

CIPL E-Bulletin – Vol. 3, No. 4, December 2008

Dear CIPL Associates,

Welcome to the fourth and final CIPL E Bulletin for 2008. Since the last E Bulletin in July CIPL issued its annual newsletter: <http://law.anu.edu.au/CIPL/Newsletters/Oct08.pdf> which includes all of CIPL's activities between September 2007 and October 2008. I encourage you, if you haven't already, to look at the Newsletter and if you would like a hard copy please contact cipl@law.anu.edu.au

Since the newsletter was published we held the successful [Thirteenth Public Law Weekend](#) which included the Eleventh Geoffrey Sawyer lecture and several other events that you'll find listed below. As you know, most of our events are audio-recorded so you can visit the website and listen to those of interest that you may not have been able to attend in person. There was also a news item about the Public law weekend in the WIN TV news on the Friday night of the PLW, featuring me and Ernst Willheim which is also available for viewing on the website.

In addition to my role as Director of CIPL I was busy earlier this year as part of the seven member Independent Committee appointed by the Minister for Immigration and Citizenship, chaired by Richard Woolcott, to review the Australian Citizenship Test. The Minister for Immigration and Citizenship recently announced receipt of the report of the Australian Citizenship Test Review Committee [Moving Forward...Improving Pathways to Citizenship](#) plus the government's response to the report: <http://www.citizenshiptestreview.gov.au/>

I'd also like to welcome on board the CIPL intern for over the summer period, Stephen Colditz. Stephen will be working with Dr Matt Rimmer, who is coediting the book out of the second CIPL workshop with me (see more info below). Stephen will be researching the topic of bio-medical patents and specifically the patent priority controversy surrounding the discoveries of HIV by Dr Montagnier and Dr Gallo. He will also assess the relative effectiveness of prizes such as the Nobel Prize in Physiology or Medicine (shared this year by Dr Montagnier) as an incentive for innovations that improve public health.

I'd like to specifically bring to your attention three particular CIPL events planned for 2009.

- The 2009 Annual Kirby lecture in International law will be presented by Professor Hilary Charlesworth, former Director of CIPL, on **Thursday 19 March** at the end of the day. Please be sure to put it in your diary now! Justice Kirby will also be in attendance and we'll be able to wish him a happy birthday for the preceding day! More details about the lecture at: <http://law.anu.edu.au/cipl/Lectures&Seminars/2009/Charlesworth.pdf>
- The **second** involves the call for papers for the third CIPL workshop *Connecting International and Public law*, on *Environmental Discourses In International and Public Law* which will be run in conjunction with the Australian Centre for Environmental Law (ACEL) in **August 2009**. See: <http://law.anu.edu.au/cipl/2009%20Workshop/CIPL%20Connecting%20Public%20%20Internat%20Law.pdf>

I am delighted that Cambridge University Press will be publishing the series of books from these workshops, with the first book, *Sanctions, Accountability and Governance in a Globalised World* about to go to press. The second book *Incentives for Global Health: Patent Law and Access to Essential Medicines* is in its final stages. Would you

please assist me in sending this call for papers for the third workshop on *Environmental Discourses* to any people you think might be interested in participating?

- The **third** is the date for the 2009 Public law “Week-end”. It will be held on the afternoon of **Thursday 12 November** and the full day of **Friday November 13** to end off the week. This is a new initiative to hold it as a week event, with the Annual Sawyer lecture and a dinner at the end of the Thursday. Those from outside Canberra will also be encouraged to stay in Canberra to enjoy the weekend, perhaps visiting the newly opened National Portrait Gallery. Please mark that date in your diary now and more details will be forthcoming in the new-year.

Can I also bring to your attention two ANZSIL events. The first is a Call for Papers for a **joint ANZSIL - Indian Society of International Law Workshop, New Delhi, which is to occur in December 2009** below in the section on future events of interest? The closing date for the Call for papers is very soon; Monday 15 December 2008. The other is the call for papers for the 2009 ANZSIL annual conference which will be in Wellington. This is available on the website at <http://law.anu.edu.au/anzsil/>

I am also delighted to let you know we have a new CIPL logo designed by Paul Liddelow which will appear on the back of the CUP book series and will also appear on the new CIPL banner for 2009. You can see the logo on the law school Centre’s page at <http://law.anu.edu.au/Centres/>

I would also like to take the opportunity to thank Tanya Mark who has been working as Assistant Manager in the ANU College of Law’s Outreach and Support Team (COAST), specifically responsible for CIPL since July. Tanya’s warmth and enthusiasm has been appreciated and we wish her well as she heads off to undertake other activities in 2009. The COAST team of Director Chris Debono, Wendy Mohring and Kristian Draxl will continue to support CIPL in its various activities throughout 2009.

Finally, I will be on study leave for the first half of 2009, as a Visiting Fellow at the Humanities Research Centre, here at the ANU, with the aim of completing the biography I am writing on Joan Montgomery, AM OBE. I thank in anticipation Professor Don Rothwell who has agreed to take on the role of Acting Director for that period.

Wishing you all the best over the festive season and the New Year, and I look forward to being in touch again personally in the second half of 2009. You’ll be hearing from Professor Rothwell in the February 2009 CIPL E Bulletin!

Best wishes,
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News

Congratulations

To Simon Rice in his appointment to chair the newly formed independent Law Reform Advisory Council in the ACT, (alongside his role as Director of Law Reform and Social Justice in the College)

To Simon Bronitt, Anne McNaughton with others from ANU CAP and CASS for a three year Linkage grant on 'Australia and the European Union: A study of a changing trade and business relationship' with DFAT and the EU as partners.

To Hilary Charlesworth for her success in obtaining a two year Linkage grant on protecting economic, social and cultural rights in the ACT.

To Professors Don Rothwell and Kent Anderson for being awarded The Vice-Chancellor's Award for Community Outreach, Australian National University (2008)

Three of our colleagues received inaugural student awards for teaching: Amelia Simpson, Wayne Morgan and Kent Anderson. Congratulations to all three!

We are delighted that our colleagues Leighton McDonald and James Stellios were promoted to Level D (Reader/Associate Professor), Vivien Holmes to Level C (Senior Lecturer) and Heather Roberts to Level B (Lecturer) in the recent promotions round.

Congratulations to our NCIS colleague Professor Mick Dodson who was named as the 2009 ACT Australian of the Year.

At the end of this year Emeritus Professor Jim Davis will stand down as Legal Adviser to the Senate Scrutiny of Bills Committee. Jim has been longest serving legal advisor, having been involved with the committee since 1983.

To Susan Harris Rimmer who will be the first ANU student to graduate with a Doctor of Juridical Science from the College of Law on 11 December and on her appointment to the board of UNIFEM Australia.

CIPL graduate student member Matt Stevens is working in the National Human Rights Consultation Secretariat at the Attorney-General's Department. He encourages CIPL friends to look at the website <http://www.humanrightsconsultation.gov.au> which announces the National Human Rights Consultation.

CIPL members who have presented/participated—or have been invited to present – in conferences/seminars include:

Donald K. Anton has been invited to present a Key Note address at the University of California at Berkeley in connection with an invitation only international workshop entitled, 'Towards a Rights-Based Agenda in International Forestry,' 30-31 May 2009 and to participate as a presenter/panelist at the University of Washington School of Law's conference entitled 'Three Degrees: The Law of Climate Change & Human Rights,' May 28-29, 2009

Peter Bailey addressed the World Conference to celebrate the 60th anniversary of the Universal Declaration of Human Rights and the approval of the Declaration on the Rights of Indigenous Peoples (DecRIP). The address pointed to the significant developments in thinking the DecRIP

represents and to the special groups of Articles relating to culture, land and self-determination. The UDHR still stands, but DecRIP is a new stage in thinking. It moves on from the two major discrimination conventions (Race and Women) and the two major rights conventions (Child and Disability) by not essentially tracking through the IBHR rights. DecRIP moves beyond them, implicitly endorsing them and identifying in some depth what recognition of particularly important human rights now means in new or expanded areas.

Kevin Boreham presented the paper 'Evans v State of New South Wales [2008] FCAFC 130 (15 July 2008): Presumption against interference with fundamental rights and freedoms' at the 13th Public Law Weekend conference on 1st November 2008.

Hilary Charlesworth and Susan Harris Rimmer presented to the 2008 Annual Human Rights and People's Diplomacy Program, Diplomacy Training Project in December.

Michael Coper presented the 11th Geoffrey Sawer Lecture by Emeritus Professor Lesley Zines, 'Chief Justice Gleeson and the Constitution' on 31st October 2008.

Joanne Lee was an invited speaker for 'Prosecuting International Crime, Human Rights Abuses and Terrorism: A Symposium on the Role of Spain and the European Union', High Table Dinner, Bruce Hall, ANU, 2 April 2008, organised by the National Europe Centre, ANU and she was also invited to speak at 'The 10th Anniversary of the Rome Statute' - presentation on the International Criminal Court's State Cooperation regime - organised by CIPL and the International Humanitarian Law Committee, Australian Red Cross (ACT), sponsored by the Embassy of the Kingdom of the Netherlands and the Embassy of Switzerland, Finkel Theatre, ANU, 22 August 2008.

Ann Kent participated in the 'China in the 21st Century Dialogue' cosponsored by the ANU China Institute and the ANU Climate Change Institute at the Coombs Extension Building, ANU, on 11 December.

Leighton McDonald chaired the session 'Public Law Leadership and the Executive: Part 1' at the 13th Public Law Weekend conference on 31st October 2008.

Yee-Fui Ng presented the paper 'Australian Tribunals as World Leaders' at the 13th Public Law Weekend conference on 31st October 2008.

Simon Rice chaired the session on 'Public Law Leadership in the Courts' at the 13th Public Law Weekend conference on 31st October 2008.

Don Rothwell chaired the session 'Public Law Leadership and Parliament' at the 13th Public Law Weekend conference on 31st October 2008.

Ernst Willheim presented the paper 'An Amicus Experience in the High Court' at the 13th Public Law Weekend conference on 1st November 2008.

Heather Roberts presented the paper 'The place of 'Swearing-in Speeches' as Indicators of Judicial Leadership' at the 13th Public Law Weekend conference on 1st November 2008.

Kim Rubenstein opened the 13th Public Law Weekend conference and the 11th Geoffrey Sawer lecture on 31 October 2008. Kim also chaired the session on 'Public Law Leadership and Academia' at the 13th Public Law Weekend conference on 1st November 2008 and presented a paper at the conference *From Migrant to Citizen: testing language, testing culture* at Macquarie University on Thursday 4th December 2008.

Amelia Simpson chaired the session on 'Updates: Recent Cases' at the 13th Public Law Weekend conference on 1st November 2008.

Daniel Stewart chaired the session 'Public Law Leadership in the Executive: Part II FOI and Privacy as a Case Study' at the 13th Public Law Weekend conference on 31 October 2008.

George Williams presented the paper 'The Move Towards a National Charter of Human Rights' at the 13th Public Law Weekend conference on 1st November 2008.

Matthew Zagor chaired the session on 'Updates' at the 13th Public Law Weekend conference on 31 October 2008.

Susan Harris Rimmer gave evidence to the Whistleblowing in Public Sector Inquiry for the House of Representatives Committee on Legal and Constitutional Affairs on 16 October, gave a paper on 'Women and the Constitution of Timor Leste' at a conference on the Constitution of Timor Leste at the Law School, Trinity College Dublin on 25 November, and gave a speech entitled '60 years of the UDHR: its contemporary normative impact' at the ACT Baha'i Community commemoration of the 60th Anniversary of the Universal Declaration of Human Rights, 7 December.

Don Rothwell presented

- 'Capital Punishment and Diplomatic Protection: Australia's Experience in Responding to its Citizens in Peril' at Lunchtime Seminar Series, School of Law, University of Canterbury, Christchurch, New Zealand, 2 October 2008
- 'The Antarctic Treaty System and the Challenges of Responding to Japanese 'Scientific' Whaling' at Christchurch Antarctic Festival 2008, Lyttelton Port of Christchurch, Christchurch, New Zealand, 3 October 2008
- 'The Yes Case' at The Socratic Forum: 'That the responsibility to protect must override national sovereignty', John Curtin School of Medical Research, Australian National University, Canberra, 30 October 2008
- 'Towards an Arctic Treaty Regime' at Melting the political ice? Recent developments in the Arctic Conference, British Institute of International and Comparative Law, London, 28 November 2008
- Discussed the Australian Government's position with respect to the death penalty in light of the anticipated executions in Indonesia of the 'Bali Bombers' (3 November 2008):
ABC Radio 936 Hobart 'Drive': 5.12pm
ABC Radio 'PM': 5.35pm
ABC Radio Australia 'Asia Pacific'
SBS TV World News: 7.05pm

Don Rothwell's other media during that period included

- 2CC Canberra 'Drive' 5 November 2008 at 5.20pm discussing the Australian Government's position with respect to the death penalty in light of the anticipated executions in Indonesia of the 'Bali Bombers'
- ABC Radio Australia/Radio National 'Asia Pacific' 8 November 2008 at 5.05am discussing an attempt to bring criminal charges of torture in New South Wales against a visiting Chinese government official
- ABC Radio 'PM' 12 November 2008 at 5.35pm discussing the options open to the Obama Administration with respect to the US military detention facility at Guantanamo Bay and how detainees may be legally treated
- 3AW 'Afternoons with Derryn Hinch' 19 November 2008 at 5.50pm discussing the hijacking by pirates of the supertanker Sirius Star off the coast of Somalia

- Don Rothwell, Peter Michael 'Accused honeymoon killer will be brought back to face trial' Courier Mail 27 November 2008, p. 7 [discussing the possible extradition from the US of Gabe Watson in relation to the death of his wife during a Great Barrier Reef honeymoon holiday]

CIPL Members recent publications include:

Donald K. Anton, Whaling at the Bottom of the Global Fishbowl: Australia's Attempt to Protect Whales in the Southern Ocean, 36 Boston College Environmental Affairs Law Review 1 (2009).

Peter Bailey, 'The Human Rights Enterprise: In Australia and Internationally', available before Christmas 2008 and published by LexisNexis, Sydney. It represents the product of some seven years work and extends to 16 chapters over nearly 1000 pages.

Ann Kent published a book review of Margaret Sleeboom-Faulkner, 'The Chinese Academy of Social Sciences: Shaping the Reforms, Academia and China (1997-2003)' (Leiden: Brill, 2007) in *The China Review* 8 (Fall 2008), no. 2, pp.298-300.

Ann Kent published an Op-Ed, 'China's Thin Veil of Compliance' in The Canberra Times, 25 August 2008, p.11.

Hilary Charlesworth and Susan Harris Rimmer, Submission No. 2, Inquiry into Human Rights Mechanisms in the Asia-Pacific, Joint Standing Committee on Foreign Affairs Defence and Trade, 20 November,
http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%203.pdf

Susan Harris Rimmer, Book Review of the publication 'Human Rights Overboard: Seeking Asylum in Australia' by Linda Briskman, Susie Latham and Chris Goddard, with a foreword by Julian Burnside, Scribe Press, 2008 in *InSight Bulletin*, Centre for Policy Development, October 2008. <http://cpd.org.au/article/human-rights-overboard>

Susan Harris Rimmer, Struggle continues for Timor Occupation Survivors, Opinion Editorial, Canberra Times, 3 November.
<http://www.canberratimes.com.au/news/opinion/editorial/general/struggle-continues-for-timor-occupation-survivors/1350071.aspx>

Don Rothwell, 'Fishery Zones and Limits' Max Planck Encyclopedia of Public International Law (2008) [IN PRESS]

Don Rothwell, 'Gibraltar, Strait of' and 'Sea Lanes' submitted to Max Planck Encyclopedia of Public International Law (31 October 2008)

Don Rothwell, 'Apathy is not an option' The Canberra Times, 4 November 2008, p. 15 [discussing the diplomatic and legal options the Rudd Government should pursue in responding to the anticipated execution of the Bali Bombers]

Don Rothwell, 'The Arctic in International Affairs: Time for a New Regime?' (Fall/Winter 2008) 15 *Brown Journal of World Affairs* 241-253

Ernst Wilhelm, 'Australian legal procedures and the protection of secret Aboriginal spiritual beliefs: a fundamental conflict', in Cane, Evans and Robinson (ed), *Law and Religion in Theoretical and Historical Context* (Cambridge University Press, 2008)

Matthew Zagor, 'Judicial rhetoric and constitutional identity: Comparative approaches to aliens' rights in the United Kingdom and Australia' (2008) 19 *Public Law Review* 270.

The *Australian Year Book of International Law* Volume 27 (edited by Donald R Rothwell and Kim Rubenstein) is now available. To order: jennifer.braid@anu.edu.au

The Value of Year Books of International Law: *James Hathaway*

Articles: The Howard Government and International Law

Introduction: Australia and International Law during the Howard Years: *Donald R Rothwell and Kim Rubenstein*

Neither Principled nor Pragmatic? International Law, International Terrorism and the Howard Government: *Greg Carne*

The Howard Government's Record of Engagement with the International Human Rights System: *Sarah Joseph*

Australia and East Timor during the Howard Years: An International Law

Perspective: *Stuart Kaye*

Refugee Protection in the Howard Years: Obstructing the Right to Seek Asylum: *Jane McAdam and Kate Purcell*

Australian Approaches to International Environmental Law during the Howard Years: *Gregory Rose*

Warriors, Humanitarians, Lawyers: The Howard Government and the Use of Force: *Gerry Simpson*

The Howard Government's Legacy in International Trade and Investment: *Jeff Waincymer*

Articles

The Foundations of Arbitrability in International Commercial Arbitration: *Ilias Bantekas*

An Australian International Law: The Impact of Australian Courts on the Fragmentation of International Law: *Alexander Kunzelmann*

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- See also the ANU College of Law SSRN series edited by Kim Rubenstein at <http://www.ssrn.com/link/Australian-Natl-U-LEG.html>
 - For recent expert comments by CIPL members see also <http://law.anu.edu.au/cipl/expertopinion.asp>
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Recent Past Events

Audio recordings for many of the seminars and lectures mentioned below are available at: <http://law.anu.edu.au/cipl/events.asp>

- Public Presentation, *60th Anniversary of the Genocide Convention*, Dr John Docker and Mr Robert Handby, Monday, 24 November 2008
- Public Seminar, *Making People Illegal What Globalization Means for Migration and Law* Dr Catherine Dauvergne (University of British Columbia), Friday, 21 November 2008
- Public Seminar, *Disintegration Through Law? On the Decomposition of Citizenship in Europe*, Prof Alexander Graser (Hertie School of Governance, Germany), 7 November 2008

- 13th Annual Public Law Weekend, *Public Law: Public Leadership*, 31 October - 1 November 2008
- Seminar on book by Ann Curthoys, Ann Genovese and Alexander Reilly *Rights & Redemption: History, Law and Indigenous People*, 17 October 2008
- Solferino Seminar, *Private Military Companies: Mercenary Boom or Legitimate Outsourcing?* Mary Picard (University of Geneva), 18 August 2008
- Senator Evans Announces New Immigration Policy, ANU College Of Law, 29 July 2008: *New Directions in Detention: Restoring Integrity to Australia's Immigration System*

Forthcoming CIPL Events

For more details about each of the forthcoming events see:

<http://law.anu.edu.au/cipl/Events.asp>

Second Annual Kirby lecture in International Law

Professor Hilary Charlesworth, with Justice Kirby in attendance.

Title TBA (more information forthcoming).

Thursday, 19 March 6.30-7.30pm, drinks from 6.00pm

<http://law.anu.edu.au/cipl/Lectures&Seminars/2009/Charlesworth.pdf>

Call for abstracts for 2009 CIPL workshop connecting international and public law:

[*Environmental discourses in international and public law*](#)

2009 Public law weekend

Thursday 12th and Friday 13th November

Events and Information of Interest

CALL for papers for joint ANZSIL - Indian Society of International Law Workshop, New Delhi

ANZSIL invites members to submit proposals for papers to present at a joint ANZSIL/ISIL workshop on 'Contemporary challenges to international law' to be held in New Delhi 5-6 December 2009.

The workshop will provide an historic opportunity for Australian and New Zealand scholars to exchange ideas about future directions in international law with their Indian colleagues. Indian scholars have been at the forefront of debates about critical approaches to international law, including feminist and third world approaches. Indian jurists have also played a significant role in the development of human rights law and the international law relating to terrorism.

Papers might focus on one of the following issues:

- Climate change and the environment
- Responses to terrorism
- International human rights standards
- Critical theories of international law
- International humanitarian law

A total of eight ANZSIL members will be able to participate as paper-givers, but others are welcome as observers/discussants. ANZSIL members will be expected to fund their own travel to and accommodation in India, but a small supplement may be available in cases where ANZSIL members' institutions are unable to contribute to these costs.

Applicants should submit by 15 December 2008:

(1) A one page abstract of their paper proposal, which also explains how an engagement with Indian scholars is likely to further their research; and

(2) A one page curriculum vitae.

Applications should be submitted in the first instance to Professor Hilary Charlesworth at hilary.charlesworth@anu.edu.au.

All applications will be reviewed by a Committee appointed by the Council of ANZSIL before a final decision is made.

**Conference: Judicial Reasoning: Art or Science?
7 & 8 February 2009
Finkel Theatre, ANU**

Judicial Reasoning: Art or Science? will look at how judges judge. It will explore how judges' reasoning is influenced by a range of factors, including: social, neurological, biological and psychological aspects.

The program will cover:

- Judicial reasoning—how judicial officers make decisions
- The biology and psychology of judicial reasoning
- Technology influencing judicial reasoning

For more information, including registration details, go to:

http://law.anu.edu.au/nissl/JudReas_09.htm

Conference hosted by the National Judicial College of Australia, ANU College of Law & Australian Academy of Forensic Science

**Call for papers for the 17th ANNUAL CONFERENCE WELLINGTON, 2-4 JULY 2009
THE FUTURE OF MULTILATERALISM IN A PLURAL WORLD**

The 17th Annual Conference of the Australian and New Zealand Society of International Law ('ANZSIL') will take place from Thursday 2 July to Saturday 4 July 2009 at the Law School, Victoria University of Wellington, New Zealand, hosted by the New Zealand Centre for Public Law.

In this important meeting, ANZSIL will bring together leading scholars and practitioners of international law, as well as Australasian lawyers working in a range of multilateral institutions, to debate the theory and practice of multilateralism, and its future. Issues include:

- What do we want out of multilateral and regional institutions?
- Does international law really serve the interests of plural societies?
- Are multilateral institutions representative of the voices that need to be heard?
- Are the methods of international law suited to 21st century governance?

- How can they be reformed?

Accordingly, the Conference Organising Committee now calls for proposals for papers to be presented at the 17th Annual Conference. Special consideration will be given to proposals which seek to develop the Conference theme either generally or in one of the following five areas:

- (1) *Peace*: can the UN's global project for peace and human rights be renewed?
- (2) *Biosphere*: Governance of the oceans, the global commons and climate – can international law hope to provide responses to the world's most complex challenges?
- (3) *Dispute resolution*: What is needed to make dispute settlement across the Public/ Private International Law divide work better?
- (4) *Crime and reconciliation*: Prosecuting international crimes in post-conflict societies
- (5) *Economy*: The adequacy of the international financial and trading systems in market melt-down.

A one page abstract and one page curriculum vitae should be submitted to the Organising Committee (which is chaired by Professor Campbell McLachlan QC) by Monday 2 March 2009 by e-mail to the conference administrator (Kelley McMenamin) at: law-events@vuw.ac.nz (tel: +64 4 463 6327).

Postgraduate students and those wishing to present their postgraduate thesis work are encouraged to submit their proposals (marked 'PG Workshop') for presentation at the Postgraduate Workshop (which will be coordinated by Amokura Kawharu and held the day before the Conference on Wednesday 1 July 2009).