

Grotius Centre Newsletter

Spring 2018



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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,

Welcome to the first newsletter of 2018! In this issue, Larissa van den Herik talks about interdisciplinary collaboration; we take a look at the Centre's emerging focus on cultural heritage; and learn about Professor Helen Duffy and Professor Carsten Stahn's upcoming books. We also update you on the Moot Courts as well as the activities of the Kalshoven Gieskes Forum on International Humanitarian Law as Robert Heinsch and his colleagues prepare to launch the Grotius Centre's fourth MOOC, helping to spread Leiden's excellent teaching to a global audience.

Congratulations on an excellent start to 2018, and I wish you all the very best of success with your teaching and research as we head into the start of the 2018-2019 academic year!

Professor Eric de Brabandere

Director, Grotius Centre for International Legal Studies



Dear all,

I think that if there is a theme of this newsletter, it is the importance of interdisciplinary research and collaborations in exploring the frontiers of international law! On Page 4, Larissa van den Herik explains how valuable these collaborations are and offers some advice as to how to embark on your own collaborative research project. I continue to be excited by the dynamic inter-faculty research being conducted between Joe Powderly and Amy Strecker in the field of cultural heritage protection. I was also interested to read the *Newsletter's* interview with Professor Helen Duffy about her recent success at the European Court of Human Rights and strategic human rights litigation, where she encourages us to think 'outside the courtroom' and look at the benefits of litigation from a broader perspective.

Best of luck for the upcoming semester!

Professor Carsten Stahn

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

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Academia is a Team Sport



Interdisciplinary collaborations can teach lawyers a lot about methodologies and enrich scholarly output. The Grotius Centre Newsletter spoke with Larissa van den Herik about the benefits of inter-departmental and inter-faculty engagement and some of the challenges it poses

"It ALWAYS MAKES ME HAPPY to collaborate", Larissa van den Herik says to me from across the table. "I think it's nice. It's refreshing".

Larissa has been the Vice-Dean of Research at the Faculty of Law for approximately three years. She is also a Professor at the Grotius Centre, having been with the University since 2005.

"I haven't studied here", she explains. "Once I became Vice-Dean, it was fantastic. I got to know so many new people, and different disciplines within the Faculty".

One of her first major projects as Vice-Dean was to complete the Faculty's Formal Research Assessment, in which the previous seven years of research output of the entire Faculty had to

be presented to an external Assessment Committee.

"I became acquainted with different approaches to research", she says. The preparation of the Formal Assessment opened her eyes to the potential for collaborations and the employment of new methodologies in public international law to produce original, exciting research.

"As lawyers, we try to squeeze reality into our categories. At some point this trick expires and we need to engage with new approaches". "You can't look in stereo, as a person", she explains. "But we need to look in stereo because the world is so complex. Multidisciplinarity may be a way of looking in stereo, while not

losing touch with your own discipline, through co-authorship with a scholar from a different discipline, for example".

"Co-authoring is generally very enriching", she adds, "in particular if you do so with an author of a different discipline, as it makes you very aware of your own approach." Larissa mentions an article on the Eritrean Commission of Inquiry and its relation with the Eritrean Diaspora as an example of a piece she co-authored recently. She wrote it with Mirjam van Reisen, Professor of Computing for Society at the Leiden Centre for Data Science. The piece is currently under review.

"I think that we have great research groups at our Faculty that we can learn from and

collaborate with”.

Criminology, Economics, and Socio-Legal Studies, she explains, have similarly international publications strategies. “They are very professional in terms of their research methods”, she says. “I think we can still improve our thinking and diversify our approach to research methods”, adding that public international lawyers can learn from the methodological techniques other scientific fields adopt. One way of learning from others, in addition to co-authoring, is also joint PhD-supervision. Larissa has several PhD-projects that she co-supervises with professors of other departments, such as the project of Hanna Bosdriesz.

Of course, interdisciplinary collaborations are not without their challenges. “I think the challenge is to find common language”, Larissa says. “You don’t normally realise that people refer to different concepts behind the same word”. Lawyers give the term ‘Crimes Against Humanity’ very specific meaning, while historians or IR-scholars may use it for different purposes.

Such contrasts come to the fore very clearly in a large, government-funded historical project on Decolonization and Violence in Indonesia in 1945-1950 (<https://www.ind45-50.org/en>) for which Larissa is a member of the Advisory Board, specifically to advice on the use of legal language. She also contributed to a CAVV advice recently on the use of the term ‘genocide’ by parliamentarians.

Beyond language, different strictures of other disciplines may also be difficult to grasp. For instance, the concept of ‘algorithms’—while well known to mathematicians and computer scientists—may be completely alien to those trained in law. This is something Larissa has great pleasure in discussing with Emma (our Grotius tech-person!), for instance, for their chapter on the obligation to prevent genocide

and crimes against humanity, which also examines the role of new technology.

And then there is the issue of finding people to collaborate with. “For the Grotius Centre, I am in a unique position to help find people and to help stage meetings”, she says. “If I see a match, I try to make a link”.

But also, Larissa explains, the importance of getting out of the office and mingling should not be understated. “Life goes by chance. You go out there, you talk to people. We had this Faculty Beach Party. These are the moments to find people”.

The challenges are by no means insurmountable, and the benefits of co-authored research also have practical consequences. “If you co-author an article”, Larissa says, “it counts once for each person under the RAF (Meijers) norm”.

“You see co-authorship very strongly in criminology and economics. I think this is something we can do more at the Grotius Centre”.

“Even if it’s not multidisciplinary, two people see more than one”.

“Ultimately, my vision is that academia is a team sport. It becomes better if you collaborate”.

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 Autumn 2017 newsletter, the following additional papers have been published in the series:

- > Helen Duffy and Kate Pitcher, *Inciting Terrorism? Crimes of Expression and the Limits of the Law*
- > Eric de Brabandere, *Human Rights and International Investment Law*
- > Carsten Stahn, *Liberals vs. Romantics: Challenges of an Emerging Corporate International Criminal Law*
- > Daniëlla Dam-de Jong, *Ignorantia Facti Excusata? The Viability of Due Diligence as a Model to Establish International Criminal Accountability for Corporate Actors Purchasing Natural Resources from Conflict Zones*
- > Jens Iverson, *War Aims Matter: Keeping Jus Contra Bellum Restrictive While Requiring the Articulation of the Goals of the Use of Force*
- > Ramses A Wessel, *Studying International and European Law: Confronting Perspectives and Combining Interests*

Submissions to c.j.davis@law.leidenuniv.nl.



Research in Focus: Cultural Heritage

Photo by Flickr user Michiel2005, used under the creative commons licence.

Dr Joe Powderly (Grotius Centre) and Dr Amy Strecker (Heritage and Society, Faculty of Archaeology) recently received a GIAS grant to collaborate on ‘Heritage Destruction, Human Rights, and International Law’.

Inter-Faculty Collaboration

LEIDEN’S GLOBAL INTERACTIONS grants aim to stimulate research that address the question of how global change across time and space leads to a convergence and loss of variation or increasing diversity and conflict.

The Grotius Centre’s Dr Joe Powderly and the Faculty of Archaeology Department of Heritage and Society’s Dr Amy Strecker jointly received a Global Interactions grant to develop inter-faculty research on ‘Heritage Destruction, Human Rights, and International Law’.

The collaboration was inspired by the recognition that normative developments in international cultural heritage law increasingly advocate a human rights approach to heritage.

Similarly, in heritage studies, there has been a proliferation and assertion of ‘rights’ in relation to heritage protection.

But what are these ‘rights’? What are the obligations and duties that flow from them? And what happens when a state charged with the protection of heritage threatens it during peacetime?

These are not abstract questions. International criminal courts and tribunals, for example, have not ignored the destruction of cultural heritage in their work. When it comes to determining liability for criminal offences, an understanding of the legal rules pertaining to heritage is not simply important, it is essential.

Human rights—with their focus on the

individual—are not necessarily appropriate for providing the requisite insights into these problems. Cultural heritage belongs to everyone and cannot be measured in the same way as property loss.

A better understanding of the legal regime concerning cultural heritage is required in order to ensure its protection through effective laws and clear obligations. Without scrutiny, the protection of cultural heritage may remain an abstract goal enjoying only vague legal protections and weak governance regimes.

With this in mind, Joe Powderly and Amy Strecker arranged a grant funded, high-level seminar to consider creative ways that the protection of important heritage sites and land-

scapes could be advanced beyond rhetoric.

The programme, which took place from 30 April to 2 May, included a wide range of speakers. The conference managed to draw upon some of the key scholars currently active in the field of cultural heritage law from across the globe, including a number of members of the prospective ILA Committee on 'Participation in Cultural Heritage Governance', which will be launched at the 2018 ILA meeting in Sydney. The keynote address was delivered by Francesco Francioni, who posed the question whether international law is ready for the recognition of a general obligation to prevent and avoid destruction of cultural heritage. Over the course of the next two days, panels discussed 'Heritage Destruction in Armed Conflict and Recent Developments', 'Heritage Destruction in Peacetime and Human Rights', 'Conflicting (And Complementary?) Areas of International Law', and 'Challenging Concepts and Assumptions'.

Panellists included Grotius Centre PhD candidates Evelien Campfens and Sophie Starrenburg, along with Faculty of Archaeology PhD candidate Amanda Byer. Mamadou Hébié spoke with Paula Cruz on 'International Investment in Developing Countries and its Impact on Cultural Heritage', and Cecily Rose chaired a panel held at Leiden's *Rijksmuseum van Oudheden*.

Joe and Amy are currently working with the panellists on an edited volume as a result of the conference.

Summer School to Spread Knowledge

FOR FIVE DAYS IN AUGUST, Joe and Amy will collaborate again in the Leiden-Delft-Erasmus Centre for Global Heritage and Development's

first Summer School on Heritage Destruction, Human Rights, and International Law.

The Summer School is open to all students and professionals who would like to acquire a general knowledge of how heritage destruction is dealt with in international law in times of conflict and peace.

The programme brings together students and professionals from a wide range of backgrounds and will give a broad overview of heritage protection in international law with a particular focus on heritage destruction. Students will learn how heritage is protected in international law, the rules governing that protection in armed conflict and peace-

time, the link between heritage and human rights, and the increasing case law from international criminal courts treating heritage destruction as a war crime and crime against humanity.

Students will also get to visit the International Criminal Court (subject to availability), the National Museum of Antiquities, or the National Museum of Ethnology.

Speakers include Dr Joe Powderly, Dr Amy Strecker, Professor Yvonne Donders, Dr Alessandro Chechi, Dr Elisa Novic, Dr Marina Lostal, Evelien Campfens, Sophie Starrenburg, and Dr Bas Rombouts.

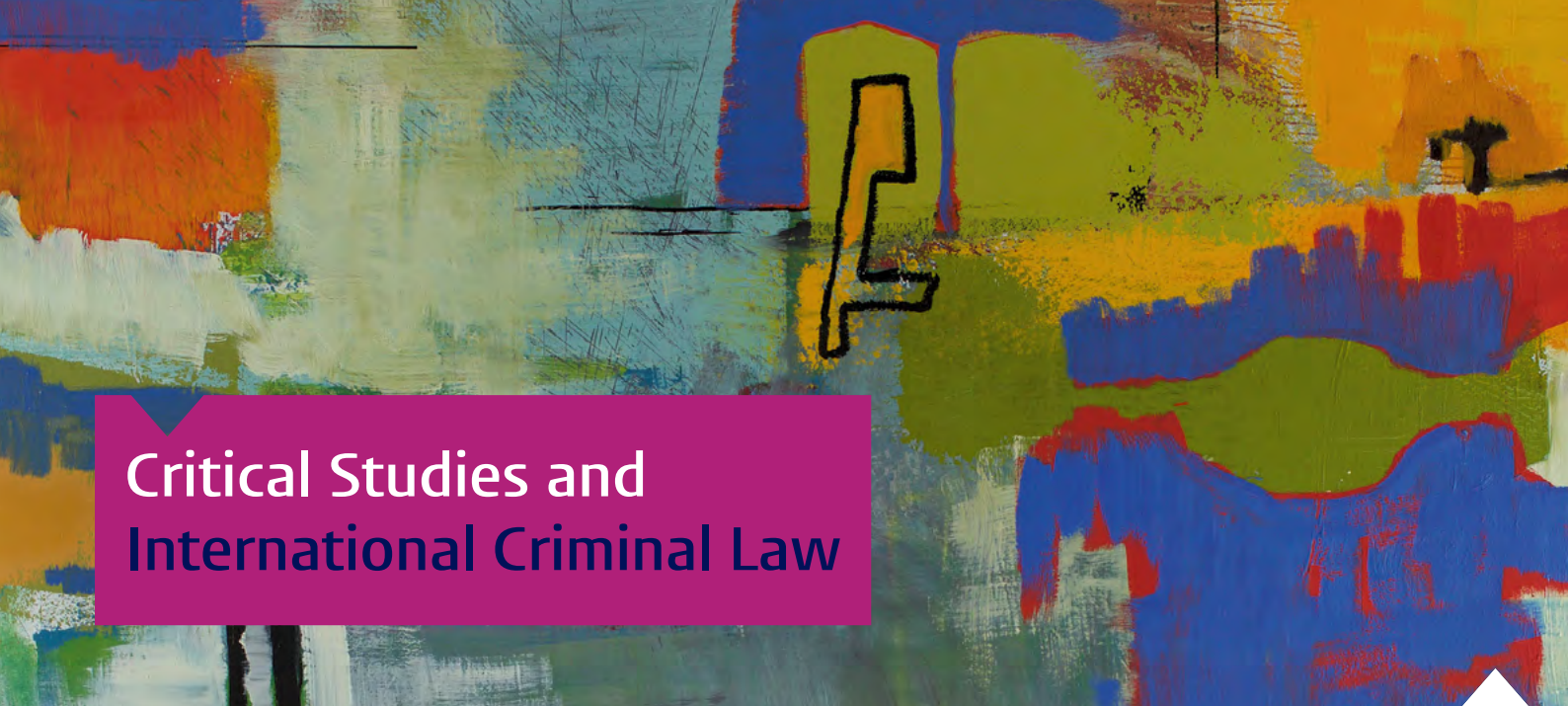
Conference Participation

FROM 16 JUNE TO 26 JUNE, Sophie Starrenburg participated in the 2018 World Heritage Young Professionals Forum, organised as part of the 42nd session of the World Heritage Committee in Manama, Bahrain. The Forum was hosted by the World Heritage Education Programme and the Bahrain Authority for Culture

and Antiquities. Thirty young professionals were selected to participate in the Forum, and the participants included individuals from all five continents working in World Heritage sites, such as architects, archaeologists, and site managers. During the Young Professionals Forum, the participants discussed the global issues facing the World Heritage Committee and the World Heritage Convention as a whole, such as climate change, tourism, sustainable development, community participation, and the role of human rights in the work of the Committee, in tandem with the assistance of experts working on (and within) the World Heritage Committee, the World Heritage Centre and the World Heritage advisory bodies. The Forum concluded with a declaration which was drafted by the members of the Forum and presented to the Committee at its opening session on the 25th of June.

Meanwhile, Evelien Campfens attended the UNESCO *Conference Circulation of Cultural Property and Shared Heritage: new perspectives* in Paris. This international congress contained a high-level ministerial panel on Challenges of heritage mobility, as well as roundtables on new forms of cooperation, ethical debates, and the role of museums.

“Joe and Amy are currently working with the panellists on an edited volume as a result of the conference”



Critical Studies and International Criminal Law

Professor Carsten Stahn's new book, *International Criminal Law: A Critical Introduction* will be published later this year by Cambridge University Press. The textbook breaks new ground in taking a critical approach to teaching international criminal law, and by being open access

AT THE END OF 2018, Cambridge University Press will publish Professor Carsten Stahn's new textbook, *International Criminal Law: A Critical Introduction*. The book breaks new ground: not only is it the first international criminal law textbook to present core scholarship alongside critical perspectives, but it will also be freely available as an open-access publication.

"I'm really excited", says Carsten. "It's a new generation of textbook and it's my first textbook in international criminal law".

The project commenced in 2016 at the same time as the Grotius Centre's second MOOC, *Investigating and Prosecuting International Crimes*. "It was supposed to be a small ren-

dition of the lectures that we had recorded as part of the MOOC", Carsten says, "but the deeper the process unfolded, the bigger the book became. It's now evolved into something much more fundamental than the MOOC".

"You might say the book is second-generational, because it tries to map how ICL constructs itself as a field", he says. "So rather than just including positivist analysis, it's about seeing how ICL defines itself through practices, throughout narratives, through institutions. Rather than taking the classical segments of international criminal law as a foundation, I try to build them into a broader narrative and broader picture of how ICL operates in the field".

The approach is novel and a marked shift away from how international criminal law is traditionally taught. "The discourse has developed beyond the legal discipline", Carsten explains. "I wanted to build in the influence from criminology, from anthropology. We have more critical research on the foundations of international criminal law from various disciplines. I wanted to take into account some of these novel and fresh perspectives to challenge our current conceptualisation of core themes".

"We also have this second stage of critical discourse on international criminal law emerging", he adds. "What I wanted to do in this book is integrate this critical research and some of the questions that are raised by

critique and present them alongside the main treatment of mainstream ICL scholarship”.

Carsten hopes to demonstrate the importance of considering both critical studies and traditional legal scholarship when trying to make sense of the ramifications and limitations of international criminal law. “One of the problems is that mainstream voices sometimes don’t listen to the critiques because some of them might be too radical, some might challenge their assumptions. At the same time,” Carsten says, “some of the critical scholarship tends to look with a degree of scepticism towards mainstream doctrine and sometimes doesn’t bring out what constructive solutions might be found to address the critiques. The purpose of the book was really to bring this dialogue forward and integrate it”.

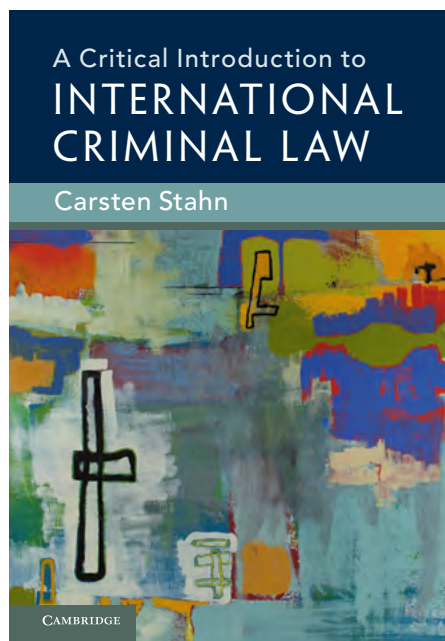
The book is constructed around three macro themes. “The first theme I take on is the debate on international crimes. I bring out are some of the neglected crimes, like famine and environmental crimes. I want to show there is a fuller picture, and the notion about what develops into a crime is pretty fluid. The second theme is the tension between individual and collective responsibility. This is the only textbook that reviews modes of liability and defences from the perspective of that tension. The third theme is an institutional perspective on how international criminal justice develops as an enforcement system. The developments over the past decade have tended towards a more 4D perspective, with international courts, domestic courts, regional courts, and hybrid courts”.

Students have reacted well to the merging of disciplines and the integration of critical studies. “It makes for much more interesting student discussions”, explains Carsten. “I really want to trigger a critical sense of enquiry. It makes for better scholarship and better awareness among students about the ramifications

and limits the law has”.

Sometimes students react with shock to this novel approach. “They might never have looked at ICL from this perspective”, he says. It allows them to go beyond what they were taught in their previous legal studies, take the blinkers off, and see law in a much broader perspective.

Carsten smiles. “This is where students get the fun back”, he says. “It’s about arguing about the law and discussing it from multiple angles,



seeing its weaknesses, its strengths, its questions”.

For practitioners, too, Carsten hopes the book will trigger a process of self-consciousness creation. “Practitioners can be so deeply engrained in their daily practice that they might forget the bigger picture”, he explains.

Carsten found that writing the book was a rewarding learning process. “I’ve discovered many new slopes I don’t think I would ever have explored had I not written the book”, he

says. “I’m particularly proud of the chapter about individual and collective responsibility. To understand that tension you really have to understand why crimes are committed, how collective structures operate in relation to each other, and to understand the phenomenon of system criminality. This is where criminological research has really been helpful”.

And, he adds, “if you think about the macro purposes of international criminal justice, one of the most radical claims is that international criminal justice is really supposed to encourage civil courage. It’s supposed to encourage disobedience by citizens. I think this is a very interesting and novel approach, to think about what international criminal justice could mean for ordinary citizens”.

Yet the research process also caused him to realise that international criminal law needed to be more modest in its objectives. “When the whole project started at Nuremberg, we had all of these lofty objectives for international criminal justice”, Carsten explains. “You see it in the opening statement by Jackson, through to the sentencing decisions of the ad hoc tribunals and the ICC, which mention all of these broad goals”.

“But if you really study international criminal law and take into account new research, political science, and criminology, you see that many of these effects are actually overstated. They drive beliefs to international criminal justice, but empirically they’re very difficult to prove and they probably never will be entirely proven. And that forces us to rethink some of our foundations”.

“I’ve realised that the more I’ve engaged with the critical perspectives and influences from other disciplines, the humbler I’ve become about what can be achieved through international criminal justice. We need to take a modest approach to what international criminal justice can achieve”.



Strategic Human Rights Litigation with Helen Duffy

Photo by Flickr user ELSA International, used under the creative commons licence.

In May 2018, the European Court of Human Rights delivered its judgment in *Abu Zubaydah v Lithuania*. The Grotius Newsletter sat down with Abu Zubaydah's representative and Grotius Centre Professor Helen Duffy to talk about the case and strategic human rights litigation.

ON 27 MARCH 2002, Abu Zubaydah was captured in Faisalabad by Pakistani authorities working in collaboration with the CIA. He would be the first of what the CIA refers to as 'High-Value Detainees', people secretly detained and subject to 'enhanced interrogation techniques' to extract information they were believed to possess on potential terrorist threats.

The High-Value Detainee or 'extraordinary rendition' programme was one of several measures taken by the United States post-9/11. As part of the programme, the CIA captured people and transferred them to a network of secret 'black sites' located across the world, where they were subjected to torture, secret

detention and other gross human rights violations. At its height, approximately 57 states participated in the programme in various ways by either allowing black sites to be operated on their territory, assisting in the capture, detention, and transfer of the detainees or providing logistic support such as allowing rendition planes to refuel on their territory. One of the states was Lithuania.

On 31st of May 2018, the European Court of Human Rights handed down a judgment finding Lithuania responsible for its role in the secret detention and torture programme. The court found it established beyond reasonable doubt that after his capture, Abu Zubaydah was transferred to Poland, to Guantanamo

Bay, to Morocco, and then to Lithuania on or around 17 February 2005, from where he was sent on to Afghanistan and to Guantanamo Bay, where he is held to this day. Lithuanian was the last European state to house a CIA run secret detention centre where, for over a year, Zubaydah was held in the CIA's 'standard conditions of confinement'.

'Standard conditions of confinement' are by no means 'standard' in national systems. The Court found they involved, "as a matter of fixed, predictable routine, blindfolding or hooding of the detainees, designed to disorient them and keep from learning their location or the layout of the detention facility; removal of hair upon arrival at the site; incom-

municado, solitary confinement; continuous noise of high and varying intensity played at all times; continuous light such that each cell was illuminated to about the same brightness as an office; and use of leg shackles in all aspects of detainee management and movement”.

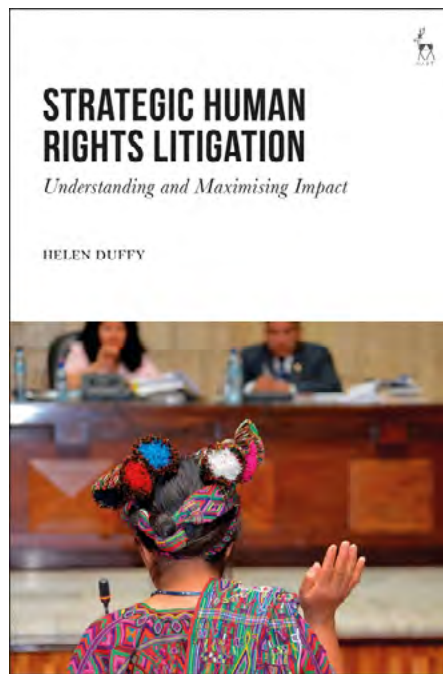
This “integral part of the CIA interrogation scheme” intended to “dislocate psychologically’ the detainee, to ‘maximise his feeling of vulnerability and helplessness’ and ‘reduce or eliminate his will to resist ... efforts to obtain critical intelligence’”. The detention was secret and incommunicado. His situation was, in other words, dire.

On 14 July 2011 he filed his originating application before the European Court of Human Rights for violations of the prohibition of torture, the right to liberty and security, the right to respect for private life, and the right to an effective remedy.

The Grotius Centre’s Professor Helen Duffy represented Abu Zubaydah at the European Court of Human Rights. She is also the author of the upcoming book *Strategic Human Rights Litigation*, which was supported by the Nuhancovic Foundation and will be published in September this year by Hart Publishing, which reflects on the impact of cases such as this one.

“The book has been germinating for a really long time”, Helen says. “I’ve been doing human rights litigation off and on for twenty-odd years, and over that period of time I came increasingly to the view that although human rights litigation was becoming more popular and vastly more voluminous, this wasn’t always matched by a depth of understanding of what we actually achieve through it. Sometimes we assumed its value, rather than sought to understand it”.

Many other questions flowed from the one on impact. “How do we maximise its potential?”, she asks, “and what are its limitations?” In *Strategic Human Rights Litigation*, Helen



sets out to explore and reflect on what strategic human rights litigation does achieve and in what circumstances.

Researching and writing also gave her the opportunity to revisit some of her own work, and to seek insights from others, including those affected by the cases, as to their positive and negative impact.

“The decision to enquire into the impact of my own cases had its pros and cons”, she says “but it enabled a different level of access and provided an opportunity for honest, sometimes self-critical reflection on what I would do differently now. The idea was not to sell these as great products that I’ve contributed to in the world, but in a sense the opposite: to say when does this work, and when does it not”. “I think part of the problem”, she says, “is that those pursuing human rights cases either do not routinely inquire into longer term impact, beyond the “result” at judgment, or maybe if

you are lucky implementation. And if they do they may be understandably reluctant to expose negative impact. They need to be funded, which might lead them to emphasise the positive from their work”.

“It was interesting to see how impact changes over time and from different perspectives. Some layers appear to only be felt a very long time after judgement, in how discussions are influenced and attitudes changed for example. It is also clear that cases rarely provides solutions to underlying human rights problems in themselves, but they can change the picture and provide new opportunities. Its a journey of many tiny steps, hopefully in the right direction.”

Access to information is an important part of this. “Litigation contributes directly and indirectly to eliciting more information, which can also empower people to demand a fuller truth, and create momentum towards accountability as a longer term goal”.

“Sometimes it is direct, through FOI litigation, but more often than not it’s the dynamic of litigation that prises open the truth.”

But some layers of impact are more immediate and do arise from the judgment themselves. “One of the major ways in which human rights litigation makes a difference,” Helen observes, “is through the creation of human rights standards and certainly the strengthening and the clarification of those standards through interpretation by Courts”.

“Human rights law is really shaped through cases – leading to the description of human rights litigators as “norm entrepreneurs”. The right to truth, the doctrine of positive obligations, extraterritorial application of human rights norms – all this law was shaped through litigation and jurisprudence.

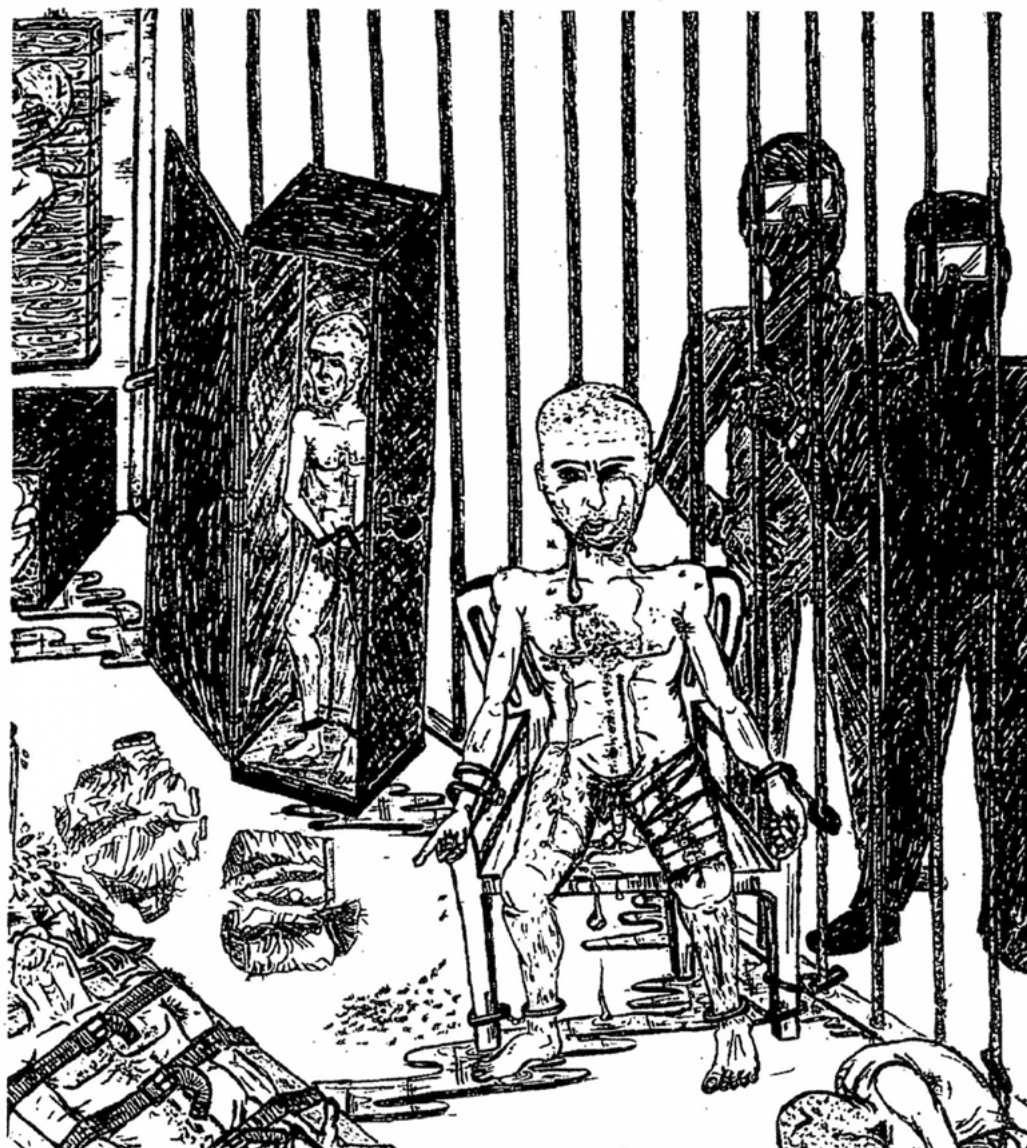
“Ultimately, I hope the book will help contribute to a conversation about what we need to do to litigate more strategically, to maxim-

This picture, drawn by Abu Zubaydah, depicts some of torture to which he was subjected: waterboarding, detention in a coffin-shaped box, violent rectal feeding, prolonged shackling, forced nudity and humiliation (declassified 24 May).

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ise the benefit of the process for human rights protection”, Helen notes. “For example, the book underscored for me for example the sense that what happens outside of the courtroom is probably more determinative of impact than what unfolds within the contours of the Court”.

“The people that you partner with, the communication that is done around cases, the extent to which it is framed in a way that helps to mobilise civil society will all be critical to many levels of impact”.

And what does this say about the role of the lawyer in human rights litigation? Helen is cautious. “I think the role of the lawyer in human rights litigation shouldn’t be overstated”, she says. “The lawyer, obviously, has an important role. But the victims or affected communities should be in the middle of the picture, not the lawyers. And the lawyer should ideally work alongside a much broader team of persons better equipped to use the law to effect the broader social and political change that is very often needed to address underlying human rights problems”.

It also suggests that we need more strategic lawyering, and to that end more strategic education of lawyers. “I think we need to teach strategic, but also professionally and ethically sensitive lawyering to our students. We need to confront the truth that victims are often, if not retraumatised, then sidelined in litigation processes, or the process fails to meet unmanaged expectations or disempowers people in various ways.”

“We have to take really seriously the different dimension of our role as lawyers”, Helen says. “As well as representing individuals, we do have a responsibility to uphold the rule of law. In the way that we do strategic litigation, we should be aware of any tensions that arise in that respect and we should always be sure that we are meeting our own profession-

al and ethical standards towards the Court as well as towards the client and the system we are part of”.

So how does she see the impact of the European Court of Human Rights recent judgment in *Abu Zubaydah v Lithuania*? “Its too early to say as the judgment isn’t the end point but a stage in the process. But you can see the potential significance of the case on a number of different levels”, says Helen.

“In drawing together detailed public information about the High-Value Detainee programme, and condemning categorically its unlawfulness, it makes a contribution to the historical record about the CIA’s activities. It is important historically to look back and understand what happened in this incredible, global, coordinated torture programme and why.”

The judgment focuses on the role Lithuania played in facilitating the programme. “The Court describes it as inconceivable that Lithuania could not have known that this had happened”, she adds “and that it lent its active support anyway.” “It puts beyond plausible deniability the role of states like Lithuania.”

The judgment isn’t only historically significant though. “One question is whether we’re willing to reflect on that historical record and grapple with what it means in terms of ensuring non-repetition in the future.” “States, so far, have not fully grappled with what happened”, Helen observes. “As the Court found looking through the facts in significant detail, and conducted the sort of thorough, effective investigations that they are obliged to carry out and ensure accountability.” “It reasserts that there are no circumstances which could justify these kinds of violations. Not intelligence gathering, not the prevention of future terrorist attacks which was used to justify torture in the wake of 9/11 and still today”. The reemergence of the debate on whether torture is acceptable suggests we still haven’t

learned some of the lessons of this programme.

“On a more normative level, the Court makes a contribution in underscoring the right to truth and the benchmarks of an effective investigation in this type of case” Helen argues. “The Court specifically said, at the end of its judgment, that if Lithuania were to continue to not carry out a proper, thorough, meaningful investigation, then it would be a continuing violation”.

“What I would hope is that this may help to catalyse processes of accountability that have been woefully neglected, not only in Lithuania but in general in relation to rendition and torture.”

Abu Zubaydah remains in incommunicado detention in Guantanamo Bay. “A crucial question of course is the impact on the victim, and I wish there was something more positive to say. It recognizes his suffering, awards him compensation. But he is still in a situation of ongoing arbitrary detention so the violations in this case are not even over. He has now been held for over sixteen years in arbitrary detention. No charge. No trial. No due process whatsoever. He is chillingly referred to as a ‘forever prisoner’. There is a risk we start normalizing this atrocious situation.”

“The Court found that Lithuania has the responsibility to make representations to the United States to do whatever it can to bring to an end his situation. This may not change that much or be seen as all that important in itself of course, but the principle that the states that have contributed to his current situation have the responsibility to act to end it, is.”

“I hope the case again will shine a light on the human being held in a dark corner of Guantanamo with no prospect of justice at the moment. This has to end. The judgment confirms that many share the responsibility for making that happen.”



Scenes from the 2018 International Criminal Court Moot Court Competition.



The team from the Singapore Management University with Judge Geoffrey Henderson, winners of the 2018 International Criminal Court Moot Court Competition.



Director Barry Avrich, introducing his latest film at the world premiere of Prosecuting Evil: The Extraordinary World of Ben Ferencz



Members of the team from the Honourable Society of the King's Inn, second-runners up in the 2018 ICC Moot Court Competition



West Bengal National University of Juridical Sciences came first runner-up in the 2018 ICC Moot Court Competition.



Moot Court Updates

The Spring Semester is Moot Court Semester! The Grotius Centre supports several moot courts and competitions, allowing volunteering students to hone their legal analysis and advocacy skills through personalised teaching, giving them valuable experience for their future careers.

The Philip C Jessup International Law Moot

LEIDEN UNIVERSITY TOOK PART in the 59th edition of the Philip C Jessup Moot—the world's largest and truly global international law moot court competition. This year the competition engaged students from over 6480 law schools in 100 jurisdictions around the world. The case this year concerned the validity and annulment of an arbitral award; the capture of autonomous underwater vehicles; non-proliferation and disarmament of nuclear weapons; the legality of the use of force in anticipatory self-defense; the interpretation of SC resolutions acting under chapter VII and the conduct of states in naval warfare.

The Leiden team put on a brilliant performance at the Dutch qualifying competition in Maastricht. It progressed to the final round and came out as the winners with a unanimous vote from the three-strong bench, presided by professor Flinterman who founded the Jessup tradition in the Netherlands 45 years ago.

The team then traveled to Washington DC in April to represent the Netherlands at the international rounds of the competition where each student showcased excellent pleading skills and an extensive knowledge on general public international law. Globally the team ranked 38th and took advantage of the possibility to engage in cultural and academic exchange with legal professionals from all over

the world in the context of the Jessup competition as well as the American Society of International Law Annual Meeting that took place simultaneously.

The Leiden team consisted of Vanessa Menendez, Tiffany Ancey, Georgia Beatty, Rashmi Dharia and Jirat Jitwarawong (Reg LLM). It was coached by Sophie Schiettekatte, Charlotte Servant-l'Heureux and Felipe Rodriguez.

Sophie Schiettekatte

The International Criminal Court Moot Court Competition

THE INTERNATIONAL CRIMINAL COURT Moot Court Competition is the premier international competition for students of international

criminal law . This year, 70 teams from across the world came to The Hague to compete.

The problem this year concerned a case of exploitative labour practices. Due to an economic crisis, migrant workers from one state crossed the border into another and took jobs in shrimp peeling sheds. The work was hard. They worked for 80 hours per week, had their passports and identity documents withheld, and a large percentage of their wages were cut for the three years it took them to pay off their food, lodging, and visa fees the shrimp peeling sheds paid for. The Defendant was McGregor Klegane. Klegane was the CEO of a company whose subsidiary purchased 60% of all shrimp produced by the sheds. Klegane could control the corporate actions of the subsidiary, but did nothing to stop the purchases.

The workers eventually had enough and launched a class action against the sheds and were awarded damages in the amount of \$20 million USD. In addition, Klegane was prosecuted domestically for human trafficking, with the trial judge finding that the conduct did not

amount to a crime against humanity.

Did the conduct amount to the crime against humanity of 'other inhumane acts'? Could the subsidiary company be held liable as an unindicted co-perpetrator for the purposes of prosecuting Klegane? And does the fact that Klegane paid millions of dollars to the campaign of the President who appointed the trial judge, as well as a possible error of law in the trial judgment, mean the ICC lacks jurisdiction?

The Leiden team of Fabian Ortner, Una Schamberger, Helena Loutas-Paraskeva, Niki Spathopoulos, and Alejandra Fernández y de Aragón Pascual worked on the problem for 8 months, putting in many hours of hard work and effort. As a result, each team member demonstrated their abilities to work well in a team, under pressure, and act as confident and capable advocates. The skills they learnt will serve them well in their future careers, and life in general.

In addition to the competition itself, the opening ceremony included the world pre-

mier of Canadian director Barry Avrich's new film, *Prosecuting Evil: The Extraordinary Life of Ben Ferencz*. The film, as well as being a fascinating insight into the life and work of the famous Nuremberg prosecutor (featuring Ferencz himself!), also has significant historical value. It captures on film Ferencz's life story, making his infectious passion for international criminal justice accessible to a broad audience. Avrich can be commended for capturing so well the story of Ferencz and the importance of his work, as well as his tireless efforts to create a more just world. It is essential viewing for any student of international criminal law, as well as those interested in justice, human rights, or world politics.

The competition participants were extremely fortunate to see the film's first public screening. Afterwards, students could interact with Avrich, Ferencz, and his son Don Ferencz in an entertaining and insightful panel discussion that also got them excited for the week of competition to come.





Kalshoven-Gieskes Forum on International Humanitarian Law

The Kalshoven-Gieskes Forum on International Humanitarian Law has recently started work on the 4th MOOC in the International Law in Action series and will be released later this year. Robert Heinsch and Cinny Buys fill us in on the details!

SINCE MARCH THIS YEAR, the Kalshoven-Gieskes Forum on International Humanitarian Law (KGF) together with the Center for Innovation is working on the first Massive Open Online Course (MOOC) on “International Humanitarian Law in Theory and Practice”.

One of the overall goals of the KGF is increasing respect for IHL, and knowledge of IHL is a pre-condition for respecting it. With the IHL MOOC we want to take dissemination of IHL to the next level, by spreading knowledge of IHL to thousands of eager students and practitioners, all over the world. Once the course is launched in October, participants will be able to study IHL in a convenient, yet interactive manner. Like other MOOCs, our IHL

online course will consist of numerous short and clear video lectures, critical readings, engaging discussions, and assignments. On top, there will be interviews with highly knowledgeable experts in the field. We are also working on a case study in the form of an animation where participants can apply their knowledge of IHL to a fictitious country, named Arfula.

The course will roughly be divided into five weeks, so called “modules”. The modules, will be covering the following topics: Introduction to IHL; Conflict Classification; The Conduct of Hostilities; The Protection of Persons in IHL; and, Implementation and Enforcement of IHL. With our IHL MOOC we want to address law students and practitioners in the humanitarian

field, although everyone who has an interest in IHL is invited to enroll in our IHL MOOC. The MOOC will be accessible free of charge in Coursera. The language of the course is English but we are considering options to translate some of the subtitles into other languages. So we really hope to reach out to all parts of the world!

What is refreshing about this course, when comparing to other online and offline IHL courses, is that we will not only focus on theory but also on practice. A combination of theory and practice is at the heart of the mandate and vision of the KGF. Participants will notice this in our online course, among others, when they are invited to think critically about current IHL

“With the IHL MOOC we want to take dissemination of IHL to the next level

challenges that take place in real-life conflicts. Another special feature of the MOOC is that we want to bring IHL success stories to the attention of the participants. The idea is to show that IHL is not only violated, but that IHL does work and is complied with. This ties in nicely with the recently launched “IHL in Action: Respect for the Law on the Battlefield” platform (<https://ihl-in-action.icrc.org/>), launched by the ICRC which presents case studies of IHL compliance which have been researched by the IHL Clinic of the KGF together with three other IHL Clinics. We hope that these success stories trigger some students to take action in the humanitarian field.

The current status of the IHL MOOC is that we are working on the scripts of the video lectures. We already developed the module on Conflict Classification, which also has served as a prototype test and now has been reviewed by IHL Clinic students, and staff members of the Netherlands Red Cross and PAX. The official launch of our IHL MOOC is tentatively scheduled for October 2018.

Once released, the MOOC will join the Grotius Centre’s collection of three other MOOCs on international arbitration, international criminal law, and international courts and tribunals in The Hague.

Do you want to stay up to date about our “International Humanitarian Law in Theory and Practice” MOOC, or want to get a notification when you can enroll into this course? Follow the Kalshoven-Gieskes Forum on Facebook (<https://www.facebook.com/KGFLeiden/>) or subscribe to our newsletter (<http://kalshovengieskesforum.com/newsletter/>).

Robert Heinsch and Cinny Buys



News from around the Grotius Centre

Staff Arrivals

The Grotius Centre is pleased to welcome:

- > Dr Daniel Peat, who will primarily be teaching in the new ISDA Advanced LLM;
- > Dr Margaretha Wewerinke, who will teach in the Regular LLM and BA3; and,
- > Ms Marcelle Klinker, who is a teaching and research assistant based in The Hague.

Staff Departures

The Grotius Centre is sad to farewell:

- > Dr Simone van den Driest, who will be leaving us to work in The Hague; and,
- > Ms Sophie Schiettekatte, who will be leaving us to pursue a PhD at the EUI.



Professor Eric de Brabandere

Eric de Brabandere delivered his inaugural address, 'To The Hague! International Dispute Settlement from Practice to Legal Discipline' on 23 February 2018. Eric also had a busy first-half of the year, as a panelist at the roundtable on 'Achmea, BITs, and the Netherlands: Reining in Investor-State Dispute Settlement' (at the Asser Institute); a presenter on 'Gender and Racial Diversity before International Courts and Tribunals' (at the American Bar Association's Section of International Law's 2018 Annual Conference); a panelist and commentator on 'Be Careful What You Ask For: Can Recent Changes to BIT Models Satisfy ISDS Sceptics and Opponents?'

(at the Twelfth Annual Juris Investment Treaty Arbitration in Washington DC); a presenter on 'Cross-Pollination between International Courts and Tribunals and Investment Arbitral Tribunals' (at the Columbia Arbitration Day at Columbia University in New York); and a presenter on 'Coherence and Consistency in Investment Treaty Arbitration – the EU Investment Court Proposal' (at Harvard University's conference on 'Coherence and Consistency in Investment Treaty Arbitration').

Seun Bakare

On 29 April 2018, in the city of The Hague, Seun Bakare joined six other speakers, to speak at the first ever TEDxLeidenUniversity Talks. The theme of the conference was 'Building Bridges'.

The story of activism is always woven around astounding acts of bravery and extreme intelligence. However, Seun's talk takes a different dimension. He argues that the twin factors of fear and ignorance are always with us, but in spite of them, we can push ahead to build bridges that connect humanity in positive ways.

Inspired by his work at the African Commission on Human and Peoples' Rights, Seun's talk tells how 'courageous homophobes' and 'fearful activists' are helping to combat homophobia and accelerating social acceptance for LGBTI persons in Africa.



Seun Bakare speaking at the TEDxLeidenUniversity Talks event in The Hague

Professor Nico Schrijver Speaks at the 70th Anniversary Celebration of the International Law Commission

Professor Nico Schrijver served as the keynote speaker at a celebratory event as part of a solemn meeting of the UNGA on 21 May 2018. He gave an assessment of the work of the ILC and praised its contributions to international law making during the past 70 years. Through the work of the ILC major parts of international law have been codified in treaty law, for example the Vienna Convention on the Law of Treaties, Law of the Sea treaties and those on diplomatic and consular relations. Furthermore, its work has also resulted in some principal other texts, such as its draft articles

on State Responsibility for Internationally Wrongful Acts, which have a major impact on the development of international law and judicial decisions in this field. Nico Schrijver addressed in his keynote also the interaction between the work of academics, especially through the Institut de Droit international, and the International Law Commission and earlier the League of Nations (e.g., The Hague Codification Conference in 1930). He raised the question whether the agenda for international law is now more or less completed now that after 1945 so many multilateral treaties have been concluded or whether there is still work to be done and an agenda for the future? In his view the latter is certainly the case now

that frequently new issues of pressing concern emerge which are in need of international law making, such as combatting international terrorism, protecting the global climate system and achieving the UN Sustainable Development Goals. Furthermore, international law is in need of constant maintenance in order to remain relevant. Nico Schrijver emphasized also that international law is much more than just a 'belief': in our deeply divided world it is our only common language as well as the embodiment of shared global values such as peace and security, humanity, justice, freedom and sustainability and a concrete regulatory framework for action in many fields of international relations.

Grotius Dialogues

The Grotius Dialogues provide a forum for Grotius Centre-affiliated researchers to present their current research and obtain feedback from colleagues.

So far this year, the following Grotius Dialogues have been held:

- > Kushtrim Istrefi, *European Judicial Responses to Security Council Resolutions: A Consequentialist Assessment*
- > Evelien Campfens, *Whose cultural objects? Justice and injustice in the field of looted art*
- > Meagan Wong, *Aggression and the International Criminal Court: the issue of State responsibility*
- > Emma Irving, *Human Rights Fact Finding in the Digital Age: Beyond Opportunities and Challenges*
- > Eliana Tersi Cusato, *Environmental Protection and Armed Conflict*
- > Luigi Prosperi, *A Bull in a China Shop: the Impact of the ICC Decisions on Jurisdiction on the Disputes over State Sovereignty and Borders*

The Grotius Dialogues are coordinated by Jens Iverson: get in touch if you are interested in discussing your own research in a friendly and stimulating environment!.



Professor Larissa van den Herik

Larissa van den Herik had a busy start to 2018, having given the following lectures and presenta-

tions:

- > *Due Diligence and the Obligation to Prevent Genocide and Crimes against Humanity*, Max Planck Institute, Berlin, 28/29 June 2018.
- > *The UN and the use of sanctions and self-defence against non-state actors: Reporting requirements as a channel for custom formation*, at *Conference on Specially-Affected States & International Organizations: Rising Actors in the Formation & Identification of Customary International Law*, University of Amsterdam, 5 June 2018.
- > Commentator at *Conference on The European Court of Human Rights in East-West Relations: Norms, Values and Legal Politics*, Higher School of Economics, Tartu University and PluriCourts, Moscow, 18-19 May 2018.
- > *Gravity and the Role of Diasporas in Armed Conflict*, *Conference on Sufficient Gravity Before the International Criminal Court*, University of Westminster, London, 11 May 2018.
- > Launch of *UNU Study entitled Fairly clear risks: Protecting UN sanctions' legitimacy and effectiveness through fair and clear procedures*, organized by the Permanent Mission of Switzerland to the United Nations and the United Nations University UNU Side Event, UNHQ, New York, 9 March 2018.
- > Lecture at Hague Academy on *Corporate Responsibility under International Criminal Law*, The Hague, 1 December 2017.
- > Lecture on *Fact-Finding in International Law*, Aberdeen University, 17 November

2017.

- > *Max Planck Trialogues Workshop on Reparations*, Berlin, 10-11 November 2017.

Her publications are:

- > *Sidestepping the Security Council: The Use of Non-UN Sanctions for UN Purposes*, *Revue Belge de Droit International*, 2018/2, pp. 464-491.
- > *Commissions of Inquiry and the Jus ad Bellum*, in Leila Sadat, *Seeking Accountability for the Unlawful Use of Force*, (co-author: Catherine Harwood), Cambridge University Press, 2018, pp. 171-193.

ICC Scholars Forum

Assistant Professor Sergey Vasiliev and Professor Larissa van den Herik organised the ICC Scholars Forum held in June. Sergey, Assistant Professor Emma Irving, Assistant Professor Joe Powderly, and Professor Carsten Stahn all presented at the Forum and Larissa commented on a paper prepared by Charles Jallow. The high-level Forum brought together leading scholars and practitioners in the field of international criminal justice.



Publications

January to June

Articles

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Dugard C.J. (2018), Apartheid in South Africa and the Occupied Palestinian Territory: A Useful Comparison?. In: Stern-Weiner J. (Ed.) *Moment of Truth: Tackling Israel-Palestine's Toughest Questions*. London: OR Books. 351-385.

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Sun L. (26 June 2018), *International environmental obligations and liabilities in deep seabed mining* (PhD thesis. Institute of Public Law, Law, Leiden) Meijers-reeks no. 306. Supervisor(s): Schrijver N.J., De Brabandere E.C.P.D.C.

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Laverty C.S. (23 April 2018), What lies beneath? The turn to values in international criminal legal discourse. *EJIL Talk!*:

European Society of International Law [blog entry].

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