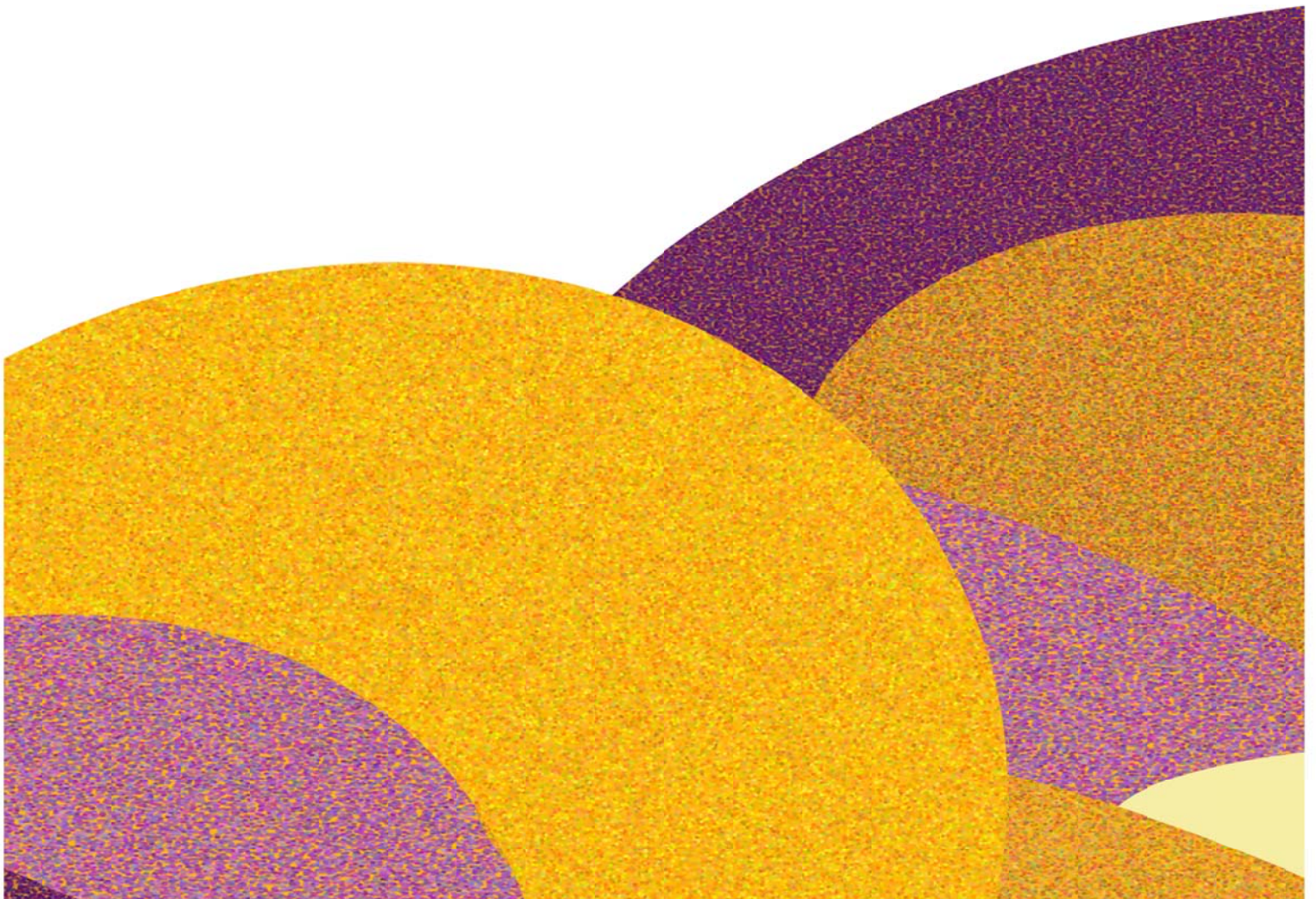




Institute for International Law
and the Humanities

2005-2006 Annual Report



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Message from the Director

It is a great pleasure to present the first annual report of the Institute for International Law and the Humanities (IILAH). IILAH is the successor to the Institute for International and Comparative Law, which was established in the Law School in 1999. In 2005, I was appointed as Director of the Institute and invited to undertake the reorganisation and renaming of the Institute to reflect the next stage of its development. IILAH is the result of that process. It brings together an exciting and dynamic group of Faculty members and research students based at the University of Melbourne and has already become a major centre of interdisciplinary research in international law and the humanities.

During 2005-6, IILAH hosted visits to Melbourne by many outstanding international scholars working in the fields of international law and legal theory. Some of these visitors presented public lectures and seminars which contributed to ongoing community debates about the theoretical foundation and practical effect of international law in today's political climate. Other visitors took part in smaller research symposia, workshops and roundtables with faculty and doctoral students, designed to allow Australian-based researchers to engage with international scholars engaged in innovative theoretical work. These symposia and workshops have generated ongoing interdisciplinary research links within Australia and internationally.

Throughout this period, IILAH also held a range of roundtable discussions and public fora on pressing contemporary issues. These included a series of roundtables to allow Melbourne-based researchers and activists to meet with visiting human rights scholars and practitioners and to develop an international dialogue about the implementation, direction and future of human rights law. In addition, IILAH hosted a range of fora and workshops to facilitate public discussion of the implications of proposals to strengthen and expand Australia's anti-terrorism and sedition laws.

IILAH has worked collaboratively with a range of centres and organisations within and outside the University of Melbourne, including the Contemporary Europe Research Centre, the Department of Political Science, the Melbourne School of Continental Philosophy, the Ashworth Centre for Social Theory, the Centre for Employment and Labour Relations Law, the Asia-Pacific Centre for Military Law and the Institute of Postcolonial Studies (all at the University of Melbourne), as well as the Victorian Equal Opportunity Commission, Liberty Victoria, the Australian Muslim Civil Rights Advocacy Network, the Federation of Community Legal Centres, the Psychoanalytic Studies program at Deakin University and the Public Interest Law Clearing House. Interdisciplinary and community collaboration will continue to be a major focus of IILAH's activities.

Another core aspect of IILAH's work involves fostering and supporting the research of doctoral students working in areas of international law and legal, political and social theory. IILAH provides opportunities for students to discuss their work in reading groups, at doctoral student roundtables and at workshops with visiting international scholars. In 2005 and 2006, IILAH doctoral students presented their work at a range of international workshops and conferences and undertook exchanges at the European University Institute in Florence and at the History of Consciousness Programme at UC Santa Cruz. In 2007, IILAH student exchanges are planned at Birkbeck College London and the Centre for Human Rights at the University of Pretoria and a number of IILAH doctoral students will take part in an

international legal theory workshop in Sweden, which IILAH will co-host with the Faculty of Law, Lund University and the Erik Castrén Institute of International Law and Human Rights, University of Helsinki. IILAH aims to build further linkages with international institutions, in order to provide all doctoral students at IILAH with the opportunity to spend a period of their doctoral candidature at collaborating international centres of research.

The scope and success of IILAH's activities over this period are due to the creativity and enthusiasm of the Faculty members who direct the eight IILAH research programmes, together with the hard work and commitment of Research Fellow Megan Donaldson and IILAH Administrator Emma Brimfield. IILAH's activities have been made possible by the support and encouragement of the Dean of the Faculty of Law, Michael Crommelin. I am very grateful to all of them.

I hope our first report gives you a sense of the vibrant intellectual life and the engaged scholarly community at IILAH. We look forward to another exciting year in 2007 and warmly invite you to visit our web-site to keep track of coming events.

Anne Orford
Australian Professorial Fellow
Director, Institute for International Law and the Humanities



Overview of IILAH

The Institute for International Law and the Humanities (IILAH) is the successor to the Institute for Comparative and International Law, which was established in the Law School in 1999. In 2005, Professor Anne Orford was appointed as Director of the Institute and invited to undertake a reorganisation of the Institute to reflect the next stage of its development. IILAH facilitates and promotes innovative scholarship and critical thinking on emerging questions of international law, governance and justice and strengthens the role of Melbourne Law School as a leading centre of research in this area.

Aims and objectives

IILAH is dedicated to integrating the study of international law with contemporary approaches to the humanities. The modern discipline of international law has been a productive site for the exploration of concepts which have also absorbed the humanities — sovereignty, jurisdiction, force, universality, territory, asylum, peace, non-discrimination, equality, development, imperialism, human rights, security and states of emergency. Many of the significant modes of thought which have framed the way in which international lawyers understand the world have developed in conversation with the humanities. IILAH continues this engagement, through fostering dialogue with scholars working in disciplines such as anthropology, art, cultural studies, geography, history, linguistics, literature, philosophy, politics and theology.

IILAH focuses on encouraging the work of those developing new approaches to the field of international law and on facilitating engagement between scholars and the community of professionals and activists working on issues of international law and governance in Australia and the Asia-Pacific region. IILAH seeks to develop networks with scholars in international law and the humanities from the global South, to explore the ways in which colonial law has arrived and been received. It will also focus on developing links with scholars in the United Kingdom and in former British colonies such as Canada, India, New Zealand and Sri Lanka, in order to explore the shared legacies of British colonialism with respect to international law and governance.

Activities

IILAH hosts visits of distinguished and emerging international scholars; organises conferences, public lectures, workshops and reading groups; supervises and supports the work of graduate research students; and undertakes and facilitates collaborative and interdisciplinary research projects both within the University of Melbourne and internationally. In doing so, it contributes to ongoing debates about the theoretical foundation and practical effect of international law in today's political climate.

Research Programmes

IILAH's activities are structured around the following key research programmes, which represent areas of development and change in international law and legal theory and which build on the breadth of research expertise at Melbourne Law School:

- History and Theory of International Law (Director: Professor Anne Orford)
- International Economic Law (Director: Mr Jürgen Kurtz)
- International Environmental Law (Director: Dr Jacqueline Peel)
- International Human Rights Law (Director: Associate Professor Dianne Otto)
- International Refugee Law (Director: Dr Michelle Foster)
- Law and Development (Directors: Dr Jennifer Beard and Associate Professor Sundhya Pahuja)
- Security and the Limits of International Law (Director: Professor Anne Orford)
- Theories of Sovereignty and Jurisdiction (Director: Associate Professor Peter Rush).

Contacting IILAH

IILAH's website can be accessed at: <http://iilah.unimelb.edu.au>

IILAH can be contacted by email at: law-iilah@unimelb.edu.au

Directors and Staff of IILAH

Director

Professor Anne Orford

Director of IILAH

*Programme Director
History and Theory of
International Law*

*Programme Director
International Law and
Security*



Anne Orford is a Chair of Law and Director of IILAH. She researches in the areas of international law and legal theory, with a particular interest in international economic law (involving questions of gift, exchange, debt, money, commerce, amity, non-discrimination and jurisdiction), the law relating to use of force (war, peace, self-defence, security, revolution, mass destruction and intervention) and the international legal legacies of British imperialism. Her publications include *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (2003) and the edited collection *International Law and its Others* (2006). Anne has held visiting positions at Lund University and New York University and presented guest lectures at the European University Institute, Osgoode Hall Law School, the University of Helsinki, New York University and the World Trade Organization. In 2007 she will present a parallel lecture series on humanitarian intervention at the University of Vienna and the Central European University, Budapest and will spend the second half of the year as Visiting Professor and Edward Clarence Dyason Universitas 21 Fellow at Lund University. She has been awarded a 5 year Australian Professorial Fellowship by the Australian Research Council for work on a research project entitled *Cosmopolitanism and the Future of International Law*, commencing in 2007. Anne was appointed to the International Law Association Study Group on UN Reform in 2006. She is on the Advisory Boards of the *Journal of Intervention and State-Building* and the *Melbourne Journal of International Law*, was the guest editor of a special issue of the *Nordic Journal of International Law* on feminist approaches to international law in 2002 and was an editor of the *Australian Feminist Law Journal* from 1994 to 1999. She convenes the annual Melbourne Legal Theory Workshop at the Melbourne Law School and was a member of the Program Committee for the Centennial Meeting of the American Society of International Law in 2006.

Programme Directors

Mr Jürgen Kurtz

*Programme Director
International Economic
Law*



Jürgen Kurtz is a Senior Lecturer, researching and teaching in the various strands of international economic law including the jurisprudence of the World Trade Organization and that of investor–state arbitral tribunals. He has a particular interest in examining whether treaty-based disciplines on regulatory autonomy can be conceived as mechanisms to improve good governance outcomes in member states. In 2002, Jürgen was appointed an Emile Noël Fellow at the Jean Monnet Center for International and Regional Economic Law and Justice, New York University Law School. He has subsequently held a Grotius Fellowship at the University of Michigan Law School (2003–2004) and was appointed a research fellow at the Hague Academy of International Law in 2004. Jürgen acts as a consultant to a variety of governmental (AusAID) and inter-governmental agencies on law reform and implementation of investment and trade treaty commitments in developing countries. Most recently, Jürgen was invited by UNCTAD and UNDP to advise on Vietnam's planned accession to the World Trade Organization.

Dr Jacqueline Peel

*Programme Director
International
Environmental
Law*



Jacqueline Peel is a Senior Lecturer, teaching in the areas of environmental law, international environmental law and the intersection of trade and environmental protection. Jacqueline holds an LLM from New York University where she studied in 1999–2000 as a Fulbright Scholar. In 2003–2004, Jacqueline returned to NYU as a Hauser Scholar and Emile Noël Research Fellow with the Jean Monnet Center for Regional and International Economic Law and Justice. Jacqueline's publications and consultancy work deal with domestic and international environmental law issues, with a particular focus on the relationship between law and science, risk assessment and the precautionary principle. Jacqueline is one of four scholars from Australia and New Zealand to present a paper at the 'Fostering a Scholarly Network: International Law and Democratic Theory' conference (Wellington, 27–28 June 2006). This event was co-sponsored by the Australian and New Zealand Society of International Law, the American Society of International Law (ASIL), the Japanese Society of International Law and the Canadian Council on International Law and formed part of ASIL's centenary celebrations.

**Associate Professor
Dianne Otto**

*Programme Director
International Human
Rights Law*



Dianne Otto researches and publishes in the areas of international law and human rights law, focussing in particular on peace and security issues, economic and social rights and legal representations of marginalised groups, especially women. This work draws upon and develops a range of critical legal theories, particularly those influenced by feminism, postcolonialism, poststructuralism and queer theory. A central question in her work is how human multiplicity might be made more legally comprehensible, without 'colonisation'. This issue is of increasing significance, as the global community becomes more interdependent. In the Australian context, Dianne's research includes the domestic implementation of international legal obligations, including economic, social and cultural rights and feminist legal theory. Dianne has been active in a number of human rights NGOs including Amnesty International, Women's Rights Action Network Australia, Women's Economic Equality Project (Canada) and International Women's Rights Action Watch Asia Pacific (IWRAW-AP). She is a member of the Advisory Group of the Homelessness Legal Rights Project at the University of NSW.

Dr Michelle Foster

*Programme Director
International Refugee
Law*



Michelle Foster joined the Melbourne Law School as a Senior Lecturer in 2005. Her teaching and research interests are in the areas of public law, international refugee law and international human rights law. Michelle developed an expertise in international refugee law while completing an LLM and SJD at the University of Michigan, where she was a Michigan Grotius Fellow. Michelle's doctoral thesis in international refugee law was supervised by James C Hathaway, with whom she has co-authored a number of papers on various aspects of the 1951 *Refugee Convention*. While at Michigan she also participated in the 2001 and 2004 Michigan Colloquia on Challenges in International Refugee Law as student and rapporteur respectively. Michelle's current research is related to her doctoral dissertation, entitled *Refuge From Deprivation: Forced Migration and Economic and Social Rights in International Law*.

Dr Jennifer Beard

*Programme Director
Law and Development*



Dr Jennifer Beard is a barrister as well as an academic. In 2005, Jennifer was invited to be a visiting fellow at the University of British Columbia Law School, Canada, where she taught a PhD Seminar on Legal Theory and Interdisciplinary Approaches to Law. On her way back to Australia, she taught an intensive course on International Law, Trade and Development to LLM students in the Department of International Law and Human Rights at the United Nations University for Peace in Costa Rica. Jennifer otherwise practises as a barrister in Melbourne, Australia where she also continues to undertake research and writing in the fields of international law and development and critical legal theory. At the Bar, Jennifer's practice areas include public law, competition law, statutory interpretation and policy formulation, human rights and public interest litigation. Jennifer also sits on the Advisory Board for the Master of Law and Development course.

Associate Professor Sundhya Pahuja

*Programme Director
Law and Development*



Sundhya's scholarship explores the changing role of law and legal institutions in the context of globalisation. Her research crosses traditional disciplinary boundaries and challenges distinctions between public and private behaviours and the categories of economic and non-economic in new ways. The various national and trans-national regulatory practices (including law) through which governance is affected, especially in the context of the relationship between North and South, are a particular concern. To this end, Sundhya's work engages with public international law, international economic law and a range of critical and philosophical approaches to law and legal theory, including postcolonial, post-structuralist and feminist theories. Together with her collaborator Professor Ruth Buchanan (University of British Columbia), Sundhya received a three year grant from the Social Sciences and Humanities Research Council of Canada for a project entitled *Between the Lines: Social Protection and the Limits of Law in the Context of Globalisation*. Sundhya's PhD dissertation explores public international law from a philosophical perspective. In particular, she is considering the implications for the relationship between North and South of the convergence between the economic and political branches of international law in the context of international interventions. Before entering academia, Sundhya practised as a commercial lawyer and worked as a research associate in international law and human rights at the European University Institute in Florence.

**Associate Professor
Peter Rush**

*Programme Director
Theories of Sovereignty
and Jurisdiction*



Peter Rush came to the Law Faculty at the University of Melbourne in 1999. He has been a youth worker, an artist, a filmmaker and a scholar. Since 1988, he has taught in law faculties and criminology departments in Australia and in England. Courses taught have included criminal law, jurisprudence, legal discourse, gender and law, evidence, legal history and legal method, law and the body, law and criminal justice. He is the author of several books on criminal law and edited collections on jurisprudence and poststructuralist legal theory. A longstanding member of the critical legal studies movement in the United Kingdom, he was coordinator of its national conference and a founding member of the interdisciplinary legal theory journal *Law & Critique*. Additionally, he has been invited to present papers and lectures at institutions in the United States and Canada, such as Amherst College, Carleton University and New York University. In Australia, he is a member of the editorial boards of several legal theory journals and has been active in the Australian Law and Literature Association and the Australian Law and Society Association. He contributes to community and professional debate concerning law reform, particularly in relation to both the law of sexual offences and the criminal law of HIV transmission. In 2000, he made a short documentary film concerning justice, aesthetics and colonialism in the city of Melbourne. His most recent scholarship has been in the areas of jurisprudence (specifically critical psychoanalysis), the history of dogmatism and the jurisdiction of criminal legal doctrine (specifically its links with jurisprudence, sexual politics and indigenous legal relations).

Staff

Ms Emma Brimfield

Centre Administrator



Emma was appointed as Administrator of IILAH in late 2005. She has worked for several years within the higher education sector, undertaking event management and web/graphic design duties for the University of Melbourne's Alumni Relations Program as well as for a private higher education provider. Emma holds a Bachelor of Commerce degree from the University of Tasmania with majors in Market Strategies and Business Economics. As Administrator, Emma is responsible for maintaining the IILAH website and assisting with the organisation of seminars and other events.

Megan Donaldson

Research Fellow



Megan has completed a Bachelor of Arts and Bachelor of Laws at the University of Melbourne, with studies focussing on French and modern European history and international law, respectively. She is a former Editor of the *Melbourne Journal of International Law* and in 2005 helped prepare the manuscript of *International Law and its Others*, edited by Anne Orford (Cambridge: Cambridge University Press, 2006). Megan was appointed as a part-time Research Fellow in December 2005 and in this position assists the Director with publications, administration and funding matters.

Members

Ms Alison Duxbury

Senior Lecturer



Alison Duxbury's main areas of research are international institutional law, human rights law and international humanitarian law. She is currently undertaking research on the role of human rights and democracy in determining states' participation in international organisations. Alison is a member of the Australian Red Cross International Humanitarian Law Committee (Victorian Division), the Asia-Pacific Centre for Military Law and the International Advisory Commission of the Commonwealth Human Rights Initiative based in Delhi.

Dr Carolyn Evans

Senior Lecturer



Carolyn Evans works in the fields of international and constitutional law. She is Deputy Director, with Kristen Walker, of the Centre for Comparative Constitutional Studies. Her work has a particular focus on human rights, especially religious freedom and institutional protection of rights. She is the author of *Religious Freedom under the European Convention on Human Rights* (Oxford University Press, 2000) and co-editor of *Religion and International Law* (Martinus Nijhoff, 1998) and *Mixed Blessings: Laws, Religions and Women's Rights in the Asia-Pacific Region* (Martinus Nijhoff, 2006). She writes regularly on religious freedom issues and on domestic institutions (including parliaments and national human rights commissions) that have responsibility for protecting human rights. She has spoken on religious freedom issues at conferences in Moscow, New Haven, Beijing, Utah and around Australia. In 2006 she is due to complete a large, co-authored project on the role of parliaments in the protection of human rights in Commonwealth countries.

**Associate Professor
Lee Godden**



Lee's research interests include environmental law, native title law, property law and jurisprudential aspects of these areas of law. Her doctoral research examined the historical development and interaction between Australian natural heritage laws, property law and native title. She also has an interest in the intersection of environmental law and natural resources management and regulation. In addition, she has an interest in legal theory related to spatial control, drawing upon her interdisciplinary background in law and geography.

Dr Andrew D Mitchell

Senior Lecturer



Andrew's primary research interests in international law are international economic law, international dispute resolution and international humanitarian law. Andrew has worked for a number of international organisations including the International Monetary Fund, the Organisation for Economic Co-operation and Development and the World Trade Organization. He is a graduate of Melbourne Law School and Harvard Law School. In 2005 he successfully defended his PhD thesis on 'The Role of Principles in WTO Dispute Settlement' at the University of Cambridge, where he was a WM Tapp Scholar of Gonville & Caius College and a Cambridge Commonwealth Trust Scholar. His thesis will be published by Cambridge University Press in 2006. He was a Fellow at the Institute of International Economic Law, Georgetown University, July–October 2003 and a Visiting Fellow at the Lauterpacht Centre for International Law, University of Cambridge, July 2006. Since 2004 he has been a Fellow of the Tim Fischer Centre for Global Trade & Finance, Bond University. He compiled, edited and contributed to *Challenges and Prospects for the WTO* (Cameron May, 2005).

Mr Bruce Oswald CSC

Senior Lecturer

*Associate Director,
Asia-Pacific Centre for
Military Law*



Bruce “Ozzie” Oswald has served in the Regular Australian Army as a legal officer. He has seen operational service in Rwanda, the Former Yugoslavia and East Timor. He has provided legal advice and held staff appointments as a legal officer at tactical, operational and strategic levels. During his service in Australia he provided legal advice to the Deployable Joint Force Headquarters, Headquarters Australian Theatre, Strategic Command and Directorate of Operations and International Law. For his service as the Legal Officer for the Australian Service Contingent serving in Rwanda, Ozzie was awarded the Conspicuous Service Cross (CSC). In 1997 Ozzie worked with the International Committee of the Red Cross as a Delegate to the Armed and Security Forces in the Former Yugoslavia. In this role, his primary duties included conducting international humanitarian law training with the officers of the Army of Bosnia and Herzegovina, the Croatian Defence Force and the Army of the Republika Srpska.

Dr Joo-Cheong Tham

Senior Lecturer



One of Joo-Cheong’s main areas of research relates to laws regulating the funding of parties and candidates. His research in this area has included comparative analysis of United Kingdom and Australian regulation. Joo-Cheong’s work has also focussed on anti-terrorism laws. Together with four other investigators, he was awarded an Australian Research Council Discovery Grant in 2005 to examine whether measures to suppress the financing of terrorism have enhanced security or compromised civil rights and democracy. This three-year project includes an examination of financing of terrorism measures taken at the international level and by other countries.

Mr John Tobin

Senior Lecturer



John Tobin has a combined commerce/law degree with honours from the University of Melbourne and an LLM with distinction from the University of London specialising in human rights law. Since 2001 he has worked in the Law Faculty at the University of Melbourne and has designed and taught several subjects including Human Rights Litigation and Advocacy, International Human Rights Law, International Law and International Law and Children's Rights. He also co-supervises the Graduate International Legal Internship. He has been a Visiting Professor at the American Academy of Human Rights and Humanitarian Law, Washington College of Law, American University and the Centre for Human Rights and Global Justice, in the Law School at New York University.

John has published numerous reports and articles on human rights and provided human rights training and advice as a consultant and on a pro bono basis on numerous occasions to organisations such as UNICEF, the Victorian Law Reform Commissions, the Equal Opportunity Commission, the Human Rights Law Resource Centre, NGOs, statutory bodies, government departments and community groups. He is a Director of Childwise, a leading NGO which campaigns against the sexual exploitation of children in the Asia-Pacific, an Advisory Board member of the *Melbourne Journal of International Law*, an Advisory Committee member and occasional chair of the Human Rights Legal Resource Centre and a member of the Steering Committee for the Human Rights Forum, an interdisciplinary committee at the University of Melbourne. He has also worked in numerous capacities as a solicitor including as a commercial lawyer, legal aid lawyer and legal officer with the Department of Justice. He is currently working on a comprehensive commentary to the *Convention on the Rights of the Child* with Professor Philip Alston, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to be published by Oxford University Press in 2007.

Dr Tania Voon

Senior Lecturer



Tania undertook her Master of Laws at Harvard Law School (focusing on humanitarian intervention) and her PhD at the University of Cambridge, where she was a WM Tapp Scholar and a Fellow of the Cambridge Commonwealth Society. Her doctoral dissertation, *Cultural Products in the World Trade Organization*, is being published by Cambridge University Press. Before joining Melbourne Law School in 2006, Tania was a Legal Officer in the Appellate Body Secretariat of the WTO. She has also worked with the Australian Government Solicitor, Mallesons Stephen Jaques, the UN Office of Legal Affairs and the Environment Directorate of the OECD. Aside from international economic law, Tania's research interests include the laws of war and cultural rights. She is a member of the Asia-Pacific Centre for Military Law and a Fellow of the Tim Fischer Centre for Global Trade & Finance.

**Associate Professor
Kristen Walker**



Kristen Walker is Deputy Director, with Carolyn Evans, of the Centre for Comparative Constitutional Studies. Her main areas of research in international law are refugee law, gender, sexuality and international human rights law and the interrelationship between international law and domestic law. Kristen is a member of the Editorial Board of the *Australian Yearbook of International Law* and a member of the Advisory Board of the *Melbourne Journal of International Law*. Kristen also practises at the Victorian Bar, where she specializes in constitutional law.

Ms Amanda Whiting

Lecturer



Amanda Whiting joined the Melbourne Law School as a Lecturer in 2004 and has been a member of the Asian Law Centre since 1999. Her research is in the area of human rights institutions and practices in the Asia-Pacific Region. She is Associate Director (Malaysia) of the Asian Law Centre. Amanda is the author of 'Situating Suhakam: Human Rights Debates and Malaysia's National Human Rights Commission' (2003) 39 *Stanford Journal of International Law* 59, which provides a contextualised reading of the meanings that human rights have in Malaysia and for Malaysians. Her current research, which builds upon this methodology, examines the way that the national human rights commissions of Australia, Malaysia, the Philippines, Indonesia and Fiji bring international human rights norms into the domestic arena and the reception that they receive. Amanda has been involved with the *Australian Journal of Asian Law* since its inaugural issue in 1999 and has been an editor since 2002. With Tim Lindsey, Director of the Asian Law Centre, she edited and contributed to *Doing Business in Indonesia* (CCH Singapore, 2000) and she is co-editor, with Carolyn Evans, of *Mixed Blessings: Laws, Religions and Women's Rights in the Asia-Pacific Region* (Martinus Nijhoff, 2006).

Events and Visitors

Major Workshops and Symposia

21–22 July 2005: Workshop, *The Culture(s) of Human Rights*

(Convenor: Anne Orford)

The second Melbourne Legal Theory Workshop brought together a range of international scholars to consider ‘The Culture(s) of Human Rights’. Human rights have been denounced by many critical legal theorists as hopelessly complicit in constituting and authorising the liberal capitalist state, or the atomistic subjects that inhabit it. The appeal to human rights finds arguments for military intervention, just as natural law authorised imperial adventures and the civilising mission in other eras. Lawyers and activists are too ready to respond to rights as articles of faith, or to enchant rights claims as something more than the tools that (on their best days) they represent. Yet human rights persist as a challenge to imperial overreach and state oppression. Participants in this workshop came together to reflect on such questions as: How might we understand the stubborn presence of human rights? Does it make a difference that human rights arrive or are imagined in many different forms – perhaps as ethics, memory, alibi, advocacy, illusion, anachronism, bureaucracy, legislation, trumps, distraction, sentimentality, biopolitics, bad faith or promise? How do human rights encounter ‘other’ cultures (the US military, the politics of Eastern Europe, Africa, Asia and Latin America, indigenous peoples, the institutions of globalised economics, militant Islam)? Are human rights the product or portend of one culture, or of many?

Participants included:

- Dr Florian Hoffmann (Law, Pontifícia Universidade Católica do Rio de Janeiro)
- Professor Karen Knop (Law, University of Toronto)
- Professor Gregor Noll (Law, Lund University)
- Professor Costas Douzinas (Arts, Birkbeck College, London)
- Professor Hassan El Menyawi (Law, UN University for Peace, Costa Rica)
- Professor Juan Amaya Castro (Law, UN University for Peace, Costa Rica)
- Professor Karen Engle (Law, University of Texas)
- Associate Professor Greta Bird (Law, Southern Cross University)
- Dr Carolyn Evans (Law, University of Melbourne)
- Associate Professor Dianne Otto (Law, University of Melbourne)
- Mr Connal Parsley (Law, University of Melbourne)
- Mr Amir Kordvani (Law, University of Melbourne)
- Ms Cressida Limon (Law, University of Melbourne)
- Professor Anne Orford (IILAH, University of Melbourne)
- Dr Andrew Schaap (Politics, University of Melbourne)

Selected papers from the workshop have been published in a special issue of the *Melbourne Journal of International Law*: ((2006) 7(1) MJIL).

12–13 April 2006: Symposium, *Declarations of Law*

(Convenors: Peter Rush and Juliet Rogers)

This symposium offered a narrated path through discourses of sovereignty, the enemy, criticism and law. These coordinates provided an entry point for dialogue about the declaration of law as the condition of a political and ethical engagement with the subject of law and the subject as law. Within this frame the symposium considered questions and strategies that have emerged as ‘anti-terrorism’, ‘sovereign jurisdiction’ and the ‘condition of the exception’ in contemporary politics.

Speakers included:

- Professor Costas Douzinas (Arts, Birkbeck College, London)
- Dr Catherine Mills (Philosophy, University of NSW)
- Mr Shaun McVeigh (Law, Griffith University)
- Associate Professor Joseph Pugliese (Critical and Cultural Studies, Macquarie University)

22–24 November 2006: Third Melbourne Legal Theory Workshop and Research Student Symposium, *Limit, Exception, Emergency, Miracle*

(Convenor: Anne Orford)

This workshop explored the ways in which a range of disciplines (including law, philosophy, political theory, international relations and anthropology) have understood the possibility, necessity or dangers of the moment at which authority produces itself through the suspension of law or tradition. The revival of interest in and anxiety about such a moment has been repeatedly invoked in international law in recent times, as expressed by reference to notions such as imperialism, exceptionalism, states of emergency, human rights violations, the off-shore detention centre and the camp and through a revival of interest in major theorists of the state/law/exception nexus such as Kant, Schmitt, Agamben and Benjamin. The workshop addressed a series of questions about the relations between law, authority, sovereignty, governmentality and the exceptional. What happens to law at the limits of modern political organisation? Is law outside the production of the space of exception or state of emergency? Is the exception to jurisprudence what the miracle is to theology, as Carl Schmitt would have had us believe? What would it mean to live in a world without miracles? How is the authority of our different disciplinary traditions constituted and what part have revolution, empire, the off-shore, the exception, the limit, the miraculous or the suspension of tradition played in that constitution? What is the responsibility of the jurist or the critic in the state of emergency or a time of suspended law? The workshop brought together scholars from law and the humanities to attempt to generate a better understanding of the stakes of this pervasive contemporary anxiety about law at the limit. It was preceded by a research student symposium, offering doctoral students in international law and legal theory the opportunity to present their work and engage with world-renowned scholars and public intellectuals.

Speakers included:

- Dr Jennifer Beard (Law, Melbourne)
- Professor Hilary Charlesworth (Law, ANU)
- Ms Megan Donaldson (IILAH, Melbourne)
- Professor Costas Douzinas (Arts, Birkbeck)
- Mr Ian Duncanson (Postcolonial Studies, Melbourne; Law, Griffith)
- Professor Hassan El Menyawi (Law, UN University for Peace, Costa Rica)
- Dr Fleur Johns (Law, Sydney)
- Mr Vivek Kanwar (Law, NYU/Loyola University, New Orleans)
- Professor Martti Koskeniemi (Law, Helsinki and NYU)
- Dr William MacNeil (Law, Griffith)
- Mr Shaun McVeigh (Law, Griffith)
- Dr Naz Modirzadeh (Humanitarian Policy and Conflict Research, Harvard)
- Dr Gregor Noll (Law, Lund University, Sweden)
- Professor Anne Orford (IILAH, Melbourne)
- Ms Yoriko Otomo (IILAH, Melbourne)
- Associate Professor Dianne Otto (Law, Melbourne)
- Associate Professor Peter Rush (Law, Melbourne)
- Dr Sanjay Seth (Politics, La Trobe)
- Professor Rob Walker (International Relations, Keele)
- Professor Kath Weston (Visiting Scholar, Anthropology, MIT)

Selected papers from the workshop will be published in a special issue of *Alternatives*, to be co-edited by Anne Orford and Rob Walker.

11–12 December 2006: British Academy Collaborative Workshop, *Popular Sovereignty and the Rule of Law in Divided Societies*
(Convenor: Andrew Schaap)

In contemporary legal and political theory, the dominant consensus-oriented model of deliberative democracy understands the principles of rule of law and popular sovereignty to mutually presuppose each other. On this view, rule of law is an enabling condition for the exercise of popular sovereignty. However, theorists of agonistic politics have challenged this understanding of law as enabling popular sovereignty. Instead, they argue that the ‘containment’ of popular sovereignty within the law comes at the cost of silencing radical forms of political action and speech, which would fundamentally challenge the terms of political association. Drawing inspiration from this agonistic perspective, this workshop critically examined the ways in which the principles of popular sovereignty and rule of law articulate in the context of divided societies to variably facilitate, underwrite and frustrate political processes.

Speakers included:

- Dr Emilios Christodoulidis (Law, Glasgow)
- Assistant Professor Jason Frank (Politics, Cornell)
- Professor Bonnie Honig (Politics, Northwestern)

- Dr Fiona Jenkins (Philosophy, ANU)
- Dr Paul Muldoon (Politics, Monash)
- Professor Paul Patton (Philosophy, UNSW)
- Dr Andrew Schaap (Politics, Melbourne)
- Dr Scott Veitch (Law, Glasgow)

Public Lectures and Fora

15 November 2005: Forum, *Perspectives on Turkey and the EU — Islam, Democracy and the Contemporary State*

Presented by the Contemporary Europe Research Centre in co-operation with IILAH, this forum brought together Turkish guests H E Ambassador Murat Bilhan and Professor Dr Mustafa Aydin with speakers from the University of Melbourne, including:

- Dr Carolyn Evans (Deputy Director, Centre for Comparative Constitutional Studies)
- Professor Anne Orford (Director, IILAH)
- Associate Professor Philomena Murray (Director, Contemporary Europe Research Centre)
- Dr Richard Pennell (Department of History)
- Mr Ian Coller (Department of History)

H. E. Ambassador Murat Bilhan is the Chairman of the Centre for Strategic Research (SAM) of the Turkish Ministry of Foreign Affairs. He has been Ambassador in Ethiopia, Consul General in Greece, Libya and Germany and held diplomatic appointments in GDR, USSR, Germany and Iran. Ambassador Bilhan also chaired the sub-committee for the legal status of Migrant Workers of the European Council, Strasbourg and has been advisor to the Turkish Parliament's Foreign Affairs Committee.

Professor Mustafa Aydin has a doctorate from the University of Lancaster and is based in the Faculty of Political Sciences, Ankara University, Turkey. He is a specialist in international relations and security policy as well as factors in Turkish foreign policy-making and member of the Editorial Board of *Perceptions*, the English quarterly publication of SAM. He has recently edited *Turkish–Greek Relations: The Security Dilemma in the Aegean* (with K. Ifantis, Routledge, 2004) and *Turkey's Foreign Policy in the 21st Century: A Changing Role in World Politics* (with T. Y. Ismael, Ashgate, 2004).

17 November 2005: Forum, *Laws for Insecurity?*

This forum explored the critical issue of the proposed measures to strengthen Australia's anti-terrorism laws, giving police unprecedented detention and search powers and expanding the government's power to ban organisations and prosecute Australians who politically dissent.

The seminar explored the following questions: will the proposed laws promote the safety of Australians? Will they, on the other hand, inflict insecurity on Australians by increasing the risk of racial and religious profiling? What will they mean for the health of Australia's democracy and multiculturalism?

Speakers included:

- Mr Brian Walters SC (President, Liberty Victoria) (Chair)
- Mr Petro Georgiou, MP
- Ms Vicky Sentas (Federation of Community Legal Centres)
- Mr Amir Butler (Australian Muslim Civil Rights Advocacy Network)
- Professor George Williams (Victorian Human Rights Consultation Committee)

15 December 2005: Forum, *Anti-Terrorism and the Police State* (Organisers: Peter Rush and Juliet Rogers)

This public forum provided an opportunity for the audience and guest speakers to discuss recently passed anti-terrorism laws. The forum was the first in an interdisciplinary series of events jointly hosted by the Institute for International Law and the Humanities, Melbourne School of Continental Philosophy, Ashworth Centre for Social Theory (all of Melbourne University) as well as the Psychoanalytic Studies program (Deakin University) and the Institute of Postcolonial Studies. Building on other forums like *Laws for Insecurity*, this seminar combined the perspectives of guest speakers with public discussion to offer information about the new laws, contextual analysis of legislating against terrorism, the potential for the new laws to limit critical debate and a consideration of the laws' relationship with a 'police state'. After opening comments by the invited panel of guest speakers, general discussion was facilitated by Peter Rush and Juliet Rogers.

The invited panel comprised:

- Mr Ian Duncanson (Institute of Postcolonial Studies; Griffith University)
- Dr Geoff Boucher (Psychoanalytic Studies program, Deakin University; Community Activist)
- Mr Joo-Cheong Tham (Melbourne Law School)
- Ms Marika Dias (Federation of Community Legal Centres)

16 February 2006: Public Forum, *The Enemy Within* (Organisers: Peter Rush and Juliet Rogers)

The Enemy Within was a public forum for audience and speaker discussion of the sedition laws recently introduced in Australia. It was the second in the *Terror Seminar Series* – an interdisciplinary series jointly hosted by the Institute for International Law and the Humanities, Melbourne School of Continental Philosophy, Ashworth Centre for Social Theory (all of Melbourne University) as well as the Psychoanalytic Studies program (Deakin University) and the Institute of Postcolonial Studies. This forum considered the construction of an historical enemy, sedition laws, issues of national identification and intellectual freedom and censorship. The seminar offered opening comments from speakers, followed by

panel discussion and then a forum for audience discussion with speakers, facilitated by Peter Rush and Juliet Rogers. Speakers, from the Psychoanalytic Studies program, Deakin University, were:

- Dr Geoff Boucher
- Dr Justin Clemens
- Associate Professor Russell Grigg
- Dr Matthew Sharpe

16 March 2006: Public Seminar, *Right to Health of Indigenous Australians*
(Organiser: Dianne Otto)

This seminar, the third to be presented as part of the *A Fair and Healthy Future: The Right to Health in Australia* seminar series, brought together experts in health and human rights to critically examine pressing health issues facing indigenous Australians. The series is supported by the University of Melbourne School of Population Health, Institute for International Law and the Humanities and the Victorian Health Promotion Foundation (VicHealth).

The seminar considered:

- What are the challenges and why are existing approaches not working?
- What changes to law, policy and practice are needed to bring about changes?
- What is the significance of human rights to Indigenous health and what would a rights approach to indigenous health look like?

Speakers included:

- Mr Tom Calma (Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission)
- Professor Ian Anderson (Director, Onemda VicHealth Koori Health Unit, University of Melbourne)
- Dr Papaarangi Reid (Director, Maori Health Centre, Wellington School of Medicine)

12 April 2006: Public Lecture, *The Normative Foundations of Empire*
(Organiser: Anne Orford)

Professor Costas Douzinas (Birkbeck College, London) explored whether we are moving toward a benign new world order or a new imperial arrangement. A public debate with important practical consequences has been taking place since 1989, but not much has been written about the normative foundations of the new disposition. Legal and political institutions are the best signs of the emerging of a new social order, reflections of the metaphysics of an age. By examining recent developments in international law, war, human rights, humanitarianism, political justice and the spatial, temporal and linguistic understandings of our world, Professor Douzinas began addressing the questions: what are the common normative characteristics of the world order? Can we define it as a new empire?

22 November 2006: Sir Kenneth Bailey Memorial Lecture, *Miserable Comforters? International Law as a New Natural Law*
(Organiser: Anne Orford)

Academy of Finland Professor of International Law, Martti Koskenniemi, gave the 2006 Sir Kenneth Bailey Memorial Lecture, addressing the topic: *Miserable Comforters? International Law as a New Natural Law*. His visit to the Law School coincided with the 3rd Melbourne Legal Theory Workshop, in which he also participated.

Professor Koskenniemi compared two moments of international transformation in which legal vocabularies clashed. He argued that the situation facing international lawyers today resembles an earlier moment of transformation - the end of the Thirty Years' War and the emergence of a secular natural law to govern thinking about international reform towards the end of the 17th and early 18th, century. Then, as now, lawyers were urged to abandon anachronistic scholasticism and legal renewal was proposed as a project for grasping the inherent laws of human nature and society. It was this proposal that Immanuel Kant rejected in his attack on the natural lawyers as 'miserable comforters'. In his lecture, Professor Koskenniemi turned this Kantian indictment against the novel legal vocabularies of international power expressed in the suave idioms of globalization and military necessity.

Professor Koskenniemi is Academy Professor of International Law at the University of Helsinki and Global Professor of Law at New York University. He was appointed as a member of the United Nations International Law Commission in 2002. From 1978 to 1994 he was counsellor for legal affairs at the Finnish Ministry for Foreign Affairs. His major publications, *From Apology to Utopia: The Structure of International Legal Argument* (1989) and *The Gentle Civiliser of Nations: The Rise and Fall of International Law 1870-1960* (2002), have become defining works in the history and theory of international law.

Seminars, Roundtables and Reading Groups

8 September 2005: Seminar, *Writing Human Rights Reports*
(Organiser: Anne Orford)

Professor Philip Alston (Director of the Centre for Human Rights and Global Justice, New York University) provided a presentation on writing human rights reports, drawing on his experience as UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. The presentation was followed by a discussion of questions raised by Professor Alston.

Philip Alston is currently UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions and for 2005–06 is Chairperson of the Coordinating Committee for all of the UN Human Rights Special Procedures (of which there are now almost 50). He is also Special Adviser to the UN High Commissioner for Human Rights on the Millennium Development Goals and was Chairperson of the UN Committee on Economic, Social and Cultural Rights for eight years until 1998. Throughout the 1990s he was an Independent Expert appointed by the UN Secretary-General to propose major reforms to the UN human rights treaty body system. He has also been Editor-in-Chief of *the European Journal of International Law* since 1996.

6 October 2005: Seminar, *Terror in the Name of Human Rights*
(Organiser: Anne Orford)

This seminar, presented by Tarik Kochi, introduced an approach to looking at what can be termed 'war's moral problem' by focusing upon one contemporary form of war, war in the name of human rights. It examined some of the difficulties involved in the moral and legal judgment of contemporary acts of terror carried out by political Islamicists. Attention was given to how the demand for a not-yet-right and justice upsets forms of moral and juridical ordering and opens onto modern partisan wars over the content of human dignity.

Tarik Kochi is a Research Associate with the Socio-Legal Research Centre, Griffith University. He received a PhD in Law from Griffith Law School in 2005. In 2004 he was a DAAD Scholar, Philosophy Seminar, Eberhard Karls Universität, Tübingen, Germany. His research interests are in the areas of legal and political philosophy, international law and international relations. He is currently working on a book entitled 'The Ethics of Another's War'.

1 December 2005: Roundtable Discussion, *Reconceptualising Remedies — The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*
(Organiser: Dianne Otto)

This roundtable discussion, organised in conjunction with the Centre for Employment and Labour Relations Law, explored new ways of invigorating the floundering international campaign to adopt an Optional Protocol (OP) to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. If adopted, the OP will establish a complaints procedure whereby individuals and possibly groups, will be able to bring alleged violations of the *ICESCR* to the attention of the Committee on Economic, Social and Cultural Rights and the Committee will be empowered to adopt Views (non-binding but authoritative) in relation to each complaint.

The focus of the roundtable was on the provision of remedies for violations of *ICESCR*, because it is one of the main points of contention in the present process, though not by any means the only one. One view which needs to be countered is that remedies will necessarily involve judicial or quasi-judicial 'interference' in domestic political discussions about resource allocation. The roundtable aimed to identify the remedies, both legal and policy-based, that might be available in the event of a breach of the *ICESCR* and to think through how these remedies might be usefully applied in the domestic context. It developed illustrative examples showing how a complaints procedure would provide States Parties with a constructive and useful framework for understanding and fulfilling their progressive implementation obligations under *ICESCR*. A report of the roundtable was prepared as Working Paper No 1 of IILAH's International Human Rights Law Programme.

22 February 2006: Workshop, *Responding to the Anti-Terrorism Legislation*

The Victorian Equal Opportunity Commission, in conjunction with IILAH's International Human Rights Law Program and the Federation of Community Legal Centres, organised this forum to discuss strategies to monitor the impact of the anti-terrorism legislation. Representatives from peak organisations working on the issue were invited to attend. The forum included presentations by John Von Doussa, President of the Human Rights and Equal Opportunity Commission and Marika Dias, Federation of Community Legal Centres. The final part of the forum involved a group discussion facilitated by Joo-Cheong Tham of the Melbourne Law School and the Civil Rights Network.

29 March 2006: Research Seminar, *The Role of Science and Public Sentiment in Regulatory Decisions regarding Health under WTO Law* (Organiser: Jürgen Kurtz)

Ms Tracey Epps, an SJD candidate in the Faculty of Law, University of Toronto, presented aspects of her doctoral dissertation on the role of science and public sentiment in international trade disputes involving trade restrictive health regulations. Her paper addressed the case for using scientific evidence as a benchmark for justification of trade restrictive health regulations under the *WTO Agreement for Sanitary and Phytosanitary Standards (SPS Agreement)* and questioned whether the use of a scientific benchmark leaves room for consideration of public sentiment by domestic regulatory decision-makers. Tracey approached this issue from within a framework that accepts the importance and validity of both the welfare gains to be derived from health protection and increased international trade and the need for trade panels to balance these sometimes competing objectives. Tracey argued that science plays an appropriate role in the *SPS Agreement*, subject to qualifications that recognize its indeterminate nature and the importance of public sentiment regarding health concerns.

27 April 2006: Seminar, *Human Trafficking: approaches to justice for human trafficking victims in Australia* (Organiser: Dianne Otto)

This seminar, presented by Ms Georgina Costello and supported by IILAH and the Asia-Pacific Centre for Military Law, focused on pressing societal and global human trafficking issues including human rights abuses, organised crime, severe labour exploitation, gender harm, poverty and development issues, border control and the desire of many victims to migrate in search of a life that is more socially and economically secure.

Georgina Costello is a Melbourne barrister who has provided legal advice to several human trafficking victims and has written extensively about law and policy in this area. In 2003 she appeared as a lawyer at the inquest into the death in the Villawood Immigration Detention Centre of a woman who may have been a victim of trafficking. She has coordinated research into instances of human trafficking in Australia and, in 2005, travelled to Italy and the United States to research trafficking law and policy as a Donald MacKay Winston Churchill Fellow. Georgina recently presented a report to the UN Committee on the Elimination of Discrimination against Women regarding Australia's approach to human trafficking.

1 May 2006: Roundtable Discussion with Professor Paul Hunt (UN Special Rapporteur on the right to health)
(Organiser: Dianne Otto)

Professor Hunt's work as Special Rapporteur has focused on promoting the right to health as a fundamental human right, clarifying its contours and content and identifying good practices for its operationalisation. His work has addressed such wide-ranging issues as access to essential medicines, the responsibilities of the corporate pharmaceutical sector, a human rights based approach to health indicators, social determinants of health, reproductive health, relevant WTO agreements, poverty and the right to health, discrimination, stigma and the right to health and the right to health and violence prevention.

The Roundtable provided an opportunity for participants to become more fully acquainted with the Special Rapporteur's work and its relevance to promoting health as a human right in the Australian context. The Roundtable focused, in particular, on how international human rights work and avenues for petition and complaint might be utilised towards improving the health of Aborigines and Torres Strait Islanders. There was also open discussion between participants and the Special Rapporteur.

15 May 2006: Seminar, *Fragmentation and the Sleeping Beauty of Systemic Integration*
(Organiser: Anne Orford)

At this seminar, hosted by IILAH and the Asia-Pacific Centre for Military Law, Professor Campbell McLachlan (Victoria University of Wellington Law School) presented aspects of his work on the recently-released report of the International Law Commission's Study Group on Fragmentation of International Law. The Study Group is chaired by Professor Martti Koskeniemi (University of Helsinki; New York University) and the report is an ambitious historical, theoretical and doctrinal mapping of the idea of international law as a system.

After taking his undergraduate degree at Victoria University, Professor McLachlan completed his PhD at the University of London and went on to practice in the field of international litigation. He was a partner in the firm of Herbert Smith and head of its International Law Practice Group. He was a member of the Law Faculty of the University of Cambridge, taught at the University of London and was Joint Honorary Secretary of the British Branch of the International Law Association. Professor McLachlan is the current President of the Australian and New Zealand Society of International Law.

7 August 2006: Seminar, *The International Court of Justice: A View from the Inside*
(Organiser: Dianne Otto)

Justice Kenneth Keith QC KBE discussed aspects of his work as a Judge of the International Court of Justice. Sir Kenneth has so far participated in two cases that are currently before the Court: the request for provisional measures in the Argentina v Uruguay case concerning Uruguay's construction of pulp mills on the River Uruguay and the case brought by Bosnia

and Herzegovina against Serbia and Montenegro concerning the application of the *Genocide Convention*. Sir Kenneth also drew some comparisons between the ICJ and other courts and tribunals on which he has served.

Justice Kenneth Keith was elected a judge of the ICJ in 2005. Sir Kenneth has also been a Judge of the Supreme Courts of New Zealand, Samoa, the Cook Islands and Fiji and has sat as a member of the Privy Council in London. He is a Counsellor of Honour and International Humanitarian Law Consultant with the Red Cross (NZ). Sir Kenneth was a member of the international arbitral tribunal in the *Rainbow Warrior Case* (NZ v France) and represented New Zealand in the *Nuclear Test Cases* before the ICJ in 1973, 1974 and 1995. He is a former President of the New Zealand Law Commission.

11 August 2006: Roundtable Discussion with Miloon Kothari (UN Special Rapporteur on the right to adequate housing)
(Organiser: Dianne Otto)

The mandate of the Special Rapporteur on the right to adequate housing is a broad one, encompassing issues such as access to water and electricity, sanitation, land rights, forced eviction and displacement due to development and disasters and post-conflict situations. Since his appointment to the position in 2000, Miloon Kothari's work has included reporting annually on the worldwide status of realization of the right to adequate housing and identifying practical solutions to advance realization. An architect by training, he has extensive experience in the areas of housing and land rights. He is also the coordinator of the South Asian Regional Programme of the Habitat International Coalition's Housing and Land Rights Network and a founding member of the International NGO Committee on Human Rights in Trade and Investment. The Roundtable drew on Mr Kothari's expertise in order to focus on 'bigger picture' factors contributing to the housing and land crisis globally, as well as on housing policy and problems in the Australian context.

7 September 2006: Seminar, *Trends and Challenges in Accountability Mechanisms of Multilateral Development Banks*
(Organiser: Sundhya Pahuja)

In this seminar, Mr Suresh Nanwani explored the use by multilateral development banks of accountability mechanisms that allow NGOs and community groups affected by particular projects to seek review of the bank's compliance with its own internal policies and procedures relating to project design and implementation.

Mr Nanwani is an expert in the law and practice of international financial institutions, particularly with respect to development issues. He is currently the Associate Secretary of the Compliance Review Panel at the Asian Development Bank and has been critically involved in the development of law and policy reform projects within the ADB, including the recently established ADB Accountability Mechanism. He has also worked on institutional and administrative matters in the legal department of the European Bank for Reconstruction and Development. Before assuming his current position, Mr Nanwani practised law in the private sector in Singapore and worked from 15 years in the Office of the General Counsel at the ADB.

3 November 2006: Seminar, *Competitive Adjudication? Dispute Settlement in FTAs and the WTO*

(Organiser: Jürgen Kurtz)

In this seminar, Mr Joshua Meltzer examined issues associated with the various dispute settlement mechanisms available under World Trade Organization agreements and bilateral free trade agreements (FTAs).

The proliferation of dispute settlement processes in economic treaty fora raises a host of important normative and systemic issues. There is the initial question of whether FTA dispute settlement organs should automatically apply the developed jurisprudence of the WTO in adjudication of similar treaty commitments. The recent WTO *Mexico – Soft Drinks* case raises an entirely separate dimension to this difficult issue. Where substantive commitments diverge but jurisdiction is shared in a given dispute, there is the potential for differing outcomes depending on adjudication in either the WTO or the FTA in question. The sensitive task of managing conflict in jurisdiction in these instances remains a significant challenge confronting treaty negotiators and interpreters alike.

Joshua Meltzer acts as a negotiator for the Australia-Malaysia FTA and the ASEAN-Australia-New Zealand FTA, with particular responsibility for the investment chapters in those agreements. Joshua holds an LLM from the University of Michigan Law School and was awarded a Grotius Fellowship for his on-going SJD research at that Law School. Joshua has also held positions at the Legal Affairs Division at the WTO and the United Nations International Law Commission. David Morgan, a Visiting Fellow at Melbourne Law School who has developed and taught the LLM subject Free Trade Agreements, acted as a discussant to Mr Meltzer's presentation.

April – November: Reading Group, *International Law and Kantian Political Theory*

(Co-organisers: Megan Donaldson and Anne Orford)

This reading group brought together interested Faculty and doctoral students to discuss selected texts by Immanuel Kant alongside the work of contemporary legal and political theorists exploring the Kantian legacy. Readings included the essays 'Toward Perpetual Peace' and 'Idea for a Universal History with a Cosmopolitan Purpose' and extracts from Kant's *Groundwork of the Metaphysics of Morals*, *Critique of Judgment* and *The Metaphysics of Morals*, together with texts by Gayatri Spivak, Martti Koskenniemi, Elizabeth Rottenberg and Jürgen Habermas.

Research Supervision

IILAH Directors and Members supervise a range of research higher degree projects. Students working towards research higher degrees in 2005–6 included:

Nicola Charwat

Contesting Global Governance: A Critical Examination of Amicus Curiae Briefs in the World Trade Organization's Dispute Settlement Body

Supervisors: Dianne Otto and Gillian Triggs

Paula Gerber

From Convention to Classroom - Does Human Rights Education Work?

Supervisors: Dianne Otto and Gillian Triggs

Carolyn Graydon

Domestic Violence in Timor-Leste: Is There a Place for Indigenous Justice Systems?

Supervisors: Tim Lindsey and Gillian Triggs

Clancy Kelly

How International Law Gives Effect to the Right to Essential Medicines

Supervisors: Carolyn Evans and Dianne Otto

Amir Kordvani

International Law, Economic Liberalization and the Movement of Natural Persons

Supervisor: Anne Orford

Kasia Lach

The EU and the Contemporary Notion of State Sovereignty

Supervisors: Anne Orford and Carolyn Evans

Cressida Limon

Genes, Biotechnology and Legal Imaginings

Supervisors: Anne Orford and Lee Godden

Daniel Muriu

The Impact of International Economic Institutions on the Realization of the Right to Health in Sub-Saharan Africa

Supervisor: Anne Orford and Jennifer Beard

Edward Mussawir

Jurisdiction: The Expression and Representation of Law

Supervisors: Peter Rush and Anne Orford

Yoriko Otomo

The Changing Landscapes of Risk

Supervisors: Anne Orford and Jennifer Beard

Connal Parsley

Giorgio Agamben and the Failure of Law

Supervisor: Peter Rush

Jacqueline Peel

International Law and the Determination of Risk: Science, Uncertainty and the Role of Values

Supervisors: Anne Orford, Gillian Triggs and Philippe Sands

Juliet Rogers

Flesh for Fantasy — A Psychoanalytic Contemplation of Female Genital Mutilation Laws

Supervisor: Peter Rush

John Tobin

Dancing with Folk Devils: The Administration of Juvenile Justice — A Rights Based Response

Supervisors: Anne Orford and Philip Alston

Publications

The following is a list of works authored or edited by IILAH Programme Directors and Members and appearing between January 2005 and December 2006.¹

Books

Jennifer Beard, *The Political Economy of Desire: International Law, Development and the Nation State* (London: Routledge-Cavendish, 2006).

Anne Orford (ed), *International Law and its Others* (Cambridge: Cambridge University Press, 2006).

Andrew D Mitchell (ed), *Challenges and Prospects for the WTO* (London: Cameron May, 2005).

Jacqueline Peel, *The Precautionary Principle in Practice: Environmental Decision-making and Scientific Uncertainty* (Sydney: Federation Press, 2005).

Peter Rush and Stanley Yeo, *Criminal Law Sourcebook* (2nd ed) (Sydney: LexisNexis Butterworths, 2006).

Amanda Whiting and **Carolyn Evans** (eds), *Mixed Blessings: Laws, Religions and Women's Rights in the Asia-Pacific Region* (Netherlands: Martinus Nijhoff, 2006).

Book chapters

Carolyn Evans and **Amanda Whiting**, 'Situating the Issues, Framing the Analysis' in Amanda Whiting and Carolyn Evans (eds), *Mixed Blessings: Laws, Religions and Women's Rights in the Asia-Pacific Region* (Netherlands: Martinus Nijhoff, 2006), pp 1–23.

Carolyn Evans, 'Human Rights Commissions and Religious Conflict in the Asia-Pacific Region' in Ustinia Dolgopol and Judith Gardam (eds), *The Challenge of Conflict: International Law Responds* (Leiden; Boston: Martinus Nijhoff, 2006), p 629ff.

Michelle Foster and Christine Breining, 'Introduction' in Frederick M Abbott, Christine Breining and Thomas Cottier (eds), Michelle Foster and Thomas Fischer (associate eds), *Trade and Human Rights*, vol 4 (World Trade Institute Proceedings, University of Michigan Press, 2005).

¹ Given the difficulty of ascertaining when particular publications appeared in a calendar year, no distinction has been made between those publications appearing prior to and after, the establishment of IILAH in 2005.

NJS Lockhart and **Andrew D Mitchell**, 'Regional Trade Agreements under GATT 1994: An Exception and its Limit' in Andrew D Mitchell (ed), *Challenges and Prospects for the WTO* (London: Cameron May, 2005), pp 217–52.

Andrew D Mitchell, 'Due Process in WTO Disputes' in Rufus Yerxa and Bruce Wilson (eds), *Key Issues in WTO Dispute Settlement: The First Ten Years* (Cambridge: Cambridge University Press, 2005), pp 144–60.

Anne Orford, 'A jurisprudence of the limit' in Anne Orford (ed), *International Law and its Others* (Cambridge: Cambridge University Press, 2006), pp 1–31.

Anne Orford, 'Biopolitics and the Tragic Subject of Human Rights' in Elizabeth Dauphinee and Cristina Masters (eds), *The Logics of Biopower and the War on Terror: Living, Dying, Surviving* (New York: Palgrave Macmillan, 2006), pp 205–228.

Anne Orford, 'Trade, human rights and the economy of sacrifice' in Anne Orford (ed), *International Law and its Others* (Cambridge: Cambridge University Press, 2006), pp 156–96.

Dianne Otto, 'Disconcerting "Masculinities": Reinventing the Gendered Subject(s) of International Human Rights Law' in Doris Buss and Ambreena Manji (eds), *International Law: Modern Feminist Approaches* (Oxford & Portland: Hart, 2005), pp 105–29.

Dianne Otto, 'Freedom From Discrimination' in Rhona K M Smith and Christien van den Anker (eds), *The Essentials of Human Rights* (London: Arnold, 2005), pp 97–100.

Dianne Otto, 'Lost in translation: re-scripting the sexed subjects of international human rights law' in Anne Orford (ed), *International Law and its Others* (Cambridge: Cambridge University Press, 2006), pp 318–56.

Jacqueline Peel and Philippe Sands, 'Environmental Protection in the Twenty-First Century: The Evolution of Sustainable Development and International Law' in Regina Axelrod, David Downie and Norman Vig (eds), *The Global Environment: Institutions, Law and Policy* (2nd ed) (Washington DC: CQ Press, 2005), pp 43–63.

Jacqueline Peel, 'Precautionary only in name? Tensions between precaution and risk assessment in the Australian GMO regulatory framework' in Elizabeth Fisher, Judith Jones and René von Schomberg (eds), *Implementing the Precautionary Principle: Perspectives and Prospects* (Edward Elgar, 2006), pp 202–20.

Joo-Cheong Tham, 'Diversification of the Labour Force: The Scope of Labour Law and the Notion of Employee: Australia' in Takashi Araki and Shinya Ouchi (eds), *Labour Law in Motion: Diversification of the Labour Force & Terms and Conditions of Employment* (The Hague: Kluwer Law International, 2005), pp 1–8.

Joo-Cheong Tham, 'The Mechanism of Establishing and Changing Terms and Conditions of Employment' in Takashi Araki and Shinya Ouchi (eds), *Labour Law in Motion: Diversification of the Labour Force & Terms and Conditions of Employment* (The Hague: Kluwer Law International, 2005), pp 73–90.

Joo-Cheong Tham, 'Job Security Laws: Constituting "Standards" and "Non-Standard" Employment' in Christopher Arup et al (eds), *Labour Law and Labour Market Regulation: Essays on the Construction, Constitution and Regulation of Labour Markets and Work Relationships* (Annandale, NSW: Federation Press, 2006), pp 657–76.

A Yanovich and **Tania Voon**, 'What is the Measure at Issue?' in Andrew Mitchell (ed), *Challenges and Prospects for the WTO* (London: Cameron May, 2005), pp 115–63.

Kristen Walker and **Andrew D Mitchell**, 'A Stronger Role for Customary International Law in Domestic Law' in Hilary Charlesworth, Madelaine Chiam, Devika Hovell and George Williams (eds), *The Fluid State: International Law and National Legal Systems* (Annandale, NSW: Federation Press, 2005), pp 110–35.

Amanda Whiting, 'In the Shadow of Developmentalism: The Human Rights Commission of Malaysia at the Intersection of State and Civil Society Priorities' in C Raj Kumar and D K Srivastava (eds), *Human Rights and Development: Law, Policy and Governance* (Hong Kong: LexisNexis, 2006), p 550ff.

Journal articles

Alison Duxbury, 'The Commonwealth Secretariat and the Implementation of Human Rights' (2006) 95 *The Round Table* 425–40.

Carolyn Evans, 'The Double-Edged Sword: Religious Influences on International Humanitarian Law' (2005) 6 *Melbourne Journal of International Law* 1–32.

Carolyn Evans, 'Evaluating Human Rights Education Programs' (2006) 11 *Australian Journal of Human Rights* 53–70.

Melissa Conley-Tyler and **Carolyn Evans**, 'Papers from the Fulbright Symposium on Peace and Human Rights Education' (2006) 11 *Australian Journal of Human Rights* 1–12.

Carolyn Evans, 'Strengthening the Role of the Special Rapporteur on Freedom of Religion or Belief' (2006) 1 *Religion and Human Rights: An International Journal* 75–96.

Simon Evans and **Carolyn Evans**, 'Remedies for Human Rights Violations under the Victorian *Charter of Human Rights and Responsibilities*' (2006) 17 *Public Law Review* 264.

Michelle Foster, 'The Michigan Guidelines on Well-founded Fear' (2005) 26 *Michigan Journal of International Law* 491–503 (collaboratively written).

Michelle Foster, 'Membership in the Australian Community: *Singh v The Commonwealth* and its Consequences for Australian Citizenship Law' (2006) 34 *Federal Law Review* 161–83.

Lee Godden, 'Water Law Reform in Australia and South Africa: Sustainability, Efficiency and Social Justice' (2005) 17 *Journal of Environmental Law* 181–205.

Shaunnagh Dorsett and **Lee Godden**, 'Interpreting Customary Rights Orders under the *Foreshore and Seabed Act 2004*' (2005) 36 *Victoria University of Wellington Law Review* 229–55.

Andrew D Mitchell and **Tania Voon**, 'Justice at the Sharp End: Improving Australia's Military Justice System' (2005) 28 *University of New South Wales Law Journal* 396–425.

Andrew D Mitchell, 'A Legal Principle of Special and Differential Treatment for WTO Disputes' (2006) *World Trade Review* 445–69.

Anne Orford, 'Beyond Harmonization: Trade, Human Rights and the Economy of Sacrifice' (2005) 18(2) *Leiden Journal of International Law* 179–213.

Anne Orford, 'Critical Intimacy: Jacques Derrida and the Friendship of Politics' (2005) 6(1) *German Law Journal* (Special issue dedicated to Jacques Derrida) 31–42.

Anne Orford, 'Commissioning the Truth' (2006) 16 *Columbia Journal of Gender and Law* 851–83.

Anne Orford, 'Human Rights after Faith: An Introduction to the "Cultures of Human Rights" Symposium' (2006) 7 *Melbourne Journal of International Law* 1–12.

Anne Orford, 'A Journal of the Voyage from Apology to Utopia' (2006) 7(12) *German Law Journal* (Special issue on Martti Koskenniemi's From Apology to Utopia) 993–1010.

Bruce Oswald and Sarah Finnin, 'Combating the Trafficking of Persons on Peace Operations' (2006) 10 *International Peacekeeping: The Yearbook of International Peace Operations* 1–32.

Sundhya Pahuja, 'The Postcoloniality of International Law' (2005) 46 *Harvard International Law Journal* 459–69.

Jacqueline Peel, 'Precaution: A Matter of Principle, Approach or Process?' (2005) 5 *Melbourne Journal of International Law* 483–501.

Jacqueline Peel, Rebecca Nelson and **Lee Godden**, 'GMO Trade Wars: The Submissions in the US–EC Biotech Dispute in the WTO' (2005) 6 *Melbourne Journal of International Law* 141–66.

Jacqueline Peel and **Lee Godden**, 'Australian Environmental Management: A "Dams" Story' (2005) 28 *University of New South Wales Law Journal* 668–95.

Jacqueline Peel, 'A GMO by any other name ... might be an SPS risk! Implications of Expanding the Scope of the WTO *Sanitary and Phytosanitary Measures Agreement*' (2006) 17(5) *European Journal of International Law* (forthcoming December 2006).

Peter D Rush, 'Surviving Common Law: Silence and the Violence Internal to the Legal

Sign' (2005) 27 *Cardozo Law Review* 753–66.

Jude McCulloch and **Joo-Cheong Tham**, 'Secret State, Transparent Subject: The Australian Security Intelligence Organisation in the Age of Terror' (2005) 38 *Australian and New Zealand Journal of Criminology* 400–415.

John Tobin, 'What's Wrong with the Charter of Rights?' (2005) 79 *Law Institute Journal* 40–43.

John Tobin, 'Parents and Children's Rights under the *Convention on the Rights of the Child*: Finding Reconciliation in a Misunderstood Relationship' (2005) 7 *Australian Journal of Professional and Applied Ethics* 31–46.

John Tobin, 'Increasingly Seen and Heard: The Constitutional Recognition of Children's Rights' (2005) 21 *South African Journal on Human Rights* 86–126.

John Tobin, 'A Right to be No Longer Dismissed or Ignored: Children's Voices in Pedagogy & Policy Making' (2005) 3 *International Journal of Equity and Innovation in Early Childhood* 4–18.

Tania Voon, 'To Uphold, Modify or Reverse? How the WTO Appellate Body Treats Panel Reports' (2006) 7 *Journal of World Investment & Trade* 507–18.

Tania Voon, 'UNESCO and the WTO: A Clash of Cultures?' (2006) 55 *International & Comparative Law Quarterly* 635–52.

Tania Voon and A Yanovich, 'The Facts Aside: The Limitation of WTO Appeals to Issues of Law' (2006) 40 *Journal of World Trade* 239–58.

Selected seminar papers and conference presentations

Jennifer Beard, 'The Professional Limits of Legal Ethics: Lawyering at the Edges of the Body Politic' (paper presented at the 3rd Melbourne Legal Theory Workshop, *Limit, Exception, Emergency, Miracle*, Melbourne Law School, 22–24 November 2006).

Alison Duxbury, 'War Crimes and the AAT' (paper presented at *Nuremberg and Transitional Justice: Civilising Influence or Institutionalised Vengeance?*, Canberra, 19 November 2005).

Carolyn Evans, 'Veiling Over the Issues: Muslim Women in the European Court of Human Rights' (paper presented at the 2nd Melbourne Legal Theory Workshop on *The Culture(s) of Human Rights*, Melbourne Law School, 21 - 22 July 2005).

Anne Orford, 'Commissioning the Truth' (paper presented at the *Gender and Transitional Justice* Workshop convened by the International Centre for Transitional Justice, Rockefeller Foundation Study and Conference Centre, Bellagio, Italy; and at the International Studies Association Workshop on *The Art of Security*, Hawaii, March 2005).

Anne Orford, ‘Globalization and Immortality’ (seminar presented as part of the New York University Institute for International Law and Justice colloquium on *Rethinking International Law*, 24 March 2005).

Anne Orford, ‘The Many Futures of the WTO’ (seminar presented at the Secretariat of the World Trade Organization, Geneva, 25 May 2005).

Anne Orford, ‘Human Rights and the Ruin of our Time’ (closing remarks presented at the 2nd Melbourne Legal Theory Workshop on *The Culture(s) of Human Rights*, Melbourne Law School, 21 - 22 July 2005).

Anne Orford, Member, Panel discussion on ‘The UN: Damned if they do, damned if they don’t’ (United Nations Association of Australia National Media Peace Awards Presentation Dinner, 21 October 2005).

Anne Orford, Chair, Roundtable discussion on ‘War, Force and Revolution’ (100th Meeting of the American Society of International Law, Washington DC, 31 March 2006).

Anne Orford, ‘International Law and the South as a Legal Space’ (paper presented at the *Of the South* Symposium, Griffith Law School, 18–19 July 2006).

Anne Orford, ‘Cosmopolitanism and the Future of International Law’ (paper presented at the 3rd Melbourne Legal Theory Workshop, *Limit, Exception, Emergency, Miracle*, Melbourne Law School, 22–24 November 2006).

Bruce Oswald, ‘The Responsibility of Military Lawyers during a State of Emergency or a Time of Suspended Law’ (paper presented at the 3rd Melbourne Legal Theory Workshop, *Limit, Exception, Emergency, Miracle*, Melbourne Law School, 22–24 November 2006).

Dianne Otto, ‘The Power of Indicators to Shape Women’s Property Rights: Taking a Human Rights Approach’ (paper presented at an International Women’s Development Agency Symposium on the Harmonisation of Gender Indicators, Canberra, 15–16 June 2006).

Dianne Otto, ‘Emergency Sex: Responding to the Intersecting Dynamics of Survival, Agency and Coercion in Peacekeeping Sexual Economies’ (paper presented at the 3rd Melbourne Legal Theory Workshop, *Limit, Exception, Emergency, Miracle*, Melbourne Law School, 22–24 November 2006).

Sundhya Pahuja, ‘Comparative International Law Today’ (paper presented at a conference on *Comparative Visions of Global Public Order*, Harvard Law School, March 2005).

Sundhya Pahuja, ‘The Convergence Between Public International Law and International Economic Law’ (workshop presentation at the Law and Society Summer Institute, Centre for Socio-Legal Studies, University of Oxford, June 2005).

Sundhya Pahuja, ‘Development and the Rule of Law’ (paper presented at a conference on *Human Rights and Global Justice*, Centre for Human Rights in Practice, University of Warwick, March 2006).

Jacqueline Peel, ‘International Law and the Determination of Risk: Is “Democratised”

Science the Answer?’ (paper presented at *Fostering a Scholarly Network: International Law and Democratic Theory*, sponsored by American Society of International Law, Australia and New Zealand Society of International Law, Japanese Society of International Law, Canadian Council on International Law, Wellington, 27–28 June 2006).

Peter Rush, ‘Common Law Precedence’ (paper presented at the 3rd Melbourne Legal Theory Workshop, *Limit, Exception, Emergency, Miracle*, Melbourne Law School, 22–24 November 2006).

Submissions, reports and working papers

Dianne Otto, ‘Making United Nations Human Rights Treaty Bodies More Effective: A gender critique of reforms to the reporting process — the case of the “common core document”’ (International Women’s Rights Action Watch (Asia Pacific), Report/Working Paper No 4, 2005).

Dianne Otto and Lia Kent, ‘Submission to the Human Rights Consultation Committee on a Proposed Charter of Rights for Victoria’ (2005).

Dianne Otto, Lia Kent and Trish Prentice, ‘Reconceptualising Remedies: Roundtable Discussion on the Optional Protocol to the *International Covenant on Economic, Social and Cultural Rights*’ (IILAH International Human Rights Law Research Programme, Working Paper No 1, 2006).

Philip Alston, **John Tobin** and Mac Darrow, UNICEF Innocenti Insight, ‘Laying the Foundations for Children’s Rights: An Independent Study of Some Key Legal and Institutional Aspects of the Impact of the Convention on the Rights of the Child’ (2005).

Other contributions

Carolyn Evans, ‘Book Review: Equal before Man, Unequal before Allah’ (2005) 7 *Australian Journal of Asian Law* 198–200.

Carolyn Evans, ‘The Human Rights Act and Administrative Law’ (2005) 197 *Ethos* 13–14.

Carolyn Evans and Simon Evans, ‘Parliaments and the Protection of Human Rights’ (2005) 30 *Alternative Law Journal* 53.

Anne Orford, ‘Book Review: Shabtai Rosenne, The Perplexities of Modern International Law’ (2005) 99 *American Journal of International Law* 274–80.

Anne Orford, ‘Book Review: Hilary Charlesworth, Madeleine Chiam, Devika Hovell and George Williams (eds), The Fluid State’ (2006) 7 *Melbourne Journal of International Law* 425–36.

Sundhya Pahuja, ‘Don’t Just Do Something, Stand There!: Humanitarian Intervention and the Drowning Stranger’ (2005) 5 *Human Rights and Human Welfare: An International Review of Books and Other Publications* 51–9.

Sundhya Pahuja, ‘Antony Anghie, Imperialism, Sovereignty and the Making of International Law’ (2006) 69 *Modern Law Review* 486–88.

John Lockhart and **Tania Voon**, ‘Reviewing Appellate Review in the WTO Dispute Settlement System’ (2005) 6 *Melbourne Journal of International Law* 474–84.



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