



NEWSLETTER

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July 2003

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Human Rights & the International Criminal Court

On 16 April this year, Ms Cherie Booth QC delivered a lecture entitled ‘The International Criminal Court: Instrument of Peace or Punishment?’ at Queens Hall, Victorian State Parliament on behalf of the Castan Centre for Human Rights Law. This is a condensed version of that speech. The full paper can be found at www.law.monash.edu.au/castancentre.

It is both a privilege and an honour to address you today. I am especially excited to be involved in a discussion about prospects and issues for the International Criminal Court. This is an opportune time for such a discussion, given that, as you know, the Court was inaugurated last month. The Rome Statute of the ICC has its flaws – the nature of the drafting process and the political issues at stake ensured that – but we have now reached a stage where the principle of individual criminal liability is established for those responsible for the most serious crimes, and where an institution has been established – on a permanent basis – to ensure the punishment of such individuals. The Court, no doubt, will serve as a painful reminder of the atrocities of the past century and the level to which humanity can stoop. I say nothing new when I tell you that it appears we are doomed to repeat history. International criminal law is

testimony to that fact. As Judge Richard Goldstone, former Chief Prosecutor at the Hague Tribunals has wryly commented, the hope of “never again” so often becomes the reality of again and again. But at the same time I am convinced that the International Criminal Court, with independent prosecutors putting tyrants and torturers in the dock before independent judges, reflects a post-war aspiration come true. My discussion with you today flows from the conviction that the International Criminal Court is our best response to the atrocities which bedevil our claims to ‘humanity’.

The Statute of the International Criminal Court was adopted on the 17th of July 1998 by an overwhelming majority of the States attending the Rome Conference. To date, the Rome Statute has been signed by 139 States and 89 States have ratified it. The Statute entered into force last year on 1 July 2002, at which time the Court’s jurisdiction over genocide, war crimes and crimes against humanity took effect.



Nellie Castan and Cherie Booth QC after the 16 April lecture

Human Rights and the ICC (cont)

The judges for the Court were chosen earlier this year in February, and were sworn in on 11 March 2003 at the inaugural session of the Court in The Hague. All of the senior elected officials of the Court should be in place and ready to take up their tasks by the summer of 2003.

The prospects for an effective, legitimate and credible international court depend, to a very great extent, on the composition of its bench. It is of singular importance that an international court be composed of judges with the *most appropriate qualifications*. That means, amongst other points, that there be representation of the principal legal systems and appropriate geographical representation, and that there be an appropriate gender balance.

The election of seven women judges to the International Criminal Court, under the strictest conditions of openness and transparency, shows that States are finally taking seriously the idea of a 'legitimate' international judiciary. The importance of female appointees to the Court is reinforced by the attention given by the ICC Statute to women's issues, as compared with the very limited concern that women's issues have received in international criminal law in the past. In the field of armed conflict history is replete with examples of women being targeted as victims of sexual assault as part of a policy of war. Rape and other acts of sexual violence have long been utilised as instruments of warfare. These victims have been let down when it has come to the prevention and prosecution of these offences, largely because sexual violence has been regarded as an accepted concomitant of war, even if it was not explicitly condoned.

At the international level it was only in relatively recent times that sexual violence against women in armed conflict came to be regarded as an important issue in



From L to R: Ms Julie Debeljak, Ms Melissa Castan, Ms Cherie Booth QC & Prof David Kinley

serious need of redress. Since 1990 international criminal law has made greater progress on women's issues than during any other time in recorded history. The Rome Statute allows for prosecution of a wide range of gender-based or sex-based crimes, provides certain protections to victims of these crimes, and calls for the inclusion of women in the different Organs of the Court. The experiences of the International Criminal Tribunals for the Former Yugoslavia and Rwanda suggest that there are considerable advantages these women judges will bring to the International Criminal Court when it comes to the prosecution of gender-based and sex-based crimes.

More broadly, the ICC will have an effect beyond the trials themselves, and significance beyond traditional conceptions of justice. The function of a trial in the International Criminal Court is first and foremost a proclamation that certain conduct is unacceptable to the world community. In this regard, it is of singular importance to note that no one – not even a serving head of state – will be able to claim immunity from the jurisdiction of the Court.

Besides the moral condemnation of these crimes at the international level, the ICC will serve a second, and vital, purpose, namely, upholding the rule of law. One of the problems this raises is that a war crimes trial is an exercise in partial justice to the extent that it reminds us that the majority of war crimes go unpunished. We should draw some solace, I would suggest, from the fact that in a world in which a multitude of people may have become embroiled in war crimes, the punishment of each and every offender is not necessary to achieve respect for the rule of law, or to declare our disgust at the acts committed.

The third function of an ICC trial – and closely aligned with the value of upholding the rule of law – is the opportunity it creates for truth telling. Two important points, I think, need to be kept in mind. The first is that international criminal trials have a commemorative potential; they can build an objective and impartial record of events. The second point is this: proceedings before the ICC have the potential of countering the attribution of collective responsibility for acts committed by individuals.

Finally, the US claims that the Rome Statute is flawed. Certainly it is not perfect. While the Statute is a reflection of wide agreement which inevitably involved some compromises, none of those compromises undermines the basic fact that the Court will act only where national jurisdictions cannot. The UK has concluded that the liberty and well-being of its citizens will not be threatened by malicious or politically motivated arrest and indictment in a foreign land by virtue of its commitment to the Court. The absence of the US means that we all stand to lose from the full benefit of the experience of a country with the strongest commitment to the rule of law generally and expertise in criminal and international law in particular. I hope, in these circumstances, that the United States will leave the door open to future participation and, in the meantime, provide constructive support from the sidelines.

The Castan Centre thanks Mallesons Stephen Jaques for their generous support of this event.

Human Rights in an Age of Terrorism

On 3 June this year, **Prof Ivan Shearer**, Challis Professor of International Law at the University of Sydney, delivered for the Castan Centre a public lecture entitled 'Human Rights in an Age of Terrorism'. The following is a condensed version of the draft paper on which Prof Shearer based his talk. The full speech can be found at www.law.monash.edu.au/castancentre.

There can be little doubt as to the necessity of legislation against terrorism. Some have argued that its very existence creates a climate of fear and lays the groundwork for future repression; that existing legislation regarding crimes of violence is sufficient. In my view focused legislation is both necessary and desirable to respond adequately to the need, while embracing international standards of human rights.

Australian Anti-Terrorism legislation, at both Commonwealth and State level, defines "terrorist acts" as acts of violence which cause serious physical harm to persons or property, or constitute a collective danger, committed for a political, religious or ideological cause, and intended to coerce, influence, or intimidate a government, or to intimidate the public generally. Expressly excluded from the definition are advocacy, protest, dissent or industrial action which are not intended to cause serious harm to persons or public safety. The Minister of Foreign Affairs, on the advice of the Special Committee established under Security Council resolution 1267, can also declare prohibitions on organisations and corporations known to have terrorist connections. A current debate on this question surrounds the status of the Hezbollah organisation, which has not been listed by the Special Committee.

The heart of the matter lies in the exercise of powers by the authorities against the individual under this legislation. The general rule of the common law, as amended by statute in varying degrees among the States and Territories of Australia, is that a person may not be detained for questioning by police. If arrested on reasonable suspicion of having committed an offence, the person may be detained for up to about four hours (with some exceptions) before being formally charged. The person is not required to answer questions (except under certain legislation when required to give name, address and proof of identity.) Anything said before the warning against self-incrimination is given at the time of arrest may not be used in evidence against the person.

The powers given to police under the legislation respecting terrorism so far mentioned does not significantly diminish the basic common law protections of the rights of the individual. For example, under the Terrorism (Police Powers) Act, 2002 (NSW) there is authorisation to exercise what is termed "special powers".

These powers do not, however, provide for detention without charge, nor do they extend the period allowed for questioning. The Act requires that a person who is the subject of an authorisation given by senior police disclose his or her identity and provide proof. The Act also provides for extensive powers of search of the person, vehicles and of premises.

Attention has also been focused on the, as yet unenacted, Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill, 2002. As originally proposed, the Bill would have enabled persons suspected by ASIO of having information about a terrorist offence, and with the concurrence of the Commonwealth Attorney-General, to be held for questioning for considerable periods of time, as authorised by a warrant issued by a judge. On this basis they could be held incommunicado and without access to a lawyer, and required to answer questions on pain of committing an offence. The Bill received much criticism, in the face of which the Attorney-General has announced significant amendments, including that any evidence taken from a detained person cannot be used against them in prosecution for a terrorism offence. This is a significant concession, since the right to silence is not constitutionally protected in Australia as it is in the United States.



Prof Ivan Shearer delivering his lecture on 3 June 2003

What are the international human rights law implications of the ASIO Bill? Under the bill a person may be detained for questioning under a warrant for up to 48 hours, which may be extended by a Federal Court judge for periods of up to a maximum of 7 days. This sits uneasily with article 9 (1) of the International Covenant on Civil and Political Rights, which requires that "no person shall be subjected to arbitrary arrest or detention". It is an open question whether the flexibility of the word "arbitrary" (reasonable) in article 9 would extend so far as to enable a lengthy period of detention such as proposed under the ASIO Bill to be justified.

Human Rights in an Age of Terrorism (cont)

It may be that the length of the detention is not on its own the sole relevant factor; the availability of judicial review of the detention and access to legal assistance would also come into account.

Article 14 (3) (b) of the Covenant provides that in the determination of any criminal charge the person shall be entitled to “communicate with counsel of his own choosing”. This right of communication is wider than the right to legal assistance at the trial itself and has been held by the UN Human Rights Committee to apply in cases of incommunicado detention before charges have been laid. The ASIO Bill in its present form proposes that a person detained shall have access to a “security-cleared” lawyer, except where specific grounds exist for denying that right during the first 48 hours of detention. This means that a panel of lawyers in private practice, each granted appropriate security clearances, must be established. They will, however, not be permitted to consult with their clients in private: contact must be carried out within the hearing of a “warrant holder”, in practice an officer of ASIO. Questions of reasonableness, having regard to all the circumstances, also arise here.

So far, neither Australia nor the United States have made a proclamation of emergency under Article 4 of the Covenant which would allow them to derogate from certain of its provisions. There would be an understandable reluctance to proclaim an emergency, even after such catastrophic events as those of 11 September 2001, for fear of spreading panic in the community, or appearing to confess the inability of the government to take effective measures against terrorists within the existing law or within the framework of special laws considered by it to be compatible with the Covenant. The fact that the UK has done so may be a reflection of the fact that the UK has, in the past, made declarations of emergency in relation to Northern Ireland, and to that extent the public is not unused to them.

Even if an emergency were proclaimed, Articles 9 and 14 of the Covenant cannot be set aside entirely. The Human Rights Committee made an important pronouncement on this subject in 2001, just prior to the events of 11 September, in General Comment No. 29 on Derogations During a State of Emergency:

“...the obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers. Moreover, the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation. In practice, this will ensure that no provision of the Covenant, however validly derogated from, will be entirely inapplicable to the behaviour of a state

party....The legal obligation to narrow down all derogations to those strictly required by the exigencies of the situation establishes for both states parties and for the Committee a duty to conduct a careful analysis under each article of the Covenant based on an objective assessment of the actual situation”.

The Committee also emphasised that measures derogating from the provisions of the Covenant “must be of an exceptional and temporary nature”. It must be wondered whether, in an age of terrorism, special measures, if they are of such a nature as to require formal notification as derogations, could ever be regarded as “temporary”. It is likely that they are here to stay.

Knee-jerk reactions of horror at restrictions on certain rights are not helpful to the general cause of human rights in an age of terrorism. There must be a sober analysis of the dangers and of the measures necessary to combat them. Nevertheless, while we may feel ourselves to be qualified and equipped to face these challenges, useful guidance is to be found in international human rights standards. Above all, the considerations of strict proportionality set out in General Comment No. 29 of the Human Rights Committee should be taken into account, and weighed heavily against the objectively assessed present dangers to our society.

To a large extent, we in Australia are more alive than most to the importance of civil liberties. Our society has benefited from the common law inheritance that has provided a more effective protection of those liberties in the past than paper guarantees in charters of human rights. Perhaps at this stage of our development a written bill of rights could supplement and enhance those liberties and to that extent play a useful role. But the right instincts were planted long ago. Fortunately, we enjoy the benefits of a free and democratic society, in which the need for special measures to deal with terrorism can be openly debated.

Professor Shearer will be producing a full article based on this draft paper for inclusion in a festschrift in honour of Professor Alice Tay due to be published later in 2003.

[UPDATE: Since Professor Shearer delivered his paper on 3 June, political events have moved on in relation to the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2]. On 25 June 2003 the Opposition in the Senate agreed to pass the Bill after several rounds of amendments had been agreed upon. The key compromises were that ASIO cannot detain anyone younger than 16, that detainees will get immediate access to a lawyer and that, once released, people cannot be detained again unless that is justified by additional or materially new information. The minor parties in the Senate have opposed the passage of the legislation. The Bill will return to the House of Representatives where it is expected to be passed in its amended form.]

Australian Interns at the UN Commission on Human Rights

Simone Cusack was one of two Australian interns from Monash Law School to participate in the 59th Session of the UN Commission on Human Rights in Geneva earlier this year (the other Monash student was David Goldberg). Here she relates some of the key issues and highlights that arose during her internship.

Iraq

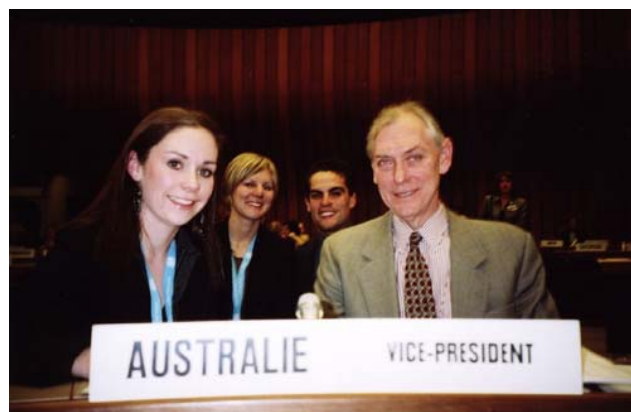
This year's Commission was undoubtedly overshadowed by the outbreak of war in Iraq. A significant portion of the Commission was spent debating the appropriateness of holding a special sitting to consider the human rights situation in Iraq following the American-led invasion. Despite the general feeling of inevitability surrounding the special sitting, the Commission rejected the motion to hold a special sitting on the human rights and humanitarian situation in Iraq, 18 votes in favour to 25 against, with 7 abstentions. During the debate on the merits of holding such a session, several delegations, including Australia, expressed the view that the Commission was not the appropriate forum to discuss the human rights concerns of Iraq, saying that the Security Council was currently debating the issue. Many Western countries were also concerned that such a sitting would be confined only to the war, rather than the human rights situation of the Iraqi people under Saddam Hussein's leadership. States in favour of the proposal emphasised the illegality of the American invasion as reason for the session. Ironically, the time spent debating the merits of holding a special sitting far exceeded any time which would have been set aside for the session. Despite the irony of the situation, United Nations Secretary General Kofi Annan surmised it best when he said "whatever view we may take of the war in Iraq, it is right to acknowledge that we have also witnessed scenes of jubilation at the fall of an oppressive regime. They remind us that...the human rights crisis in Iraq did not begin with this war."



The 59th Session of the UN Commission on Human Rights

The Middle East

The human rights situation in the Middle East continued to dominate debates at this year's Commission. Exchanges between Israel, Palestine and Syria, amongst others, were frequently heated and intense. On several occasions Palestine likened the acts of the Israeli government to those of Nazis during World War II. Following a point of order in which Israel objected to this analogy and also to claims by Palestine that Israel was a liar, the Palestinian authority responded by stating that it would "stop calling Israel a liar when it stopped lying". Exchanges like these were frequent and intense. No microphones were needed to hear the statements from these delegations. Sitting in the plenary watching these exchanges, one would be forgiven for questioning whether this war of words was actually furthering human rights in the region.



From L to R: Simone Cusack (Monash), Emma Leske, (University of Adelaide), David Goldberg (Monash), Australian Ambassador Mike Smith

Terrorism

The issue of terrorism and its repercussions for human rights dominated many debates at this year's Commission. Many States and non-governmental organisations reaffirmed the importance of combating terrorism, while emphasising the need to respect human rights in the process of eradicating terrorism.

The Libyan Chair

The appointment of the Libyan Ambassador as Chair of the Commission created controversy both during her election and the Commission. Within ten minutes of the opening of the Commission members of the non-governmental organisation, 'Reporters without border,' threw pamphlets across the plenary which stated: "At last the UN has appointed someone who knows what she's talking about! Ms. Najat Al-Hajjaji can be proud of her new job as Chairperson... The people of her country – Libya – know a thing or two about violations of them." Whilst the Chair got off to a rather shaky start, all things considered she performed her role as Chair extremely professionally (including during the debate on the sexual orientation bill despite pressure inflicted by certain countries).

Australian Interns at the UN Commission on Human Rights (cont.)

Our role as interns

During the Commission our role was constant and varied. We began each morning attending various meetings, including the Bureau (the Chairperson, the Vice-Chairpersons, the Secretariat and representatives from all of the regional groups) and Western Group (consisting of countries from the European Union, and JUSCANZ (Japan, United States, Canada, Australia, New Zealand, Korea, Norway amongst others)). After that a large part of our day was spent monitoring the plenary. In addition, we were required to attend ‘informal’ and ‘open-ended’ consultations on resolutions. These meetings involved negotiating the resolutions and lobbying the Australian Government’s position. As Australia was not only a member of the Commission this year, but also Vice-Chair (and thereby a member of the bureau), we were also able to gain an insight into procedural aspects of the Commission. It would be remiss of me not to mention the numerous functions and receptions we were invited to...it’s a hard job, but someone has to do it!

One of the most interesting aspects was being party to multi-lateral negotiations. Trying to negotiate consensus texts was fascinating, especially given the extreme diversity of opinion, although at times frustrating. Additionally, the plenary provided an excellent opportunity to witness debate at the international level. This was made more interesting given that the plenary was arranged into French alphabetical order. Take for example the United States. They were seated next to their ‘arch rivals’ Cuba, and their recent sparing partners in the Security Council, France and Russia. Like the U.S., Australia also had its own ‘arch rival’ – Zimbabwe. On one occasion the Zimbabwean delegation accused the Australian Government of using alcohol as our ‘Weapon of Mass Destruction’ against our Indigenous population. The political rhetoric often present in the plenary can make one question the effectiveness of the Commission as a forum for furthering human rights throughout the world. However, one needs to be realistic and recognise the difficulties faced in facilitating multi-lateral negotiations, especially on sensitive issues such as those pertaining to human rights abuses. If the plenary sometimes failed to fulfil the Commission’s aims, it can be said that the informal and open-ended consultations make up for those failings. Whilst this process can sometimes be hampered by attempts to reach a consensus, it is clear that States are making sincere efforts to build upon previous resolutions and make the Commission function more effectively.

I would highly recommend the internship to anyone interested in human rights and international law, or to anyone interested in pursuing a career in government.

Further information regarding internships can be found at www.law.monash.edu.au/castancentre/internships

Australian Red Cross Inaugural Solferino Cup

On 2 May the International Humanitarian Law Department of the Australian Red Cross held its inaugural Solferino Cup fund-raising gala at the Royal Exhibition Buildings, Melbourne. Competition for The Cup took the form of a trivia challenge held over several rounds. The questions tested each team’s understanding of international human rights law and the Red Cross as well as their general knowledge. Into the first categories fell questions such as “Who were the five founders of the ICRC?” (answer: Dunant, Dufour, Moynier, Appia & Maunoir), while participants’ general knowledge was stretched by teasers such as “What were the names of the Banana Splits?” (answer: Fleegele, Snorky, Bingo & Drooper). Indicative of the extreme intellectual breadth of Castan Centre Members is the fact we were able to answer both questions successfully. At the end of the night the Castan Centre for Human Rights Law led the points tally and had etched its name on the plating as the first winner of the ARC Solferino Cup. The actual chromeware will go back to the Red Cross in time for next year’s challenge, but, as they say in several of the classics, the memories are forever. Most importantly, the money raised by the event went to assist the International Humanitarian Law Department of the ARC in its important work.

If you or your organisation think you can wrest the mantle from the Castan Centre and are interested in getting a table together for next year’s Solferino Challenge, contact Emma Richardson at the Red Cross at email address erichardson@vic.redcross.org.au for further information.



Grinning winners. From L to R: Adam McBeth, Melissa Rudd, Julie Debeljak, Tom Davis, Beth Gaze and Bronwyn Naylor

EVENTS

2003 – So Far

- **Public Lecture:** 29 January. *Corporations, Human Rights and Transnational Litigation* by **Richard Meeran** Chair of the UK Solicitors' Human Rights Group, winner of the 2002 Liberty/Justice 'Human Rights Lawyer of the Year' award and Holding Redlich Visiting Fellow for the Castan Centre.



Richard Meeran speaking at Monash Law Chambers on 29 January.

- **Public Lecture:** 12 March. *How Humanitarian is Australia's Humanitarian Program?: The Case of Stateless Asylum Seekers*, by **Assoc Prof Susan Kneebone** (Monash Law School), **Hoi Trinh** (lawyer for stateless Vietnamese in The Philippines) and **Julian Burnside QC**.
- **Public Lecture:** 16 April. *The International Criminal Court: Instrument of Peace or Punishment?*, by **Cherie Booth QC**, Matrix Law Chambers (UK).
- **Public Lecture:** 28 April. *When All Else Fails: The Practicalities of Seeking Protection of Human Rights Under International Treaties*, by **Nicholas Poynder**, Barrister, NSW.
- **Public Lecture + Staff/Student Seminar:** 3 June. *Human Rights in an Age of Terrorism*, by **Prof Ivan Shearer**, University of Sydney and Member of the UN Human Rights Committee.

N.B. The full papers of all public lectures can be found on the Castan Centre website at www.law.monash.edu.au/castancentre/events/events_prev

Second Semester Public Lecture Series

www.law.monash.edu.au/castancentre for details

Lectures anticipated for September and October

Coming Up

CASTAN CENTRE FOR HUMAN RIGHTS LAW ANNUAL LECTURE 2003

“The Role of the UN After Iraq: International Security and Human Rights”



MR KEVIN RUDD MP
Shadow Minister for Foreign Affairs

25 August 2003
6.45pm
Alexander Theatre
Monash Clayton Campus

The Castan Centre for Human Rights Law

CONFERENCE

**“HUMAN RIGHTS 2003:
THE YEAR IN REVIEW”**

4 December 2003

The CUB Malthouse
Sturt St, Southbank

Full \$150 / Students \$50

Bookings & inquiries:

Castan.Centre@law.monash.edu.au

TOPICS

Human Rights & the War on Terrorism:
International law
Anti-terrorism legis.
Risk analysis
Political perspectives
Developments in International Criminal Law
Indigenous People & Human Rights Law
Developments
Transitional Justice in East Timor
Refugees & Human Rights Law
Developments

SPEAKERS

Simon Bronitt (*ANU*)
Melissa Castan (*Monash*)
Prof Hilary Charlesworth (*ANU*)
Gwyn MacCarrick (*Former Defence-Counsel, East Timor*)
Prof Tim McCormack (*Melb Uni*)
Greg Sheridan (*Foreign Editor, The Australian*)
Dr David Wright-Neville (*Monash*)
More speakers to be confirmed ...

Human Rights Law Courses

<http://www.law.monash.edu.au/castancentre/units.html>

Undergraduate:

Citizenship and Migration Law

Comparative Constitutions and Rights

Human Rights and Australian Law

International Law

Indigenous Peoples and the Law

International Human Rights

International Organisations

International Refugee Law and Practice

Law and Discrimination

Law, Gender and Feminism

Graduate:

Current Issues in International Human Rights law

Human Rights in the Global Economy

Human Rights Litigation

Indigenous Rights and International Law

International Humanitarian Law

Law, Gender and Feminism

Migration Law

Native Title and Land Rights

Practising in the Public Interest

** Not all courses are offered by the Law Faculty each year.*

Student Internships

The Castan Centre helps to facilitate human rights related international internships for Monash Law students.

Key schemes with which the Centre is involved include:

- **Reprieve Australia** – provides Monash law students with the opportunity to work with Reprieve lawyers in the USA on death-row cases. These are three month internships that usually take place over the main University break.
- **Australian Delegation to the UN Commission on Human Rights** – A six-week internship program with the Australian delegation in Geneva (usually over March-April).
- **Australian Red Cross International Humanitarian Law Summer Internships** – Two-week, project-oriented voluntary internships run out of the ARC HQ in Melbourne.

More information on these and other human rights internships is available online at:

law.monash.edu.au/castancentre/internships/internships

Student Placements & Professional Practice

- Moves are afoot for the Castan Centre to oversee a Human Rights Unit in the **Advanced Professional Practice** subject coordinated by Assoc Prof Adrian Evans. It is anticipated this will be offered in Semester 1 2004. Further details will be forthcoming. Expressions of interest should be directed to Tom Davis at Tom.Davis@law.monash.edu.au.
- An Optional Student Placement scheme is also run by Assoc Prof Beth Gaze in her **Law and Discrimination** course, which is offered to law undergraduates in Semester 2, 2003.
- Julie Debeljak is teaching the postgraduate course **International Humanitarian Law** in Semester 2, 2003.

NEW POSTGRADUATE COURSES

2004

To be listed later in 2003 on the Castan Centre website. Email Castan.Centre@law.monash.edu.au for further details.

PUBLICATIONS, PAPERS & RESEARCH

Publications

Multinational Corporations and Human Rights

Kinley, D., Joseph, S., & McBeth, A., 'The Human Rights Responsibilities of Multinational Corporations: A Legal Study', *New Academy Review*, Vol 2 No 1, 2003.

Joseph, S., 'Pharmaceutical Corporations and Access to Drugs: The 'Fourth Wave' of Corporate Human Rights Scrutiny', (2003) 25 *Human Rights Quarterly*: 425-452

Joseph, S., 'Accountability beyond Borders: Corporations and Human Rights Litigation', *Futureye Newsletter*, June 2003.

Bill of Rights

Debeljak, J., 'Rights and Democracy: A Reconciliation of the Institutional Debate', in Tom Campbell, Jeffrey Goldsworthy and Adrienne Stone (eds.), *Human Rights Protection: Boundaries and Challenges*, Oxford: Oxford University Press, 2003: 135-159

Debeljak, J., 'The Human Rights Act 1998 (UK): The Preservation of Parliamentary Supremacy in the Context of Rights Protection', (2003) *Australian Journal for Human Rights* (in press)

Indigenous Rights

Castan, M & Kee, S. 'The Jurisprudence of denial', (2003) 28 *Alternative Law Journal* 2: 83.

International Covenant on Civil and Political Rights

Joseph, S., 'Human Rights Committee: Recent Cases,' (2003) 3 *Human Rights Law Review*: 91-103.

Refugees

Kneebone, S. (ed), *The Refugees Convention 50 Years On*, Aldershot: Ashgate, 2003.

STOP PRESS!!
BOOK LAUNCH
The Refugees Convention 50 Years On
edited by Susan Kneebone
Ashgate Publishing

In September 2003

Details to be Advised



Korea, 1951 (US National Archives)

Relationship between International Human Rights Law and Domestic Law

Gaze, B., "Privacy and Research Involving Humans" (2003) 10 *Journal of Law and Medicine*: 410-434.

Reports/Submissions

Trade and Human Rights

McBeth, A., Joseph, S. & Kinley, D., *Submission to the Senate Foreign Affairs, Defence and Trade Committee 'Inquiry into the General*

Agreement on Trade in Services and the Australia/ United States Free Trade Agreement', May 2003.

HREOC Bill

Gaze, B & Schmidt, C. (on behalf of the Castan Centre), *Submission to the Senate Legal and Constitutional Committee Inquiry into the Provisions of the Australian Human Rights Commission Legislation Bill 2003*, May 2003.

Human Rights Education

Kinley, D. and Davis, T., *Response to Additional Questions of 29 May 2003 from the Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-Committee, 'Inquiry into Human Rights and Good Governance Education in the Asia-Pacific Region'*, 27 June 2003.

Conference Papers & Public Speeches

Bill of Rights

Debeljak, J., 'Human Rights in Australia: A Conversation about Values', The Law Institute of Victoria's Bill of Rights Committee, Melbourne, 19 June 2003.

Human Rights in Burma

Kinley, D., Presented at a Forum on *The Struggle for Democracy in Burma: Policy Options for Australia*, held by AsiaLink Centre and Melbourne Institute of Asian Languages and Societies, Melbourne, 8 May 2003.

Indigenous Rights

Castan, M. 'International Law And Indigenous Claims', Centre For Australian Indigenous Studies

Seminar Series, 30 April 2003. Plus additional lectures for 'Koorie Studies' and 'Aborigines and the Law' in May 2003

Economic, Social & Cultural Rights

Kinley, D., 'Economic, Social and Cultural Rights' presented at the CLA/Interights Conference *Enforcing Economic Social and Cultural Rights: Rhetoric or Reality?*, Melbourne, 16 April 2003.

Joseph, S., 'Corporations and Human Rights', presentation at the DFAT/NGO Human Rights Consultations, Parliament House, Canberra, 5 March 2003.

Human Rights Litigation

Joseph, S., 'Transnational Human Rights Litigation against Corporations', *Futureeye Seminar*, Melbourne, 19 May 2003.

Joseph, S., 'Transnational Human Rights Litigation against Corporations', University of Tasmania, Law Faculty, Hobart, 6 May 2003.

International Human Rights Law

Kinley, D., Presented at the *Melbourne Asia Policy Papers Workshop 'Enforcing International Human Rights Post September 11th'*, at the invitation of AsiaLink Centre, Australian Centre for International Business and Melbourne Institute of Asian Languages and Societies, Melbourne, 6 March 2003.

Joseph, S., Interview regarding the Australian Governor-General, SBS Radio, *World View*, 9 May 2003

Prisons

Naylor, B., 'Just Prisons: researching prison disciplinary processes and the scope for justice in prisons', Melbourne University, Department of Criminology, 3 July 2003.

Freedom of Speech

Litaba, O., "Criticising Judges – Should Contempt of Court by 'Scandalising' be part of the Modern Law of Australia?", Presented at Washington College of Law, Washington DC, 21 April 2003.

(Selected) Research

ARC Large Grant

Multinational Corporations and Human Rights

Human rights abuses are perpetrated by multinational corporations, yet they are subject to few laws protecting human rights. Given the global power of these bodies, it is imperative and inevitable that greater legal accountability mechanisms will be developed. Working with a consortium of major industry partners, this project will identify current legal obligations on corporations to protect human rights, their means of enforcement and investigate their likely future extension in Australia and internationally. Best practice models for corporate compliance with these laws will be constructed and all results will be widely disseminated and accessible in a variety of formats.

Researchers: D. Kinley, A. McBeth, S. Joseph

Research Unit on Cultures & Technologies in Asia Grant

Linking Human Rights and Human Development in Asia: Facilitating sustainable human development through a rights-based approach to the regulation of tourism

This research tests the broad argument that a 'human rights way to human development' approach is necessary for tourism to be a less ambiguous force for change. How can the nature of the economic and cultural transactions between tourism consumers (usually tourists from the developed world) and suppliers

(operators based in both the developed and the developing world) be altered to better support human development? How can the profit imperative be re-worked so consumer demands and supplier responses no longer encourage practices that abuse human rights through cultural commodification and political disempowerment? This project will explore the possibility of reconfiguring incentives in the tourist industry via regulatory frameworks so as to better reflect international human rights principles. It will evaluate the merits of industry self-regulation regimes, international regulatory bodies and policy-making domestic governments in observing human development related rights. Finally, the participation of affected communities in tourism-related decision-making processes will be assessed as a means of achieving these rights (and also as a human rights end in itself).

Researchers: D. Kinley & M. McAdam

[Proposed Research]

Human Rights, Privatisation & Private Sector Development in Developing Countries: Law, Policy and International Development Bank Practice

The proposed research seeks to define a set of broad policies, and more specific institutional and programming recommendations for development banks, that are supportive of privatisation and private sector-oriented approaches toward development yet also ultimately promote the core economic and social rights enshrined in the international human rights law regime. The research aims to do more than just offer legal prescriptions, it is an interdisciplinary attempt to integrate the law and ideals of human rights with a clear-eyed appreciation of the economic, political, cultural and administrative realities of Third World development.

Researchers: T. Davis. G. Hodge, D. Kinley

Castan Centre Members

Key Centre Staff

Prof David Kinley – Director

Current research focus is on International Financial Institutions, Multinational Corporations, development and human rights.

Dr Sarah Joseph – Associate Director

Overseeing the Multinational Corporations & Human Rights project and teaching and researching in Constitutional and Human Rights Law.

Julie Debeljak – Associate Director

Completing her PhD on ‘Protection of Rights and the Impact on Judicial Independence and the Separation of Powers’. Teaching International Humanitarian Law.

Dr Tom Davis – Project Manager

Researching Human Rights, Privatisation & Private Sector Development in Developing Countries.

Kay Magnani – Administrator

Responsible for key management duties.

Monash Law School Centre Members

Melissa Castan

Teaching in Constitutional Law and Indigenous Rights. Developing the Transitional Justice Unit.

Jonathon Clough

Teaching and researching in Criminal Law, especially as it relates to electronic crime.

Associate Prof Beth Gaze

Teaching Law & Discrimination in Semester 2, 2003. Research interests in Anti-Discrimination Law and Feminist Legal Thought.

Associate Prof Susan Kneebone

Recently returned from being Senior Visiting Fellow, Refugee Studies Centre, Oxford University. Pursuing further research on refugee law & human rights.

Oyiela Litaba

Coordinating the Monash Postgraduate Diploma in Legal Practice. Research interests in practical legal training and civil procedure.

Associate Prof Bernadette McSherry

Researching legal issues relating to bioethics, psychiatry & psychology, with a focus on Criminal Law.

Kwame Mfodwo

Currently involved in establishing a Transitional Justice Unit attached to the Castan Centre.

Dr Bronwyn Naylor

Teaching and researching in Criminal and

Administrative Law, with a focus on gender issues and the impact of privatisation.

Pam O’Connor

Teaching and researching in Administrative Law and Native Title and Land Rights.

Prof Marilyn Pittard

Teaching Law of Employee Relations. Researching Australian Industrial Relations Law.

Jenny Schultz

Research interests in Property, International Trade Law and International Organisations.

Prof Francis Trindade

Emeritus Professor of the Monash Law School.

Dr Eric Wilson

Research interests in Public International Law and International Environmental Law.

PhD Students

Becky Batagol

Thesis is on ‘Community Based Mediation: Bargaining in the Shadow of the Law?’

Nicole Bieske

Thesis is on ‘Cultural Relativism and the Development of International Human Rights.’

Adam McBeth

Researching ‘Human Rights in the International Economic Sphere.’

Helen Potts

Researching ‘Implementing the Right to Health: An Australian Perspective.’

Marnie Wilson.

Conducting a “... critical analysis of the history of corporations law and its relevance to contemporary understandings of the corporation in Australia.”

Professional Associate

Chris Sidoti

Human Rights Consultant, Former Federal Human Rights Commissioner.

Research Assistants

Marika McAdam

Conducting research for the Linking Human Rights & Human Development RUCTA Project.

Victoria Elliot & Martin Hecht

Assisting Castan Centre members with ongoing research activities

Arnold Bloch Leibler Indigenous Law Student Scholarship

The Castan Centre for Human Rights Law, Monash University, is pleased to announce that Jeanette Vaha'akolo has been awarded the first Arnold Bloch Leibler Indigenous Law Student Scholarship.

This scholarship has come about as the result of a partnership between the Castan Centre, Arnold Bloch Leibler Lawyers and the Centre for Australian Indigenous Studies, Monash University. It assists an Australian Indigenous person to enter or continue studies with the Law Faculty of Monash University by meeting the costs of their Higher Education Contribution Scheme debt up-front each year, this can be for a maximum period of 5 years.

The scholarship represents an early step in the Castan Centre's longer-term goal of improving the availability of legal education not just to Indigenous Australians but also to other groups in the community who have been under-represented in the practice of law. It is one of a number of initiatives, including mentoring and close liaising with the Centre for Australian Indigenous Studies, in place to assist indigenous scholars complete their degree.

Jeanette is the first recipient of the Arnold Bloch Leibler Indigenous Law Student Scholarship. A member of the Yorta Yorta community, she has just entered the third year of her law degree and is also working with the Victorian Department of Justice during breaks in the University year. The Castan Centre believes that the legal discipline and Victoria as a whole will benefit from Jeanette's eventual qualification and practice as a lawyer. The Castan Centre is proud to be involved in assisting Jeanette to finish her law degree



Jeanette Vaha'akolo

Castan Centre Advisory Board

- ❖ **Professor Philip Alston**, New York University School of Law
- ❖ **Professor Virginia Dandan**, Department of Studio Arts, College of Fine Arts, University of the Philippines; Chair United Nations Committee on Economic, Social and Cultural Rights
- ❖ **The Hon Elizabeth Evatt AC**, Member; World Bank Administrative Tribunal; Honorary Visiting Professor, University of NSW Law School.
- ❖ **Professor Claudio Grossman**, Dean of Law School, Washington College of Law, The American University
- ❖ **Ms Felicity Hampel QC**, Barrister-at-Law; Part-time Commissioner, Victorian Law Reform Commission
- ❖ **Professor Christof Heyns**, Professor of Human Rights Law, University of Pretoria, South Africa and Director of the Centre for Human Rights
- ❖ **The Hon Justice Michael Kirby**, AC CMG, High Court of Australia
- ❖ **Senator Aden Ridgeway**, Australian Democrats
- ❖ **Professor Ivan Shearer**, Faculty of Law, University of Sydney; Member, United Nations Human Rights Committee
- ❖ **His Excellency Judge C.G. Weeramantry**, Judge ad hoc of the International Court of Justice

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