



**British Institute of
International and
Comparative Law**



**Melbourne
Law School**

Dialogues between International and Public Law

A conference organised by BIICL and Melbourne Law School
Thursday 30 June – Friday 1 July 2016, London



Dialogues between International and Public Law

This two-day conference will bring together for the first time leading academic and practising lawyers to pool knowledge and share perspectives on the changing relationship between public international law and domestic public law in different jurisdictions.

Organised by the British Institute of International and Comparative Law (BIICL) and the Melbourne Law School (MLS), this event will allow a constructive dialogue on how national public law and public international law and practice should and must co-exist, combining theory with case studies and the experience of practitioners.

Event concept

An initiative of this kind is badly needed. It is trite that 21st century globalisation is characterised by an interpenetration of domestic public law and international law. It is also characterised by shifting boundaries between public and private spheres of activity at both the international and national levels. The concept of 'global constitutionalism' is used by some in an attempt to capture the implications of these developments for one or both spheres but does not do them justice. Terms of this kind draw attention to the reality of some significant change but mask disagreement over its extent, nature and consequences. Generalisation has inhibited a deeper understanding of what really is going on in this complex and diverse terrain. Focussed dialogue between public lawyers and international lawyers is needed to pool knowledge and share perspectives and to examine how, in present conditions, the two bodies of law and practice can and should co-exist. This event is designed to provide the impetus for a more informed debate which connects theory and doctrine with practice, drawing on the insights that case studies provide.

Conference venue

Woburn House Conference Centre, 20-24 Tavistock Square, London WC1H 9HQ

Provisional Programme

THURSDAY 30 JUNE

10.30 -11.00 Registration and tea/coffee

11.00 – 11.30 Keynote Address

by **Lord Peter Goldsmith QC PC**, Debevoise & Plimpton and former UK Attorney General

Chair: Sir Bernard Rix QC (formerly Lord Justice Rix), 20 Essex St Chambers

11.30-13.00 Panel 1

The relationship between Public International law and Public Law – why is it important in practice and in theory?

This panel will examine the importance of the relationship from the perspective of Public International Law and from the perspective of Public Law, to set the scene for the whole conference. Speakers will offer an overview of ways in which their area of law has changed under conditions of globalisation to intrude into the other: for example, to extend to non-state actors, in the case of public international law, and to involve increasing levels of extraterritorial action, in the case of public law. They will explore whether these developments are linear or involve a degree of ebb and flow, and the issues they raise for scholars and practitioners in both fields.

Speakers:

Sir Frank Berman, KCMG QC, BIICL: International and Public Law: 'Perspectives from Government and private legal practice'

Professor Cheryl Saunders, Melbourne Law School: 'Public law and Public International Law: a Public Law Perspective on Interdependence'

Professor Gerry Simpson, London School of Economics and Melbourne Law School: 'International Law as Public Law'

Chair: Sir Bernard Rix QC (formerly Lord Justice Rix), 20 Essex St Chambers

13.00-14.00 Lunch (provided for all participants)

14.00- 15.30 Panel 2

Impacts of public international law on public law

This panel will examine some of the principal ways in which public international law and practice intrude into domestic public law, placing pressures on the way in which international affairs are conducted. It will range from the impact of international law in domestic public law with particular, but not exclusive, reference to international human rights law, and the evolving scope of non-justiciability

doctrines, as an aspect of the response of public law systems to internationalisation and globalisation.

Speakers:

Dr Veronica Fikfak, Homerton College, Cambridge University: 'English courts' 'internalisation' of the European Convention on Human Rights? – Between theory and practice'

Professor Michael Crommelin, Melbourne Law School: 'The Pacific 'Solution' to the Refugee Crisis: a case study'

Professor Dapo Akande, Oxford University: 'Non-justiciability and the Foreign Act of State doctrine'

Chair: Professor Robert McCorquodale, BIICL

15.30 - 16.00 Tea break

16.00 – 17.30 Panel 3

Public law influences on public international law

This panel will examine the rationale for the extension of domestic public law principles into the international sphere and the scope for and limits of this development. The principles in question include (but are not limited to) democratic legitimacy; legal and political accountability; subsidiarity; the separation of powers and the rule of law. It will discuss their application to 'global administrative law', and the internationalisation of the right to good administration.

Speakers:

Sir Jeffrey Jowell QC, Blackstone Chambers: 'The Internationalisation of the Right to Administrative Justice'

Aimee-Jane Lee, Debevoise & Plimpton: 'The role of public law notions of proportionality in investment arbitration and in contemporary treaty practice'

Ben Juratowitch, Freshfields Bruckhaus Deringer: 'Individual rights in disputes between States'

Chair: Professor Dan Sarooshi, Oxford University and Essex Court Chambers

17.30-18.30 Reception for all conference participants

19.00 Speakers' Dinner (at nearby restaurant)

FRIDAY 1 JULY

9.00 – 9.30 **Registrations (for new arrivals) and tea/coffee**

9.30 – 11.00 **Panel 4**

Concepts of 'public' in 'public' international and 'public' law

This panel will explore the concept of the 'public' aspect of each of the two branches of law: their commonality (if any); differences among domestic public law traditions; the interface between the public and the private in each; the impacts on both areas of law of privatisation; and other shifts in train, such as the increasing ability of corporations and individuals to communicate and transact directly through electronic means, without the mediation of states. The case of the horizontal application of human rights will also be considered to draw additional insights from both.

Speakers:

Professor Dr Armin von Bogdandy, Max Planck Institute for Comparative Public Law and International Law, Heidelberg; and University of Frankfurt: 'From Public International to International Public Law. Translating World Public Opinion into International Public Authority'

Professor David Feldman QC, Cambridge University: 'The varying meaning of "public" in public law and public international law'

Dr Jason Varuhas, Melbourne Law School: 'Against the Public-Private Law Divide: Pluralism and Public Law'

Chair: Jill Barrett, BIICL

11.00-11.30 **Coffee break**

11.30 – 13.00 **Panel 5**

Complications of pluralism

This panel will examine the various ways in which domestic public law and public international law come into conflict and are in tension with each other. It will look at cases where the influence or impact is a two- or multi-way street. Examples include the use of international investor-state dispute settlement procedures where there are also implications arising out of the same disputes in domestic public law; the (typical) dependence of international law on state implementation; and the (atypical) dependence of international law on implementation by the EU. The way international law penetrates the domestic public law of the EU, and via EU law into the public law of Member States, will be discussed in the context of the UK's preparations for Brexit.

Speakers:

Alistair McGlone, international environmental law consultant, former Defra lawyer: 'Case study on compliance by EU institutions with international obligations arising under the Aarhus Convention.'

Jansen Calamita, BIICL: 'The disconnect between the approach to remedies in investment treaty law and the approach to remedies under systems of public law'.

Dr Jarrod Hepburn, Melbourne Law School: 'Parallel Expropriation Norms in International Law and Australian Law'

Chair: Professor Dawn Oliver, University College London

13.00- 14.00 Lunch (provided for all participants)

14.00- 15.30 Panel 6

Future directions

This final session will draw conclusions from the earlier proceedings, highlight key insights and examine possible future directions in terms of (a) the likely trajectories of the interface between domestic and international law; (b) ways of ameliorating difficulties; (c) suggestions for a more effective working relationship between domestic public lawyers and public international lawyers. The Chair will facilitate an interactive conversation between the panel members and all participants.

Speakers:

Tim Eicke QC, Essex Court Chambers: 'The future potential for human rights and public law issues to feature in investment treaty negotiations and arbitrations'

Douglas Wilson, Foreign & Commonwealth Office: 'Issues on the horizon: International law positions as an act of foreign policy?'

Professor Thomas Poole, London School of Economics: 'Future narratives on State Sovereignty: where are we heading?'

Dr Antonios Tzanakopoulos, Oxford University: 'What can we take away from these dialogues?'

Chair: Rt Hon Sir Stanley Burnton QC, One Essex Court Chambers

15.30 – 15.45 Chair's concluding remarks

by Rt Hon Sir Stanley Burnton QC

NOTE: this programme is provisional and changes may be made, to the themes, speakers, order and timings of panels.

The conference start and end time will not change.

Speakers

Speakers for this unique conference are drawn from international academia, law firms, public administration and the judiciary. The following individuals have agreed to speak:

Professor Dapo Akande, Oxford University

Jill Barrett, BIICL

Sir Frank Berman KCMG QC, BIICL

Professor Dr Armin von Bogdandy, Max Planck Institute for Comparative Public Law and International Law, Heidelberg; and University of Frankfurt

Rt Hon Sir Stanley Burnton QC, One Essex Court Chambers

N. Jansen Calamita, BIICL

Professor Michael Crommelin, Melbourne Law School

Tim Eicke QC, Essex Court Chambers

Professor David Feldman QC, Cambridge University

Dr Veronica Fikfak, Cambridge University

Lord Peter Goldsmith QC PC, Debevoise & Plimpton

Dr Jarrod Hepburn, Melbourne Law School

Aimee-Jane Lee, Debevoise & Plimpton

Sir Jeffrey Jowell KCMG QC, Blackstone Chambers

Ben Juratowitch, Freshfields Bruckhaus Deringer

Professor Robert McCorquodale, BIICL

Alistair McGlone, international environmental law consultant

Professor Dawn Oliver, University College London

Professor Thomas Poole, London School of Economics

Sir Bernard Rix, 20 Essex Street Chambers

Professor Dan Sarooshi, Oxford University and Essex Court Chambers

Professor Cheryl Saunders, Melbourne Law School

Professor Gerry Simpson, London School of Economics and Melbourne Law School

Dr Antonios Tzanakopoulos, Oxford University

Dr Jason Varuhas, Melbourne Law School

Douglas Wilson, Foreign & Commonwealth Office

British Institute of International and Comparative Law (BIICL)

As a leading independent legal research organisation with charitable status, unaffiliated to any university, BIICL is the only body of its kind in the UK and one of very few in the world. The Institute is focused on applied legal research and serves as an invaluable focal point for the study of international and comparative law. Established over 50 years ago, it has its headquarters in central London. BIICL works closely with the American Society of International Law (ASIL).

Melbourne Law School (MLS)

Since 2012 BIICL has been welcoming Visiting Research Fellows and post-graduate law students from Melbourne Law School to participate in BIICL's Arthur Watts Fellowship's programme of public international law research and events on subjects ranging from the Antarctic Treaty System to the Paris Convention on Industrial Property. BIICL extends its gratitude to Allan Myers AO who has helped make this programme possible through his generous funding and ongoing support, and Professor Carolyn Evans, Dean of Melbourne Law School for her active support which has also helped make this partnership a great success.

Sponsorship

Conference generously co-sponsored by

**Debevoise
& Plimpton**

 **Freshfields Bruckhaus Deringer**

Speaker Dinner and conference lunches sponsored by

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BARRISTERS