

SYDNEY CENTRE FOR INTERNATIONAL LAW FACULTY OF LAW



THE UNIVERSITY OF
SYDNEY

Annual Report 2009

Semester 1

Semester 2

Financial Statement



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*

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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

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

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

Sponsors

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Centre for Asian and Pacific Law at the University of Sydney (CAPLUS)
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

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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 21st 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.



SYDNEY CENTRE FOR INTERNATIONAL LAW FACULTY OF LAW, UNIVERSITY OF SYDNEY



Dear Friends of the Sydney Centre

There was little of what is known in the Japanese Diet as ox-walking in the second half of 2009, the Year of the Ox. Rather, SCIL members practically bounded through the latter six months of the year. A successful international conference, two international workshops, eight public seminars, and several other events were staged during the second half of 2009, many the outcome of fruitful collaborations with scholars from other institutions as detailed below.

Between August and November, SCIL's public seminars covered a wide range of topics including WTO law (in a series convened by Brett Williams), comparative constitutional law, the status of Guantanamo Bay under the Obama administration, and human rights practice by UN and UNHCR field workers. In August, SCIL member Luke Nottage and others hosted the 19th Symposium of the Australasian Forum for International Arbitration. In October, SCIL welcomed the ANU's Professor Hilary Charlesworth to discuss grant-writing strategy for international legal scholars with members and friends of the Centre.

In November, a successful conference – *Human Rights in Asia-Pacific: Towards Institution-Building* – was jointly convened by SCIL, the Australian Network for Japanese Law, the Centre for Asian and Pacific Law in the University of Sydney, and UNSW's Australian Human Rights Centre. Also in November, SCIL was delighted to welcome Professor Martti Koskenniemi, Academy Professor, University of Helsinki to deliver the 2009 Julius Stone Address *Ius Gentium and Forms of Modern Power: The Legacy of 16th Century Spanish Scholasticism*. Professor Koskenniemi's talk, as well as many of the seminars above, may be heard via podcast or video-link through the Sydney Law School web site.

In December, our own David Kinley co-convened, with the ANU's Professor Morten Pedersen, a cross-disciplinary workshop on *Principled Engagement: Promoting Human Rights by Engaging Abusive Regimes*, as part of an ongoing project supported by the United Nations University. In the same month, SCIL members collaborated with colleagues from the International and Comparative Criminal Justice Network to convene a workshop on *Reimagining International Criminal Justice*, as part of a three year, inter-disciplinary research project.

Far from confining their scholarly input to academic arenas such as these, SCIL members made numerous submissions to parliamentary committees and public consultations during the second semester of 2009. The subject matter of these ranged from migration law to national security law, and from amendments to native title legislation to legislative proposals to achieve marriage equality. Inquiries into a number of treaty ratifications were also informed by SCIL member input.

As always, this productivity was achieved thanks in no small part to the work of SCIL interns – in second semester 2009, Matthew Kalyk and Callista Harris made a wonderful contribution to the Centre. Also crucial was the work of our Administrator, Sadhana Abayasekara, whom we farewelled reluctantly at the end of 2009. Sadhie has since been succeeded, we're pleased to say, by Amber Colhoun, who came started as SCIL Administrator in February 2010. (There will be more on Amber in our next newsletter.)

The pages that follow detail these endeavours and more. We hope reading these pages will whet your appetite to read some of the great books that SCIL members have published over the past year. For now, though, let us invite you to peruse our second newsletter from 2009 and, as always, to share with us any thoughts you may have on the work of the Sydney Centre in 2010 and beyond.

Fleur Johns & Ben Saul
Co-Directors, Sydney Centre for International Law

Newsletter #5 Semester 2, 2009

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THE UNIVERSITY OF
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July 2009: Ben Saul makes a submission to the Inquiry into ratification of the Convention on Cluster Munitions.

This submission strongly supported Australia's ratification of the Convention in light of the significant humanitarian threat posed by cluster munitions due to their imprecise targeting, the likelihood of unlawfully *indiscriminate* use, and the considerable costs involved in identifying and rendering harmless those many sub-munitions which fail to explode upon impact. The submission also considered the absence of an express prohibition on the use of cluster munitions under humanitarian law and the considerable costs, in purely military terms, involved in identifying and rendering harmless those many sub-munitions which fail to explode upon impact.

July 2009: Ben Saul advises the Standing Committee on Treaties on the Optional Protocol on UN personnel.

This submission strongly supported Australia's ratification of the Optional Protocol given the parent Convention's limited scope in protecting UN and associated personnel, and considered issues important to the Optional Protocol's implementation.

July 2009: Ben Saul and Thalia Anthony analyse the Native Title Amendment Bill 2009.

Ben Saul and Thalia Anthony co-authored an analysis of the Native Title Amendment Bill 2009. The analysis considered the effect of the Bill upon the rights or interests of Indigenous people as enshrined in international law, in relation to native title claims. While it acknowledges the significance of enacting native title legislation in Australia, it also notes that considerable further effort is required to ensure equitable outcomes for the land rights of indigenous people.

July 2009: Ben Saul advises the Senate Standing Committee on Finance and Public Administration on the National Security Legislation Monitor Bill 2009.

This submission advised the Senate Standing Committee on Finance and Public Administration on the best means of meeting the need for ongoing periodic review of the complex anti-terrorism laws which Australia has adopted since 2001. It suggested that a new independent monitor was not the best method of securing the most effective review of the laws and the identification of opportunities for the reform or amendment of the laws. Instead, it argued that the objectives of the bill would be better accomplished by tasking the Australian Law Reform Commission (ALRC) with ongoing periodic review of anti-terrorism laws. The submission also assessed whether the 2009 Bill addressed the limitations of the *Independent Reviewer of Terrorism Laws Bill 2008*, as identified in the Centre's previous submission to the Senate Standing Committee on Legal and Constitutional Affairs' inquiry into the 2008 Bill.

August 2009: Centre Affiliate, Melissa Perry QC, reappointed to the Administrative Review Council.

Attorney General, Robert McClelland, announced the reappointment of Centre Affiliate, **Dr Melissa Perry QC**, to the Administrative Review Council. Dr Perry was first appointed as a member of the Council in 2006. She has practiced at the Bar since 1992 and was appointed Queens Counsel in 2004. She has extensive experience in the High Court and Federal Court in administrative and constitutional litigation. Her doctorate was in public international law (boundary disputes) and she was awarded the Yorke Prize by Cambridge University.

September 2009: Luke Nottage brings together his submissions and major blog postings comparing Australia's

initiatives this year in consumer law reform.

Luke Nottage published a working paper on Australia's current consumer law reform efforts, product safety, unfair terms, mandatory and voluntary warranties, and consumer credit. Luke also wrote about the need to rethink Consumer Alternative Dispute Resolution (ADR). Comparative updates are regularly available at his blog on Japanese law.

September 2009: Fleur Johns and Callista Harris make a submission to the Senate Legal and Constitutional Committee Inquiry into the Marriage Equality Amendment Bill.

This submission welcomed the Marriage Equality Amendment Bill's attempt to provide for same-sex marriage. It considered the interpretation of the right to non-discrimination contained in the International Covenant on Civil and Political Rights (ICCPR). It argued that there is a body of expert opinion in favour of an interpretation of the ICCPR that guarantees against discrimination on the basis of sexual orientation that would extend to state parties' legislative definition of marriage.

September 2009: Luke Nottage co-authors an updated and expanded summary of ACICA's Arbitration Rules, used in the next Vis Moot.

This paper contained an updated overview of the 2005 Australian Centre for International Commercial Arbitration (ACICA) Rules, comparing developments in many major arbitral institutions worldwide. It was particularly timely because the ACICA Rules will be used by hundreds of mock arbitrators and advocates in the 17th Vis Moot, to be held in Vienna and Hong Kong around March 2010.

September 2009: Ben Saul makes a submission on the Migration Amendment (Complementary Protection) Bill 2009.

This submission welcomed the Migration Amendment (Complementary Protection) Bill 2009 as a supplement to Australia's long humanitarian tradition of protecting non-citizens from serious harm abroad and a demonstration of Australia's renewed global leadership on human rights. However, several amendments to the Bill were recommended in order to bring Australia into conformity with its human rights obligations, delete certain arbitrary distinctions, enhance safeguards, and clarify the legal status of persons deemed a security risk but who cannot be returned to torture.

September 2009: Mary Crock and Daniel Ghezelbash advise the Senate Legal and Constitutional Legislation Committee on the Migration Amendment (Complementary Protection) Bill 2009.

This submission supported the introduction of a legislative protection scheme to complement that operating for persons recognised as refugees. However, several amendments to the proposed Bill were recommended, in order to bring it in line with existing refugee status determination processes and with existing international jurisprudence in the area, as well as to simplify the law so as to minimise litigation.

October 2009: Ben Saul makes a submission to the Discussion Paper on proposed amendments to the National Security Legislation.

This submission strongly endorsed the establishment of an independent reviewer which, by increasing high level, ongoing scrutiny of terrorism laws, has the potential to improve the legislation's

operation (thus countering terrorism more effectively) and to enhance public confidence in the laws. It made a number of recommendations relating to urging violence offences, the definition of a terrorist act, terrorist organisation listing provisions and offences, and the investigation regime for terrorist offences, and the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

October 2009: Irene Baghoomians, Fleur Johns and Matthew Kalyk advise the Attorney General's Department on the proposed amendments to the National Security Legislation.

This submission considered the proposed legislative reforms to Australia's counter-terrorism and national security legislation as set forth in a July 2009 Discussion Paper. It argued that the proposed legislative provisions did not appear to be fully consistent with Australia's obligations under international law, chiefly under the ICCPR. In light of this, and in order to more tightly draw provisions to avoid unintended consequences, the submission made recommendations concerning the following areas of the Discussion Paper: treason and urging violence offences; definition of a terrorist act and the terrorism hoax offence; terrorist organisation listing provisions; procedure and conditions applicable to pre-charge detention of persons arrested for terrorist and non-terrorist offences; and warrantless entry and search provisions.

News in Brief

Charlotte Epstein's book *The Power of Words in International Relations: Birth of an Anti-Whaling Discourse* (MIT press, Cambridge, MA) narrowly missed out on the 2009 International Studies Association Sprout Award for the best book in global environmental politics, coming runner up from a field of over 75 books.

Charlotte Epstein was elected to the chair of the International Political Sociology section of the International Studies Association (ISA) and was invited to join the advisory board of *International Studies Perspective*, one of the flagship journals of the ISA.

Fleur Johns was re-elected to the Coordinating Committee of the European Society of International Law Interest Group on International Legal Theory. She was appointed External Academic Advisor for jurisprudence at the City University of Hong Kong, and rejoined the Management Committee of the Refugee Advice and Casework Service (NSW). Fleur was also awarded a Brown Fellowship from the University of Sydney.

Brett Williams and Annett Schmiedel were blessed with an early Christmas present, Felix Harry Williams born 5.28pm on 22 December 2009 weighing 2.935kg and measuring 51cm.

Sabbatical Reports

Three of the Centre members recently undertook sabbatical.

Vivienne Bath

Vivienne had two main purposes for sabbatical, taken in second semester 2008. First to complete writing "The Law of International Business Transactions in Australasia" with Robin Burnett. The book covers the sale of goods, carriage of goods, finance and operating in foreign markets. A timely completion was complicated by the energetic approach of the new federal government in acceding to a wide range of international treaties. It was, however, finished in time, and was published by Federation Press in March 2009. Secondly she aimed to, and did, spend 6 weeks in China based at the Shanghai and Beijing offices of an international law

firm with a strong China practice, conducting research on current Chinese law and practice and updating her transactional experience (which is vital for the postgraduate "Doing Business in China" as well as for "International Business Law").

Tim Stephens

From July 2009 to February 2010, Dr Tim Stephens undertook a sabbatical in Sydney and in the United Kingdom. During his sabbatical Tim substantially completed writing the *International Law of the Sea*, a textbook coauthored with Professor Don Rothwell of the ANU, which is to be published by Hart Publishing later this year. *International Law of the Sea* provides concise and complete coverage of the law of the sea in an era in which there is growing interest in the governance of the ocean spaces that cover over two-thirds of the planet's surface. It offers a fresh explanation of the foundational principles of the law of the sea, a critical overview of the 1982 United Nations Convention on the Law of the Sea, and an analysis of subsequent developments. Such developments include significant challenges for the law of the sea in the twenty-first century such as climate change (which is recasting maritime boundaries) and maritime security (which is leading to new and exorbitant claims to maritime jurisdiction). The book is one of only a handful of omnibus monographs on the international law of the sea and will be the first textbook by Australian authors since D. P. O'Connell (I. A. Shearer, editor) *The International Law of the Sea (1982-1984)*. During his sabbatical Tim also travelled to the University of Sheffield in the United Kingdom to present at an International Law Association Committee on the Law of Sustainable Development Conference on the topic of 'Sustainability Discourses in International Courts: What Place for Global Justice?'. A version of this paper was also presented at a workshop held by the ANU College of Law, Centre for International and Public Law in Canberra in August.

Ben Saul

Ben Saul spent semester two on sabbatical in Oxford, working on a new book about terrorism and the international law of armed conflict, and completing a second book of international law documents on terrorism. Work in progress was presented at the Lauterpacht Centre for International Law at Cambridge, the British Institute for International and Comparative Law in London, and the Oxford Public International Law Discussion Group. At Oxford he was also able to see old colleagues and friends, and catch up with recent Sydney law graduates now studying at Oxford. The tail end of summer provided an opportunity to finesse his punting skills



on the River Cherwell, while the onset of winter brought snow (and the paralysis of British civilisation). Ben reports that sabbatical was a fabulous opportunity to undertake new research without the usual of office distractions, and to recharge academic batteries before returning to teach in 2010.

Centre Events

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

Forum for International Arbitration 2009

Professor Yasuhei Taniguchi, Emeritus Professor, Kyoto University; Of Counsel, Matsuo and Kosugi; and Former Chair of the WTO Appellate Body

Thursday 30 July, 2:30 – 5:00pm

About the Seminar: The WTO has two visible functions: settling trade disputes between member states and promoting further liberalisation of international trade. The latter, commonly referred to as DDR, has faced many challenges recently amidst rising protectionism. But the former has continued operating and seems to act as a centripetal force preventing the whole WTO system from falling apart. Yet this dispute settlement side to the WTO is far from perfect, and faces its own problems. Although many have praised the “judicialisation” of WTO dispute settlement, it is unlike any of the world’s judicial systems. It also differs significantly from dispute resolution through international arbitration. Professor Taniguchi elaborated as to how and why this is so by drawing on his experiences on the WTO Appellate Body and as an expert in arbitration and civil dispute resolution. Through such comparisons he explored the source of the WTO’s legitimacy in the international community.



Professor Yasuhei Taniguchi is one of the world’s most eminent experts in comparative civil procedure and cross-border dispute resolution. He served on the Appellate Body of the World Trade Organization from 2000 until 2007.

He has also been active in international arbitration, especially in the ICC and throughout the Asia-Pacific, and is currently president of the Japan Association of Arbitrators. Professor Taniguchi was also former president of the Japanese Association of Civil Procedure, and former Vice-President of the International Association of Procedural Law. He recently retired from Senshu University Law School, and before that taught principally at Kyoto University for 39 years. He has also presented many courses world-wide as a Visiting Professor, including at the University of Michigan, University of California at Berkeley, Duke University, Stanford University, Georgetown University, Harvard University, New York University, the University of Melbourne, Murdoch University, the University of Hong Kong and the University of Paris XII. Cornell Law School, which awarded him a JSD in 1964, recently hosted a WTO conference and special law journal issue commemorating his achievements. Sydney Law School was privileged to host Professor Taniguchi as a 2009 Distinguished Visitor, and an ANJel (Australian Network for Japanese Law) Visiting Academic, over July-August.

Global Health Beyond the Millennium Development Goals

Professor Larry Gostin, Georgetown University and Director, O’Neill Institute for National and Global Health Law

Professor Daniel Tarantola, Health and Human Rights Initiative, University of NSW and Co-founder, Médecins Sans Frontières

Professor Roger Magnusson, Health Law & Governance, University of Sydney Law School

Professor Gillian Triggs, Dean, University of Sydney Law School

Thursday 6 August, 6.00 – 8.00 pm

Co-hosted by the Centre for Health Governance, Law & Ethics.

About the seminar: The Millennium Development Goals, consisting of eight goals which UN agencies and their partners are committed to achieving by 2015, represent the most significant health development program within the UN system. However, with 2015 rapidly approaching, the question becomes: what happens with respect to global health beyond the MDGs? What kinds of structures and strategies are best suited to advancing global health in the medium term? What kinds of global architecture could best co-ordinate and support the many stakeholders working in this field? And what is the role of international law, relative to non-legal strategies for encouraging international cooperation? This seminar, chaired by Professor Gillian Triggs, explored these themes. In his keynote address, Professor Gostin argued that global health should occupy a higher priority for rich countries both for reasons of enlightened self-interest, and because the vast disparities in life expectancies between rich and poor countries are unethical. Professor Daniel Tarantola, in his address, reviewed the extent to which a human rights-centred approach has featured in global health and development initiatives over time.

Professor Larry Gostin is the Director of the O’Neill Institute for National and Global Health Law at Georgetown University’s Law Center.

Professor Daniel Tarantola, former adviser to the World Health Organisation and co-founder of Médecins Sans Frontières, is from the University of New South Wales’ Health and Human Rights Initiative.

Roger Magnusson is a Professor in the Faculty of Law, University of Sydney. He has Arts/Law degrees from the Australian National University (1988), and a PhD in law (1994) and a Graduate Diploma in Managing Development (2007) from the University of Melbourne. His research interests are in health law, policy and bioethics, health development and in public health law and governance.

Gillian Triggs is a Public International lawyer and a Barrister with Seven Wentworth Chambers, NSW. She is currently the Dean of the Faculty of Law, University of Sydney, having been the Director of the British Institute of International and Comparative Law in London from 2005 - 2007. She was a Professor in Law at the University of Melbourne since 1996, having graduated in law in 1968 and gaining a PhD in 1982.

Vodcast online at: <http://sydney.edu.au/law/video/2009.shtml>



L-R Daniel Tarantola, Larry Gostin, Gillian Triggs, Roger Magusson.

“Are the WTO Negotiations Leading Nowhere?” Arguments for a Critical Mass Approach

Andrew Stoler, Executive Director, Institute for International Trade and Former Deputy Director-General of the World Trade Organisation

Wednesday 12 August, 6.00-7.30pm

About the Seminar: The current WTO multilateral round of trade negotiations, the Doha Round, are running at least six years' behind the originally agreed timetable. As usual, the main stumbling block seems to be the inability of participants to reach consensus on how to reform and liberalise agriculture. This presentation explored the prospects for achieving trade liberalisation through WTO negotiations. Andrew Stoler considered whether it is time to reconsider the accepted rules, particularly, the concept of a single undertaking under which everything should be agreed to as one package, and that all members must sign on to the same package of agreements.



Andrew Stoler is the Executive Director of the Institute for International Trade and holds the title of adjunct Professor of International Trade at the University of Adelaide. Currently, he serves on the International Academic Advisory Committee of the United States Study Centre (University of Sydney), the Advisory Board of the European Centre for International Political Economy and Stanford University's GATT Digital Library Advisory Board. He is also a Senior Advisor to the Shanghai and Shenzhen WTO Affairs Centres. Previously he served on the Australian Foreign Minister's Aid Advisory Council and the Board of Directors of the Australian Services Roundtable. Over the course of a long career in international trade, he has served as Deputy Director-General of the Geneva-based World Trade Organization (1999-2002) and as a senior official of the Office of the United States Trade Representative, Executive Office of the President (Washington, DC). He holds an MBA in International Business from George Washington University and a BSFS in International Economic Affairs from Georgetown University.

Vodcast online at: <http://sydney.edu.au/law/video/2009.shtml>

Symposium: WTO Litigation: Issues and Reforms

Professor Yasuhei Taniguchi, former Member (2001-2008) and Chairperson of the WTO Appellate Body, Geneva

Bruce Gosper, Deputy Secretary, Department of Foreign Affairs and Trade

Andrew Stoler, Director, Institute for International Trade, University of Adelaide and Former Deputy Director General of the WTO

Mark Jennings, Office of International law, Attorney General's Department

Patricia Holmes, Director, WTO Disputes Section, Department of Foreign Affairs and Trade

Clare Fearnley, International Trade Law Advisor, New Zealand Ministry of Foreign Affairs and Trade

Jo Feldman and Jessica Giovanelli, Office of International law, Attorney General's Department

Dr Brett Williams, Senior Lecturer, University of Sydney Law School and Director, Research Programme in Public International Economic Law, SCIL

Friday 14 August 2009

About the Seminar: Litigation in the World Trade Organization has effects of paramount importance to both Australia and its trade relations. Since the introduction of the WTO dispute settlement system in 1995 there have been 400 complaints leading to 120 reports of both panels and the WTO Appellate Body, ultimately resulting in the WTO's authorization of retaliation in 16 instances. Understanding this process of litigation is critical to understanding the rights that Australia can exercise on behalf of its exporters.

To further scholarship and understanding in relation to this emerging system of law, SCIL held a symposium on WTO Dispute Settlement. The symposium considered various issues arising in WTO dispute settlement including treaty interpretation, burden of proof, standard of review, and retaliation procedures; and also the WTO negotiations reviewing the WTO Understanding on Dispute Settlement. The keynote speaker was Professor Yasuhei who delivered a presentation on "The WTO dispute Settlement as seen by a Proceduralist".

Professor Taniguchi, former Member (2001-2008) and Chairperson of the WTO Appellate Body, Geneva, is visiting Sydney Law School in July and August 2009.

Brett Williams is a Senior Lecturer and expert in international trade law and international regulations of trade especially the law of the World Trade Organisation. He is Director of the Research Programme in Public International Economic Law at SCIL.



Professor Taniguchi speaking at the symposium.

WTO / Public International Economic Law Seminar Series

Dr Brett Williams, Faculty of Law, University of Sydney
Friday 11 September, 1.00 - 2.15pm

About the Seminar: This seminar reviewed and discussed the cases under Article XX of the WTO. It reviewed the conclusions of the two unadopted Tuna Dolphin cases and then in turn focused upon the *US - Gasoline* case and the *US- Shrimp/Turtle* case.

Legal and Political Perspectives on Foreign Investment and China

Vivienne Bath, Sydney University Law School,
Dr James Reilly, Department of Government and International Relations, University of Sydney,

Dr Geoffrey Garrett, CEO of the United States Studies Centre and Professor of Political Science, University of Sydney.
Tuesday 22 September

About the Seminar: the seminar covered aspects of Chinese government policies and legislation relating to investment, both inbound and outbound. It brought together members of various Faculties albeit with a range of different related research interests. The seminar was well-attended and provoked a wide-ranging and interesting discussion from members of the public and the University.

Does the World Trade Organization Appellate Body understand the difference between an Import Quota and an Import Tariff: Reflections on the Chile Price Band cases

Dr Brett Williams, Faculty of Law, University of Sydney
Thursday 8 October, 1.00-2:00pm

About the Seminar: exploring some of the elementary economics relating to the difference between an import tariff and an import quota, Dr Williams explained how this analysis can be applied to a particular World Trade Organization dispute. Speaking primarily as to the legality of a mechanism adopted by Chile to smooth out fluctuations in world prices, Dr Williams argues that consideration of the economic differences between import tariffs and import quotas and of the economic function of Article 4.2 would have led to a different outcome in the case.

He then went on to discuss how that economic understanding is reflected in GATT rules and how that understanding could have been applied to the assessment of WTO consistency of Chile's price band method of smoothing out fluctuations in import prices.

Dr Brett Williams is a Senior Lecturer in the Faculty of Law at the University of Sydney, specialising in the Law of the World Trade Organization. He has also taught WTO law for the University of North Carolina, for William and Mary College, Virginia, at the Adelaide University Centre for International Economics, for the Ausaid Australia-China WTO Training Project, teaching officials from the PRC Ministry of Foreign Trade



and Economic Cooperation and Ministry of Agriculture and has taught on the economics of the WTO system for the International Development. He also teaches in the fields of Competition Law and Public International Law.

SCIL Monthly Discussion Group on Public International Economic Law / WTO Law

The Proposed Korea USA Free Trade Agreement

Associate Professor Steve Lee, Faculty of Law, University of Sydney
9 October 2009, 1.00 - 2.15pm

About the Seminar: Associate Professor Lee discussed a range of issues raised in the (proposed) US – Korea Free Trade Agreement and examined whether the FTA would achieve a new balance in trade concessions between the two countries. The seminar drew upon Associate Professor Lee's article in the *Journal of World Trade*, "The Beginning of Economic Integration between East Asia and north America? Forming the Third largest Free Trade Area between the United States and the Republic of Korea."

SCIL Seminar: Pushing and Shoving - Human Rights in the Field from Kenya to Kandahar

Simon Russell, Senior Protection Officer, UNHCR
Thursday 15 October 4.00-5.30pm

About the Seminar: This seminar began with a brief overview of what protection of human rights in a humanitarian situation actually means, drawing on experience in Afghanistan, Iraq and East Africa. The speaker asked why the situation in Afghanistan has not improved, how the humanitarian reforms are working out at field level, how the difficulties of working in remote places like Iraq can be overcome and how an inexperienced and untrained lawyer winds up managing an IDP camp near Kandahar.

Simon Russell was recently deployed as a senior human rights/protection officer to peacekeeping missions in Sudan and Afghanistan and the UN refugee agency in Uganda, Iraq, Lebanon and Kenya and has worked for several NGOs, including the Norwegian Refugee Council and Amnesty International. He is also a part-time judge of the Asylum & Immigration Tribunal in London.

Guantanamo Redux: The Obama Effect and its Significance for David Hicks and Australia

Kate Eastman, Barrister
Professor Geoffrey Garrett, University of Sydney
Katie Wood, Amnesty International Australia
Tuesday 20 October, 6.00 - 7:30pm

About the Seminar: In this seminar, a panel of experts reflected upon steps recently taken in the US Congress to amend the Military Commissions Act 2006 and otherwise prepare for the January 2010 deadline imposed by the Obama administration for closure of Guantanamo Bay. In the course of discussion the following questions were addressed. What exactly was likely to change as

a result of this process? What parts of the Bush administration's legacy on counter-terrorism were likely to remain intact? What ramifications has the Obama administration's policy redirection had so far for Australia? What impact might the Obama administration yet have in influencing the course of global policy-making on counter-terrorism and the treatment of detainees? More specifically, what could be the effect of US legislative change on the life and legal status of David Hicks, an Australian citizen who continues to live under conditions imposed as a consequence of his conviction under the Military Commissions Act?



L to R: Kate Eastman, Dr Geoffrey Garrett and Katie Wood

Kate Eastman has practised as a barrister in Sydney since 1998. She has previously worked in private practice and was a senior legal officer at the then named Human Rights and Equal Opportunity Commission. Kate has been a part-time law lecturer at the University of Technology Sydney, Monash University and the University of Sydney. She has lectured in international human rights law, civil liberties law and human rights advocacy. Kate has been actively involved in a number of human rights and international law organisations. She was a co-founder and president of Australian Lawyers for Human Rights. In mid 2006, she was asked by Major Mori to become involved in David Hicks case. She was involved in the Federal Court proceeding brought by Mr Hicks against the Commonwealth in late 2006.

Dr Geoffrey Garrett is founding CEO of the United States Studies Centre and Professor of Political Science at the University of Sydney. He was previously President of the Pacific Council on International Policy in Los Angeles and before that Dean of the UCLA International Institute. Garrett is a frequent commentator on all aspects of US politics, economics and foreign policy in Australian media, including *The Australian*, *Australian Financial Review*, *Sydney Morning Herald*, *Sky TV* and *ABC* radio and television programs. Among the most influential political scientists of his generation, Garrett is author of *Partisan Politics in the Global Economy*, editor of *The Global Diffusion of Markets and Democracy*, both published by Cambridge University Press, and over fifty articles in the world's leading social science journals. Garrett has held academic appointments at Oxford, Stanford and Yale universities and the Wharton School of the University of Pennsylvania. He is a member of the New York-based Council on Foreign Relations as well as the Los Angeles-based Pacific Council on International Policy. A dual citizen of Australia and the US, Garrett was born and raised in Canberra and holds a BA (Hons) from the Australian National University. He earned his MA and PhD at Duke University in North Carolina, where he was a Fulbright Scholar.

Katie Wood is the Governance Coordinator at Amnesty International Australia and was formerly the Campaign Coordinator for

Counter Terror with Justice Campaign. Internationally, this campaign focuses on the undermining of human rights and the rule of law in governments' responses to the so called 'war on terror'. The campaign also seeks to restore the absolute prohibition against torture as well as seeking to ensure accountability for those who violated human rights standards. Prior to this, Katie worked as a solicitor for several years predominantly in the area of commercial litigation. Katie holds a BA, LLB and a Masters of International Law.

Vodcast online at: <http://sydney.edu.au/law/video/2009.shtml>

Navigating the Strange World of Grant-Writing Workshop (Or: How One Learns to Stop Worrying and Love the ARC)

Wednesday 28 October, 2.30-5.00pm

Sydney Law School

About the workshop: This masterclass/workshop was convened by the Sydney Centre of International Law for members of the Faculty of Law and was designed for those considering applying for funding from the Australian Research Council in the forthcoming round or future application rounds. Guest speaker, Professor Hilary Charlesworth reflected upon her experience as an ARC grant application assessor and an ARC grant recipient, offering suggestions as to how one might give one's research project the best possible chance of attracting ARC funding. Particular attention was given to the challenges faced by legal scholars in applying for ARC funding, especially those whose research interests have a strong international dimension. Participants in the workshop presented a research project for which they were proposing to seek funding.



Hilary Charlesworth is Professor and Director of the Centre for International Governance and Justice in the Regulatory Institutions Network at the Australian National University. She also holds an appointment as Professor of International Law and Human Rights in the College of Law, ANU. In 2005 she was awarded a

Federation Fellowship by the Australian Research Council for a project on building democracy and justice after conflict. She has held visiting appointments at United States and European universities. Professor Charlesworth is a former member of the ARC College of Experts, where she served on the Humanities and Creative Arts Panel (by which most law applications are considered).

*Julius Stone Address *Ius Gentium* and Forms of Modern Power: The Legacy of 16th Century Spanish Scholasticism*

Professor Martii Koskenniemi, Academy Professor,
University of Helsinki

Thursday 12 November, 6:00 – 7:30 pm

About the Presentation: In this Address, part of the Law School's Distinguished Speakers Program, Professor Koskenniemi explored the relationship between international law and state power, focusing on the historical legacy of 16th Century Spanish Scholasticism. In the history of international law, Francisco Suarez (1548-1617) is known as the first writer working with a distinctly "modern" view of the subject by dividing it into legal rules common to all or most nations and rules applicable in the relations between nations, that is to say, rules on diplomacy, trade and warfare. From that distinction, we have taken the latter as public international law proper, relegating the former into a non-normative pursuit of comparative studies. But this is to fail to see the power and point of the doctrine of *jus gentium* as propounded not only by Suarez but by a whole tradition of legal thought that grew among Spanish theologians and jurists in the 16th and 17th centuries as they were seeking to respond not only to the religious split in Christendom and the "discovery" of the New World but to social, economic and political transformations they witnessed around themselves. As part of this, they developed the law of nations - *ius gentium* - into a kind of universal sociology or philosophical anthropology that far from being limited to marginal aspects of foreign policy became foundational for the most important institutions of political modernity, namely those of State sovereignty, private property, and warfare.



Martti Koskenniemi is an international lawyer and a former Finnish diplomat. He is currently Professor of International Law at the University of Helsinki and Director of the Erik Castrén Institute of International Law and Human Rights. He is well known for his critical approach to international law.

Book Launch: Dr Tim Stephens - International Courts and Environmental Protection

Dr Tim Stephens, Senior Lecturer, Faculty of Law, University of Sydney

Wednesday 18 November, 5:30-7.00 pm

About the Book: International environmental law has come of age, yet the global environment continues to deteriorate. The challenge of the twenty-first century is to reverse this process by ensuring that governments comply fully with their obligations, and progressively assume stricter duties to preserve the environment. This book is the first comprehensive examination of international environmental litigation. Analysing the spectrum of adjudicative bodies that are engaged in the resolution of environmental disputes, it offers a reappraisal of their relevance in contemporary contexts. The book critiques the contribution that arbitral awards and judicial decisions have made to the development of environmental law, and considers the looming challenges for international

litigation. With its unique combination of scholarly analysis and practical discussion, this work is especially relevant to an era in which environmental matters are increasingly being brought before international jurisdictions, and will be of great interest to students and scholars who are engaged within this vital field.



Dr Tim Stephens is an international lawyer and human geographer. He has been published widely on issues of public international law, national and international environmental law and the law of the sea. He is Co-Editor in Chief of the *Asia Pacific Journal of Environmental Law*. He is also a regular media commentator in Australia and internationally on issues of international law and environmental law.

Exploring the Horizontal Application of the South African Bill of Rights to Corporations: a Model for Australia and International Law?

Dr. David Bilchitz, Director of the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC)

Monday 23 November, 4.00 -5.00 pm

About the Seminar: The South African Bill of Rights is relatively unique in containing a clause that renders the duties imposed by the Bill directly applicable to corporations. This seminar sought to explore this change and focused upon the relevant clause in some detail. It questioned whether the clause gives adequate legal expression to the duties of corporations for the realisation of fundamental rights. Bilchitz also discussed the need to raise certain concrete legal measures that are of importance in seeking to give content to, and realise, the more abstract duties contained in the Constitution. He explored whether or not the obligations of corporations based in South Africa for the realisation of fundamental rights apply beyond South Africa's borders.



Dr. David Bilchitz is Director of the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC). He has a BA (Hons) LLB cum laude from Wits University. He graduated with an MPhil in Philosophy from St John's College, University of Cambridge in

2001 and with a PHD in political philosophy and law from the same university in 2004. His book *Poverty and Fundamental Rights: the Justification and Enforcement of Socio-Economic Rights* was published by Oxford University Press at the end of February 2007. He has several other publications on the Law of Evidence, Socio-Economic Rights, Corporations and Human Rights, Animal Rights, Lesbian and Gay Rights and much else. David is also a committed activist working towards social reform with his involvement in feminist, gay rights, poverty and animal rights issues.

Vodcast online at: <http://sydney.edu.au/law/video/2009.shtml>

Reimagining International Criminal Justice Workshop

Monday 7 December - Tuesday 8 December 9.00am-6.00pm

About the Workshop: The University of Sydney and International and Comparative Criminal Justice Network (ICCNJNet) launched Reimagining International Criminal Justice, a three year, collaborative inter-disciplinary research project intended to critically examine the shape, nature, impacts, and direction of the evolving processes of international criminal justice.

International criminal justice is in a time of transition. Fifteen years after the emergence of the modern system of international criminal justice through the creation of the International Criminal Tribunal for the former Yugoslavia, the 'idea' of international criminal justice has become normalized to an extent that few foresaw a decade and a half ago. Yet the system that has been 'normalized' represents a specific and contested vision of what shape international criminal justice can and should take, the nature of its operation and institutions, the impacts it has and interests it should serve - and the direction in which it should evolve. The two day workshop included a public debate entitled: *'Is it all Law and No Justice?'*. The team in the affirmative was led by Prof. Mark Findlay (of the Sydney University Law School and Institute of Criminology) and the team against by Mark Lerace (former ICTY Prosecutor). This, debate fostered a research dialogue between scholars, policy-makers and practitioners in developing a critical research agenda.

Speakers and participants included: Prof. Mark Findlay (University of Sydney Law School), Mark Tedeschi QC (Crown Prosecutor NSW), Mark Lerace (former ICTY prosecutor), Prof. Gerry Simpson (Melbourne University Law School), Sonja Litz (AusAID), Dr Gordon Peake (AusAID/UNAMET), Andrew Hughes (AFP and former UN Police Adviser), Kevin Jon Heller (Melbourne University Law School), James Cockayne (International Peace Institute NY), Fergus Hanson (Lowy Institute)

Principled Engagement: Engaging Pariah States on Human Rights

Professor David Kinley, SCIL

Morten Pederson, Research Fellow, Centre for International Governance and Justice

10 and 11 December

About the Seminar: This joint project between United Nations University, Australian National University and Sydney University was co-directed by Professor Kinley and Pederson and involved a dozen leading scholars and practitioners from around the world. This conference intended to address an important gap in the academic literature on international statecraft, as well as to provide concrete lessons and recommendations for policy makers, it further developed a theoretical model of principled engagement and undertook a series of case studies to elucidate how statecraft works in practice.

Morten B. Pedersen joined the ANU's Centre for International Governance and Justice in late 2008 from the United Nations University, Peace and Governance Programme, Tokyo. He previously worked as senior analyst for the International Crisis Group in Burma/Myanmar and consultant on Burmese politics and development affairs with the UN, the World Bank and the Conflict Prevention and Peace Forum. He has a PhD in Politics and International Relations from ANU and a MA in Southeast Asian Studies from University of Hull, UK.



David Kinley is Professor of Human Rights Law at Sydney Law School. An expert in human rights and corporate responsibility, the World Trade Organisation, World Bank and the International Monetary Fund. Professor Kinley has previously held positions at Cambridge University, The Australian National University, the University of New South Wales, Washington College of Law, American Univer-

sity, and most recently was the founding Director of the Castan Centre for Human Rights Law at Monash University (2000-2005). He was a Senior Fulbright Scholar in 2004, based in Washington DC, and Herbert Smith Visiting Fellow at the Faculty of Law, University of Cambridge during the first half of 2008. He has written and edited eight books and more than 60 articles, book chapters, reports and papers.

International Law Reading Group

The international law reading group met regularly throughout Second Semester, 2009, bringing together a range of SCIL members, postgraduate research students and friends in vibrant discussions of a range of texts. Readings discussed were the following:

- On 3 August, Emiliios Christodoulidis, 'Strategies of Rupture'(2009) 20:1 *Law and Critique* (with Richard Bailey, PhD candidate, introducing);
- On 24 August, Melinda Cooper, 'Preempting Emergence: The Biological Turn in the War on Terror' in *Life As Surplus: Biotechnology and Capitalism in the Neoliberal Era* (University of Washington Press, 2008) (with Edwin Bikundo and Melinda Cooper - from the Department of Sociology and Social Policy in the Faculty of Arts, introducing);
- On 14 September, Upendra Baxi, 'Global Development and Impoverishment' in Peter Cane and Mark Tushnet (eds), *Oxford Handbook of Legal Studies* (2003) 455-484 (with Mostafa Haider, PhD candidate, introducing);
- On 16 November, Gunther Teubner, 'Constitutionalising Polycontextuality', Paper delivered at School of Law, Glasgow University, 25 September 2009 (with Kevin Walton introducing); and
- On 30 November, Joel Trachtman, 'International Law and Domestic Political Coalitions: The Causes of Compliance with International Law' (July 9, 2009). Available at SSRN: <http://ssrn.com/abstract=1431956> (with Brett Williams introducing).

Human Rights in Asia Conference

On Friday 27 and Saturday 28 November The Australian Network for Japanese Law (ANJeL), Sydney Centre for International Law (SCIL), and The Centre for Asian and Pacific Law in the University of Sydney (CAPLUS), in partnership with the Australian Human Rights Centre (AHRC) hosted an international conference at the Sydney Law School.

The theme of the conference was Human Rights in 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 Subcommittee 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? These were all issues discussed throughout the conference. This conference brought 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.

The conference speakers included Professor Gillian Triggs (Dean, Sydney Law School), Professor Kent Anderson (ANU/ANJeL), The Hon Michael Kirby AC CMG, Professor Nisuke Ando (Human Rights Research Institute, Kyoto University) Dr Andrew Ladley (Victoria University of Wellington), Catherine Renshaw, Andrew Byrnes and Andrea Durbach (Australian Human Rights Centre), Professor Tom Zwart (UNSW) and Mimi Zhou (Netherlands School of Human Rights Research)

The event attracted a large crowd with 94 people attending and provided an enormous benefit not only for academics who are interested in this area, but also for the wider audience who have become aware of the potential for development in this important area of institution-building. Draft conference papers were also shared by relevant governmental officials both during and after the event, which could well be reflected in Australia's foreign policy in the future.

This project was a prime example of fruitful collaboration and a product of good networking among Australia's key academic institutions at the Australian National University, the University of Sydney, and the University of New South Wales in the areas of international law, human rights law, and Asian law.



Fleur Johns opening the conference



Ivan Shearer speaking at the conference



Prof Thamilaran speaking at the conference

Completion of Nepal Project

The objective of this Activity was to improve understanding and knowledge of, and respect for, Nepal's human rights law obligations amongst key actors in the criminal justice system in Nepal, by reviewing legal education in Nepal on human rights in the criminal justice system and training Nepalese police and prosecutors on human rights in the criminal justice system:

The project systematically reviewed existing education on human rights in the criminal justice system in Nepal resulting in the project's *Report on Human Rights Education on Criminal Justice in Nepal* (2009). Following advice from the Steering Committee and consultation with stakeholders, it was decided to present the Report in the form of recommendations of rather than formulating a prescriptive model curriculum, thus leaving it to individual institutions to implement recommendations as appropriate. It is likely, however, that the Report's recommendations will have a direct influence on KSL's own human rights programs, and on the ongoing development of human rights training within Nepalese Police, the latter reform process being a particularly significant component of the sustainability impacts of this project.

The project trained 122 law enforcement trainers in a two-day intensive workshop, followed by six training workshops (one in Kathmandu and five in regional districts) the 122 participants was made up of 82 police, 27 prosecutors and 13 defence lawyers.

The project successfully developed and delivered comprehensive, customisable training materials including a 200-page trainers' manual and a 127-page workshop manual. Both manuals were produced in English, translated into Nepali, published in both languages, and made available freely online. The manuals

were based on best-practice principles of human rights education for adults, including participant-oriented learning which utilized the participants' own experiences of policing or prosecuting crime in Nepal's justice system and was further refined following extensive discussion by attendees of practical problems within a human rights framework.

The project also published an additional 2000 hard copies of the Workshop Manual and distributed them more widely to Nepali Police, prosecutors, defence and legal aid lawyers, and law students. Already the Manual has been used as a resource by other actors in the justice sector, including the UN Office of the High Commissioner for Human Rights and Advocacy Forum.

Participants evaluated the workshops very positively and there was a clear desire for more detailed and regular training in the future. Some participants expressed their willingness to deliver training, if resources became available. The training materials are also influencing ongoing training initiatives in Nepal, both within Nepal Police, universities and NGOs.

In their evaluation forms at the end of each workshop, across the six workshops, 98% of participants responded that the workshop was "very" or "quite" relevant to their work; 95% of participants felt that the training was "very" or "quite" "informative" and "useful" in their work; and 53% responded that the training would "significantly" impact on their work and 38% that it would "occasionally" impact.

The project achieved an effective and productive collaboration between staff (and students) of the Sydney Centre for International Law and KSL. By taking the lead in drafting the trainer and workshop manuals and the curriculum review, Sydney Centre personnel, in close consultation with KSL staff, helped to improve KSL staff's knowledge of and capacity in the application of international human rights law to the Nepali law enforcement context. At the same time, KSL staff were able to bring to bear their unique experience of and expertise in the Nepali criminal justice system and law enforcement institutions and procedures, and from which Sydney Centre staff benefited.



Surjat Basnet (Kathmandu School of Law) and the Centre's Irene Baghoomians.



Workshop participants in Nepalgunj, south western Nepal.



Workshop participants in Nepalgunj, south western Nepal.



View over Kathmandu.

The Early Work of the CRPD Committee

Professor Ron McCallum
Faculty of Law
University of Sydney

Introduction

On 3 May 2008, the United Nations Convention on the Rights of Persons with Disabilities (the CRPD) came into force. It is the United Nations' youngest convention which guarantees to persons with disabilities civil and political rights and also economic and social rights. The CRPD is based upon the social model of disability which asserts that the label of 'disability' is placed upon persons with physical and mental impairments by society through stereotyping and through the creation of inappropriate and unnecessary obstacles. The primary purpose of the CRPD is to ensure that such stereotypes disappear by promoting persons with disabilities and through guaranteeing to us the same rights which are bestowed upon able-bodied persons.

Like other United Nations conventions, article 34 of the CRPD establishes a treaty body which is called the United Nations Committee on the Rights of Persons with Disabilities (the CRPD Committee). Its functions are to monitor the operations of the CRPD through the examination of reports submitted by ratifying countries. Under the CRPD's Optional Protocol, the CRPD Committee also hears individual complaints brought by persons who allege that their CRPD rights have been infringed.

As a foundation member of the CRPD Committee, in this brief note I describe the early work of this treaty body.

The Election of the Inaugural CRPD Committee

On 3 November 2008, the 41 ratifying countries who are known as 'State Parties', elected from 23 candidates 12 members of the inaugural CRPD Committee. Eight of the 12 members are persons with disabilities. This treaty body is therefore the first where a majority of its members are persons with disabilities.

The Early Work of the CRPD Committee

The CRPD Committee has now held three sessions in Geneva in the Palais de Nations which originally housed the old League of Nations which fell apart at the beginning of World War II. The CRPD Committee is assisted in its work by officers of the Office of the High Commissioner for Human Rights (the OHCHR). For example, the OHCHR has provided the important documents in braille for we blind members of the CRPD Committee.

In its first session in February 2009, the CRPD Committee elected its officers with its first Chair being Mr Mohammed Al-Tarawneh from Jordan. As this was its initial session, the members were addressed by various United Nations agencies who introduced their work with special reference to persons with disabilities. The CRPD then began its work on its core documents. They are: first, the Rules of Procedure; secondly, the reporting guidelines for State Parties; and thirdly, its working methods. At the conclusion of this session, the CRPD Committee issued its first declaration titled *First Declaration by the Committee on the Rights of Persons with Disabilities: Looking Forward* which exhorts nations to further and protect the rights of persons with disabilities.

The second session took place in October 2009 and the CRPD

completed its work on the reporting guidelines for State Parties which were published in November that year. Briefly put, these guidelines explain to State Parties who are required to report on the implementation of the CRPD and how to set forth their material to show how the rights of persons with disabilities have operated and have been advanced.

The CRPD Committee also held its first general day of discussion on article 12 of the CRPD which deals with equal recognition before the law and legal capacity. This article recognises that all persons with disabilities have full legal capacity; however, it appreciates that, on occasions, assistance must be given to enable some persons with disabilities to exercise this right. Ratifying countries are obliged to establish mechanisms to assist persons with disabilities in decision-making where appropriate, and also to ensure that such persons are able to exercise property and financial rights.

At this session, I was unanimously elected as the 2010 Chair of the CRPD Committee which was indeed a great honour.

The latest session of the CRPD, its third session, took place from 23 to 27 February 2010. The remaining core documents were completed, although there is still some tidying up of a machinery nature which will be completed in the weeks after the session.

The rules of procedure set forth the rules under which the CRPD Committee operates. The working methods are a living document which specify how the CRPD Committee will undertake the monitoring of reports on the CRPD by ratifying countries, as well as the manner in which it will examine individual complaints under the Optional Protocol.

The CRPD Committee established a working group to follow-up on its October 2009 day of discussion on article 12 of the CRPD and to commence the development of a general comment on this article. It was decided to devote the general day of discussion of its fourth session in October 2010 to article 9 and related articles of the CRPD dealing with access, including access to buildings, to transport and also to information. A working group was set up to prepare material on this forthcoming day of discussion.

Conclusion

The CRPD Committee is just over a year old, its progress has been good, and the cooperation and warm and open spirits of its foundation members are exemplary. Its core documents have been completed before the first reports from ratifying countries are due on 3 May 2010. At its fourth session which will be held in October 2010, it will commence the processes which will lead to it engaging in dialogue over the first reports of ratifying nations. For me, it has been a life changing process to be a member of the inaugural CRPD Committee.



Prof McCallum chairing the 5th session of the CRPD (assisted by Prof Mary Crock)

New Centre Members

The Centre was delighted to have four new members join the Centre in 2009

Dr Chester Brown



Chester is Associate Professor at the Faculty of Law, University of Sydney, where he is a Programme Coordinator for the Master of International Law. His research interests are public international law, international dispute settlement, international arbitration, international investment law, and private international law. He previously served as Assistant Legal

Adviser at the British Foreign and Commonwealth Office, where he advised on a range of public international law issues, including international investment, State and diplomatic immunities, international arbitration, and the work of the International Law Commission. Prior to this, he was a Senior Associate in the International Law and International Arbitration Group of Clifford Chance LLP, London. Chester is a Barrister, and has a door tenancy at Essex Court Chambers, London. He is the author of *A Common Law of International Adjudication* (OUP, 2007), which has been awarded the American Society of International Law's Certificate of Merit for "High Technical Craftsmanship and Utility to Practising Lawyers and Scholars". He is a graduate of the Universities of Melbourne, Oxford, and Cambridge.

Dr Euan McDonald



Euan graduated in Law from the University of Edinburgh in 1999 before going on to gain a Masters degree from the same institution in 2000, where his studies focused throughout on public international law and legal theory. He went on to obtain a PhD in law from the European University Institute in Florence, Italy, in October 2006, with a thesis

on critical approaches to international legal theory. From 2005-2006, he was a Visiting Fellow on the Programme for the Study of International Organizations at the Graduate Institute for International Studies in Geneva. He was a Research Officer at NYU's Institute for International Law and Justice, working on the Global Administrative Law project, from 2007-2009. He remains a consultant to the IILJ, and is a Fellow of the Institute for Research on Public Administration in Rome, Italy.



Professor Terry Carney

Terry is Professor of Law at the University of Sydney (1991-), specialising in welfare law. A former head of school (1992-1995) he is currently Director of Research in the Faculty and a past chair of the Research committee of the College of Humanities and Social Sci-

ences. He is a Board member and Immediate Past President (President 2005-2007) and former General Secretary of the International Academy of Law and Mental Health, and a past chair both of the Australian government's National Advisory Council on Social Welfare and the Board of the Institute of Family Studies. The Australian reporter to the Max Planck Institute on Foreign and International Social Law (Munich), he serves on the Editorial Board of journals such as the International Journal of Law and Psychiatry, Current Issues in Criminal Justice, and the Elder Law Review, and on Kluwer's International Library of Ethics, Law and the New Medicine. In 2005 he was the recipient of the University of Sydney Vice Chancellor's Award for Excellence in Higher Degree Supervision. The author of nearly a dozen books/monographs and around a hundred academic papers, and has chaired various Government enquiries (including Victorian enquiries on Child Welfare Practice and Legislation (1982-84), on Health Law (1986-1987)). He was also a founding Director of the National Children and Youth Law Centre (1992-2003).

Dr Salim Farrar



Salim first graduated in Law from King's College London in 1991 and was called to the English Bar in 1992. Following a two-year stint in Malaysia from 1994-1996, he returned to England to pursue a doctorate in comparative criminal justice at the University of Warwick and as a British Academy Scholar.

Upon completion of his doctorate, he went on to teach at the Universities of Coventry, Warwick and Manchester before his most recent appointment as an Associate Professor at the International Islamic University Malaysia in 2004. His principal research and teaching interests are in Islamic Law, Criminal Justice and 'Human Rights', with a particular focus on Southeast Asia and the Middle East. He speaks English, Arabic, Bahasa Malaysia and French, and has just written a book on the reforms of the Malaysian criminal process.

New Books

Law of International Business in Australasia

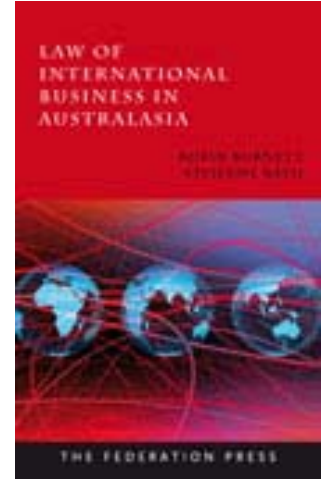
(Federation Press, Sydney, 2009)

Robin Burnett and Vivienne Bath

This book is a successor to Robin Burnett's *Law of International Business Transactions*. Incorporating and building on the comprehensive information and material contained in the earlier book, *Law of International Business in Australasia* provides an up-to-date analysis of the legal environment for international trade and covers:

- the changes made to payment and letters of credit by reason of the adoption of the UCP 600, which became effective in 2007, and other means of payment which are currently used;
- the provisions and possible adoption of the UNCITRAL Draft Convention on the Carriage of Goods Wholly or Partly by Sea;
- recent developments in the law relating to international sale of goods;
- the question of international arbitration and other means of dispute resolution; and
- the strategies and issues of international operations.

This book will assist practitioners and students in their understanding of the legal and practical aspects of international and overseas trade and operations.



Environmental and Planning Law in New South Wales (2nd edition)

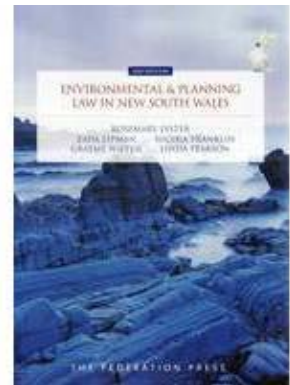
(Federation Press, Sydney, 2009)

Rosemary Lyster, Zada Lipman, Nicola Franklin, Graeme Wiffen and Linda Pearson

This is a comprehensive, up-to-date text on environmental, planning and development law in New South Wales. Leading academics provide original commentary and case analysis which take account of international as well as national developments.

This new edition traces developments in climate law and reflects the extensive legislative changes made by the *Environmental Planning and Assessment Amendment Act 2008* (NSW), the *Contaminated Land Management Amendment Act 2008* (NSW), and the *Water Act Amendment Act 2008* (Cth). The new edition also features:

- a restructure of the planning, development control and environmental assessment chapters;
- a restructure of the waste, contaminated land, chemicals and dangerous goods chapters;
- a new chapter, 'Managing Environment Conflict', which covers: merit appeals; judicial review; civil enforcement; issues in environmental litigation: standing, costs, access to information; overview of the Land and Environment Court; the Ombudsman; and ICAC.



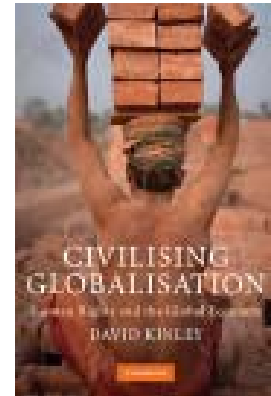
Civilising Globalisation: Human Rights and the Global Economy
 (Cambridge University Press, United Kingdom, 2009)

David Kinley

Economic globalisation and universal human rights both have the aspiration and power to improve and enrich individuals and communities. However, their respective institutions, methods, practices and goals differ, leading to both detrimental clashes and beneficial synergies. David Kinley analyses how human rights intersect with the trade, aid, and commercial dimensions of global economic relations, taking the view that, while the global economy is a vitally important civilising instrument, it itself requires civilising according to human rights standards.

Combining meticulous research with highly informed views and experiences, Kinley outlines the intellectual, policy and practical frameworks for ensuring that the global economy advances the ends of human rights, argues for better exploitation of the global economy's capacity to distribute as well as create wealth, and proposes mechanisms by which to minimise and manage the socially debilitating effects of market failures and financial meltdowns.

Blending the disciplines of economics, human rights, law and politics and drawing on a wide range of illuminating cases, Kinley demonstrates how, in the wake of a global financial crisis, human rights responsibilities can be met while simultaneously promoting global economic growth and explores the responsibilities of global economic actors to respect people's human rights, building a persuasive case for why and how these duties ought to be reconfigured and enforced.

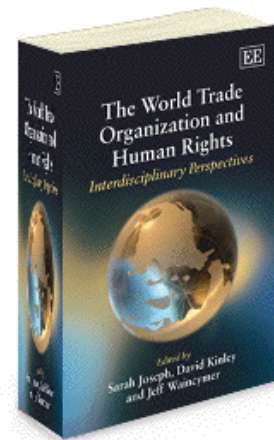


The World Trade Organization and Human Rights: Interdisciplinary Perspectives
 (Edward Elgar, United Kingdom, 2009)

Sarah Joseph, David Kinley and Jeff Waincymer (editors)

This collection of essays from leading academics examines the connection between the World Trade Organization (WTO) and human rights issues, a topic which has provoked significant debate, particularly in the decade since the collapsed WTO talks in Seattle in 1999.

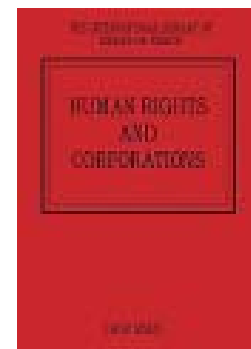
The editors argue that a true appreciation of the salient issues requires consideration of disciplines beyond the law, such as economics, political science and philosophy. Building on previous trade/human rights projects by adding that interdisciplinary dimension, *World Trade Organization and Human Rights* brings together trade scholars and human rights scholars from legal and interdisciplinary perspectives. It will be an invaluable research tool for international scholars in human rights and trade, NGOs focusing on human rights and development, trade organisations and trade practitioners.



Human Rights and Corporations
 (Ashgate, United Kingdom, 2009)

David Kinley

The erstwhile unlikely coupling of human rights and corporations is now a typical feature of corporate/community relations. High-profile corporate infringements of human rights, the rise and rise of corporate social responsibility (CSR) and on-going efforts to regulate corporate behaviour through legal regimes at both domestic and international levels have spawned a mountain of academic literature and commentary. This volume assembles the leading essays from this body of work. Together they frame the relationship between human rights and corporations by charting its history and salient features, tackling the conceptual perspectives of the relationship and detailing the practice, problems and potential of the relationship.



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Thalia Anthony, 'Sentencing Indigenous 'Rioters' as if the Death in Custody Never Occurred', Australian & New Zealand Critical Criminology Conference 2009, Monash University, Melbourne, 8-9 July 2009

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Vivienne Bath

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Vivienne Bath, 'Legal Drafting – Dual Language Drafting', International Conference for Effective Legal and Judgment Writing, co-organised by CAPLUS, the China Law Society's National Association of Legal Writing Studies, and the China Law Research Group at UTS, East China University of Political Science and Law, 14 September 2009

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Belinda Bennett

Belinda Bennett, 'Cross-Cultural and Cross-Jurisdictional Issues in Pandemic Planning', Health and Borders in China, India and the Indian Ocean Region, China Research Centre and Indian Ocean and South Asia Research Network, UTS, Sydney, 28-29 October 2009

Belinda Bennett, 'Who Owns Stem Cells? Legal and Ethical Considerations in Regulating iPS', 12th Stem Cell Workshop - Induced Pluripotent Stem Cells, University of Sydney, Sydney, 4 August 2009

Belinda Bennett 'Cross-Cultural Perspectives on Pandemic Planning and Public Health Laws', Rights, Regulation and Responsibility: Australian and Singaporean Perspectives Law Research Symposium, University of Sydney and National University of Singapore, University of Sydney, 30-31 July 2009

Belinda Bennett, 'Beyond the Body: Law and the Regulation of Enhancement Technologies', International Academy of Law and Mental Health Congress, International Academy of Law and Mental Health, New York, 28 June-3 July 2009

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Edwin Bikundo

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Ben Boer

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Ben Boer, 'The role of biodiversity conservation and protected areas in the context of climate change', International Conference on Environmental Law, Bogota, Colombia, October 2009

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Chester Brown

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Simon Butt

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Terry Carney

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Salim Farrar

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Mark Findlay

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Jennifer Hill

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Jennifer Hill, 'Recent Developments in Directors' Duties in the Common Law World', Corporate Governance Models and the Liability of Directors and Managers, Faculty of Economics and Business Sciences, University of Sannion, Italy, Benevento, Italy, 28 September -2 October 2009

Jennifer Hill, 'New Trends in the Regulation of Executive Compensation', Supreme Court Annual Corporate Law Conference: Directors in Troubled Times, Supreme Court of NSW, Supreme Court of NSW, 11 August 2009

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David Kinley

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Roger Magnusson

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Roger Magnusson, Workshop presenter, 'Chronic Disease and Injury', workshop forming part of the Global Health Day conference, jointly convened by Sydney Medical School and the Centre for Health Governance, Law & Ethics, Sydney Law School, 28 August 2009

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Ron McCallum

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Ron McCallum, 'Employment Relations & Law - Collective Bargaining and the New Fair Employment Laws', LPD Seminar Series, Sydney Law School, University of Sydney, 29 April 2009

Shae McCrystal

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Shae McCrystal, 'The Fair Work Act and Industrial Action', The Emerging Framework: Change in Australian Labour Law: 17th Annual Workplace Research Centre Labour Law Conference, Workplace Research Centre, Sydney, 15 May 2009

Kate Miles

Kate Miles, 'Legal Elements of Financing Climate Investment', Copenhagen Climate Change Summit, United Nations, Copenhagen, 7-18 December 2009

Kate Miles, 'Climate Finance for Adaptation in Developing States: Mobilising the Private Sector', presented at 'Legal Aspects of Technology Transfer and Carbon Financing', United Nations Climate Change Conference, Copenhagen, Denmark, December 2009 (invited speaker)

Kate Miles, Experts Panel, Centre for International Sustainable Development Law, World Trade & Investment Law for a Low-Carbon Economy: Development & Regional Implications of Environmental Pricing Reform, Seventh World Trade Organisation Ministerial Conference, Geneva, December 2009 (invited speaker)

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Kate Miles, 'Arbitrating Climate Change: Regulatory Regimes and Investor-State Disputes', presented at Climate Change in the Courts: Emerging Patterns, Closed Workshop, University of Edinburgh, United Kingdom, November 2009 (invited speaker).

Kate Miles & Susan Park, 'Sustainable Finance: Codes, International Organisations and Law', presented at Faculty of Law Seminar Series, University of Sydney, October 2009

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Rebecca Millar

Rebecca Millar, 'Australia's Cross-Border Rules: Taking the Bull by the Horns', 21st Annual GST and Indirect Tax Weekend Workshop, University of New South Wales, Noosa Heads, QLD, 16-18 April 2009

Rebecca Millar, 'Intentional and Unintentional Double Non-Taxation', Value Added Tax and Direct Taxation – Similarities and Differences: International Network for Tax Research Conference, Institute for Austrian and International Law, WU, Vienna and the Institute for VAT Research, Stockholm University, Vienna University of Economics and Business, 26-28 March 2009

Jacqueline Mowbray

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Luke Nottage

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Luke Nottage, 'Consumer Law and Policy in the Asia-Pacific: Product Safety, Consumer Credit, Unfair Contracts, and Consumer Access to Justice', Rights, Regulation and Responsibility: Australian and Singaporean Perspectives Law Research Symposium, University of Sydney and National University of Singapore, University of Sydney, 30-31 July 2009

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David Rolph

David Rolph, 'Judicial Perceptions of the Media', Law School Luncheon Seminar Series, Sydney Law School, University of Sydney, 5 November 2009

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Tim Stephens, 'Sustainability Discourses in International Courts: What Place for Global Justice?', Global Justice and Sustainable Development Conference, International Law Association Committee on the International Law on Sustainable Development & University of Sheffield School of Law, Sheffield, United Kingdom, 26-27 August 2009

Tim Stephens, 'Sustainability Discourses in International Courts', Environmental Discourses in International and Domestic Law, Connecting International and Public Law, Workshop, ANU College of Law, Australian National University, Canberra, 15-16 August 2009

Tim Stephens, 'Australian Foreign Policy on Global Environmental Issues', Guest Lecture, Department of Government and International Relations, University of Sydney, 28 May 2009

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Gillian Triggs, 'Internationalization of Australian Legal Education', International Law Schools Association, Canberra, October 2009.

Gillian Triggs, 'Partition of Territory in International Law', 2009 Conference: 'Partition of Territory in 20th Century History', Faculty of Arts, University of Sydney, 29 September 2009.

Gillian Triggs, 'Australia's International Security Issues and International Law', Australian Davos Summit, Melbourne, August 2009

Gillian Triggs, 'Boundary Disputes in the South China Sea: Energy Security and International Law', Rights, Regulation and Responsibility: Australian and Singaporean Perspectives Law Research Symposium, University of Sydney and National University of Singapore, University of Sydney, 30-31 July 2009

Gillian Triggs, 'The World Trade Organization and Climate Change: a clash of Civilizations?', 16th Commonwealth Law Conference, 'The Dynamics of Law in a Rapidly Changing World', Hong Kong, April 6-9 2009

Gillian Triggs, 'WTO and Trade Measures to enforce Kyoto Climate Change Targets', Australian Institute of International Affairs (NSW Branch), April 2009.

Anne Twomey

Anne Twomey, 'Equality and Freedom – Regulating Political Expression and Spending in Australia', Electoral Law Workshop, University of Melbourne Law School, University of Melbourne Law School, Melbourne, 12-13 November 2009

Anne Twomey, 'Heirs and Graces – Changing the Rules of Succession to the Throne', Speech to the ACM Sydney Chapter, Parliament House Sydney, Australians for Constitutional Monarchy, Sydney, 25 September 2009

Anne Twomey, 'Pape, power and the prerogative', Forum on the Pape Case, Australian Association of Constitutional Law, Australian Association of Constitutional Law, Sydney, 22 September 2009

Anne Twomey, 'No Free Lunches at the Table of Knowledge – Ending Political Donations Scandals in New South Wales', University of Sydney, Spring Back to Sydney Alumni Day, University of Sydney Alumni Relations, Sydney, 19 September 2009

Anne Twomey, 'Commonwealth Coercion and Cooperation', Upholding the Australian Constitution Vol. 20, Samuel Griffith Society, Sydney, 24 August 2009

Anne Twomey, 'The Fijian Coup Cases – What lessons are there for Australia?', Address to the NSW Bar Association, NSW Bar Association, Sydney, 4 August 2009

Anne Twomey, 'An Australian Bill of Rights', Strengthening Parliamentary Democracy: Commonwealth Parliamentary Association Conference, Commonwealth Parliamentary Association, Sydney, 29 May 2009

Anne Twomey, 'Cutting the Gordian Knot – Limiting Rather than Codifying the Powers of a Republican Head of State', Australian Senate Occasional Lecture Series, Australian Senate, Parliament House Canberra, 3 April 2009

Brett Williams

Brett Williams, 'Does the World Trade Organization Appellate Body Understand the Difference between an Import Quota and an Import Tariff: Reflections on the Chile Price Band Cases', University of Sydney Faculty of Law Lunchtime seminar series, 8 October 2009.

Brett Williams, 'Review of the GATT Article XX cases, Part 1: The Environment Cases US-Gasoline & and Shrimp/Turtle', WTO/ Public International Economic Law Seminar Series, Sydney Centre for International Law (SCIL), Sydney Law School, 11 September 2009

Brett Williams, 'Proposals for Third Party and Collective Retaliation in the Light of the Trading Nations Dilemma model and Article 22.6 Arbitrations', symposium on WTO Litigation: Issues and Reforms, Sydney Centre for International Law, Sydney, 14 August 2009.

Brett Williams, 'Using the Prisoner's Dilemma Model in Teaching Competition Law and Teaching International Trade Regulation', Rights, Regulation and Responsibility: Australian and Singaporean Perspectives Law Research Symposium, University of Sydney and National University of Singapore, University of Sydney, 30-31 July 2009.

Brett Williams, 'The TRIPS Provisions on Enforcement of Intellectual Property Law: what Guidance from the China- IP case of Dec 2008', WTO/ Public International Economic Law Seminar Series, Sydney Centre for International Law (SCIL), Sydney Law School, 5 May 2009.

Brett Williams, 'Bananas, Phones and Tumbling Dice: Experience of WTO dispute settlement under the GATS', Law Council of Australia Trade Law Symposium, Canberra, 3-4 April 2009.

Brett Williams, 'Faculty of Law E-Learning Showcase', Lunchtime Seminar Series, Faculty of Law, University of Sydney, Sydney, 26 March 2009 (on enhancing teaching using the announcement Function in WebCT)

Brett Williams, 'The Doha Round Negotiation on Antidumping Rules – What's On the Table?', WTO/ Public International Economic Law Seminar Series, Sydney Centre for International Law (SCIL), Sydney Law School St James campus, 12 March 2009.

Alex Ziegert

Alex Ziegert, 'Law in Asia: The Key Role of Law as a Productive Force for Development', 6th Asian Law Institute Conference "Dynamics of Change in Asia", Asian Law Institute, Hong Kong, 29-30 May, 2009

Media**Fleur Johns**

ABC2 Radio/Sydney Morning Herald website, Intelligence Squared Debate – 'Freedom of Expression Must Include a Licence to Offend', 31 March 2009

The Canberra Times, 'No justification for enhanced police search powers' (co-author Matthew Kalyk), 20 October 2009

Ben Saul

The Economist (Indonesian war crimes at Balibo), 27 August 2009
ABC Radio National (Balibo war crimes investigation), 19 August 2009

The Australian (Indonesian war crimes at Balibo), 17 August 2009

The Australian (Australians detained abroad), 7 August 2009

SBS TV (extradition of alleged people smuggler from Indonesia), 27 May 2009

ABC Radio National PM Program (extradition), 26 May 2009

ABC Unleashed, 'Influencing the Burmese dictators', 25 May 2009

ABC TV Four Corners Program (extradition of suspected criminal from India), 25 May 2009

ABC Radio National (extradition of suspected criminal from India), 25 May 2009

SBS Radio (Australia's obligations under human rights treaties), 17 March 2009

South China Morning Post (Chinese naval activity in the South China Sea), 11 March 2009

SBS TV Dateline (war crimes allegations against Australian forces in Afghanistan), 8 March 2009

ABC Radio National (Sudan head of state arrest warrant), 6 March 2009

ABC Radio National PM Program (Sudan head of state arrest warrant), 13 February 2009

Sydney Morning Herald (torture prosecutions in the United States), 8 January 2009

Boardroom Radio Roundtable/The Australian (Israel-Hamas Conflict in Gaza), 8 January 2009

2GB Radio (release of Guantanamo Bay detainees), 5 January 2009

Brett Williams

ABC Radio National PM Program (whether pork import bans breach WTO law), 4 May 2009



Irene Baghoomians overlooking the World Heritage listed main square of Bhaktapur.



Executive Director of Kathmandu School of Law, Professor Yubaraj Sangroula, at a market in central rural Nepal



Swayambhunath temple, Kathmandu.



Swayambhunath temple(the monkey temple), Kathmandu.



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.

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Articles

The Review Conference On The Rome Statute Of The International Criminal Court In Kampala, 2010

- *Roger S Clark*

Victim Participation At The International Criminal Court

- *Matthew Gillett*

Australian Trials of Class B and C Japanese War Crimes Suspects 1945-51

- *Emmi Okada*

Crimes Processes in Timor Leste

- *Sue Harris Rimmer*

Intervening Interests: Humanitarian and Pro-Democratic Intervention in the Asia-Pacific

- *Robert Lancaster*

Responding to Attacks by Non-State Actors: The Attribution Requirement of Self-Defence

- *Brent Michael*

Targeting the 'terrorist enemy': the boundaries of an armed conflict against transnational terrorists

- *Kelisiana Thynne*

At The Fault-Lines Of Armed Conflict: The 2006 Israel-Hezbollah Conflict And The Framework Of International Humanitarian Law

- *Andrew Yuile*

The Australian Charter Of Human Rights Debate: Battle Of The Models

- *Irina Kolodizner*

Call for Contributions

The Journal is currently accepting submissions of articles, case notes and book reviews on any area of public or private international law, for inclusion in the 2010 annual volume of the Journal. Contributions on private international law (conflict of laws) are particularly encouraged. Instructions for authors are on the website. The deadline for submissions is 30 June 2010

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 many areas of public and private international law, including the history and theory thereof.

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

Associate Professor 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, Senior 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

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.

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.

Associate Professor Vivienne Bath is 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.

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

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.

Associate Professor Chester Brown is an expert on international law and international dispute settlement.

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.

Professor Terry Carney, specialising in welfare law, has contributed extensively to international legal scholarship on social security, mental health and drug 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.

Dr Charlotte Epstein is a Lecturer in the Department of Government and International Relations and her interests include concepts in IR theory (in particular, articulations of sovereignty, the state and North-South Relations), critical security studies, feminist IR theories, global environmental politics and the international politics of energy, and the overlap between international trade and the environment.

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.

Dr Salim Farrar lectures in public international law and criminal procedure, with a special interest in human rights, Islamic law and comparative criminal justice in Asia.

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.

Professor Helen Irving is Professor of Constitutional Law and expert in federal constitutional law, comparative constitutionalism, and gender and constitution-making.

Associate Professor Y.S. (Steve) Lee is an expert in international trade law and business law.

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

Dr Euan MacDonald expert in public international law and legal theory and recently worked on the Global Administrative Law project.

Associate Professor Roger Magnusson is an expert in health law and public health law, with an interest in global health govern-

ance and in legal response to epidemics.

Professor Ron McCallum is Professor of Industrial Law and an expert in labour and employment law.

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

Kate Miles is a 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.

Jacqueline Mowbray is a Lecturer with a particular interest in international law and legal theory, with a focus on both international human rights law and international commercial issues.

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 James Renwick, a former Fulbright Scholar, with a doctorate from Sydney University, is a member of the NSW Bar, practising in the fields of both public and commercial law. He has appeared in many constitutional matters in the High Court. He is a pioneer of the teaching and practice of national security law in Australia. He holds a commission in the Royal Australian Naval Reserve.

Dr David Rolph is a 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

Danielle Celermajer is Director of the Asia Pacific Masters of Human Rights and Democratisation, Director of the Masters of Human Rights and a Senior Lecturer at the Department of Sociology and Social Policy, University of Sydney. Her research interests include international human rights law and institutions and their domestic application, and mechanisms for dealing with violations in the past.

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.

Adriana Edmears was a member of the 2009 Jessup Moot team.

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.

Angela Ha is a final year Sydney law student and was a member of the 2009 Jessup Moot team. She was selected to attend the 2020 Summit on the panel considering Australia's future in the region and the world. Her research interests include peacekeeping and international human rights law.

Robert Hill is an Adjunct Professor in Sustainability at the United States Studies Centre at the University of Sydney. He has been a member of the Australian Senate from 1981 to 2006, and a former Minister for the Environment, Minister for the Environment and Heritage and Minister for Defence. From 2006 to 2009 he served as the Australian Ambassador to the United Nations. He was recently appointed by the Prime Minister as Chairman of the Australian Carbon Trust.

Nikolas Kirby is a final year Sydney law student and was a member of the 2009 Jessup Moot team. He will begin a BPhil in Philosophy at Oxford as a Rhodes Scholar later this year. His research interests include conflict between jus cogens norms inter se, and the law of evidence in international litigation.

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 research interests include corporate governance, and international environmental law with a focus on climate change and energy.

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.

Associate Professor Jake Lynch is Director of the Centre for Peace and Conflict Studies at the University of Sydney. He is a leader in the field of peace journalism, as an experienced international reporter and scholar.

Ryan May is studying for a law degree at Sydney University and was a member of the 2009 Jessup Moot team.

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.

Melissa Perry QC is a senior barrister practicing primarily in the federal sphere, specialising in public international law, constitutional law, administrative law, native title and environmental law.

Chris Sidoti is a human rights lawyer, activist and teacher who currently works from Sydney, Australia, as an international human rights consultant, specialising in the international human rights system and in national human rights institutions.

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.

Annelise Young was a member of the 2009 Jessup Moot team, and is currently completing the final year of her law degree. Annelise's research interests include the law governing the use of force and international criminal law.

Jessup Affiliates

Odette Murray (Coach)	Angela Ha
Adriana Edmeaders	Nikolas Kirby
Ryan May	Annelise Young

Centre Interns: Semester 2, 2009

Matthew Kalyk (S2, 2009) Callista Harris (S2, 2009)

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Sadhie Abayasekara, penultimate year undergraduate law student

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Dr Michael Fullilove, Director of Global Issues, Lowy Institute for International Policy, Sydney; Visiting Fellow, [Brookings Institution](#), Washington, DC (in 2008)

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Swayambhunath temple, Kathmandu.



Swayambhunath temple, Kathmandu.

Sydney Centre for International Law (SCIL) - J0033 00000 / 11111
Statement of Financial Performance as at 31 Dec 2009

	Budget 2010 - Excluding M3UNU \$	Note for 2009	2009 J0033 00000/11111 (Including M3UNU) \$	2009 J0033 00000/11111 (Excluding M3UNU)	2009 J0033 11111 M3UNU	2008 \$	2007 \$
Revenue							
Grants (Faculty contribution & UNU Project)	30,000	1	47,968	20,000	27,968	20,000	20,000
SShips, Donations & Bequests							
Business Income (Sales Publication)			5,101	5,101			
Consulting & Contract Research	2,000					3,649	
Interest & Investment Income	120		593	593			
Student Fee							
Other Fees & charges (Fee seminar/conference)						1,067	9,000
Internal Income (LPD profit, RIAP Trannsfer)	23,870		6,111	6,111		2,975	605
Other Income (Invoicing Worldwide, Moulis Legal)			2,991	2,991			1,605
Total Revenue	55,990		62,764	34,795	27,968	27,691	31,210
Salary Expenditure							
Academic Salary costs			19	19		86	
Part time teaching costs			580	580		35	
General Salary Costs							
Casual Salary Costs	49,239		30,039	25,433	4,606	21,022	15,099
Overtime Costs			635	635		439	1,506
Other Salary Costs							
Total Salary Expenditure	49,239	2	31,273	26,667	4,606	21,582	16,605
Non Salary Expenditure							
Employee Related Costs (Travel, Meal/entertainment)	3,000		1,323	1,323		2,725	1,558
Consumables	50		5	5		23	54
Repairs and Maintenance							
Equip Purchases & leases < \$10K							
Utilities and Communications (Catering, inter charge communicaiton)	1,500	3	4,248	2,050	2,198	2,563	1,255
Consultants and Contractors	500		313	313		1,992	100
Insurance, Legal, Motor, Admin (Advertising, general expense)	175	4	558	408	150	3,086	
Student, Printing, Library (photocopying, binding, ref material, printing)	500		15			2,178	
Total Non Salary Expenditure	5,725		6,462	4,114	2,348	12,567	2,967
Total Expenditure	54,964		37,735	30,781	6,954	34,149	19,572
Operating Margin	1,026	5	25,029	4,014	21,014	-6,458	11,638
Depreciation & Amortisation							
Net Extraordinary & Elimination Items							
Net Operating Margin	1,026		25,029	4,014	21,014	-6,458	11,638
Asset Additions >\$10,000							
Net Financial Performance	1,026		25,029	4,014	21,014	-6,458	11,638
<u>Accumulations:</u>							
Operating Accum Funds C/Fwd	22,422		43,407	43,407		49,865	38,227
Transfer to Reserves			25,000	25,000			
Transfer from Reserves							
Closing Balance	24,474		43,435	22,422	21,014	43,407	49,865
Reserve	25,000		25,000				

Note:

- \$20K from Faculty contribution; \$27,968 from the UNU Project.
- \$31,273 salary expenditure includes \$4,606 casual wage for UNU Project of which \$4,497.09 for Natasha Khassam's wage was adjusted to M3UNU in 2010.
- \$4248 Utility cost, of which \$2198 was for UNU project
- \$558 Insurance adm cost include \$408 for center and \$150 for UNU Project
- Centre's Oprating margin of \$4014 reflected casual wage adjustment of \$12,566.13(for Claire and Natasha) done in Jan 2010