



CENTRE FOR INTERNATIONAL AND PUBLIC LAW FACULTY OF LAW

NEWSLETTER

Issue 2/2003
July 2003

Dear Friends of CIPL

This newsletter covers activities of the Centre and Centre members in the period April to June 2003, and gives notice of some of our activities for the rest of the year.

We are delighted that Professor Christina Murray has accepted our invitation to give the sixth Geoffrey Sawer lecture on 7 November (more details below). Perhaps this lecture series is more prestigious than we know – just a few months after delivering the fifth Sawer Lecture last year, Judge Navi Pillay was elected as a judge of the International Criminal Court!

Please check our website <http://law.anu.edu.au/CIPL> for details of all our forthcoming events.

Cathy Hutton, Editor

Geoffrey Sawer Lecture 2003

Professor Christina Murray, University of Cape Town
7 November at 6.30pm

Professor Murray is a highly respected South African constitutional lawyer. She is a founding editor of the South African Journal on Human Rights. In 1994 Professor Murray was appointed to the expert panel advising the South African Constitutional Assembly in drafting South Africa's new constitution.

2003 Conferences

(see inside newsletter for further details)

4-6 July 2003

Eleventh ANZSIL Annual Conference

7-9 November 2003

Eighth Annual Public Law Weekend

20-21 November 2003

Joint conference with the Australian Centre for Environmental Law (ACEL-ANU)

Coming Up – Seminars

(flyers will be sent out nearer the time of each seminar, or check the Centre's website <http://law.anu.edu.au/CIPL> for further details)

8 July

Public Law Seminar

'The language of practical reality': *Al-Masri* and Mandatory Detention in Australia

Matthew Zagor, Faculty of Law

22 July

International Law Seminar

Bioprospecting in Antarctica

Don Rothwell, University of Sydney

late July

International Law Seminar

Current Challenges in the International Refugee Protection System

Michel Gabaudan, Regional Representative, UNHCR

Seminars 2003

30 July

International Law Seminar

Treaty Body reform

Jane Connors, OHCHR, Geneva

5 August

International Law/Public Law Seminar

The *Hagan* case: Australia before the CERD Committee

Ernst Willheim, Visiting Fellow, Law Program, RSCS

18 August

International Law Seminar

Gay and Lesbian rights at the UN

Rodney Croome AM

August TBC

International Law/Public Law Seminar

Industrial Organisation

Michael Dowdle, Visiting Fellow, Faculty of Law

22 September

International Law Seminar

Topic TBC

Ryszard Piotrowicz, University of Wales at Aberystwyth

30 September

Public Law Seminar

Scrutiny of Bills Committees

Bryan Horrigan, University of Canberra

Conferences 2003

ANZSIL Conference

4-6 July 2003, Wellington NZ

International Governance and Institutions:
What Significance for International Law?

The annual conference of the Australian and New Zealand Society of International Law (ANZSIL) will take place in Wellington, New Zealand from 4-6 July. Further information:
<http://law.anu.edu.au/ANZSIL>

Annual Public Law Weekend

7-9 November 2003

'The Australian Constitution in Troubled Times'

This year the conference is a joint event of CIPL and the Australian Association of Constitutional Law (AACL). For further information about the program, contact the Conference Directors

James.Stellios@anu.edu.au or

Fiona.Wheeler@anu.edu.au

General inquiries:

Cathy.Hutton@anu.edu.au

20-21 November

Joint CIPL/ACEL-ANU conference

This conference, on the **Precautionary Principle** and convened by the Acting Director of ACEL Judith Jones, will celebrate the tenth anniversary of the *Leatch* decision. It is our first joint activity with the Australian Centre for Environmental Law (ACEL-ANU).

Congratulations



Robin Creyke has received a grant from the Australian Institute of Judicial Administration for a project on 'Inquisitorial Processes in Australian Tribunals'.



In April, **Dennis Pearce** was awarded a Centenary Medal for services as chair of the Copyright Law Review Committee.

Andrew Byrnes has been invited to serve as a member of the Advisory Committee of International Disability Monitoring Project of Disability Rights Promotion International (DRPI), based at York University, Canada.

John McMillan, former Centre member and recently appointed Commonwealth Ombudsman, celebrated his first 100 days with former colleagues at an informal dinner recently. John pointed out that he is returning to the Ombudsman's office after 25 years and looks forward to completing the work he initiated then!

Recent Centre Publications

Australian Yearbook of International Law
Volume 22 is now available. Further details at <http://law.anu.edu.au/CIPL> under Publications.

Public Law Intersections

Papers presented at the Public Law Weekend – 2000 and 2001.

John McMillan and Judith Jones (editors)

This book will shortly be available from the Centre at a cost of \$35 incl GST and postage

Centre 2002 Annual Report

Now available in hard copy or on the Centre's website <http://law.anu.edu.au/CIPL>
This Report summarises the activities undertaken by the Centre and members of the Centre in 2002.

Occasional paper

'The Contribution of Children to Australian Administrative Law', the text of the Sir Richard Blackburn Lecture given at the Law Society of the ACT by Chief Federal Magistrate Diana Bryant on 13 May 2003. Available in hard copy or on the Centre's website <http://law.anu.edu.au/CIPL>

Comparative Perspectives on Bills of Rights

The papers from this one-day conference held at the National Museum of Australia on 18 December 2002 and jointly organised by CIPL with the ANU's National Institute of Government and Law (NIGL), are about to be published. Professor Penelope Andrews writes on South Africa, Professor Andrew Byrnes on Hong Kong, Ms Francesca Klug OBE on the United Kingdom and Rt Hon E W Thomas DCNZM QC on New Zealand. Please contact the Centre if you would like to be sent a copy.

Recent Centre Events

Current Issues Forum - 28 May

(in association with the Australian Red Cross (ACT) International Humanitarian Law Committee)

Picking up the Pieces: The Iraq War and International Humanitarian Law

The forum was introduced and chaired by Michael Carrel, Chair of the International Humanitarian Law Committee of the Australian Red Cross (ACT Branch).

Speakers were:

- Professor Andrew Byrnes, ANU
- Professor Hilary Charlesworth, ANU
- Dr Helen Durham, Legal Adviser to the International Committee of the Red Cross, Regional Delegation for the Pacific
- Associate Professor Don Rothwell, Faculty of Law, University of Sydney and Visiting Fellow, Law Program RSSH, ANU

The speakers reflected on a number of international humanitarian law issues that arose during the military conflict in Iraq, including alleged violations of the laws of war and the treatment of prisoners of war, and a number of related international law issues arising in the period of transition and reconstruction, such as the democratisation process and criminal justice issues. Don Rothwell's presentation on Prisoners of War is on the Centre's website <http://law.anu.edu.au/CIPL> under War on Iraq



LtoR: Michael Carrel, Hilary Charlesworth, Andrew Byrnes, Helen Durham, Don Rothwell

FEATURE ARTICLE

Centre Director Hilary Charlesworth was chair of the ACT Bill of Rights Consultative Committee. The Report of the Committee, 'Towards an ACT Human Rights Act' was presented to the ACT Chief Minister, Jon Stanhope, on 21 May 2003. This article appeared in The Canberra Times on 22 May.

Protecting human rights

Hilary Charlesworth

In April 2002, the ACT Chief Minister appointed a committee to consult with the local community about whether the ACT should adopt a bill of rights. The committee published an issues paper in May 2002 to prompt debate and, over the past year, the committee has met with thousands of Canberrans and received 145 written submissions. We have heard many different views on whether an ACT bill of rights is a good idea, although 60 per cent of those we consulted with were in favour of some type of bill of rights. We received many varied suggestions on how such a document might be drafted.

We have now presented the Chief Minister with the results of our community consultations and our research (the full report is available at www.jcs.act.gov.au/prd/rights/index.html) In summary, the committee recommends that the ACT adopt new legislation, the ACT Human Rights Act, which will protect human rights set out in two international treaties to which Australia is a party. At the moment, the protection of these rights is piecemeal and haphazard.

The HRA (our proposed draft is contained in the report) is a very different bill of rights to that of the United States. For a start, it is an ordinary piece of legislation and does not have constitutional status. Its aim is to create a conversation or dialogue about the best method of protecting human rights

between the various branches of the ACT government the Legislative Assembly, the executive and the judiciary. The HRA puts human rights explicitly on the agenda of the institutions of government and creates a human-rights partnership between them.

At the end of the day, however, the HRA allows the democratically accountable legislature to have the final say on the protection of human rights. In this sense, the HRA is an enhancement of the rule of law in the ACT, but avoids the "rule of lawyers".

The HRA contains a number of methods of giving human rights new prominence in the ACT. First, it provides that all ACT laws (including legislation and the common law) past, present and future, should be interpreted by ACT courts and tribunals to be compatible with the designated human rights as far as possible. If this is not possible (for example, because the incompatibility is clear on the face of legislation), the law stands. Judges cannot change the clear meaning of a law, effectively rewriting it, to make it consistent with human rights.

Under the HRA, the Supreme Court can formally declare that legislation is incompatible with human rights, but this declaration has no legal effect. It is designed to draw the incompatibility to the attention of the legislature, which can make its own decision about how to respond. The HRA also increases the

role of the Legislative Assembly in scrutinising draft legislation for compatibility with human rights.

Another important feature of the HRA is that it requires public authorities to act compatibly with human rights, except if they are otherwise authorised by the legislature. This will mean that broad statutory discretions will need to be exercised consistently with human rights. The HRA emphasises that there is a range of remedies for the breach of human rights by a public authority and that damages are only to be awarded if no other remedy is appropriate. The idea is to allow context-sensitive remedies for breaches of human rights.

One fear often expressed is that bills of rights may lead to a flood of frivolous litigation. We investigated whether this fear had been realised in similar legal systems such as Britain's. The latest available statistics indicate that the British Human Rights Act 1998 has not markedly increased the number of cases brought in British courts, nor has it increased the hearing time of cases. The HRA gives the Supreme Court a significant role in management of human-rights cases to ensure smooth functioning. For example, the court can refer the parties to alternative dispute resolution if it thinks this would help.

The HRA protects economic, social and cultural rights (for example, the right to the highest attainable standard of health care) as well as civil and political rights (for example, the right to freedom of speech or a fair trial). This is a recognition that it's impossible practically to separate the two categories of rights. Real lives are not divided into these categories, after all!

Claims to rights cannot of course be treated as absolute and they must be

balanced against the rights of other individuals and the community. The HRA explicitly recognises that the protected human rights can be limited to accommodate the demands of a democratic society, allowing reasonable limitations to be considered consistent with the purpose of protecting human rights.

The members of the committee have all learned a great deal from our consultations and our various views on the issues have been influenced by hearing the thoughts of so many Canberrans. We are really grateful to everyone who became involved.

To paraphrase the South African jurist Albie Sachs, interviewed recently on ABC radio, we should value the power of imagination in political life. And, in a way, that is what inspires the HRA: it offers a balance between a belief in perfectibility in the protection of human rights and scepticism about the fallibility of human beings, specially those in power.

We do not yet know how the ACT Government will respond to our report. A decision to adopt an ACT Human Rights Act would make the ACT the first Australian jurisdiction to make a formal commitment to bringing international human rights home to roost.

As Eleanor Roosevelt said 50 years ago, "Where, after all, do universal human rights begin? In small places, close to home. Unless rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the large world."

Recent Centre Events

Current Issues Forum - 10 June An ACT Human Rights Act: Prospects for Implementation

Speakers were:

- Andrew Byrnes, Centre for International and Public Law, ANU
- Hilary Charlesworth, Chair of the ACT Bill of Rights Consultative Committee
- Daniel Stubbs, Director, ACT Council of Social Service

They discussed the legislation proposed by the report of the ACT Bill of Rights Consultative Committee and possible effects of an ACT Human Rights Act.



LtoR: Pene Mathew, Daniel Stubbs, Andrew Byrnes, Hilary Charlesworth

Recent Publications by Centre Members

Please contact Centre members directly for further information on their publications. The standard email address format is LastnameInitial@law.anu.edu.au

Hilary Charlesworth

- 'Human Rights in the Wake of Terrorism' 82 *Reform* 26-29, reprinted in 41(5) *Law Society Journal* 62-64

Anthony Forsyth

- 'Corporate Collapses and Employees' Right to Know: An Issue for Corporate

Law or Labour Law?' (2003) 31
Australian Business Law Review 81-96

- 'Giving Employees a Voice over Business Restructuring: A Role for Works Councils in Australia', in P Gollan and G Patmore (eds), *Partnership at Work: The Challenge of Employee Democracy, Labor Essays 2003* (Pluto Press, Sydney, 2003) 140-150

Penelope Mathew

- Book Review: Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* in 22 *Australian Year Book of International Law* (2002) 239-242

Dennis Pearce

- *AIAL Forum* Parts 34, 35, 36 and 37 (Editor)
- *Administrative Law Service Bulletins* Nos 209, 210, 211 (Editor and contributor).
- 'Administrative Review Council' 35 *AIAL Forum* 53-70.

James Stellios

- 'Fair Dealing and Freedom of Expression in the United Kingdom' (2003) 14 *Australian Intellectual Property Journal* 45 (with Robert Burrell).

Recent Papers, Presentations and Other Activities by Centre Members

Please contact Centre members directly for further information on their activities. The standard email address format is LastnameInitial@law.anu.edu.au

Australian Human Rights Commission (HREOC) Legislation Bill 2003

Centre members Peter Bailey, Andrew Byrnes, Hilary Charlesworth, Pene Mathew, Wayne Morgan, Anne McNaughton and James Stellios presented a submission to the Senate Legal and Constitutional Legislation Committee on 23 April 2003. The submission is available on the Centre's website <http://law.anu.edu.au/CIPL>

Andrew Byrnes

- 'Changing reality: all roads lead to equality?', paper (in absentia) for the panel Reconciving Reality: Ten Years On, at the American Society of International Law's 97th Annual Meeting, Washington DC, 3 April 2003
- 'International Justice in the age of the International Criminal Court: Old Problems, New Solutions?', Solferino Lecture, World Red Cross Day, organised by the Australian Red Cross (ACT Branch), Canberra, 8 May 2003
- Panel presentation for the Centre's Current Issues Forum, Picking up the Pieces: The Iraq War and International Humanitarian Law, ANU, 28 May 2003
- Panel presentation for the Centre's Current Issues Forum, An ACT Human Rights Act: Prospects for Implementation, ANU, 10 June 2003
- Participant in the Consultation on UNESCO's Overall Human Rights Strategy, organised by the Maastricht Centre for Human Rights and the Netherlands Institute of Human Rights, Maastricht, 13-14 June 2003
- Panel presenter for the panel on the Typology of international conventions and options for a convention on the rights of persons with disabilities, held as part of the 2nd session of the United Nations General Assembly Ad Hoc Committee on a Comprehensive and Integral International Convention on Promotion and Protection of the Rights and Dignity of Persons with Disabilities, New York, 16 June 2003
<http://www.un.org/esa/socdev/enable/rights/ahc2panel.htm>
- Panel participant, Public Forum on Issues Concerning the Rights of Persons with Disabilities, United Nations, New York, 17 June 2003
- 'Reflections on the proposed international convention on the human rights of persons with disabilities in the

light of existing international human right standards: form, process and substance', paper presented at Expert Group Meeting and Seminar on an International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities, (organised by the United Nations Economic Commission for Asia and the Pacific), Bangkok, 2-4 June 2003 available at <http://www.worldenable.net/bangkok2003/paperbyrnes.htm>

- Acted as Resource person at the above Expert Group Meeting (the Meeting resulted in the adoption of the Bangkok recommendations on the elaboration of a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, Bangkok, 2-4 June 2003
http://www.un.org/esa/socdev/enable/rights/a_ac265_2003_crp10.htm)

Hilary Charlesworth

- 'Why Obey International Law? Theories for Managing Conflicts with Municipal Law' paper for the American Society of International Law's 97th Annual Meeting, Washington DC, 3 April 2003
- 'Human Rights in the Wake of Terrorism', paper for the 13th Commonwealth Law conference, Melbourne, 15 April 2003
- 'Prospects for an ACT Bill of Rights' presentation for the Amnesty International ACT Legal Network, Canberra, 29 April 2003
- 'Potential and problems of Security Council Resolution 1325' presentation for the Unifem Women Peace and Conflict seminar, Canberra, 1 May 2003
- 'New Horizons in Human Rights', paper for the Curriculum Studies Association's National Discovering Democracy Forum, Canberra, 23 May 2003
- 'The Democracy Jigsaw', panel presentation for the Centre's Current Issues Forum, Picking up the Pieces:

The Iraq War and International Humanitarian Law, ANU, 28 May 2003

- 'Proposals for an ACT Human Rights Act', panel presentation for the Centre's Current Issues Forum, An ACT Human Rights Act: Prospects for Implementation, ANU, 10 June 2003
- 'Entrenching the protection of our human rights' *The Canberra Times* 22 May 2003 (see feature article in this newsletter)
- 'War and Law?', lecture for the Australian Catholic University's School of Philosophy public lecture series, Melbourne, 18 June 2003

Anthony Forsyth

- 'What's in a Name? The Coalition Government's Third Term Agenda in Industrial Relations', address to the Inaugural Forum of the Australian Labour Law Association (Tasmanian Chapter), Hobart, 28 April 2003

Ann Kent

- 'Australia's International Human Rights Policies', presentation to the Independent Scholars Association of Australia (ISAA), ANU, 10 June 2003
- Interviewed on 'American Unilateralism?' by Geraldine Doogue on 'Life Matters', ABC Radio, 15 April 2003

Dennis Pearce

- 'Payments without Admission of Liability', presentation to the Department of Health and Ageing, Canberra, 12 June 2003

Centre Staff and Members

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