I just discovered more and more layers

a number of quite jingoist pieces of music that were written in the US and, I suppose, in the UK as well”.

One in particular grabbed his attention: a 1917 publication of a song entitled *We’re Going*

to its peculiar cover. “I trawled through the internet for anything that had to do with the trial of the Kaiser”, says Bill. “There were

to Hang the Kaiser under the Linden Tree.

“I went onto eBay and got an original of it. When I talked about the cover with OUP and showed it to them, their artists were able to turn it into what you see on the book”.

“We removed the part on hanging the Kaiser. As someone associated with the abolition of capital punishment, that would not have been appropriate”.

“But the colouring and the lettering

is much the same, and copied from the style of the lettering on the original piece”.

The price also makes the book attractive to a broad audience. “One of the problems is that if you try to be accessible in legal academic writing for the broader public, if you publish it with an academic publisher who sells it for one hundred and twenty pounds, it will never

become that because the price is everything”.

The book—in hardback—retails for just twenty-five pounds.

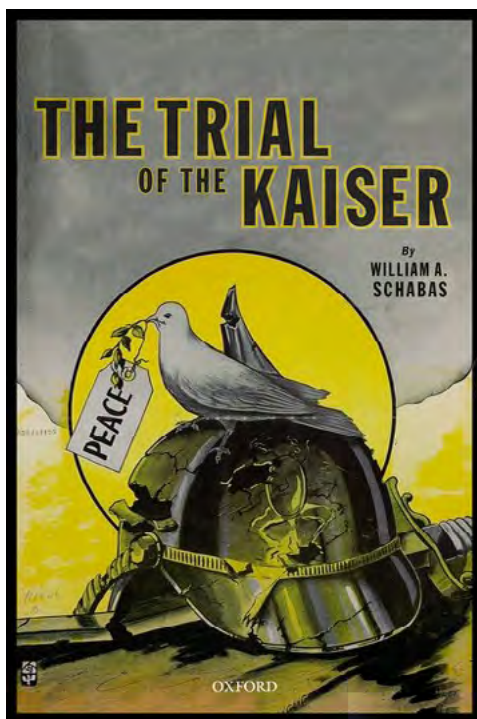
Of course, *The Trial of the Kaiser* is a work of historical legal scholarship. “OUP is an academic publisher”, explains Bill, “and the book did go through the rigorous peer review that any academic work does”. The fact that the book is being read both by historians and the general public is significant achievement.

Now the book is on shelves, Bill has been wondering whether the next chapter in the story of the trial that never was will be a film or a play. “I don’t have the skills or the means to do that”, he concedes, “but if I were to meet a filmmaker or a playwright and they were sold on the idea, I’d love to be involved in that”.

He also has been thinking about teaching a class to share his skills and experience from the archival research. “I think that one could say, in general, that there is a growing interest among international lawyers and international criminal lawyers to look at these historic dimensions”.

“I’d love to teach a class where students could study historical archival documents and learn how to find them”, he says.

And his aspirations for the book? “I hope people read it and enjoy it, and recognise it’s meant to be an accessible, readable book. But also that it’s a serious piece of scholarship”, Bill says. “They’ll be entertained, but they’ll also find answers”.



Get the book!

Professor William Schabas's *The Trial of the Kaiser* is now available at Oxford University Press for £24.99.



Summer Schools 2018

The Grotius Centre has had another outstanding summer in 2018, with new summer programmes being offered. We welcomed 296 students and professionals from all over the world to The Hague and Leiden for our eight exciting and innovative courses.

NEVER BEFORE has there been so much diversity in countries of origin: participants hailed from Mauritius to Pakistan, and from Guatemala to Russia. This diversity was matched by the variety in topics and themes that were discussed in the programmes.

The summer started with the newly established Duke-Leiden Institute in Global and Transnational Law, organized in cooperation with Duke University School of Law, ranked 1st in the Times Higher Education World University Rankings. This one-month programme offered courses taught by lecturers from both Duke Law School and Leiden Law School. Participants enjoyed classes on diverse topics, such as the Authority and Legitimacy

in International Adjudication course by Prof. Carsten Stahn and Prof. Laurence Helfer, and the lectures on Strategic Human Rights Litigation and Advocacy by Prof. Helen Duffy and Prof. Jayne Huckerby. The programme provided plenty of opportunities for cross-Atlantic exchange of thoughts and ideas. We are happy to announce that the second edition of the Duke-Leiden Institute will take place from 16 June to 17 July 2019.

Another new addition to the summer programmes is the Summer School on Heritage Destruction, Human Rights and International Law, coordinated by Dr. Joseph Powderly and Dr. Amy Strecker. The School attracted participants with a variety of backgrounds, from ac-

ademia and the judiciary to the cultural heritage sector. They enjoyed a unique programme with lectures on Cultural Genocide, ISIS and the Art Market, and a session by Marielies Schelhaas of the Netherlands UNESCO Commission on What Can, Should and Does UNESCO Do? with regards to preventing and prohibiting heritage destruction. The programme was concluded by a visit to the historical National Museum of Antiquities in Leiden. This successful collaboration between the Grotius Centre and the Leiden-Delft-Erasmus Centre for Global Heritage and Development will be continued with the second edition from 26 to 30 August 2019.

Numerous participants also took part in our

longer-standing programmes. The Summer School on International Criminal Law, for example, was taking place for the sixteenth time. The school was the perfect opportunity to celebrate the 20 years of the Rome Statute with a special panel discussion on the topic. Another example is the Summer School on Human Rights and Transitional Justice which focused on the topic of environmental protection for its seventh edition. Participants explored the topic through captivating lectures, case studies presented by experts and a thought-provoking panel discussion on “An ecocentric or anthropocentric approach towards post-conflict environmental protection: which would better serve the goals of transitional justice and peacebuilding?”. The programme was led by Dr. Jens Iverson and Dr. Daniëlla Dam-de Jong.

The participants in this year's July summer programmes had furthermore the opportunity to get to know each other and to be introduced to other fields of public international law during our open Step Talks held twice a week on the Spanish Steps in the Wijnhaven Building. These evening talks offered the chance to hear about The Influences of the Common Law and Civil Law Traditions on International Adjudication from Judge Donoghue of the International Court of Justice, about The Future of International Financial Disputes from Judge Baragwanath of the Special Tribunal for Lebanon, and from Judge Morrison of the International Criminal Court on International Law – The Road Less Travelled. Guest speakers from Eurojust and the Dr. Denis Mukwege Foundation completed this wide spectrum of short lectures.

🌸 *Marcella Klinker*

Want to join us in 2019?

The Grotius Centre's summer programmes are taught by renowned international law professionals with specialist expertise, giving you the chance to stand out and to take your knowledge to the next level.

Be sure to check out the 2019 Summer Schools our [website](#).

You can contact [Tinia De Bruycker](#) for more information.





John Dugard: Confronting Apartheid

Photo by flickr user Kyle Taylor, used under the Creative Commons licence

In *Confronting Apartheid*, John Dugard reflects on his experiences with apartheid in South Africa, Namibia, and Palestine. The book serves as a timely reminder of the lessons of history and the importance of not repeating the wrongs of the past.

IN THE WORDS OF Archbishop Desmond Tutu, Professor John Dugard's new book, *Confronting Apartheid*, "serves to remind us of the depths to which humankind may sink in its determination to secure the supposed superiority of one racial group over another".

Dugard is particularly well placed to write about apartheid, having experienced its effects first-hand in South Africa and Namibia, and through his work as the United Nations Special Rapporteur on Human Rights in Occupied Palestine. He is also a respected international lawyer, having served as a judge *ad hoc* of the International Court of Justice and as the director of both the Grotius Centre for International Legal Studies at Leiden University and the

Lauterpacht Centre for International Law at the University of Cambridge.

"The book is about my personal experiences in Namibia, South Africa, and Palestine, coping with apartheid", he explains. "It is personal on one level, but at the same time, it provides a history of the three regions, all from the perspective of apartheid".

"Of course, South Africa and Namibia are not particularly controversial because it is commonly accepted that apartheid was practiced in these two countries. But the controversial part", says Dugard, "deals with Palestine".

"There I examine the question of whether apartheid is practiced in the Occupied Palestinian Territory from the perspective of the

Rome Statute".

Dugard has obviously been deeply affected by his experiences and is worried that if the lessons of the past are not heeded, human rights violations will continue.

He describes that one motivation for writing the book was to remind South Africans of what apartheid was. "There is the risk", he reflects, "that South Africa will forget the past".

"But the main purpose is to warn people that apartheid can be applied in other societies, like Palestine, and people should not allow history to repeat itself".

As a lawyer, Dugard approaches the three cases in the book from a legal perspective. "My book is not so much concerned with the role of

“There’s a clear double-standard, and that’s what troubles me

civil society and political institutions in bringing about change”, he explains. “As a lawyer, I look at it through the spectrum of the law”.

Nevertheless, he does not shy away from engaging with the big political problems that he argues have contributed to the current situation.

“I’m particularly concerned about the way in which Israel is treated, compared to the way in which apartheid South Africa was treated”, Dugard stresses. “My assessment of the situation is that there’s very little difference between apartheid in the two societies. If anything, the apartheid that is practiced in the Occupied Palestinian Territory is worse”.

“But the international community, particularly the West, is prepared to accept Israel in a way in which South Africa was not accepted”.

“For instance, there’s no serious attempt to sanction Israel for its violations of international human rights and humanitarian law. Whereas in the case of South Africa, it was subjected to very severe sanctions”.

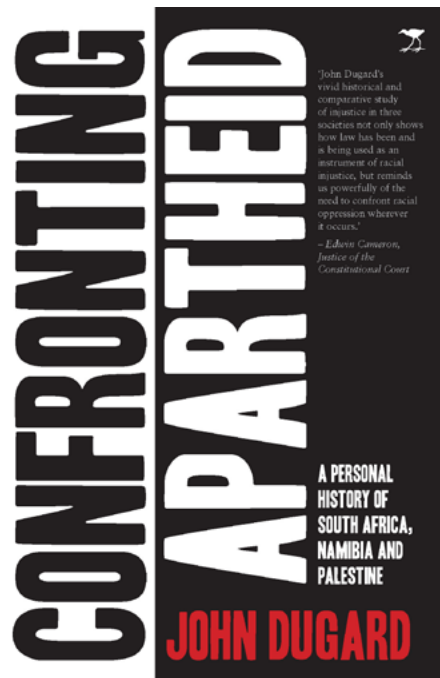
“There’s a clear double-standard, and that’s what troubles me”.

One reason, Dugard argues, is the influence of powerful pro-Israel lobby groups in Western societies. “The second, and perhaps most important of all”, he explains, “is the threat of being labelled anti-Semitic. This is a tremendous deterrent to becoming involved in a criticism of Israel”.

“To be labelled anti-Semitic has terrible consequences for a person’s career and social life. So politicians are determined not to be placed in a situation where they are accused of being anti-Semitic by taking action against Israel”.

Dugard also worries that political pressure is influencing the work of the International Criminal Court, and hindering its capacity to respond to the “most serious crimes of concern to the international community as a whole”.

Despite what has been occurring in Palestine, he says, “the Prosecutor of the ICC is not prepared to take action”.



“It’s clear the reason is not legal, but that there’s political pressure brought to bear on [the Prosecutor]—particularly from European states—not to take action”.

“It’s that sort of problem that troubles me”, Dugard says.

He sees political pressure affecting the work of the Court in other ways, too.

“At the recent Assembly of States Parties of the ICC, the Assembly refused to address the threat made to the ICC by Trump, Pompeo, and Bolton. They simply brushed it aside, and

they seem determined not to confront the very serious threats to the ICC.”

Asked whether he is optimistic about the future, Dugard responds grimly.

“I’m totally pessimistic”, he says. “I’m pessimistic because I think the West is very strong on principle, but very weak on courage”.

“I fear there is little prospect of the West being prepared to stand up to Israel”.

And his conclusion on apartheid in Palestine? “As someone who experienced apartheid in South Africa and Namibia, and who knows Palestine by virtue of the fact I was the Special Rapporteur for the United Nations for seven years, I was able to conclude that apartheid occurs in the Occupied Palestinian Territory”, he says.

“I think the West is very strong on principle, but very weak on courage

“I hope that people will become aware of the fact that apartheid was not confined to South Africa alone, and that it does exist in other societies, such as Occupied Palestine, and other societies as well”.

“If the international community is determined to stamp out apartheid, then it should take action wherever it finds, or is confronted, with this policy”.

Get the book!

Professor Dugard’s book can be purchased from the STANZA Bookshop at Noordeinde 98, The Hague.

A man with short grey hair, wearing a dark blue blazer over a white button-down shirt, is seated in front of a bookshelf. He is holding a white smartphone in his hands and looking towards the camera with a slight smile. The bookshelf behind him is filled with books of various colors. A purple banner with white text is overlaid on the left side of the image.

International Humanitarian Law Online Course is Live!

Robert Heinsch: “We would like to contribute to a further spreading of the knowledge of IHL on a global scale, and help to ensure that IHL is respected, implemented and enforced wherever we encounter armed conflict situations”

THE KALSHOVEN-GIESKES FORUM of the Grotius Centre recently launched its first Massive Open Online Course (MOOC) on “International Humanitarian Law in Theory and Practice”, which is now open for enrolment at <https://www.coursera.org/learn/international-humanitarian-law/>. The Director of the Forum, Professor Heinsch, who initiated the production of the online course, and who is also the course instructor and one of the teachers in the course, sheds light on the why and how of this IHL MOOC!

How would you describe to someone without your kind of background, what international humanitarian law is and why it is important to

learn more and have a discussion on this topic?

RH: International Humanitarian Law (IHL) is the law which regulates the behaviour of the parties of armed conflicts, and tries to protect the vulnerable and mitigate the suffering of all people concerned. Unfortunately, in our present world, armed conflicts are being fought all over the world in different circumstances, and it is crucial for everyone to learn about what measures are allowed in these situations and what is not. Only if normal citizens, soldiers, commanders and politicians actually know about international humanitarian law, and how to apply it properly, we can prevent that civilians and medical personnel are directly targeted, prisoners of war are tortured, or un-

necessary suffering and indiscriminate attacks are happening, for example through the use of chemical weapons. Basic knowledge of IHL is important for everyone!

Why did you decide to dedicate your personal and professional life to international humanitarian law? Why are you so passionate about this topic?

RH: I was raised by two parents who had survived the horrors of World War II and throughout my childhood explained to me how lucky I was that I was born during peacetime and had enough food on my table. They told me constantly how terrible it is that people are still fighting against each other. When I

then had to do my compulsory military service when I was 19, the Gulf War in Kuwait/Iraq broke out. Seeing this made me decide, on the one hand, to apply for conscientious objector status, leave the military and do my community service with the Red Cross instead. On the other hand, I decided to study international law because I hoped to contribute at least a little bit towards a more peaceful international environment.

What were your main reasons to develop the online course International Humanitarian Law in Theory and Practice?

RH: I had the opportunity to study, teach and research international humanitarian law for more than 20 years, and throughout most of this time, I engaged in the dissemination of IHL either at university or on behalf of the Red Cross. Seven years ago, we founded the Kalshoven-Gieskes Forum on International Humanitarian Law at Leiden University, and shortly afterwards created its International Humanitarian Law Clinic where students can apply their theoretical knowledge to practical cases provided by humanitarian actors. At one point, we thought that it would be great if we could share our experience in teaching and disseminating IHL to a broader audience, realizing that there is a lot of demand for high-quality teaching courses in IHL. We hope that by developing this IHL MOOC we can reach participants who are interested in humanitarian law, but don't have the chance to enrol in one of our courses here in Leiden, or at my current location of work at the Institute for International Law of Peace and Armed Conflict in Bochum.

Who have you made the online course for and what are you hoping it might achieve?

RH: We are mainly aiming at students from all over the world who are interested in inter-

“Our idea is that we would like to contribute to a further spreading of the knowledge of IHL on a global scale, and help to ensure that IHL is respected, implemented and enforced wherever we encounter armed conflict situations.”

national humanitarian law and want to get a first thorough insight into IHL, maybe in order to decide whether they want to enrol into a specialized Bachelor or Masters programme afterwards. But we also hope that this course can be of benefit for practitioners like journalists, soldiers or humanitarian aid workers who want to refresh their knowledge of IHL, or want to get further detailed information. Our idea is that we would like to contribute to a further spreading of the knowledge of IHL on a global scale, and help to ensure that IHL is respected, implemented and enforced wherever we encounter armed conflict situations.

Can you tell a bit more about the content of the course, what activities can the learners do?

RH: Our IHL online course consists of five modules which cover (a) an introduction into the history and basic principles of IHL, (b) the scope of application of IHL, (c) the rules governing the conduct of hostilities, (d) the rules protecting the persons not actively participating in hostilities, and (e) the implementation and enforcement of IHL. Through each of these five modules, participants can watch video lectures provided by two of my Leiden colleagues

and myself, they can listen to expert interviews in podcast form with some of the leading authorities in the law of armed conflict, they can do quizzes and answer assignments, as well as engage in forum discussions with other students, and finally can solve the fictitious Arfula case study, applying their knowledge directly. Overall, we try to stimulate the participants on various levels and ensure that the learning process is as active as possible.

What makes this course unique; why should people enrol?

RH: This IHL online course offers a unique combination of high-quality video lectures, expert contributions from leading academics and practitioners, practical exercises, insights into current conflict situations, and the possibility to easily learn the rules governing the law of armed conflict in a very short time at your own learning pace. The course aims at bringing together theoretical knowledge and practical application, so that participants immediately can see why the rules they learn are so important. Due to the online format of the course, we were able to bring together experts from all over the world, and let them share their expertise with us: something which would never be possible in a normal classroom!

👉 *Cinny Buys with Robert Heinsch*

Enrol today!

This MOOC is free, online, and available now at Coursera!

<https://www.coursera.org/learn/international-humanitarian-law/>

News from around the Grotius Centre



Thea Coventry

On 25 and 26 October 2018, the ILS conference 'The European Union as a Global Actor in Maritime Security' took place at the Leiden Law School. Organized by the Europa Institute within the framework of the 'Interaction between Legal Systems (ILS): Policing the High Seas' and in cooperation with four interest Groups of the European Society of International Law, the conference brought together representatives from academia and practice to discuss legal questions concerning EU Maritime Security. Thea Coventry presented in the first panel on Law Enforcement Jurisdiction and Human Rights, discussing the jurisdictional bases for

enforcement measures against migrant smuggling vessels suspected of being stateless in the context of the Mediterranean 'migrant crisis'.

Dov Jacobs

On 19 October 2018, Dov presented a paper on withdrawals from the International Criminal Court at the Salzburg Law School 20th Anniversary of the Rome Statute Conference, along with Bill.

Dov continues to be involved in the practice of international criminal law. On 12 and 13 November 2018, he pleaded at the International Criminal Court to present part of the Gbagbo Defence Team's 'no case to answer' oral submissions. The judges are expected to rule on the motion in the next few months.



Sofia Pouloupoulou

On the 19th and 20th November 2018, PhD candidate Sofia Pouloupoulou participated in the round table of University Professors of IHL from the Central and South-Eastern Europe. The

round table took place in Ljubljana, Slovenia and was organised in the framework of the All-European International Humanitarian and Refugee Law Moot Court Competition. Sofia presented the value of clinical education as a tool to teach and disseminate IHL with examples from the practice and experience of the KGF IHL Clinic.

Eric de Brabandere

Eric published four papers, entitled '(Re)Calibration, Standard-Setting and the Shaping of Investment Law and Arbitration'; 'Human Rights Counterclaims in Investment Treaty Arbitration'; 'International Dispute Settlement – From Practice to Legal Discipline'; and the Dutch-language article 'De Achmea-zaak voor het Europees Hof van Justitie – Het Einde van Intra-EU Investeringsverdragen?'—or 'The Achmea-case before the European Court of Justice – The End of Intra-EU Investment Treaties?'.

He also gave four presentations at Bocconi University in Milan (International Investment Law and Arbitration); the British Institute for International and Comparative Law Investment Treaty Forum (Parallel Proceedings in International Investment Law and Human Rights); the 6th Expert Seminar on Contemporary Perspectives on International Investment Law at the University of East Anglia (panel chair on Public Participation in and Public Scrutiny over Investment Projects); and the University of Geneva and Graduate Institute in Geneva (Environmental Law Counterclaims in Investment Treaty Arbitration).



Sofia Pouloupoulou in Ljubljana



Daniëlla Dam-de Jong

On 28 and 29 June 2018, Daniëlla organised a seminar on international law and environmental peacebuilding. The seminar brought together sixteen international experts from academics and practice to discuss the contribution of international law to environmental peacebuilding. Environmental peacebuilding is a relatively novel field of research. It focuses on reducing conflict risks associated with natural resources and on creating opportunities for conservation and benefit-sharing through natural resource cooperation. The seminar assessed the role of international law in facilitating and constraining (political) choices related to natural resource management in post-conflict settings. In addition, it explored options to address some of international law's inherent limitations in promoting environmental peacebuilding. The contributions to the seminar will be published in an edited volume on the topic. This book will be co-edited by Britta Sjöstedt from Lund University and is expected to appear in 2020.

On 18 October 2018, Daniëlla also participated in an expert seminar at UN Headquarters in New York. The seminar discussed questions related to the ILC Study on the Protection of the Environment in Relation to Armed Conflict. It was initiated by Special Rapporteur Marja Lehto and was jointly organized by the Mission of Finland, the Law Interest Group of the Environmental Peacebuilding Association, UN Environment, Lund University, and the Environmental Law Institute as a side event to the UN's International Law Week. The seminar addressed substantive rules for the protection of the environment and natural resources in relation to armed conflict as well as questions of responsibility and liability. Daniëlla's pres-

entation addressed UN Security Council natural resources related sanctions regimes. Discussions continued the following day as part of a closed meeting at the Finnish Mission to the UN, in which Daniëlla participated. The objective of this meeting was to provide input to the last report of the ILC on the topic.

Cale Davis

On 4 December 2018, Cale presented on 'The Value of Doing Justice in the Culture of Prosecuting: A Wolf in Sheep's Clothing' at the conference on Intersections of Law and Culture at the International Criminal Court at Utrecht University. In his paper, Cale looked at the ways the ICC OTP talks about 'justice' in the 395 press releases the Office of the Prosecutor has published in its history. He argued that the embodiment of the value of doing 'justice to victims' in prosecutorial culture risks misinterpretation or misapplication due to the inherent vagueness of the word 'justice', creating misconceptions in the community about the Office's capacity and purpose.



Larissa van den Herik

Larissa has contributed to the online discussion on '[Historical Inquiry as a Form of Colonial Reparation](#)'; written on 'Reparation for Decolonisation Violence: A Short Overview of Recent Dutch Litigation' in the *Heidelberg Journal of International Law*; and 'Sidestepping the Security Council: The Use of Non-UN Sanctions for UN Purposes' in the *Revue Belge de Droit International*.

She also took part in the formal Pre-PhD Defence of Letizia Lo Giacco on *The Use of*

Judicial Decisions in International Crimes Adjudication: New Perspectives on International Law-Making at the University of Lund on 21 September 2018.

Her conference participation includes chairing the 70th Anniversary Celebration Symposium on the Role and Contributions of the ILC to the Development of International Law at FIU Law, Miami, from 26-27 October 2018; presenting a paper on *Self-defence, proportionality discourse and factfulness: Rethinking institutional and procedural structures* at the Lieber Institute Workshop on Necessity and Proportionality in International Peace and Security Law at Westpoint from 28-31 October 2018; was a commentator in the *Trialogues Workshop on Intervention by Invitation* at Max Planck Heidelberg from 8-9 November 2018; gave the keynote speech at the Strategic Meeting on the Joint Initiative for a Multilateral Treaty on Mutual Legal Assistance and Extradition for the Most Serious International Crimes (crimes of genocide, crimes against humanity and war crimes) at the Netherlands Ministry of Justice on 14 November 2018; and presented at the Expert Seminar on "Towards an EU Global Human Rights Sanctions Regime" on *A European Global Human Rights Sanctions Regime: What Scope of Human Rights Violations* at the Dutch Ministry of Foreign Affairs (held at the Peace Palace) on 20 November 2018.

She also wrote a book review for the *Leiden Journal of International Law* on the recently-released text by Claus Kress and Stefan Barriga (eds), *The Crime of Aggression: A Commentary* (Cambridge University Press).



Helen Duffy

In September, Helen's book *Strategic Human Rights Litigation* was published by Hart/Bloomsbury. She also wrote a report

for the OSCE on Foreign Terrorist Fighters, launched in Warsaw in October; gave the inaugural first lecture at the Summer School on Lawyering in the Public Interest at the Asser Instituut; and lectured at Edinburgh University on Current Threats in Counter Terrorism and Human Rights in November.

Helen remains actively involved in human rights practice. She appeared as adviser to counsel in a case heard by the ECHR in November on the right to life and failure to investigate deaths during curfews in South East Turkey.

Evelien Campfens

In May 2018, Evelien was elected alternate member of the International Law Association committee 'Participation in Global Cultural Heritage Govern-



ance'. Her publications since July include a blog post on '[Artefact or heritage? Colonial collections in Western museums from the perspective of international \(human rights\) law](#)' and a special contribution on '[Koloniale Roofkunst](#)' in the *NRC Handelsblad* on 24 October 2018.

She presented a conference paper at the Third All Art and Cultural Heritage Law Conference from 9-10 November 2018; gave the address at Arbeitskreis-Treffen 2018 on "20 Jahre Washington, Ein (Rueck-) Blick auf die 11 Prinzipien" at the Gemaedegalerie Berlin on 12 November 2018; and gave an address and sat as a panel member at the Art-Related Disputes Resolution conference of the Deutsches Institut fuer Scheidtsgerichtbarkeit (DIS),

panel on Nazi-looted Art on 26 September. She also attended the conference on '20 Years of Washington Principles: Roads to the Future', DZK, Haus der Kulturen der Welt, in Berlin, from 26-28 November.

Hilde Roskam

In addition to her publications, Hilde spoke on *The Security Council's contribution to the empowerment of women in peace processes* at Nottingham Law School, Nottingham Trent University's Conference on 'Gender Equality as a United Nations "Sustainable Development Goal"' on 19 September 2018.



Cecily Rose

Cecily presented on *Conceptualizing the Relationship between Corruption and Human Rights* at the Workshop on Corruption, Human Rights, and the Sustainable Development Goals at the University of Groningen on 25 September 2018.



She also published "Treaty Monitoring and Compliance in the Field of Transnational Criminal Law" in the *Brill Research Perspectives on Transnational Crime*.



Giulia Pinzauti

Giulia presented a paper at a conference on "The Threshold from Occupation to Annexation" which took place at Birzeit University in Palestine on 3-4 October. She also wrote two chapters on 'Principle 22. Nature of restrictive measures' and 'Principle 23. Restrictions on Prescription', in

F Haldemann and T Unger (eds), *The United Nations Principles to Combat Impunity: A Commentary* (Oxford University Press).

The *Companion to IHL* was also released, in which Giulia contributed pieces on 'Common Article 3'; 'Attacks against Historic Monuments, Works of Art and Places of Worship'; 'Attacks against Non-defended Localities and Demilitarised Zones'; 'Nuclear Weapons'; 'State Responsibility'; and 'Public International Law'.

Joe Powderly

The first Summer School on Heritage Destruction, Human Rights and International Law was held in August, which was a great success and organised by Joe and Amy Strecker.



Joe also presented on *Representation and Competence on the International Criminal Bench: A Profile Sketch of the International Criminal Judiciary* at the ICC Scholars Forum, Leiden University, on 15 June 2018.

He wrote the LJIL editorial '[International criminal justice in an age of perpetual crisis](#)'.

Together with Niamh Hayes, Joe wrote a blog post on '[The Bemba Appeal: A Fragmented Appeals Chamber Destabilizes the Law and Practice of the ICC](#)'.

He was also appointed Associate Professor.

Floris Tan

On 12 and 13 November 2018, Floris Tan was in

Jerusalem to speak at the 13th annual Minerva Centre for Human Rights/ICRC Conference. The conference theme was Recent Developments in International Human-





Scenes from the first Summer School on Heritage Destruction, Human Rights and International Law



Floris Tan speaking in Jerusalem

itarian Law and Detention Law and Practice. Floris presented a paper entitled Criminal Enforcement of Rules Governing Detention in Armed Conflict: The Duty to Investigate under a Multifaceted Legal Regime, applying his PhD research on the duty to investigate in armed conflict situations specifically to detention issues. Further, beyond his research focus on IHL and human rights law, he also incorporated the applicability of international criminal law, and explored the partial convergence and partial fragmentation as between these three legal fields. Presenting at this conference with an audience of leading IHL experts was a great opportunity to test ideas, and to ensure that Floris' research still strikes a good balance between IHL and human rights thinking. Given the positive responses this is indeed the case. The paper was solicited to be published in a special issue by the *Israel Law Review*.

Scientific Research) to conduct her PhD research, entitled 'The Foundations of Cultural Heritage Protection: Striking a Balance between the Local and the Global'. Her research seeks to chart whether heritage is designated as a common interest of the international community, and what effects this designation has on the means of international legal protection employed. It examines whether the harmonisation of human rights law and cultural heritage law could ameliorate the heavily State-driven processes of international heritage protection, improving the position of local heritage stewards. The research will be jointly supervised by Prof. dr. Nico Schrijver of the Grotius Centre and Prof. dr. Yvonne Donders of the Amsterdam Centre for International Law at the University of Amsterdam.

Sophie Starrenburg

In June 2018 Sophie Starrenburg was awarded a 4-year Research Talent grant by NWO (the Netherlands Organisation for



Publications

July to December

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