

FOREWORD

2011 presented many remarkable opportunities for reflecting upon, refining and developing the principles of international humanitarian law ('IHL') and international criminal law ('ICL').

On one view, international law seeks to 'account for, respond to, contain, incorporate and overcome' the events that underlie its development.¹ For the disciplines of IHL and ICL, such opportunities for development invariably emerge from events that involve abject suffering, bloodshed and turmoil.

There has been no shortage of such events in the past year: from the 'Arab Spring' upheavals in North Africa and the Middle East; ongoing military operations in Afghanistan; and a completed military intervention in Libya — the first to be grounded in the responsibility to protect framework. Nor was there any scarcity of developments in international criminal trials: numerous cases were commenced and others brought to a close in international and national courts.

This Focus Issue of the *Melbourne Journal of International Law* brings together contemporary IHL and ICL scholarship, grouped thematically around events located in the future, present and past of these two disciplines.

'Future' collates articles investigating long-standing — and seemingly intractable — problems in IHL and ICL. The articles in this section propose pathways along which doctrinal and normative issues in criminal responsibility, military interventions, and the characterisation lines between conflict types may be resolved. 'Present' groups scholarship that addresses contemporary realities in the law and practice of IHL and ICL. These pieces engage with the disciplines as they develop, pointing to shortcomings and blindspots that are an inevitable product of international law's frantic attempt to respond to challenging events. 'Past' collects reflections on various tribunals that have completed, or are close to completing, their work. But this is more than simply a historical exercise. Returning to the tribunals that helped formulate IHL and ICL (in their early and modern incarnations), these pieces empower today's scholars and practitioners to reappraise their understandings of central legal concepts, practices, aspirations and limitations: in the words of Gerry Simpson, they demand that we 'look back in order to look forward'.²

This Focus Issue touches upon only a fraction of the myriad events, challenges and debates relevant to IHL and ICL, raised by the developments of this last year, along with milestones on the broader timeline upon which these disciplines sit. Nevertheless, we commend and present the work of these scholars as important contributions to the fields of IHL and ICL — contributions that help shape our understanding of the past, appreciate the challenges of the present, and look toward the issues and solutions of the future.

MARTIN CLARK, NUWAN DIAS AND EAMONN KELLY

2012 Editors, *Melbourne Journal of International Law*

¹ Fleur Johns, Richard Joyce and Sundhya Pahuja, 'Introduction' in Fleur Johns, Richard Joyce and Sundhya Pahuja (eds), *Events: The Force of International Law* (Routledge, 2011) 1, 3

² Gerry Simpson, 'Writing the Tokyo Trial' in Yuki Tanaka, Tim McCormack and Gerry Simpson (eds), *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* (Martinus Nijhoff, 2011) 23, 30.