

# LAUTERPACHT CENTRE NEWS



UNIVERSITY OF  
CAMBRIDGE

Issue 25 | Michaelmas 2017

# The Lauterpacht Lectures 2017: towards a global private law?

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

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

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

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

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

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

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

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

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





Professor Anne Peters.

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

people concerned. Hersch Lauterpacht would have approved.

**Audio and video recordings of the lectures are available online:**

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

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





 **LAUTERPACHT CENTRE**  
FOR INTERNATIONAL LAW

**Lauterpacht Centre for International Law**

University of Cambridge

5 Cranmer Road

Cambridge CB3 9BL

Tel: 01223 335358

Fax: 01223 761855



[www.lcil.cam.ac.uk](http://www.lcil.cam.ac.uk)



[www.facebook.com/LCILCam](https://www.facebook.com/LCILCam)



@Lauterpacht\_Ctr