



# SYDNEY CENTRE FOR INTERNATIONAL LAW

FACULTY OF LAW, UNIVERSITY OF SYDNEY



## Dear Friends of the Sydney Centre

The Sydney Centre for International Law is pleased to bring you its latest newsletter, reporting on Centre activities during the first half of 2009, a period during which the Centre moved to new digs in the spectacular new Faculty of Law building on the main campus of the University of Sydney.

This was a characteristically busy period for the Centre during which we were privileged to host some leading international law academics and practitioners from around the world as part of the Faculty of Law's Distinguished Speakers Series and the Centre's regular seminar series. These free public events covered an extraordinary range of topics and perspectives within public and private international law: from human rights to trade law; from the laws of war to international commercial and investment arbitration; from legal issues surrounding the Northern Territory intervention to questions of 'linguistic justice' towards minorities; from policing in post-conflict Nepal to private international law developments in Europe; from the challenges of judging in the International Court of Justice to those of reconciling an embrace of the free market economy with a constitution informed by socialist or communist thought. Read on to learn more about these events and the insights they yielded.

Detailed in this newsletter are the numerous submissions made by Centre members to parliamentary and other law reform inquiries addressing issues of international law during the first six months of the year. We have, however, refrained from publishing a full list of Centre members' scholarly publications for this period; we have decided to hold that over until our year-end newsletter when we can convey a picture of the full year's scholarly research output.

Last, but by no means least, we are delighted to extend an invitation to all to join us at two exciting events soon to be hosted by the Sydney Centre for International Law, alongside other sponsors. In late November, an important conference, *Human Rights in the Asia-Pacific: Towards Institution Building*, will bring together experts from across the Asia-Pacific region to consider prospects for regional institution-building towards more effective human rights protection and realisation. In mid-February 2010, we are looking forward to a stimulating conference addressing controversial politico-legal issues at stake in the contemporary discourse and practice of investment law, its treaties and arbitral proceedings: *Investment Treaty Law and Arbitration: Evolution and Revolution in Substance and Procedure*. We hope that those of you who share our interests in these areas will come along to be part of these events. Details are outlined on later pages. Please also keep an eye on our website for details of the free public seminars that we are hosting over the coming months.

A final note by way of explanation: I write this introduction as Co-Director alongside my colleague Dr. Ben Saul, under whose directorship the Centre has flourished over the past few years. This is, however, a role to which I am newcomer (as of August 2009), so I do not write as one who has steered the Centre during the period on which this newsletter reports. As in previous years, this period's productivity is a testimony to Ben's hard work and engaging approach to directorship, as well as being an indication of the talent and diversity of the international law specialists that call the Sydney Centre for International Law their some time home. Let me take this opportunity to voice our collective appreciation for your interest and support and to wish you all the best for the remainder of 2009.

Fleur Johns, *Co-Director, Sydney Centre for International Law*

## Newsletter #4 Semester 1, 2009

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## Distinguished Speakers Series

To celebrate the opening of the new Law Building in 2009, the Sydney Centre for International Law hosted a Distinguished Speakers series.

By bringing international lawyers together from all over the world, the Distinguished Speakers program actively contributes to discourse and discussion on topical and significant issues in the world today. And in international law more than any other area, as highlighted by Sir Kenneth Keith, it is essential for nations to share their experiences to move forward with a collective framework.

Later this year the Distinguished Speakers program will include presentations from Professor Martti Koskeniemi on International Law and State Power and a former Chair of the appellate body of the WTO, Professor Yasuhei Taniguchi.

### *Judging in the International Court of Justice and Other National and International Courts and Tribunals*

Sir Kenneth Keith ONZ KBE QC, Judge of the International Court of Justice

Tuesday 7 April

To deliver the first lecture for the Centre as part of the Distinguished Speakers Program, the Centre was greatly honoured to host Sir Kenneth Keith ONZ KBE QC.

Sir Kenneth Keith has made an impressive contribution to law reform, academia and the judiciary. He has served on more than ten international courts and tribunals, including the Court of Appeal and Supreme Court of New Zealand and the Judicial Committee of the Privy Council. Since 2006, Sir Keith has served as a judge of the International Court of Justice in The Hague.

In his lecture 'Judging in the International Court of Justice and Other National and International Courts and Tribunals' Sir Keith shared the insights of a remarkable career, exploring the 'who, how and what' of the International Court of Justice. That is, who is elected to the court, how decisions are reached, and what is their subject matter.

On the composition of the International Court of Justice, Sir Keith remarked: 'plainly, there are great differences of background, of legal education, legal traditions ... and views of the judicial process'. It is clear that these differences make for 'intense interaction among the judges' in the drafting of judgments. As Sir Keith noted 'some of the debate is of extraordinarily high quality ... some of it is about "first" and "firstly" and split infinitives'.

The late Sir Robert Jennings, who served as President of

the ICJ from 1991 to 1994, described the judicial decision-making process as 'ecumenical'. As Sir Keith elaborated, 'ecumenical' in the fullest sense describes a process 'belonging to the whole world'. In his view, this is apposite to the 'very collective operation' of judgment drafting in the ICJ.

Sir Keith also spoke of the concerns of international law's fragmentation resulting from the development of specialist international courts and tribunals. In his view, international disputes that cannot be settled in other ways 'can now be settled by international tribunals. This is to be applauded'. The fear of fragmentation is 'vastly overstated'.

He continued, 'we just need to keep learning from one another and we need to keep meeting in the kind of ways that we do and reading one another's judgments and reflecting on them'.



Sir Kenneth Keith has been a judge of the International Court of Justice since 2006. He was appointed Barrister and Solicitor of the High Court of New Zealand (1961) and Queen's Counsel (1994), and was a judge of the New Zealand Court of Appeal and Supreme Court (1996-2006). Sir Keith was also a judge of appeal in Samoa, the Cook Islands, Niue and Fiji; a member of arbitration tribunals; a law commissioner in New Zealand; and a member of the legal offices of the United Nations and the New Zealand Ministry of Foreign Affairs. He was also a law faculty member at the Victoria University of Wellington for almost thirty years, including five years as Dean, and is now a Professor Emeritus.

In 1988, Sir Keith was awarded the title of Knight Commander of the Order of the British Empire for services to legal education and law reform.

## *An Australian Bill of Rights? Learning from the British Experience*

**Professor Conor Gearty**, Professor of Human Rights Law and Director of the Centre for the Study of Human Rights, London School of Economics

**Wednesday 8 April**

The Centre was similarly honoured to host Professor Conor Gearty, Professor of Human Rights Law and Director of the Centre for the Study of Human Rights at the London School of Economics. His engaging and entertaining lecture drew on lessons from the British experience of a Human Rights Act, a timely subject considering the National Human Rights Consultation, which is due to report on 30 September 2009.

Professor Gearty acknowledged that formerly he was a sceptic regarding statutory human rights. However, he was converted by the careful design of the Human Rights Act which strikes a 'subtle balance between the respect required of the democratic legislature and the need to develop a human rights perspective on law' and the quality of judicial applications of the Act to date.

The unique political situation in the United Kingdom in the 1980s generated the political will for a Human Rights Act. Professor Gearty explained that 'there was a loss of confidence in the legislative and executive capacity and desire to protect freedom. But there also was great concern about the judiciary's capacity to protect freedom ... it was actually precipitated by the perception that the courts had colluded in some of the excesses of the Thatcher administration.'

As for the success of a Bill of Rights in Australia, Professor Gearty offered lessons from the British experience. In particular he noted the 'need to embed the language of human rights in the culture'. He explained of the language of human rights, 'all the evidence is that it facilitates good decision-making, it improves public policy ... and it is the most ethical language that we have'.



**Conor Gearty** is Professor of Human Rights Law and Director of the Centre for the Study of Human Rights at the London School of Economics. He is a founding member of the barristers' chambers Matrix, from where he practises law, specialising in public law and human rights. He has appeared in the High Court, the Court of Appeal

and the House of Lords.

Professor Gearty's scholarship is mainly in the fields of

human rights, terrorism and civil liberties. His most recent work focuses on the dilemma that terrorism poses to civil liberties. During the 1990s, Professor Gearty advised Tony Blair on terrorism law, and was also an executive committee member of the British-Irish Association, involved in facilitating informal discussions between the various parties and members of civil society in Northern Ireland.

## *Israel's War in Gaza and International Law*

**Professor Yuval Shany**, Hebrew University of Jerusalem

**Wednesday 15 April**

It is unusual to find someone prepared to dismiss their own craft. But Dr Yuval Shany, the Hersh Lauterpacht Chair in Public International Law at the Hebrew University of Jerusalem did just that on 15 April in his lecture, 'Israel's War in Gaza and International Law' accepting that 'international law delivers less than it actually offers'.

The traditional tilt in analysis of the issue of Israel within Gaza is toward describing Israeli action as fundamentally violating international law. However, for Dr Shany, debating Israel's actions in Gaza is itself 'hopelessly limited by the vague nature of international principles'.

A situation such as Gaza highlights the difficulties of applying international law aptly. Applying proportionality to an attack by Israel that is in response to few casualties but 8 years of disturbance is an impossible exercise. Dr Shany asked: 'Where do we draw the line? Balancing military advantages with collateral damage cannot be the mathematic equation it purports to be. How does one quantify the unquantifiable?'

Ruefully noting 'I have more questions than answers to give you', Dr Shany suggested that we are asking the wrong questions. International lawyers have sought to answer whether the barrage of Qassam rockets shot at Israel constituted an armed attack that justified an invasion of Gaza. But for Dr Shany, these 'yes' or 'no' questions promote a sterile discussion, and attempt understanding of a complex issue within a virtual reality.

'I fear that the current state of affairs is an indication that the Israeli Defence Force has not fully internalised the need to seriously abide by the law', Dr Shany explained. 'I believe that Israel, like any other nation, has a legal, moral and political imperative to abide by the rules and principles of international law.'

Professor Yuval Shany is the Hersch Lauterpacht Chair in International Law at the Faculty of Law, Hebrew University of Jerusalem. He also serves as the academic director of the Minerva Center for Human Rights at the Hebrew University and as a Director in the Project on International Courts and Tribunals.



Professor Shany has published a number of books and articles on international courts and tribunals, as well as on other international law issues such as international human rights and humanitarian law. He has taught in a number of law schools in Israel, and has been in recent years a research fellow in Harvard and Amsterdam University and a visiting professor at the Georgetown University Law Center and Michigan Law School.

***The New European Private International Law of Obligations: Marvel or Monstrosity?***

**Andrew Dickinson**, Solicitor Advocate; Consultant to Clifford Chance LLP; Visiting Fellow at the British Institute of International and Comparative Law

**Monday 20 April**

The European Community Regulations on the law applicable to contractual (Rome I) and non-contractual (Rome II) obligations, adopted in 2008 and 2007 respectively, have been described as comprising a European conflicts revolution and as providing, with the Brussels I Regulation on jurisdiction and judgments, the foundations for a European Private International Law Code. Andrew Dickinson outlined the key provisions of the Regulations and addressed whether they can truly be described as revolutionary, whether they are to be considered a 'good thing', their likely effect on non-Member States (including Australia) and whether common law jurisdictions have anything to learn from the new European private international law of obligations and the processes leading to their adoption.



**Andrew Dickinson** is a solicitor advocate, consultant to Clifford Chance LLP and visiting fellow at the British Institute of International and Comparative Law. His main area of practice and research interest is private international law, but his practice involves other aspects of civil litigation, commercial and banking law and public international law. Andrew was closely involved in the discussions leading to the adoption of the Rome I and Rome II Regulations, and his commentary (*The Rome II Regulation: The Law Applicable to Non-Contractual Obligations*) is published by Oxford University Press. Andrew is a member of the North Committee (the Ministry of Justice's advisory committee on private international law) and of the editorial board of the *Journal of Private International Law*.

## Centre Seminars

*The Centre hosted an active program of public events in the first half of 2009, with details of each seminar provided below.*

***The Aim and Effect Approach to National Treatment under the GATT: Should it be Revived?***

**Wihuan Zhou**, Sydney Law School

**Thursday 11 June**

This seminar discussed the history of the aim and effect approach to national treatment under the GATT, considered the theoretical basis for that approach and considered whether WTO panels could properly apply the national treatment rules without the aim and effect test.

**Wihuan Zhou** is a PhD candidate at the Faculty of Law, University of Sydney.

***TRIPS Provisions on Enforcement of Intellectual Property Law:***

***What Guidance from the China-IP Decision***

**Dr Brett Williams**, Sydney Law School

**Tuesday 5 May**

In the recent *China-IP* case, the WTO dispute settlement panel and appellate body considered the sections of TRIPS Part III (Agreement on Trade-Related Aspects of Intellectual Property Rights) concerning provision of remedies and application of criminal sanctions. Dr Williams presented an overview of the provisions of TRIPS Part III and discussed the impact of the recent *China-IP* case. This recent case considered, in particular, the obligation to provide remedies in the

context of a censorship law, the obligation to provide a remedy of removing infringing items from circulation and the obligation to impose criminal penalties.



**Dr Brett Williams** is a Senior Lecturer and Associate of the Sydney Centre for International Law at the Faculty of Law of the University of Sydney.

*Current Issues in International Commercial Arbitration*

**Professor James Crawford SC LLD FBA**, Whewell Professor of International Law, University of Cambridge

**Monday 4 May**

This lecture analysed major current developments in the field of international commercial arbitration. At the international level it focused on the nearly-completed review of the 1976 UNCITRAL Arbitration Rules; at the national level on the pending review of the International Arbitration Act 1974 and associated controversies. Finally, current UK case law was discussed. Professor Crawford's analysis revealed an unresolved tension between international and European policies on such matters as competence and anti-suit injunctions.

**Professor James Crawford** is the Whewell Professor of International Law at the University of Cambridge and Chair of the Faculty of Law. He was a Member of the Australian Law Reform Commission until 1992, and is a member of the International Law Commission, where he was responsible for the Draft Statute for an International Criminal Court (1994) and the Articles on State Responsibility (2001).



Professor Crawford has an extensive practice in international law and international arbitration, and is author of numerous books, as well as co-editor of the British Yearbook of International Law.

*Strengthening Human Rights Among Police & Prosecutors in Post-Conflict Nepal*

**Dr Ben Saul**, Director, Sydney Centre for International Law, Sydney Law School

**Wednesday 23 April**

In 2008, the Sydney Centre for International Law was awarded an AusAID Public Sector Linkage Program grant of \$170,000 to conduct a one year human rights project in post-Maoist Nepal, in partnership with Kathmandu School of Law. The project, entitled "Safeguarding Human Rights in the Criminal Justice System in Nepal", prompted by Nepal's poor human rights record in the justice system, has two parts: (1) a review of human rights curricula in Nepal (police, judiciary, bar association, law schools, UN agencies) and (2) design and delivery of a 100 page model human rights training Manual for Law Enforcement in Nepal, aimed at Police, Armed Police and Government Attorneys, in English and Nepali, and related Training of Trainers Workshop and 6 country-wide training Workshops.

Two-thirds into the project, after two trips to Nepal, Ben Saul reflected on designing and implementing a foreign aid project in a developing country, including the difficulties encountered, measuring its effectiveness, and relating concrete assistance to research outputs.

**Dr Ben Saul** is Director of the Sydney Centre for International and Global Law, a Senior Lecturer and barrister (including in the International Criminal Tribunal for the former Yugoslavia). Ben specializes in public international law, particularly anti-terrorism law, humanitarian law, international criminal law and human rights law.



He has published widely in international law journals and his recent book, *Defining Terrorism in International Law* (Oxford University Press, Oxford, 2006), is the first scholarly work on the subject. He has taught law at UNSW, Oxford and in Cambodia and is Editor in Chief of the *Australian International Law Journal*.

Ben has delivered lectures, seminars and conference papers in Australia and overseas, given evidence to numerous parliamentary and law reform inquiries into new legislation, and been active in public debates about terrorism, sedition, torture, refugees and human rights.

## *Race Discrimination, The Intervention and Indigenous Australians*

George Newhouse and Greg Marks

Tuesday 24 March

In January 2009 a number of Aboriginal people from the Northern Territory who are subject to the Northern Territory Emergency Intervention (NTER) requested the Committee on the Elimination of Racial Discrimination (the CERD Committee) to act under its Early-Warning Measures and Urgent Procedures to recommend to the Australian Government that it immediately take all necessary steps to end the exclusion of the Racial Discrimination Act in respect of the NTER. They also requested that CERD propose to the Australian Government that it undertake no further implementation of the NTER until CERD is satisfied that the measures are 'special measures' within the meaning of the CERD Convention. CERD was also requested to direct the Australian Government to enter into discussions with the Aboriginal peoples of the Northern Territory in regards to the NTER and compliance with international obligations. The complaint was considered by CERD at its 74th session from 16 February to 6 March 2009. George Newhouse and Greg Marks provided an update on the complaint, its consideration by CERD, and actions to follow on this consideration.



**George Newhouse** has assisted indigenous people in the preparation of their communication to CERD. George is a practising solicitor, a former member of the NSW Consumer Trader and Tenancy Tribunal, and an arbitrator (2001-2004) and Mediator (2001 to date) of the Workers Compensation Tribunal.

George has held a number of elected positions and statutory appointments in local government and in 2007 he ran against Malcolm Turnbull as the Labor candidate for the Federal Seat of Wentworth. He has a special interest in human rights and has acted in a legal capacity for Vivian Solon, Cornelia Rau and Richard Niyonsaba. He has also acted in numerous high profile anti-discrimination cases and in a stolen generation case. Newhouse began his professional career with J P Morgan in Sydney, and transferred to the bank's Treasury Planning and Development Group in New York. He moved to London and joined the Banking and Capital Markets Department of Clifford Chance, the largest law firm in the United Kingdom.

**Greg Marks** is a Canberra-based international lawyer and consultant specialising in international human rights law, in particular indigenous rights. He also has expertise in native title, land rights and indigenous policy. He is rapporteur of the International Law Association (ILA) Committee on the Rights of Indigenous Peoples and the convenor of the Indigenous Rights Committee of the ILA Australian Branch. Greg has represented Australia in bilateral development assistance negotiations and at various UN fora. He has authored a number of submissions to UN treaty bodies, and published articles and reviews on indigenous policy, native title and land rights, the origins of international law, the work of the UN human rights treaty bodies and the relationship between international obligations and Australian law and practice.

## *The Doha Round Negotiation on Antidumping Rules – What's on the Table*

Dr Brett Williams, Sydney Law School

Thursday 12 March

Dr Brett Williams provided a primer on WTO rules on antidumping followed by a consideration of the draft texts produced so far in the Doha Round negotiations for amending the WTO Agreement on Antidumping.

**Dr Brett Williams** is a Senior Lecturer and Associate of the Sydney Centre for International Law at the Faculty of Law of the University of Sydney.



## *Policing in Nepal in Transitional Context*

Professor Yubaraj Sangroula,

Kathmandu School of Law

Friday 27 February

Professor Sangroula began his presentation with an overview of the Nepali criminal justice system. While Nepal established its formal modern police institution only after the British left India in 1947, the legacy of British colonial policing was fully imported by the Nepal police. Even today, the police service in Nepal behaves like a force rather than a 'service delivery' institution. The interface between police and the people is very weak, and the Nepalese police psyche that 'use of force' is the primary alternative is deeply rooted. The lack of professionalism and specialisation in works is also a serious weakness, the institutional autonomy is politically vulnerable, and acts of corruption and irregularity are still serious problems within the institution, which are

mainly responsible for 'the phenomenal failure in crime investigation and control'.

Professor Sangroula suggested that the police system is in transition, and pointed to reforms for enhancing human rights protection. Presently, the government has sensed an urgency to 'improve the condition' of policing in Nepal. Nepal is passing through an interesting time of transition, with traditional political, social and cultural values being overtly challenged. The change in the system of policing is an aspiration of the people, and the protection of human rights and enhancement of law enforcement efficiency have been emphasised by the government. A high level taskforce has prepared a detailed report to improve conditions along with a restructuring plan, Professor Sangroula recounted.



**Professor Yubaraj Sangroula** has a PhD in criminal justice and policing. He has been a Professor at Kathmandu School of Law (KSL) since its establishment in 2000, and is the Founder Executive Director of KSL. He was a visiting scholar at

Georgetown Law Centre in 1996, and has taught as visiting professor at universities in India, Bangladesh, Japan, Thailand and Sweden. Professor Sangroula is currently working as Convener of the Law and Governance Committee at South Asia University, a newly established regional university, and has worked as consultant in Nepal and abroad for the office of the UN Human Rights Commissioner. Recently, he headed the Nepal Government High Level Taskforce for Modernisation of Security Agencies in Nepal. Professor Sangroula's visit to Sydney was supported by AustLII and AusAID ISSS.

***Language, law and democratic participation:  
International law and linguistic minorities'  
engagement in public life***

**Dr Jacqueline Mowbray, Sydney Law School  
Thursday 26 February**

This seminar took the discussion of the role of English in aboriginal communities as a starting point for exploring the relationship between language and democratic participation, and the role which international law plays in regulating that relationship.

How can language policy enhance individuals' ability to exercise control over the decisions which affect their lives? Conversely, how can language function to exclude individuals from the public sphere, preventing effective democratic participation? The first part of the

presentation raised these issues, and noted the various ways in which current structures of social and political life may limit democratic participation by linguistic minorities.

'Linguistic justice', Dr Mowbray argued, requires continual reform of these structures to enhance effective participation by all citizens, regardless of language. Dr Mowbray then turned to consider the extent to which international law contributes to, or encourages, this process of reform.

It was concluded that, while international law seeks to encourage democracy and popular participation, it adopts a narrow or restrictive interpretation of these concepts. This limits the potential for international law to open up and democratise the public sphere, a limitation which has particular implications for linguistic minorities.

**Dr Jacqueline Mowbray**

joined the Faculty of Law in 2008. She is a graduate of the Universities of Queensland (BA/LLB (Hons)), Melbourne (LLM) and Cambridge (LLM (Hons)). In June 2008, she successfully defended her PhD thesis at the University of Cambridge. Her thesis considered issues of international law and language policy. Recently, Jacqueline has practised law with Freehills in Melbourne and Barlow Lyde & Gilbert in London, and she teaches the European Masters program in human rights, which is taught at the University of Sarajevo, Bosnia-Herzegovina. Her particular area of interest is international law and legal theory, with a focus on international human rights law. She also teaches in the area of commercial law and has a particular interest in international commercial issues.



***The Future of Investment Arbitration - Is There a  
Backlash?***

**Professor August Reinisch, University of Vienna  
Thursday 19 February**

Investment arbitration has been a success story so far. This special form of mixed dispute settlement between States and private parties has many advantages, such as being widely available through jurisdiction-conferring clauses in BITs, a high level of enforcement probability, and maybe even an indirect good governance effect on States. Still, questions are being raised whether the boom of investment arbitration can be maintained. Some

commentators suggest that the current 'hype' may have already passed its zenith and point to disintegrating developments, such as the public announcement by States like Bolivia and Venezuela to exit the ICSID system or to various attempts in treaty negotiation to limit the availability of direct investor-State arbitration.

This presentation focused on three recent problems: poorly reasoned decisions and awards, inconsistent dispute settlement outcomes and significant delays through the ICSID system of annulment. It then addressed possible solutions and tried to assess the future of the system.

**Professor August**

**Reinisch** is a Professor of European and International Law and Director of the LLM Program at the University of Vienna/Faculty of Law. He holds degrees in law and philosophy and a doctorate from the University of Vienna and an LLM from New York University. His considerable consulting and research



experience in the field of international investment disputes includes serving as President in an UNCITRAL investment arbitration and as a member of the former ILA Committee on the Law of Foreign Investment and now as a co-rapporteur on the ILA Study Group on the Role of Soft-Law Instruments in International Investment Law. He has widely published in the field of International investment law and recently edited *Standards of Investment Protection* (OUP 2008).

***Socialist Constitutions in a Free Market Economy: Insights from India and China***

**Dr Surya Deva**, City University of Hong Kong

**Wednesday 18 February**

The Indian Constitution of 1950 and the Chinese Constitution of 1982 have socialist underpinnings. However, in the last quarter of the 20th century, both India and China embraced a free market economy, but without expressly or totally discarding the socialist orientation of their respective constitutions. Against this backdrop, this seminar examined how the socialist constitutions of India and China have changed in a free market economy. In particular, the seminar compared the model of constitutional socialism adopted by these two countries and explored if marrying socialism with free market

ideology has created a constitutional tension in the two jurisdictions.

**Dr Surya Deva** is an Assistant Professor and LLB Programme Leader at the School of Law, City University of Hong Kong. He holds BA (Hons), LLB and LLM degrees from the University of Delhi and a PhD from the University of Sydney. Dr Deva has taught previously at the Faculty of Law, University of Delhi and at the National Law Institute



University, Bhopal. His primary research interests lie in Corporate Social Responsibility, Indo-Chinese Constitutional Law, International Human Rights, and Globalisation. He has published widely in these areas and has also delivered guest lectures at several universities.

***Rethinking Social Regulation for Global Firms***

**Professor Gregor Murray**, University of Montreal

**Friday 13 February**

**Professor Gregor Murray**

is one of Canada's foremost scholars on contemporary labour relations and globalization. His research interests cover:

- Comparative evaluation of union renewal
- Globalization and labour regulation
- Adaptation of legal framework and new forms of collective representation
- Empirical analysis of new forms of production management and work organization;
- Collective bargaining trends.





# Australian International Law Journal

The Australian International Law Journal is a peer-reviewed scholarly journal produced by the International Law Association (ILA) (Australian Branch) in association with the Sydney Centre for International Law. As one of very few international law journals published by a national branch of the International Law Association (ILA), the Journal has a distinctive role as a publication with a shared commitment to the objectives of the ILA: 'the study, clarification and development of international law, both public and private, and the furtherance of international understanding and respect for international law'. Like the ILA, the Journal serves as an important focal point for legal practitioners, academics, government and NGO lawyers, judges and experts from related fields with a common interest in international law. As of 2008, back issues of the Journal are available in electronic format through the subscription database Heinonline.

## Subscribing to the Journal

If you are interested in subscribing to the Journal, please visit the website at: [www.ila.org.au/publications\\_journal.htm](http://www.ila.org.au/publications_journal.htm)

**An individual subscription** costs \$45 for one year (plus \$4 postage & handling within Australia or \$7 outside Australia).

**An institutional subscription** costs \$60 for one year (plus \$4 postage & handling, or \$7 outside Australia).



## Call for Contributions

The Journal welcomes articles, case notes and book reviews on public or private international law issues at any time and instructions for authors are on the website. Contributions on private international law (conflict of laws) are particularly encouraged.

## *Australian International Law Journal (2008) Volume 15*

### ARTICLES

Attribution of conduct by State armed forces participating in UN-authorized operations: the impact of Behrami and Al-Jedda  
– *Damien van der Toorn*

Blurring the Lines between International and Non-International Armed Conflicts: The Evolution of the Customary International Law Applicable in Internal Armed Conflicts  
– *Emily Crawford*

David Hicks: Prisoner of War or Prisoner of the War on Terror?  
– *Lionel Nichols*

What Is In A Name? A Theory of Crimes against Humanity  
– *Robert Dubler*

Strengthening the rule of law in the Pacific through international crime cooperation  
– *Ciara Henshaw*

Non-Legal Binding International Fisheries Instruments and Measures to Combat Illegal, Unreported and Unregulated Fishing  
– *Dik Dik Muhammed*

Ending Abusive and Exploitative Child Labour through International Law and Practical Action  
– *Jessica Selby*

Justiciable Socio-Economic Rights? South African Insights to Australia's Debate  
– *Rebecca Young*

Like Oil and Water: A Sceptical Appraisal of Climate Change and Human Rights  
– *Stephen Tully*

Article 25 Arbitration in the WTO Dispute Settlement: An Alternative Forgotten?  
– *David Jacyk*

The Sole Effects Doctrine, Police Powers and Indirect Expropriation under International Law  
– *Ben Mostafa*

## Human Rights in the Asia-Pacific: Towards Institution-Building

On 4 June 2008, Australian Prime Minister Kevin Rudd announced his vision for the establishment of an Asia-Pacific community. Subsequently, the Human Rights Sub-committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade has undertaken an inquiry into international and regional human rights mechanisms and possible models for the Asia-Pacific region.

Will such a regional institution include a function to monitor and protect human rights across the region? If so, will it succeed in effecting policy change in the face of the strong assertion of state sovereignty to avoid degradation of domestic political legitimacy?

This conference brings together experts in this area to explore how current practices might be effectively harnessed to realise a truly effective and integrated regional community based on the norms and spirit of human rights protection.

### Dates

Friday 27 November 2009, 8.30am-5.30pm  
Saturday 28 November 2009, 9.00am-1.00pm

### Venue

New Law Building  
Eastern Avenue, University of Sydney  
Camperdown Campus  
The nearest train station is Redfern. Many bus routes service the University.  
For details: [www.law.usyd.edu.au/about/campus](http://www.law.usyd.edu.au/about/campus)

Cost Full fee: \$220 inc GST  
Early bird (before 30 Sept) \$110 inc GST  
Full time Academic: \$110 inc GST  
Full time student: FREE (ID required) Optional Dinner: \$60.00 inc GST

### Contact

Sydney Law School Event Coordinator  
Phone: 02 9351 0248  
Email: [law.events@usyd.edu.au](mailto:law.events@usyd.edu.au)

### Sponsors

Sydney Centre for International Law  
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Japan Foundation  
Australian Network for Japanese Law (ANJeL)  
Australian Human Rights Centre (AHRC)

### Supporting Organisation

University of New South Wales  
Australian National University

### Conference Program

#### Friday 27 November

8.30-9.00am *Conference Registration*

9.00-9.15am *Welcome and Conference Opening*  
Professor Gillian Triggs - Sydney Law School  
Professor Kent Anderson - ANU/ANJeL

9.15-10.00am *Session 1: Keynote Addresses*  
The Hon Michael Kirby AC CMG  
Professor Nisuke Ando - Human Rights Research Institute, Kyoto University

10.00-10.30am *Morning Tea*

10.30am-12.30pm *Session 2: Institutional Norms*  
Dr Andrew Ladley - Victoria University of Wellington  
Catherine Renshaw, Andrew Byrnes and Andrea Durbach - Australian Human Rights Centre, UNSW  
Professor Tom Zwart and Mimi Zhou, - Netherlands School of Human Rights Research

12.30-1.30pm *Lunch*

1.30-3.00pm *Session 3: International Institutions*  
Emeritus Professor Ivan Shearer - Sydney Law School  
Professor Shigeki Sakamoto - Kobe University  
David Matas - University of Manitoba  
Wim Muller - European University Institute

3.00-3.30pm *Afternoon Tea*

3.30-5.30pm *Session 4: Regional Institutions - Evolving Mechanisms*  
Assistant Professor Mostafa Mahmud Naser - University of Chittagong  
VT Thamilmaran - University of Colombo  
Kamran Hashemi - School of International Relations, Tehran  
Professor Lauri Mälksoo - University of Tartu

6.30-8.00pm *Conference Dinner*

#### Saturday 28 November

9.00-10.30am *Regional Institutions - The Role of ASEAN*  
Associate Professor Simon Tay - National University of Singapore  
Hsien-Li Teresa Tan - National University of Singapore  
Professor Susan Kneebone - Monash University  
Irene Pietropaoli - Gender and Development Group

10.30-11.00am *Morning Tea*

11.00am-12.45pm *Session 6: National Institutions - Mechanism and Case Studies*  
Assistant Professor Surya Deva - City University of Hong Kong  
Andrea Durbach - Australian Human Rights Centre, UNSW  
Associate Professor Chan-Un Park - Hanyang University Law School

12.45-1.00pm *Conference Closing*  
Dr Hitoshi Nasu - ANU College of Law

# Investment Treaty Law and Arbitration: Evolution and Revolution in Substance and Procedure

This conference explores some of the most controversial issues in contemporary investment treaty law and arbitration discourse and practice.

A global web of investment treaties has emerged, free trade agreements increasingly contain investment protection provisions, and investor–state arbitration is now well-established on the international plane as a significant dispute resolution mechanism. These developments are, however, impacting on a wide range of non-investment areas and politico-legal issues.

The conference will explore these impacts, emerging issues in the nature of investment treaties, evolving jurisprudential trends, and potential changes in future direction for investment law and arbitration.

Structurally, the conference will have two streams — one addressing the way in which developments in investment agreements and investment treaty arbitration are impacting on the substantive principles of international investment law, and one addressing emerging procedural issues.

There will also be two further streams of cross-cutting issues — one addressing the interaction between investment arbitration and ‘commercially-oriented’ areas such as international commercial arbitration, WTO law, or international tax treaty dispute resolution; and one addressing the interaction between foreign investment law and policy with a focus on issues relating to the environment, development, human rights, and the Asia-Pacific.

### Keynote Speaker

Professor Philippe Sands QC, University College London

### Distinguished Speakers

Professor M. Sornarajah, National University of Singapore

Sir Franklin Berman QC, Essex Court Chambers, London (provisional acceptance)

### Dates

Friday 19 February 2010 - Saturday 20 February 2010

### Venue

New Law Building

Eastern Avenue, University of Sydney

Camperdown Campus

The nearest train station is Redfern. Many bus routes service the University.

For details: [www.law.usyd.edu.au/about/campus](http://www.law.usyd.edu.au/about/campus)

### Contact

Sydney Law School Event Coordinator

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The Transnational Dispute Management Journal

### Supporting Organisation

Australian Centre for International Commercial Arbitration (ACICA)



Professor Yasuhei Taniguchi with A/Prof Luke Nottage and M. Nagai at the 19th Australian Forum for International Arbitration on 7 August 2009 at Sydney Law School

# Submissions

The Sydney Centre frequently makes submissions to parliamentary and broader law reform inquiries on issues of international law.

**Ben Saul and Naomi Oreb, Submission to the Joint Standing Committee on Treaties Inquiry into the UNESCO Convention, March 2009**

This submission argued in support of Australia's accession to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005. It called on Australia to provide for greater ease of admission for artists and cultural practitioners from developing countries, and moderate the existing legal impediments which arise under Australian immigration law. It also considered the delicate balance that must be struck between cultural protection and free trade obligations.

**Luke Nottage and Richard Garnett, Top Twenty Things to Change In and Around Australia's *International Arbitration Act*, Submission to the Attorney-General Department's Review of the *International Arbitration Act*, March 2009**

This comprehensive submission provided a detailed analysis of concerns surrounding Australia's *International Arbitration Act*. The principles underlying the submission are that Australia would benefit from a more global and a more informal or expeditious approach to international commercial arbitration.

**Ben Saul, Thalia Anthony and Naomi Oreb, Submission to the Senate Economics Committee, Inquiry into the Uranium Royalty (Northern Territory) Bill 2008, March 2009**

This submission focussed on the effects of the proposed *Uranium Royalty (Northern Territory) Bill 2008* upon the economic rights and interests of indigenous people under international law in relation to land and mineral resources. Three potential adverse impacts of the Bill's profit-based royalty scheme were identified. First, it privileges certainty for investors over certainty for indigenous communities. Secondly, profit-based royalties bring a potential for 'creative book-keeping' by mining companies which may conceal the real level of profit. Thirdly, if profit-based royalties were to be introduced, it would be essential to ensure that traditional owner negotiated ad valorem royalties would not be deductible in calculating statutory royalties.

**Luke Nottage, Submission to the SCOCA Australian Consumer Law Consultation, March 2009**

This submission argued that there is a major gap in the Government's proposed new consumer product safety regime. It called for a commitment to updating the *Trade Practices Act* and State/Territory regimes, which date back to the 1970s and 1980s, to reflect current best practice in other industrialised

democracies. It further suggested that Australia should add a duty on suppliers to inform the ACCC if they become aware of a serious product related accident, and that Australia should reconsider adding a General Safety Provision, or at least add into the new legislation a commitment to regular reviews of product safety trends and evolving global standards.

**Ben Saul, Tim Stephens and Sadhana Abayasekara, Submission to the Joint Standing Committee on Treaties Inquiry into Nuclear Non-Proliferation and Disarmament, March 2009**

This submission focussed on how treaty bodies and other international legal instruments can be strengthened to advance Australia's objectives in the field of nuclear non-proliferation and disarmament. It argued that the major weaknesses of the existing treaty system are verification and credibility issues, and suggested practical measures for reform. It also addressed issues surrounding Australia's nuclear diplomacy, uranium trade, nuclear waste storage, climate change, human rights and democracy.

**Brett Williams, Submission to the Australia-Korea FTA Taskforce, February 2009**

This submission argued that Australia should approach the negotiation of Discriminatory Trade Agreements (DTAs) only in a manner which minimizes the extent to which DTAs make further multilateral liberalization less likely and should not open negotiations on DTAs with countries that have obstructed the achievement of comprehensive harmonizing trade liberalization in the Doha Round of WTO negotiations. It outlined how the proposal to negotiate a DTA with the Republic of Korea failed to satisfy these two grounds.

**Ben Saul and Thalia Anthony, Analysis of the Native Title Amendment Bill 2009 (Cth), April 2009**

This submission considered the effect of the Native Title Amendment Bill upon the rights or interests of indigenous people, as enshrined in international law, in relation to native title claims. It supported attempts to streamline the native title system by liberalising the rules of evidence, expanding mediation assistance and changing the powers of the Federal Court. However it drew attention to the limitations of these proposed amendments, including the continued application of the reliability threshold under the *Evidence Act*, the protracted nature of mediation, and the Government's lack of commitment to increasing expenditure.

**Ben Saul and Sadhana Abayasekara, Submission to the Australian Human Rights Commission, Inquiry into Freedom of Religion and Belief, March 2009**

This submission addressed Australia's implementation of, and compliance with, its international human rights obligations to protect freedom of religion. It considered the lack of effective remedies

for violation of freedom of religion arising under the Constitution, domestic implementation of Australia's obligations under the ICCPR, the need for a Federal Anti-vilification Law concerning religion, and the impact of anti-terrorism laws. A Background Paper on 'Freedom of Religion and Belief in the 21<sup>st</sup> Century' prepared by Sadhana Abayasekara was lodged in support of the submission.

**Ben Saul and Sadhana Abayasekara, Submission to the Senate Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into the Defence Legislation (Miscellaneous Amendments) Bill 2008, February 2009**

This submission welcomed the Defence Legislation (Miscellaneous Amendments) Bill's attempt to remove doubt and uncertainty about the validity of the gazettal of Pine Gap as a special defence undertaking and prohibited area, which arose in a recent prosecution in the Northern Territory in connection with the 1952 Act. However, it warned that the Bill's amendment of the Act through the insertion of a purposive clause may not automatically cure any deficiency in constitutional power which may (or may not) underlie the Act, as the character of an Act is determined by its operation and effect.

**Ben Saul, Jacqui Mowbray and Irene Baghoomians, Submission to the Joint Standing Committee on Treaties, Consultation on the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities, January 2009**

This submission strongly urged Australia to become a Party to the *Optional Protocol to the Convention on the Rights of Persons with Disabilities*. Among the reasons advanced in support of the Protocol was that the individual complaint process would provide guidance to Australia in the best practice interpretation of the Disabilities Convention and facilitate the development of progressive interpretations of non-discrimination standards in Australian courts and public administration.

**Ben Saul, Submission on behalf of Sydney PEN to the National Human Rights Consultation: Protecting Freedom of Expression for Writers and Readers, June 2009**

This submission to the National Human Rights Consultation identified four key areas where the freedom of expression of writers can be better protected in Australia: classification/censorship legislation, sedition offences, proceeds of crime legislation and the protection of academic freedom. It called for human rights protection through a justiciable bill of rights including binding remedies and a judicial power to declare inoperative legislation which unjustifiably infringes a human right.

## National Human Rights Consultation

**Mary Crock** made a submission with Tobias Freeman which considered the current debate in historical perspective. The submission used migrant children as a case study to demonstrate that the failure to enshrine international obligations into domestic law has placed Australia in breach of international law.

**Helen Irving** made a submission arguing against a bill of rights of the type currently proposed by prominent advocates. She stated that the inclusion of socio-economic rights is particularly problematic, drew attention to constitutional difficulties involved and suggested an amendment to the *Acts Interpretation Act 1901* (Cth) allowing the Courts to interpret legislation in light of specified rights as a possible alternative

**Anne Twomey** made a submission addressing the constitutional issues that the Consultation Committee should take into account in making its recommendations to the Commonwealth Government.

**Ben Saul** made a submission arguing in favour of a constitutional or justiciable statutory bill of rights, including economic and social rights, creating a new cause of action, binding remedies (including compensation), and a judicial power to declare legislation inoperative if it conflicts with human rights.

**Ben Saul and Jane McAdam** made a submission on behalf of the Refugee Advice and Casework Service to the National Human Rights Consultation, highlighting ongoing concerns about the lack of human rights protections under Australian law for asylum seekers and refugees. In particular, it raised issues of arbitrary detention, detention review, conditions of detention, the plight of children and the impact of 'no work rights' conditions under bridging visas.

# Human Rights in Nepal

## *Safeguarding Human Rights in the Criminal Justice System in Nepal*

*Funded by AusAID's Public Sector Linkages Program (\$170,000)*

The Sydney Centre for International Law, in partnership with the Kathmandu School of Law (KSL), organized a two-day 'Training the Trainers' course (ToT) and a workshop on 'Safeguarding Human Rights in the Criminal Justice System in Nepal' with participation by police, public prosecutors, law teachers and defense lawyers.

The ToT program was conducted on 12-13 April, 2009 at the KSL campus in Kathmandu, with attendance by six public prosecutors, five police officers, three officers from Armed Police Force, two law teachers and two defense lawyers.

At the inaugural session, the Chief Guest, Senior Advocate Biswokanta Mainali presented his observations on the present scenario surrounding police and public prosecutors' roles in the criminal justice system in Nepal. He pointed to the demerits of an adversarial system in the Nepalese context and the role of police and prosecutors in safeguarding human rights in Nepal. Police involvement in investigation is necessary but still methods are traditional and they don't fulfill expectations of the Nepalese people, he added. He also emphasised the need for complete reform of the Nepalese criminal justice system from a victims' rights perspective.

The Guest of Honour, Inspector General of Nepal Police Mr. Ramesh Chanda Thakuri, emphasized on the importance of human rights training and legal knowledge to the police officers. 'Nepal Police lacks officers [with a legal] background. Hence, training on human rights and rule of law and application of the gained knowledge in investigating criminal cases is crucial to build public confidence over police', he said. He mentioned that the role of police officers who are engaged in primary investigation of criminal cases is crucial to enhancing human rights.

In his welcome speech, Assoc. Prof. Dr. Yubaraj Sangroula said the concept of training was developed considering the practice of forced confessions, inhumane treatment in detention, sexual harassment, prolonged delays of cases, unfair trials, lack of impartial investigations and lack of access to lawyers and so on, which has created an adverse impact on people, particularly marginalized groups in Nepal.

Dr. Ben Saul discussed the objectives of the project. The programs were aimed at improving understanding and knowledge of, and respect for human rights

amongst key actors in the criminal justice system in Nepal. This objective was achieved by reviewing legal education in Nepal on human rights in the criminal justice system and formulating a model curriculum to provide training to police and prosecutors on human rights. Dr. Saul referred to the Law Enforcement Training Manual, which includes an introduction to human rights, as well as chapters on Arrest, Detention, Investigation, Policing Public Order, Fair Trial and Prosecution. This Manual provided the basis of instruction and equipped trainers to deliver a one-day training module to police and public prosecutors on human rights in the criminal justice system in Nepal.

Prof. David Kinley highlighted possible collaboration between the two institutions in different research programs in the future, including teacher and student exchanges.

Chairperson Prof. Madhav Pd. Acharya talked about the applicability of human rights in the criminal justice system for the protection of rights of accused persons and also of victims. He further proclaimed that the academic exercise of collaboration between the two institutions will provide new shape to the traditionalism of the justice system and also change the public's perception of the justice system.

Prof. David Kinley, Dr. Ben Saul and Dr. Yubaraj Sangroula facilitated the ToT training session. The participants engaged in lively discussion on the issues, realised the shortcomings in the criminal justice system, and were enthusiastic about continuing with training and workshops to ensure the cultivation of a human-rights-friendly criminal justice system in the future.

Four selected trainers from the ToT facilitated a workshop organised by the Sydney Centre and KSL on 16th April 2009, with participation by eighteen officers from Nepal Police and Office of the Government Attorney. The trainers were Prakash Dhungana, Deputy Government Attorney, Office of the Attorney General; Ishwor Babu Karki, Deputy Superintendent, Nepal Police; Mukunda Raj Acharya, Deputy Superintendent, Nepal Police; and Harka Rawal, Defense Lawyer. The Law Enforcement Training Manual was distributed to all the participants in the training. At the end of both the programs, certificates were distributed to the participants recognising their commitment to work for the protection and promotion of human rights in the criminal justice system in Nepal.

# Managing the Mekong

## 'Hard' and 'Soft' Law in Transboundary River Governance

Centre members Prof. Ben Boer, Dr. Ben Saul, Dr. Tim Stephens and Dr. Fleur Johns are working with Prof. Philip Hirsch, Director of the Australian Mekong Resource Centre, on an ongoing research project outlined here. This project is proceeding with the support of a University of Sydney Bridging Program Grant. In July 2009, the research team met with collaborators from Thailand, China and Vietnam for a workshop at Chulalongkorn University in Thailand, generously hosted by Dr. Kanongnij Sribuaiam, Professor of Faculty of Law, Chulalongkorn University. This was followed by a field visit to Pak Mun Dam in Ubon Ratchathani Province, Thailand.

### Overview of Research

This project addresses a key problem in global water management: the sense that legal norms and institutions governing particular international river basins often do not seem to be working in ways that policy-makers and stakeholders expect.

Governance of the Mekong is commonly seen as lightly regulated by international law and much more heavily dependent on informality, negotiation, politics and the exercise of sovereign prerogatives. Mekong river management is often subjugated to developmental claims to 'resource sovereignty' and wider geo-strategic interests. Assertions of an 'ASEAN way' have also driven the nature of management regimes.

Yet, in practice, a complex and poorly understood interaction of international, regional and national legal regimes (including public and private law) does substantially influence the Mekong's governance. The *demand* for more and deeper law in the Mekong – particularly transnational law – remains persistent and seeks to counter-balance less 'legal' forms of governance and management.

This impulse emanates from a variety of actors and is linked to a range of unmet needs, unresolved conflicts, unrealised aspirations, and to different *conceptions* of water (as a human right, as cultural heritage, as property, as a sovereign resource, as a shared good, as a mode of transport, or as precious ecology, and so on).

What has been obscure, and what this project explores, are the normative and constitutive impacts that transnational laws and legal institutions have had in shaping water governance in the Mekong. In turn, this can assist in better elucidating options for the effective reform of law and governance of the Mekong's natural re-

sources and their equitable, sustainable exploitation and conservation.

### Significance of Research

A better understanding of the role of international and regional law and legal institutions is necessary if the practice and reform of water governance in the Mekong is to yield positive results for the region and its people. This research is significant because it will:

1. Provide guidance to anyone seeking to undertake or sponsor reform in transboundary water governance in the Mekong, including by weighing the costs and benefits of specific laws, regulatory models, and/or theories of governance with respect to transboundary water resources;
2. Reveal and permit evaluation of the influence on the Mekong of transboundary water governance models drawn from outside the region;
3. Explain the selection and mix of 'hard' (eg, binding, enforceable) and 'soft' (non-binding, flexible) legal norms at work in the Mekong (and hybrid variations along the 'soft' to 'hard' spectrum, eg, coercive aspects of 'non-mandatory' regimes, voluntarist deferrals or zones of discretion within 'hard' law etc);
4. Facilitate assessment of the strategic and policy implications of adopting 'softer' or 'harder' legal norms for those with interests in the Mekong (e.g., the ways in which different legal regimes and institutions shape actors' identities, status and influence; and the implications of regime types for the effectiveness of law); and
5. Aid assessment of the prospects for movement from 'softer' to 'harder' law in transboundary water governance in the Mekong; and the implications of that shift (including costs and benefits, and intended and unintended consequences).

### Working Hypotheses

The starting point for our research is a set of hunches about the way in which different forms of 'law' (or normativity) influence patterns of national and regional management of water resources and the basin environment in the Mekong.

These working hypotheses respond to the aims identified above, are postulated on the basis of our review of existing studies of the Mekong, and also informed by

studies of normativity in other regional agreements and institutions:

1. That there is *more law* regulating the Mekong than most commentaries and strategic assessments suggest.

That is, we hypothesise that scholarly and other expert evaluations of the regulatory terrain of the Mekong have tended to underestimate the density, the range and the impact of legal norms – especially private law norms – affecting water governance outcomes. For example, relatively little consideration has been given, in regulatory planning, to the cumulative impact of stabilisation clauses in investment contracts for hydro-electric development in and around the Mekong.

2. That law is *understood and perceived* in a variety of different and often competing ways by the different actors who have interests in the Mekong.

Despite the universalist aspirations of international law, ideas about ‘law’ and its role, status, authority and legitimacy are not uniformly understood, but may vary according to contextual factors such as geography, social practice, politics, culture, gender, class and so on. At the same time, caution must be exercised in viewing law through the prism of ‘culture’ or some other factor. For example, it might be questioned whether this prevailing assumption is accurate: that the relatively ‘soft’ transboundary water governance in the Mekong is traceable to some kind of an ASEAN/Asian ‘way’.

3. That the *sources* of legal/policy norms and proposals impact upon their legitimacy and credibility in the eyes of key actors in the Mekong.

For instance, pressures for greater ‘legalisation’ in management of the Mekong emanating from external actors (such as development agencies) might have had less concrete impact in river management than pressure from local actors (such as riverine states) for ‘softer’ norms of cooperative management of the basin.

4. That transboundary law plays a significant role in *shaping perceptions of agents’ roles and capacities* in relation to the Mekong.

Aside from the obvious sense in which this occurs – such as through laws formally creating and authorising particular institutions – legal norms also generate narratives and shape prevailing beliefs about the relationships between different agents and their styles, priorities and capacities. The *Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin*, for example, conveys powerful impressions about what ‘cooperation’ is possible in the Mekong, and what sort of questions and concerns may be aired. The actual and potential impact of transboundary law on water governance in the Mekong may be more significant than previously assumed and

merits further study.

5. That persistent demands for law and/or legal change in relation to the Mekong comprise part of a *para-institutional process of norm-making* worthy of study.

Alongside the processes of national and regional legal change, a complex array of actors is engaged in an ongoing negotiation around the Mekong. This negotiation often takes the form of proposals for law reform, or for legal norms and institutions to play new roles. Through this, means, grievances, concerns and visions of the future, that find no other ready outlet, are articulated. A range of NGOs and communities have put forward ideas and worries about the Mekong’s future, some of which are expressed in legal language – such as in terms of ‘rights’ and ‘obligations’. This transboundary exchange of claims, expectations, and aspirations amounts to a process of innovation and political feedback for water governance in the Mekong, and greater account might fruitfully be taken of the dynamics and content of this para-institutional discourse.



# Centre Members in 2009

## Centre Management Committee

**Ross Anderson**, Senior Lecturer and expert in private international law and international criminal law.

**Professor Mary Crock**, Professor of Public Law and expert in international law and human rights law, especially migration, citizenship and refugee law.

**Professor David Kinley**, Professor of Human Rights Law and expert in human rights and corporate responsibility, the World Trade Organisation, World Bank and International Monetary Fund.

**Dr Fleur Johns**, Senior Lecturer and member of the New York bar with research interests in public international law, including the history and theory thereof.

**Dr Jacqueline Mowbray**, Lecturer and human rights expert.

**Associate Professor Luke Nottage**, expert in comparative and transnational contract law, product liability, international arbitration and corporate governance especially in relation to Japan.

**Dr Ben Saul**, Senior Lecturer and barrister, specialises in public international law, especially terrorism, use of force, humanitarian law, human rights, refugees and the United Nations.

**Dr Tim Stephens**, is a Lecturer and expert in international dispute resolution, international courts and tribunals, international environmental law and the law of the sea.

**Professor Gillian Triggs**, Dean of Law, former Director of the British Institute of International and Comparative Law, barrister, and expert in all areas of public international law.

**Dr Brett Williams**, Senior Lecturer and expert in international trade law and international regulations of trade especially the law of the World Trade Organisation.

## Centre Associates

**Nicole Abadee** is a Sydney barrister who has appeared in a number of leading High Court cases concerning International Law, both public and private. She teaches and writes in the field of international law and the use of armed force.

**Dr Thalia Anthony** is a Lecturer with interests in indigenous people and the law (including indigenous rights in international law), criminology, comparative tort law, native title and legal history.

**Vivienne Bath** is a Senior Lecturer and an expert in the Law of International Business Transactions and in Chinese Law.

**Irene Baghoomians** is a Lecturer and expert in international human rights law having experience in litigation of civil rights and human rights cases.

**Professor Belinda Bennett** is expert in health law and globalisation, especially as it relates to biomedicine.

**Emeritus Professor Ben Boer**, Professor of Environmental Law and expert in international environmental law, including sustainable development law, Asian Pacific environmental law and natural and cultural heritage law.

**Professor Lee Burns** is a Professor in Taxation Law and specialises in international and comparative tax law, and is a consultant to the International Monetary Fund and various donor agencies on taxation reform in developing countries.

**Dr Simon Butt** is a Senior Lecturer and expert in Indonesian law, with research interests in comparative law.

**Graeme Coss**, a Senior Lecturer in the Faculty of Law has research interests in, inter alia, international human rights law and international criminal law.

**Katherine Fallah** lectures in international law and specialises in international humanitarian and criminal law. She is writing a doctoral thesis on the accountability of mercenaries and private military contractors under international law.

**Professor Mark Findlay**, Professor of Criminal Law and expert in comparative criminal justice, globalisation and crime and international criminal law.

**Professor Jennifer Hill** is Professor of Corporate Law with research interests in international and comparative corporate governance, including in the United States and Europe.

**Justin Hogan-Doran** is a Barrister in private practice in Sydney. He lectures in public and private international law and coached the winning Jessup Mooting team in 2007. Justin is an Army Reserve Officer, attached to the ADF Military Law Centre.

**Associate Professor Rosemary Lyster**, expert in Asian Pacific environmental, international environmental law and international energy law, especially in relation to climate change.

**Associate Professor Roger Magnusson** is an expert in health law and in public health law with an interest in global health governance and in legal response to epidemics.

**Professor Ron McCallum AO** is Professor of Industrial Law and an expert in labour and employment law. He was recently appointed as the inaugural Rapporteur to the United Nations Convention on the Rights of Persons with Disabilities.

**Dr Shae McCrystal** is a Senior Lecturer with interests in labour and employment law, including international labour law.

**Kate Miles**, Lecturer and expert in international environmental law and international trade and investment law.

**Rebecca Millar** is a Senior Lecturer with research interests in GST, comparative VAT, and the income tax concession for research and development. She is also involved in taxation reform in developing countries for a number of donor agencies.

**John Pace** lectures in international human rights law and has served as a senior United Nations human rights official in Geneva, Iraq and Lebanon, among others.

**Alison Pert** lectures in public international law and has a special interest in the use of armed force and Australia's compliance with its treaty commitments.

**Dr David Rolph** is a Senior Lecturer with research interests in private international law, especially multi-state torts.

**Emeritus Professor Ivan Shearer AM**, former Challis Professor of International Law and expert in all areas of international law, especially international human rights law, the law of the sea, international humanitarian law and the use of armed force.

**Andrew Tuch**, Lecturer, has research interests in international financial services regulation, and globalisation and the provision of legal services.

**Associate Professor Anne Twomey** has interests in public international law and comparative constitutional law, especially issues concerning federal systems of governance.

**Dr Irene Watson** is a Post-Doctoral Research Fellow and an expert in legal issues relating to Aboriginal Peoples.

**Associate Professor Alex Ziegert**, expert in legal theory, notably the analysis of global law as a legal system.

## Centre Affiliates

**Robert Dubler SC** is a senior Sydney barrister who completed his PhD in international law from the University of Sydney, with research interests in international criminal law.

**Jolyon Ford**, Lecturer at the Australian National University and former Lecturer at Sydney Law School, with interests in public international law, constitutional law, and post-conflict studies.

**Rebecca Graham** is a criminal lawyer at NSW Legal Aid and a former Legal Officer at the International Criminal Tribunal for the former Yugoslavia, where she worked for a number of years on the Milosevic trial. She is a graduate of Sydney Law School.

**Eric Knight** is a doctoral student at the University of Oxford on a Rhodes Scholarship, and previously an Associate at Baker & McKenzie in the Environmental Markets team. His interests include public international law, environmental law, and finance.

**Dr Peter Kwon**, partner at DLA Piper, Hong Kong and specialist in cross-border securitisation, derivatives, capital markets, and structured finance law and research interests in legal culture, cross-border negotiations, and the interaction between the two.

**Dr Jane McAdam** is a Senior Lecturer in the Faculty of Law at the University of New South Wales. She holds a doctorate from the University of Oxford and has published widely in the areas of international human rights law and refugee law.

**Dr Hitoshi Nasu** is a Lecturer at the ANU College of Law and an Associate Director of The Australian Network for Japanese Law (ANJEL). His thesis on the 'Precautionary Approach to International Security Law: A Study of Article 40 of the UN Charter' was completed in 2006.

**Chris Sidoti** is a human rights lawyer, activist and teacher, independent chair of the UK Government's Northern Ireland Bill of Rights Forum and chair of the NSW Casino Control Authority. He was director of the International Service for Human Rights in Geneva from 2003-07, Australian Human Rights Commissioner (1995-2000), an Australian Law Reform Commissioner (1992-95) and Foundation Director of the Australian Human Rights Commission (1987-1992).

**Dr Martyn Taylor** is a Senior Associate at Mallesons Stephen Jaques, practising in competition & trade law, telecommunications law and international economic law. He has interests in international competition policy, international finance, and trade regulation.

**Sarah Williams** formerly worked in international law at the British Foreign and Commonwealth Office and is now researching the establishment by the United Nations Security Council and Lebanon of a criminal tribunal to prosecute political violence in Lebanon.

## Jessup Affiliates

**Alexandra Meagher** is a member of the 2008 National Jessup International Law Champion team. She will complete her LLB at the Fondation Nationale des Sciences Politiques (Sciences Po) in Paris, studying public international law in 2009.

**Laura Johnston** is in the final year of her law degree at Sydney and was a member of the 2008 Australian champion Jessup Moot team. Her research interests include international humanitarian law and the law governing the use of force.

**Joel Gilbourd** is studying for a law degree at Sydney and was a member of the 2008 Australian champion Jessup Moot team.

**Lisa-Claire Hutchinson** was a member of the 2008 Australian champion Jessup Moot team.

**Suzannah Morris** was a member of the 2008 Australian champion Jessup Moot team.

**Lucas Bastin** is an Associate to Justice Tamberlin in the Federal Court of Australia and a member of the world championship Sydney University team at the 2007 Phillip C Jessup International Law Moot Court Competition in Washington DC.

**Odette Murray** is a recent graduate of Sydney Law School, and a member of the 2007 world championship Jessup Moot team. She also participated in the Red Cross International Humanitarian Law moot, the World Trade Organisation Moot, and the Manfred Lachs Space Law Moot.

**Fiona Roughley** was a member of the 2007 world championship Jessup Moot team. She has research interests in international criminal law and private international law.

**Natasha Simonsen** was a member of the 2007 world championship Jessup Moot team. She is currently writing a thesis on expropriation under international law.

**Zelie Wood** was a member of the 2007 world championship Jessup Moot team. She is currently studying European and Public International Law at Universiteit Utrecht in the Netherlands.

## Centre Interns: Semester 1, 2009

Sue Soueid and Alice Yan (full-time);

Natasha Kassam and Tina Jelenic (part-time)

## Student Editors of the *Australian International Law Journal* (2008)

Emma Dunlop (Co-ordinator), Christine Ernst, Martin Hill, Rachel Ranjan, Sally Johnson, Alexandra Meagher, Grace Mang, Don Do, Emma Perera, Lorraine Hui, Monique Foy, Sue Soueid, Allegra Day, Robynne Croft, Darko Vranesevic, Miroslav Sandev, Deniz Tas, Ken Xie, Susan Cirillo, Eleanor Browne, Sadhana Abayasekara, Adriana Edmeades, Monica Christopher, Amy Knibbs, Sebastian Weller, Jeff Gordon, Paul Ferris, Philippa Macaskill, Andrew McLeod, Zhi Wen Liu, Christopher Beshara, Grace Ng, Patrick Lewis, Annelise Young, Suzannah Morris, Annie Chiv

## Centre Administrator

**Sadhie Abayasekara**, penultimate year undergraduate law student

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