



## Director's roundup: Strong emphasis on projects and research

The period of calm is over. The leaves are turning golden brown. A new academic year has begun. The University has returned to its normal rhythm of lectures and seminars. Students on bicycles are once more clogging up the streets, displacing the bus-loads of foreign visitors that tend to grace the town over the summer.

While Cambridge is settling into its routine, things are not quite the same at the Lauterpacht Centre. As our new strategy document had foreseen, we are developing our research profile through major, international collaborative projects based at the Centre. Over the past few months, we have launched a number of major scholarly ventures.

Along with a team of some twenty collaborators from around the world, we have started work on a major legal commentary on the UN Declaration of Indigenous Rights. We have also refined a major database on *The Defence of Democracy in International Law*. This will be followed-up by an analytical study in this area.

More advanced still is our review of the law on the use of force. This project involves some 70 authors from leading universities, and will result in the publication of the Oxford University Press *Handbook on the Prohibition of the Use of Force in International Law* next year.

Moreover, over the summer, we formally launched our project on 'Legal Tools of Peacemaking'. With seed funding from the Newton Trust and the Humanity United Foundation, we have been able to engage two excellent research associates to collect, digest and analyse some 1,800 peace agreements. This will result in a major database offering best practices examples to peace-negotiators in the field. We will also generate a Handbook on Peacemaking. This will be followed by more conceptual work in the area of what is now sometimes called the *jus pacificorum*, the law on peace-making and post conflict peace-building. We will critically question whether this is indeed a distinct area of international law, and what broader lessons can be drawn

from the practice we have been analysing. The project is being conducted in close co-operation with the United Nations, and in contact with regional organizations.

Finally, we are developing guidelines and best practices relating to transitional governance after revolutionary change. This project is inspired by my own work at the United Nations over the past two years of the Arab Spring, supporting United Nations mediations and post-conflict planning for Egypt, Libya, Yemen and the on-going negotiations on Syria.

In addition, we have been pleased to continue to provide an intellectual and physical home for the British Red Cross/ICRC sponsored project on Customary International Humanitarian Law. The project has generated a major electronic

(...continued on page 2)

## Highs and byes: Jessie Hohmann



Jessie and husband Jonathon at coffee-time

As my British Academy Fellowship comes to an end, I will be bidding farewell to the Lauterpacht Centre in September. This note is my opportunity to say thank you and farewell to the many people who have made my years here such productive and pleasant ones. My particular thanks to James Crawford and Marc Weller, as directors during my time here, and to Anita Rutherford, Karen Fachechi, and Tara Grant for their tireless support.

As most of those reading this FTD know, one never really leaves the Centre. The official end of a fellowship is just an opportunity for the Centre to extract a cake or other baked delicacy from the departee. This is certainly true in my case. Although I will be taking up a lectureship at Queen Mary, University of London in September, Professor Weller and I will continue to work together on a Commentary of the UNDRIP, to be published under the auspices of the LCIL as part of the Oxford Commentaries on International Law. In addition, I will remain part of the lecturing team on the Law Faculty's International Human Rights Law LLM paper.

I feel very fortunate that I will have the opportunity to maintain my association with the centre in this way. It ensures not only that I will have the opportunity to work with the excellent fellowship, but that I will also continue to benefit from the occasional cake extracted from others at the wonderfully collegial coffee time. Until I meet you here again, I extend a very heartfelt thanks to all those who have made my time here so professionally and personally valuable.

Dr Jessie Hohmann  
British Academy Research Fellow, 2009–2012

(...continued from page 1)

resource for scholars and practitioners and is continuing to expand by leaps and bounds.

As our activities and other projects are being developed, so does our need for additional facilities. We have completed the designs for the planned building to connect Nos. 5 and 7 Cranmer Road. We have already raised some funding for this project, but will need to attract significantly more. We have established

an Advisory Council for the Centre to offer us strategic guidance towards this end, and to broaden our portfolio of scholarly ventures.

Overall, therefore, as autumn is settling in, the Centre is approaching the academic year with a spring in its step, and with great hopes and expectations.

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## Researchers appointed for Peace-Making project

The Lauterpacht Centre is delighted to announce the appointment of Dr Tiina Pajuste and Ms Alexia Solomou as the researchers on the Centre's new *Legal Tools for Peace-Making* project (see p. 13).



Alexia Solomou LLM, (Columbia), LLB (UCL) was previously a Law Clerk at the ICJ on a Columbia Law School Fellowship. She has professional experience with the Liaison Office of the ICC at the UN, the Multilateral Affairs and International Organizations Department of the Ministry of Foreign Affairs of Cyprus, and the Commission of Economic, Social and Cultural Rights of the French Secretariat of Amnesty International. She holds the Diploma in Public International Law from The Hague Academy of International Law and has published her work in, *inter alia*, the *American Journal of International Law* and the *Stanford Journal of International Law*. She has been Editorial Assistant for the *International Journal for Transitional Justice* and the *Interdisciplinary Journal of Human Rights Law*.

Tiina Pajuste PhD (Cantab), LLM (Helsinki), BA (Tartu, Estonia) recently graduated from the PhD in Law programme at Cambridge, writing her thesis on accountability mechanisms for international organisations under the supervision of the former Centre Director, Prof James Crawford, for whom she also worked for as a research associate for 10 months. Before starting her PhD, she conducted a research project on mainstreaming human rights in the context of the European Security and Defence Policy at the Erik Castrén Institute of International Law and Human Rights, giving her invaluable experience in carrying out a research project like *Legal Tools for Peace-making*.

Working under the Guidance of Centre Director, Professor Marc Weller, the research team will be based at the Centre, until at least May 2014, and will be valued members of the Centre's growing research community.

## Professor James Crawford nominated for the ICJ

The Lauterpacht Centre is delighted to announce that Professor James Crawford, SC, FBA, Centre Director from 1997-2003 and 2006-2010, has been nominated by the Australian Government for election as a Judge of the International Court of Justice.

The independent Australian National Group – a body of eminent jurists who serve as members of the Permanent Court of Arbitration in The Hague – informed the Australian Government of its intention to nominate Professor Crawford, which the Government supported.



Members of the Court are elected for terms of nine years, with elections for five members of the Court are held every three years. James's nomination will be for elections due to take place in the United Nations in late 2014.



## Winiarski Scholarships for 2013 awarded

The Selection Committee for the Bohdan Winiarski Scholarships is pleased to announce that the selection process for the 2013 scholarships has been completed.

The successful candidates are: Ms Katarzyna Gałka from the University of Cardinal Stefan Wyszyński in Warsaw (first scholarship) and Ms Marta Żejmis and Mr Michal Dro niewski,

both of the Polish Ministry of Foreign Affairs (second scholarship, jointly).

The Scholarships, named after the Polish Judge and international lawyer, Bohdan Winiarski, are funded by the Embassy of the Republic of Poland in London and are intended to cover a stay of 8-12 weeks at the Lauterpacht Centre for International Law, University of Cambridge.

## Michael Brandon (1923–2012)

We regret to report the passing, on 26 May 2012, of one of the Centre's principal and most generous benefactors, Mr Michael Brandon, MA, LLB, LLM (Cantab.), MA (Yale), Member of the English Bar (1952) and Fellow of the Chartered Institute of Arbitrators (1992). Recently he enabled the Centre to establish the Brandon Post-Graduate Research Fellowships so that the Centre can extend the range of its own research activities.

Michael was born in 1923. After wartime service in the Royal Navy, he studied Modern Languages and Law at Trinity College, Cambridge. He was then called to the Bar, after which he worked for a while in the Legal Department of the United Nations (including UNRWA). He then settled in Geneva to develop a successful independent practice there as an adviser in international trust and estate matters. For a while he was also Executive Secretary of the International Association for the Promotion and Protection of Private Foreign Investments, which provided some private input to the formulation of the World Bank Convention on the Settlement of International Investment Disputes. He also gave advice on international legal questions and occasionally sat as an arbitrator. He was a popular and much respected member of the legal community in Geneva.

Michael is survived by his devoted and loving wife, Angelina. He will always be remembered with gratitude in the Centre.

*Sir Eli Lauterpacht*



Mr Michael Brandon with Prof James Crawford  
in the Centre Gardens in September 2009

## Xi'an Jiaotong University President visits Centre to launch Silk Road Scholarship Programme



In February 2012, the Centre was pleased to welcome Professor Nanning Zheng (President) of Xi'an Jiaotong University (XJTU) in China and his delegation including Professor Guangxu Cheng (Vice President) and Professor Wenhua Shan (Dean of the Law School and a long time associate of the Centre) to visit the Lauterpacht Centre and inaugurate the Silk Road Scholarship programme.

The scheme is the result of an agreement signed in 2011 between the XJTU and the Centre, under which one or two Silk Road Scholars from Xi'an Jiaotong University are selected each year to come to the Centre to conduct research for a year. The programme initially runs for five years and marks a historic development in the cooperation between the Lauterpacht Centre and overseas institutions.

The first Silk Road Scholar, Mr Sheng Zhang, arrived at the Centre in January to conduct research on *the interpretation of international investment treaties*; the second, Mr Shuai Leng, arrived in October and will be researching *options for institutionalized dispute settlement in East-Asian economic integration*. Both are valued contributors to Centre life.

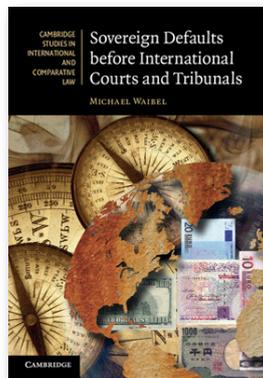
## Dr Michael Waibel awarded 2012 ESIL Book Prize

Dr Michael Waibel has been awarded the European Society of International Law (ESIL) Book Prize 2012 for his book *Sovereign Defaults before International Courts and Tribunals* (CUP 2011).

*subject. The book combines historical analysis with careful research of case law and other practice. The result is an impressive and original treatment*

*of a subject that is of the utmost relevance for the present state of the international economic system."*

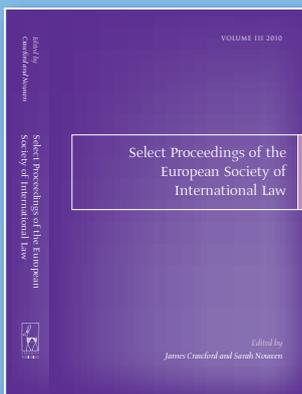
The ESIL Book Prize is presented on a biennial basis for an outstanding published work in the field of international law. The 2012 Prize was awarded during the 5th ESIL Biennial Conference in Valencia in September 2012. The Judges described Dr Waibel's book in the following terms: "A remarkable book – to our knowledge, it is the first comprehensive and systematic treatment of this



The prize was awarded during the Gala Dinner at the 5th ESIL Biennial Conference in Valencia.

For more information or to purchase a copy of Michael's book, please visit the Cambridge University Press website at:

[www.cambridge.org/9780521196994](http://www.cambridge.org/9780521196994)



### ESIL 2010 Proceedings now available

Edited by Professor James Crawford and Dr Sarah Nouwen, the conference proceedings, from the ESIL 2010 Biennial Conference, hosted here in Cambridge on 2-4 September 2010 are now available from Hart.

Follow the link below to purchase your copy!

<http://www.hartpub.co.uk/books/details.asp?isbn=9781849462020>

## Markus Gehring appointed to a University lectureship



Congratulations to Dr Markus Gehring, a long-time associate of the Centre, who was recently appointed to a University Lecturership in Law here at Cambridge. His lectureship comes shortly after his appointment in May as a Fellow of the Lauterpacht Centre, and continues the run of appointments of LCIL Fellows to University lectureships, following those of Dr Sarah Nouwen and Dr Michael Waibel earlier in the year.

Markus has long been associated with the Centre, holding frequent workshops and seminars on a range of topics, the most

recent having been held on 23 August entitled *Climate Change, Forestry and REDD+: What Research for Which Policies?*.

Markus is the Deputy Director of the Centre for European Legal Studies (CELS) and a tutor in Sustainable Development Law at the Faculty of Law and from October will be an elected Fellow in Law at Hughes Hall. Markus's research interests lie in the areas of international and EU sustainable development law, EU external relations law and EU and international trade, investment and finance law.

We wish Markus many congratulations on his new appointments. 

Annual Report for  
2011–12 now available



[www.lcil.cam.ac.uk/  
about\\_the\\_centre/  
annual\\_reports.php](http://www.lcil.cam.ac.uk/about_the_centre/annual_reports.php)

## ASIL–ESIL–Rechtskulturen workshop: Transatlantic debates in international legal theory

On 20–21 September 2012, the Lauterpacht Centre played host to a workshop on *Transatlantic Debates in International Legal Theory*, a collaboration of three leading institutions in the field of international law: the American Society of International Law (ASIL), the European Society of International Law (ESIL), and Rechtskulturen (a project of the Berlin 'Forschungsverbund Recht im Kontext').

The workshop brought together a small group of emerging and established scholars from around the world with the aim of facilitating frank and fearless discussion on a range of fundamental theoretical questions. In particular, the ASIL–ESIL–Rechtskulturen workshop encouraged participants to identify and examine the distinctive elements of North American and European approaches to international legal theory, and to engage critically with the insights generated by scholars pursuing differing methods, agendas and values in their legal research.

The workshop addressed a number of important themes, including unity and

diversity in international legal theory, competing accounts of institutional legitimacy, and comparative approaches to treaty interpretation. Each session benefitted from the inclusion of an experienced academic as a designated discussant.

The first session was devoted to an examination of the ways in which different currents within the discipline have developed in competition with, or sometimes isolation from, each other. The aim was to identify areas of misunderstanding which divide these alternative paths and to highlight opportunities for their interaction in the future. Subsequent panels built upon the programme of diversity highlighted in the opening session by looking at a number of specific areas where disparate theoretical approaches were being developed and applied.

The final session looked beyond the boundaries of the discipline of international law, with a view to gaining insights from the varied ways in which national legal

systems, from both the common and civil law traditions, have responded to theoretical difficulties, as well as taking stock of emerging scholarship in other academic disciplines.

The ASIL–ESIL–Rechtskulturen workshop emphasised the need to avoid the dangers of complacency or parochialism in the study of international law, and served as a showcase for innovative research on international legal theory. The workshop aimed to enable participants to generate new arguments and fresh questions about the complex theoretical issues confronting the discipline today.

Jörg Kammerhofer, Evan J. Criddle and  
Alexandra Kemmerer

Recht  im Kontext  
[www.rechtimkontext.de](http://www.rechtimkontext.de)

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[www.asil.org](http://www.asil.org)

## Panel discussion marks launch of the eighth edition of Brownlie's Principles



the invitees were Sir Michael Wood QC, Professor Christine Chinkin and Professor Guy Goodwin-Gill. Later in the evening, dinner was held in the Upper Hall of Jesus College in order to celebrate the new edition of Brownlie's classic treatise on public international law.

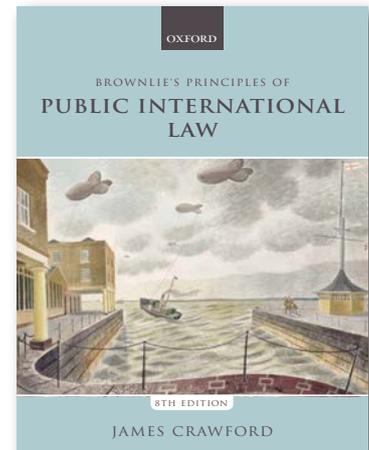
by Alexia Solomou

On 5 October 2012, a panel discussion was held at the Faculty of Law on the occasion of the launch of the 8th edition of Sir Ian Brownlie QC's *Principles of Public International Law* by Professor James Crawford. The subject of the panel discussion was 'The Scholar and International Legal Practice'. Professors Colin Warbrick, Vaughan Lowe, Christine Gray and James Crawford presented their thoughts on this topic, whilst Professor Marc Weller coordinated their discussion.

recollected an anecdote related to Sir Ian. For example, Professor Crawford remembered his reaction as being 'all of it[?]', when he expressed his desire to write his DPhil thesis on statehood at the start of his doctoral studies at Oxford. Professor Gray recalled that Sir Ian, in his later years, no longer considered himself as an 'academic', but as a 'practitioner', and consequently did not want to be addressed as Professor!

Apart from the high praise the new edition received from the panellists, each of them

The well-attended panel discussion was followed by a reception at the Lauterpacht Centre for International Law. Among



**Available to order from:**  
<http://ukcatalogue.oup.com/product/9780199654178.do>

## LCIL lectures: 100,000 hits and counting



The Lauterpacht Centre's collection of lecture recordings continues to go from strength to strength, racking up more than 100,000 hits in only its first year. The collection, available from iTunesU and through the LCIL website via University sms, features a mixture of video and audio recordings of the Centre's Friday Lunchtime lectures, the Hersch Lectures and other *ad hoc* events, such as book launches.

The collection will be further enhanced by another packed programme of LCIL lectures this academical year. Audio and video recordings are already available for the Brownlie Launch panel discussion,

entitled *The Scholar and International Legal Practice*, and for Professor Sir Elihu Lauterpacht's lecture *International Law: Recollections and Reflections*. Professor Mark Drumbl's lecture *Reimagining Child Soldiers in International Law and Policy* is also now available in audio.

Forthcoming highlights for this term's programme include Professor Marcelo Kohen on *the Falklands/Malvinas and the Peaceful Settlement of Disputes* and Centre Director Marc Weller on *Mediating the Arab Spring*. The programme for the term will conclude with the traditional *International Law: Year in Review* panel discussion, featuring a cast of prominent international lawyers and practitioners.



Sir Eli recounts some notable moments in his career; watch it now on the lcil website

The Centre will continue to add as many of these topical and thought-provoking lectures as possible throughout the year. Make sure you don't miss a session and subscribe (free) to the series on iTunesU!

[www.lcil.cam.ac.uk/lectures/term\\_lectures.php](http://www.lcil.cam.ac.uk/lectures/term_lectures.php)  
<http://sms.cam.ac.uk/collection/1174883>  
[www.apple.com/apps/itunes-u/](http://www.apple.com/apps/itunes-u/)

## Professor Philippe Sands to deliver 2012–13 Hersch Lauterpacht Lectures

The 2012-13 Hersch Lauterpacht Memorial Lectures will be delivered on Tuesday 26th to Thursday 28th February 2013 by Professor Philippe Sands QC, Professor of Law at University College London and Barrister at Matrix Chambers, London.

Professor Sands is a long-time associate of the Lauterpacht Centre, having done his undergraduate and LLM degrees at Cambridge, as well as being a Research Fellow at St Catharine's College. His international law practice is extensive, and he has been involved in numerous high profile cases, including *A & Others*, *Prosecutor*

*v Charles Taylor* and the *MOX Plant Case*. He is one of the more publicly recognisable lawyers in the country, appearing regularly at the Hay Festival, contributing regular columns to national newspapers and having published several critically acclaimed books, including *Lawless World* (Penguin 2005) and *Torture Team* (Penguin, 2008).

Professor Sands spent the 2011–12 academic year on sabbatical, researching, among other things, a new book on the making of modern international law.

Professor Sands will deliver the Hersch Lectures at the end of February over three



days, with the Friday Lunchtime session reserved for questions and discussion. Those wishing for an early taster may also see him participating at the Cambridge Wordfest on 25 November 2012. We very much look forward to welcoming him back to the Centre in February. 

## Hearing on the Legality of the Special Tribunal for Lebanon



On 13th June 2012, the Special Tribunal for Lebanon (STL) held a historic hearing on the legality of its own creation. Organized by visiting fellows, the Lauterpacht Centre hosted a transmission of the webcast from the STL trial chambers in Leidschendam directly to the Finley Library in the Cambridge.

Established in 2007 through UN Security Council Resolution 1757, the Tribunal has provoked disagreements among Lebanese political parties and international lawyers about its foundation ever since. In early May 2012, the defence counsel of the four indicted suspects, Salim Ayash, Mustafa

Badreddine, Hussein Oneissi and Assad Sabra, filed motions challenging the jurisdiction of the STL.

Following the words of Resolution 1757, the STL has been founded as a hybrid Tribunal “mindful of the demand of the Lebanese people that all those responsible for the terrorist bombing that killed former Lebanese Prime Minister Rafiq Hariri and others be identified and brought to justice.” However, in reality the STL Statute has been enforced under Chapter VII of the UN Charter, posing several legal concerns under international law.

For a summary of the arguments during the hearing and a legal assessment of prior jurisprudence in international criminal law see the comment by LCIL visiting fellow Martin Wählisch in the *Cambridge Journal of International and Comparative Law* Blog, “Contesting and Defending the Special Tribunal for Lebanon”, June 22, 2012, available at [www.cjicl.org.uk/index.php?option=com\\_easyblog&view=entry&id=24&Itemid=102](http://www.cjicl.org.uk/index.php?option=com_easyblog&view=entry&id=24&Itemid=102).

Martin Wählisch  
Visiting Scholar 1 May – 30 June 2012

# International Law is Political: So What?! - Seminar Report



On 26 and 27 January 2012, almost 40 scholars from different disciplines gathered at the Lauterpacht Centre and Pembroke College to discuss the classic yet continuously controversial issue of the politics of international law.

Martti Koskeniemi has made the argument that international law is political a classic. Indeed, his argument has become so well known that a common response is: ‘Tell me something I don’t know. Can we get back to business now?’ The other common response is that made by the persistent objectors: ‘Law is a separate discourse, dictated by legal considerations and aims to curtail and civilize politics—not to enact it. Suggesting otherwise undermines the force and integrity of law.’ Sometimes the two responses come in tandem: ‘of course law is also political, but that does not affect law as a separate enterprise, based on its own sources and methods of argumentation.’ In the latter view, pointing out that law is political is tantamount to stating the uninteresting; for a lawyer, it is the legal dimension that counts, not the political—nor for that matter the economic, esthetic, theological.

But the organizers of this round table, Wouter Werner (Free University, Amsterdam, and grant holder of the COST Action ‘International Law Between Constitutionalisation and Fragmentation’) and James Crawford and Sarah Nouwen at the Lauterpacht Centre, believed that the politics of international law remain interesting and relevant for international lawyers. They posed the groups of experts, coming from universities in, among others, Australia, Belgium, Canada, France, Germany, Italy, the Netherlands, the UK and the US, three fundamental questions:

1. What does ‘political’ mean in the context of international law?

Answers ranged from the engineering, application and analysis of law to struggles

for power; the question of ownership of economic resources; distinctions between friends and enemies; processes of inclusion and exclusion; historical agency; the organisation of a putative international polity; relations between the global and the local; the thinking of the public mind; the pursuit of ideals and ‘expert knowledge’ as a cover-up for professional or personal preferences. Others suggested that international law was as much a religion as it was political. It was observed that the legal culture in which the politics of international law is assessed influences the analysis. James Crawford argued that no great insights into the meaning of the ‘political’ can be derived from judgments or opinions of the Permanent Court of International Justice or the International Court of Justice as they merely acknowledged, as a throat-clearing exercise, the political relevance of the questions before them, and then quickly dived into the legal issues. Lacking a separation of powers, the international level knows no political-question doctrine.

2. What could a new research agenda on the politics of international law look like?

Several elements were proposed, including gathering empirical data to prove the politics (and economics) of international law; using social science methods to explore the effects of international law; researching the historicities of international legal concepts; studying the relationship between ‘doing’ international law and ‘being’ an international lawyer, and contrasting law as an authoritarian and an anti-authoritarian force. Some argued that instead of ‘so what?’, international lawyers should ask ‘so why?’ or ‘so how?’. International lawyers should stop claiming exclusive expertise of international law. Martti Koskeniemi, the king of the politics of international law, declared the call for politicising international law passé: the political has no independent existence.

3. How should such a new research agenda be operationalised?

Susan Marks answered in five slogans: move beyond the critique of indeterminacy; seek not just to describe or redescribe but to explain; put aside globalisation and other reification categories; give up appeals to personal responsibility and renounce methodological pluralism. A fierce debate followed, with some calling for more international law and Professor Allott emphasising the social responsibility of a highly educated elite that should be confident in international law, while others argued that international lawyers should be the first to subvert their own discipline. Some international-relations experts challenged international lawyers to leave their comfort zone; other IR scholars warned lawyers to stay lawyers and to leave something for the political scientists.

The discussions were accompanied by well attended public events. With the audience spreading to the floor and sitting in the window-sills, the Lauterpacht Centre was creaking at the edges to accommodate all those keen to hear the Hart-sponsored lunch lecture by Professor Martti Koskeniemi on the theme of the conference and one of his latest books: the politics of international law (listen more comfortably through [www.lcil.cam.ac.uk/news/article.php?section=26&article=1728](http://www.lcil.cam.ac.uk/news/article.php?section=26&article=1728)).

An even bigger audience could be welcomed in the Law Faculty that same afternoon for the launch of the Cambridge Companion to International Law, with lively presentations by the editors, contributors and a reception hosted by CUP.



Not just past work was celebrated. Plans for new books were discussed over lunch, dinner and during a run to Grantchester, in the inspiring footsteps of Wittgenstein, Keynes and Woolf.

The Lauterpacht Centre thanks the co-organisers, Pembroke College and COST, for making this fruitful event possible.

Dr Sarah Nouwen

## From Afghanistan to Zimbabwe without leaving Cambridge: The Customary IHL Project



The Customary International Humanitarian Law (IHL) Project, a joint British Red Cross/International Committee of the Red Cross (ICRC) undertaking, continues its valuable work from the Centre. Indeed, June 2012 marked the project's fifth anniversary with us. The British Red Cross research team based at the Centre currently comprises Dr Michael Carrel, Vanessa Holzer and Natália Ferreira de Castro (who joined in April 2012). During the University's summer vacation this year, the team were pleased to be joined by a research assistant: Anna Mathew, a recent University of Cambridge law graduate.

The aim of the Customary IHL Project is to provide a view into current national and international practice on matters of IHL. The original ICRC study on customary IHL of 2005 is now available free of charge at the ICRC's customary IHL database ([www.icrc.org/customary-ihl](http://www.icrc.org/customary-ihl)). This database offers rapid access to the rules of customary IHL and enables users to examine practice from around the world. A recent update added new practice for 27 states.

The database is a key resource to academics, military advisors and other specialists involved in the practical application of IHL. Since its inception in 2010, the number of users of the customary IHL database has grown markedly. The most visited pages of the database relate to current debates in IHL and to IHL keystones, such as the principle of distinction, the definition of civilians and detention of civilians in armed conflict.

The database strengthens the status of the 2005 ICRC study, in particular its practice section, as a crucial reference tool. The customary rules identified by the study and the practice quoted in support of these rules have been frequently relied on by national and international actors. For example, national courts such as the Colombian Supreme Court and the Israeli High Court of Justice have referred to rules of customary international humanitarian law as identified by the ICRC study. The practice published in the study has been used in support of legal arguments, for

example by the Appeals Chamber of the Special Court for Sierra Leone and the ICTY Appeals Chamber. UN special rapporteurs, various international inquiries and NGOs such as Human Rights Watch and Amnesty International have also relied on the study and the collection of practice.

The research team based at the Centre assists the ICRC in updating this database by analysing and processing practice on matters of IHL. State practice is gathered by the ICRC through its delegations around the world and through national Red Cross and Red Crescent societies. From their office at the Centre, the research team examines practice from countries around the world, covering places as diverse as Afghanistan, Bosnia and Herzegovina, Colombia, the United States and Zimbabwe. They scrutinize a variety of documents, including military manuals, legislation and jurisprudence as well as official government statements and reports on concrete situations of armed conflict.

The research team enjoys being part of the Centre's thriving academic community, whose extraordinary combination of bustling activity and tranquillity provides an ideal working environment. 



The CIHL team (left to right): Natália Ferreira de Castro, Michael Carrel, Vanessa Holzer and Anna Mathew

## Developments in WTO Jurisprudence: The Ascent of the TBT Agreement?

by Joanna Gomula

During the discussion at the Academic Workshop on “New Means to Promote Trade in Climate-Friendly Goods and Services”, which was held at the Lauterpacht Centre on 7 February 2012, a certain qualitative shift was noted with respect to WTO disputes relating to environmental protection. Namely, measures taken for the purpose of protection of human or animal life or health, which in the past have been reviewed in the context of GATT 1994 and its Article XX, have recently been subject to scrutiny under the WTO Agreement on Technical Barriers to Trade (“TBT Agreement”). Since the establishment of the WTO in 1995 this Agreement has been invoked relatively infrequently. The Appellate Body addressed it for the first time in 2001, in its report in *EC—Asbestos*, where it reversed the panel’s conclusions and found that the contested French Decree imposing a ban on asbestos products constituted a “technical regulation”. However, on that occasion the Appellate Body refused to complete the legal analysis, the reason being that the obligations under the TBT Agreement had never previously been the subject of interpretation of GATT/WTO panels. In the following years the TBT Agreement was at the heart of only one dispute (*EC – Sardines*, reviewed by the Appellate Body in 2002) and appeared in two other cases only as a side issue.



It is therefore significant that in the years 2009-10 requests for panels were made in no fewer than three disputes relating to the TBT Agreement, all of them brought against the United States: *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products* (DS381); *United States – Certain Country of Origin (COOL) Requirements* (DS 384, 386); *United States – Measures Affecting the Production and Sale of Clove Cigarettes* (DS406). Two of these cases bear a relationship, or at least a resemblance, to certain environmental disputes that were the subject of panel reviews under GATT 1947, the pre-WTO multilateral trade regime. Obviously, the first of these brings to mind the famous *US—Tuna/Dolphin* cases, which concerned a US ban on the importation of tuna harvested with the use of purse seine nets, a method leading in some areas to death or injury of dolphins that tend to swim above schools of tuna. In two (unadopted) reports, issued in 1991 and 1994, respectively, both GATT panels declared

the US measures to be inconsistent with GATT obligations and not justified by any exception in Article XX of GATT 1947. The reports have contributed to the perception that the GATT/WTO regimes have been, and still are, environmentally unfriendly. Not everyone realizes that the GATT panels’ conclusions were rectified in 1998 and 2001 by the Appellate Body in *US – Shrimp*, where US restrictions almost identical to those complained of in *US—Tuna/Dolphin* (concerning shrimp and marine turtles, instead of tuna and dolphins) were ultimately declared as WTO-consistent.

The current dispute, initiated by Mexico, has focused on US labelling provisions relating to the use of the “dolphin-safe” label on tuna products sold in the US market. Mexican tuna is harvested in the Eastern Tropical Pacific (ETP), where dolphins are known to swim above schools of tuna; a method of “setting on” dolphins with purse seine nets is used to catch the fish. Mexican tuna fishing methods are consistent with the dolphin-protection standards set in the Agreement on the International Dolphin Conservation Programme (AIDCP), which require taking additional action to protect the marine mammals. Both the United States and Mexico are parties to the AIDCP.

Before the panel Mexico argued that the US labelling requirements, being a technical regulation, awarded less favourable treatment to its tuna products and were more trade restrictive than necessary, thus violating Articles 2.1 and 2.2 of the TBT Agreement, respectively. The panel dismissed the first of these claims, on the basis that (in theory) Mexico would be able to comply with the requirements of the labelling provisions by changing its methods of harvesting tuna. This reasoning was rejected on appeal by the Appellate Body, which stressed that in an Article 2.1 assessment regard should be paid, above all, to whether the technical regulation modifies the “conditions of competition in the relevant market to the detriment of imported products”. Moreover, a further analysis was required to determine whether the detrimental effect resulted exclusively from a legitimate regulatory distinction or from discrimination against imported products. The Appellate Body found that the US labelling requirements were not even-handed in the manner in which they addressed the risks to dolphins arising from different fishing techniques in different areas of the ocean, because – and this was uncontested by the parties – the use of other methods than “setting on” dolphins could also be harmful to these animals. As a result, tuna harvested through other techniques, possibly injurious to dolphins, was eligible for the “dolphin-safe” label and thus the United States had failed to demonstrate that the discrimination against Mexican tuna resulted exclusively from a legitimate regulatory distinction.

The panel and the Appellate Body also differed with respect to the evaluation of the measure under Article 2.2 of the TBT Agreement. The panel found that the “dolphin-safe” labelling provisions were “more trade-restrictive than necessary to fulfil the legitimate objectives, taking into account the risks non-fulfilment would create”, on the basis that there existed a less trade-restrictive alternative to further consumer information and dolphin protection objectives. Such alternative, as presented by Mexico and approved by the panel, could take the form of a co-existence on the US market of “dolphin-safe” and AIDCP labels. The Appellate Body disagreed. It emphasized that such solution would in fact, through the inclusion of tuna from the ETP,

allow more tuna harvested in conditions adverse to dolphins to be labelled as “dolphin-safe”; this would contribute to the said objectives to a lesser degree than the existing measure. Therefore, no violation of Article 2.2 had been demonstrated.

Two further issues in *US – Tuna Products* merit a brief comment. The first concerns the qualification of the measure as a technical regulation, which required a finding that the labelling provisions were “mandatory” (if not mandatory, they would qualify as a voluntary standard only). Although, as argued by the United States, there was no obligation to use the “dolphin-safe” label, that is, it was just an “option” for importers and producers, both the panel and the Appellate Body confirmed the mandatory character of the labelling scheme. It was decisive that the provisions were found in legislative or regulatory acts of US federal authorities and were supported by specific enforcement mechanisms, to prevent the use of the label on non-eligible products; moreover, the use of any other labelling was disallowed.

Another interesting issue was whether the AIDCP constituted an “international standardizing body” for the purposes of the TBT Agreement. If so, the standards set by this institution would acquire the status of “relevant international standards”, obliging the United States to use them as a basis for its labelling provisions. The panel had found that the AIDCP was “open to the relevant bodies of at least all WTO Members” (as required by Annex 1.4 of the TBT Agreement). The Appellate Body reversed this conclusion. In its opinion, such “openness” could not be assumed when membership had to be preceded by a decision to issue an invitation, which in turn required consensus. In its long analysis of the issue, the Appellate Body had an opportunity to pronounce on the character of a TBT Committee Decision, which it regarded as a “subsequent agreement” within the meaning of Article 31(3)(a) of the Vienna Convention on the Law of Treaties. However, it did not address the controversial question of whether an international standard, within the meaning of the TBT Agreement, had to be based on consensus.

When reviewing the facts and arguments of the second dispute, *US—Clove Cigarettes*, one cannot help but recall another GATT 1947 case, *Thailand – Cigarettes*. This concerned restrictions imposed by Thailand on the importation of US cigarettes, which the Thai government regarded as more harmful and more addictive than their domestically produced counterparts. Then, the United States was fighting the suggestion that one category of cigarettes could be less healthy than another. In *US—Clove Cigarettes* the role was reversed: it was for the United States to convince the panel that flavoured cigarettes, including clove cigarettes from Indonesia, posed a greater danger of addiction for young smokers than domestically produced menthol cigarettes. Much of the legal analysis focused on the notion of “like products” for the purposes of the TBT Agreement. The panel favoured a purpose-based approach that took into account the legitimate objectives and purposes of a technical regulation, that is, an approach different from that applied in the interpretation of the national treatment obligation under Article III of GATT 1994.



The Appellate Body was not convinced by this proposal. It opted for a competition-based approach, developed in previous WTO jurisprudence. Drawing attention to the similar formulation and overlap in scope between Article 2.1 of the TBT Agreement and Article III:4 of GATT 1994, the Appellate Body underlined that Article III was relevant context for Article 2.1. However, it did not exclude that regulatory concerns and considerations could play a role in determining the likeness of products. Having concluded (for different reasons than the panel) that clove and menthol cigarettes were like products, the Appellate Body confirmed that by exempting menthol cigarettes from the ban, the United States had subjected clove cigarettes from Indonesia to less favourable treatment and had violated Article 2.1.

The last of the above-mentioned cases, *US – COOL*, concerned US “country of origin labelling requirements”, imposed for meat products. Out of five categories set by the relevant legislation only meat derived from animals exclusively born, raised and slaughtered in the United States, was eligible for the “US origin” label. In this case, the panel has found violations of Articles 2.1 and 2.2 of the TBT Agreement. On appeal, the Appellate Body recalled that in assessing whether there had been less favourable treatment within the meaning of Article 2.1 it was the effect of the measure on the competitive opportunities in the market that was relevant; however, not every instance of a detrimental impact amounted to prohibited discrimination. The panel had failed to carry out a proper assessment as to whether the regulatory distinction was legitimate and applied in an even-handed manner, involving a scrutiny of the design, architecture, revealing structure, operation, and application of the technical regulation in question. Having performed the analysis itself, the Appellate Body confirmed that there had been less favourable treatment, though for different reasons than the panel. The Appellate Body also reversed some of the panel’s conclusions relating to Article 2.2, finding itself unable to conclude the analysis.

The question as to whether the measure was more trade restrictive than necessary was thus left open.

The three cases, jointly, will undoubtedly have a substantial impact on the clarification of basic concepts and obligations under the TBT Agreement. They have also revealed that the TBT Agreement may be a useful tool for WTO Members to attack discriminatory measures and a convenient alternative to claims under Article III, with respect to which a defence under Article XX of GATT 1994 comes into play. Will the TBT Agreement become a hurdle to implementing environmental objectives? Or will it constitute a genuine shield against discriminatory measures taken under a false umbrella of such objectives? This is certainly something to be looked out for in the near future.

Dr Joanna Gomula  
October 2012

*Joanna is a fellow of the Lauterpacht Centre, a visiting reader at Queen Mary, London, and a visiting lecturer at the Diplomatic Academy in Vienna. She co-edits the ICSID Reports, and writes regularly on WTO dispute settlement developments.*

## Making Legal Evolution Explicit: Reinterpretation of International Law by Courts and Tribunals?

by Christian Djéffal  
June 2012

### *Reinterpretation of International Law by International Adjudication*

When opting for change, lawyers often frame their arguments in terms of continuity and tradition. They would suggest that there is no development at all or that the law is only clarified and not changed. When, for instance, the European Court of Justice made a revolutionary move in 1993 to change the meaning of the term “measures equivalent to quantitative restrictions” in the famous case of *Criminal proceedings against Bernard Keck and Daniel Mithouard*, it simply stated that “the Court considers it necessary to re-examine and clarify its case-law on this matter”. This holds true in the common law tradition, in which the principle of distinction allows the accommodation of modifications to an established principle. But it is also true for deductive reasoning which derive these alternations from the more abstract legal principle, for example, by means of necessary implication. However, somewhat paradoxically, international courts and tribunals are in many cases quite open about changing the law. They have even explicitly developed doctrines to make change visible. While this attitude of courts and tribunals entails many problems, in the legal as well as in the extra-legal sense, this brief comment will provide three instances in which international courts and tribunals have openly developed the law evolutively.

1. The European Court of Human Rights has in many cases openly changed the interpretation referring to the European Convention on Human Rights (ECHR) as “living instrument”. This doctrine was firstly developed in the *Tyrer case*, in which corporal punishment for schoolchildren was held to contravene Art. 3 of the ECHR, as it would amount to cruel and degrading treatment in 1974. This had not been the case at the time the ECHR was drafted as many legal systems had provided for such punishment then.

2. The International Court of Justice (ICJ) has in several instances relied on an evolutive interpretation, the last time has been in the *Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*. The ICJ had to answer the question whether Art. VI of the Treaty of Limits of 1858 would allow the navigation of ships from Costa Rica for the purposes of tourism. Costa Rica had the right to navigation for commercial purposes (*con objectos de comercio*). The ICJ held that in 1858 the clause in the treaty would only apply to the transport of goods whereas it would now also cover the transport of persons for commercial purposes. The court explicitly stated that it was the intention of the parties that this was a generic term that should evolve over time and that it actually did evolve.

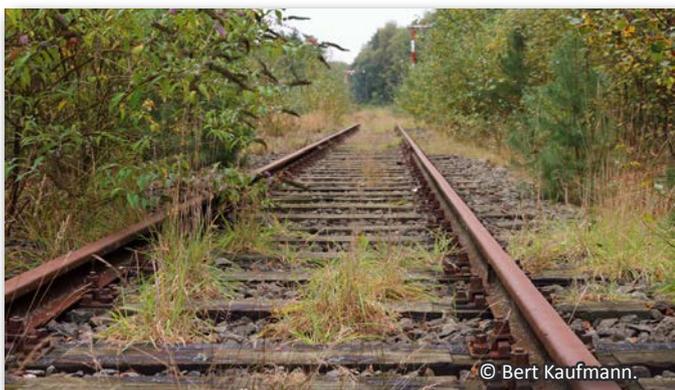
3. The most striking example of an explicit evolutive interpretation has been the *Iron Rhine Case* before an Arbitral Tribunal established under the rules of the Permanent Court of Arbitration in 2005. According to the Treaty of Separation of 1839 and the Iron Rhine Treaty of 1873, Belgium was granted a right to establish a railway link crossing the territory of the Netherlands that would link Belgian with German territory. The traffic, however, completely stopped after 1991 and, while Belgium reserved its contractual right, the Netherlands were implementing environmental measures in different areas. When Belgium aimed to re-establish and modernise the link, it had to adapt the route because of the environmental measures. The parties, therefore, asked the Arbitral Tribunal whether the Netherlands were entitled to implement the environmental measures and who would actually have to pay for it.

The interesting aspect in relation to evolutive interpretation is that the Tribunal discussed the possibility of evolutive interpretations at great length and found that it would be possible to read the treaty in the light of the principle of sustainable development in the abstract.

In the application of that abstract notions to the treaty, the Tribunal based the jurisdiction of the Netherlands on the principle of territorial sovereignty. The Tribunal found that the allocation of costs had to be provided for by balancing the contractual rights with environmental concerns. This exercise of balancing resulted in the finding that Belgium had to bear the costs unless it could be proved that the Netherlands had quantifiable benefits. While this is a possible outcome of the process of balancing, it has to be stressed that the same result could have been achieved by balancing the territorial sovereignty of the Netherlands with the contractual right of Belgium.

So it might be argued that the Arbitral Tribunal was in that arbitration over-explicit in the sense that raised the problem of evolutive interpretation although it was not really determinative for the outcome. The use of evolutive interpretation is even more interesting when one considers that the Arbitral Tribunal has been the first judicial body ever to apply the principle of sustainable development as a legal principle that could influence treaty interpretation and not as a mere concept without normative force. This principle was actually employed in the process of balancing.





Hence, one could say that while the Tribunal purported to develop the treaties through the principle of sustainable development, the Tribunal did in fact develop the principle of sustainable development in the face of a question of treaty interpretation. It discusses the change of interpretation explicitly without need and provides for a change of the normative status of sustainable development implicitly.

### Conclusion

International Courts and Tribunals have interpreted treaties in an evolutive manner. They have done so openly and sometimes even without necessity. An inquiry into the reasons for this attitude would go beyond the confines of this comment. International legal scholarship should in any case continue to review the attitudes of courts and tribunals with care.

Christian Djeflal  
June 2012

*Christian is completing a PhD at Humboldt University Berlin, where he works on evolutive interpretation of treaties by international courts and tribunals. He was a visiting fellow at the Centre from April to June 2012 (visiting scholar profile: [www.lcil.cam.ac.uk/news/article.php?section=35&article=1836](http://www.lcil.cam.ac.uk/news/article.php?section=35&article=1836)).*

*Some of the arguments in this brief comment are explained in greater detail in the following article: "The Iron Rhine Case – A Treaty's Journey from Peace to Sustainable Development", Heidelberg Journal of International Law, 71 (2011), pp. 569-586.*

## Legal Tools for Peace-Making Project Launched

A new research project entitled *Legal Tools for Peace-making* was launched at the Lauterpacht Centre at the beginning of August. The initial research team consists of Dr Tiina Pajuste and Ms Alexia Solomou and will be conducted under the guidance of the Director of the Lauterpacht Centre, Professor Marc Weller. Funded with assistance from Humanity United and the Newton Trust, the project will run from July 2012 to May 2014, or longer if additional funding can be raised.

The project is run in cooperation with the UN Department of Political Affairs, and aims to offer legal options for the settlement of specific issues that arise in international peace negotiations. The project fills a vacuum in legal research as there is currently no in-depth and comprehensive analysis of the various aspects of internal peace settlements.

In each new set of peace negotiations there is a need to research past peace settlements and experiences, along with the applicable legal standards. The project aims to eliminate the necessity to conduct this research anew on each new occasion. On the basis of legal research into settlement practice around the world, the project will offer a legal toolkit in relation to the general and specific problems that typically arise in peace negotiations, such as devising mechanisms to support democratic practices, power-sharing, judicial and security sector reform etc. The legal toolkit will include a discussion of settlement options on each issue, along with analytical commentary identifying which solutions have been applied to what particular circumstances and with what results, and a review of applicable international legal standards.



The project should result in a range of outputs, including an analytical database of materials, case studies addressing the major topical issue areas concerning peace agreements, a handbook on peace settlements and an edited scholarly volume by recognised authors who have utilised the database. The initial stage that has just commenced will focus on compiling the database to put it into practice as soon as possible in order to analyse its functionality at a later stage, and on obtaining additional funding for the project. 



## The Right to Housing: Law, Concepts, Possibilities

by Jessie Hohmann

Ours is a world in which events as disparate and unrelated as war, natural disaster, city regeneration, mortgage repossession, international sporting events, and rural development schemes, render many millions homeless each year. These upheavals displace great waves of people across international borders, and many millions more within their own states. It is a world in which even the most prosperous states have homeless populations in the hundreds of thousands and where more than one billion people are crowded into informal settlements on the margins of economic and political life.

In such a dark world, what role can a human right as nebulous, contested (even derided) as the right to housing, play?

It is this question that motivates my forthcoming book: *The Right to Housing, Law, Concepts, Possibilities*. The question began its life during my work as Tenants' Rights caseworker at the Parkdale Legal Clinic in Toronto, where I spent a semester during my undergraduate law degree. It continued to haunt me in my work as a research assistant in the area of refugee law and rights at the University of Sydney, and finally provoked me into devoting several years of my life to a PhD here in Cambridge. Yet the question remained unanswered. Fortunately, the British Academy and the LCIL stepped in to provide me with the opportunity to devote several more years to the project. I am now emerging from this long tunnel with a monograph in hand.

A human right to housing represents the law's most direct and overt protection of housing and home. Unlike other human rights, through which the home incidentally receives protection and attention, the right to housing raises housing itself to the position of primary importance. As such, it forces us to ask why we might claim a right to housing as a human right. What does this right add to the human rights corpus, and what does treating housing as a human right offer beyond other paradigms of aid and assistance?

Courts and those international and regional bodies charged with interpreting the right and making it enforceable and realizable have

struggled with (or dodged) this question since the right's inclusion in various international, regional and national legal regimes. So far, their responses have ranged from rhetorically profound to practically unsatisfactory, largely failing to traverse the terrain of practical and conceptual clarity between these two points.

Yet the homeless, the marginalized and the dispossessed continue to turn to a human right to housing in response to the harms they experience. As I emerge from the tunnel of this project, I conclude that they are not wrong to do so. The right to housing offers the possibility to radically re-imagine the relationship between the individual and the state, through the discourse and practice of rights, in ways that meaningfully challenge current inequalities and deprivations.

Drawing on insights from disciplines including law, anthropology, political theory, philosophy and geography, this book is both a contribution to the state of knowledge on the right to housing, and an entry into the broader human rights debate. It addresses profound questions on the role of human rights in belonging and citizenship, the formation of identity, the perpetuation of forms of social organisation, and, ultimately, of the relationship between the individual and the state.

The book represents a major contribution to the scholarship on an under-studied and ill-defined right. In terms of content, it provides a much needed exploration of the right to housing. In approach it offers a new framework for argument within which the right to housing, as well as other under-theorised and contested rights, can be reconsidered, reconnecting human rights with the social conditions of their violation, and hence with the reasons for their existence.

Dr Jessie Hohmann

*Jessie has been at the Centre for the past 3 years as a British Academy Post-doctoral Research Fellow. Jessie's Fellowship ends in September when she'll take up a University Lectureship at Queen Mary London, see p. 2.*



## Deliberately created Treaty Conflict and the Politics of International Law

by Surabhi Ranganathan

One of my principal research projects for this three-year stint at the Lauterpacht Centre is a book on deliberately-created treaty conflicts, and what they reveal about the 'function of international law'. This planned monograph builds on an empirical observation: that treaty conflicts do not 'just happen', i.e. they are not always inadvertent by-products of the increase in the numbers of international legal agreements; often, they are deliberately created. In many instances, States have undertaken new treaties contrary to their commitments under existing ones, in order to undermine or stimulate change in the implementation of those existing treaties.

The monograph will examine three examples of such deliberately-created treaty conflict: the establishment of the Reciprocating States Regime in opposition to the deep seabed mining provisions of the UN Convention on the Law of the Sea; USA's conclusion of more than a 100 bilateral immunity agreements to foster non-cooperation with the International Criminal Court; and the agreement for civil nuclear cooperation concluded between the USA and India, arguably in contravention of the former's commitments under the Non-Proliferation Treaty. It will do so in order to make the following points:

First, such conflicts reveal the need for a change of focus in international legal scholarship. Scholars studying this topic tend to focus on distinguishing 'true' conflicts from 'false' ones, and ranking legal principles (harmonious interpretation, *lex specialis*, *lex posterior*, etc.) that may be applied to 'resolve' conflicts. The monograph will instead follow Jan Klabbers' *Treaty Conflict and the European Union* (CUP 2009) in embracing the idea that questions of whether, how, and to what outcome treaty conflicts are resolved are determined by political decision. The monograph will not offer ideal solutions to resolving treaty conflicts; it will

explore the dynamics that follow from deliberately created treaty conflicts.

Second, the centrality of politics is no reason to dismiss international law as only 'epiphenomenal' (as does, for example, the *Limits of International Law* (OUP, 2005)). Instead recognising that international law is political is the first step towards a nuanced appreciation of its important role in international affairs. Based on its study of three cases of deliberately-created treaty conflicts, the monograph will argue that international law is not only a crucial instrument of international politics, but also that legal forms, practices and discourse serve to shape politics in significant ways.

Third, that contrary to many critical accounts of 'mainstream' legal scholarship as excessively doctrinal or idealistic, many international lawyers have not only embraced a sophisticated understanding of the politics of international law, but have founded entire visions of legal order upon such understanding. The monograph will explore several strands of the so-called mainstream that displays this complexity, including the work of members of International Law Commission on treaty conflict in the 1950s and 60s as well as American, British and German scholarship on the implementation of multilateral treaties. These works reveal that a political idea of law has often coexisted with faith in its normative authority; the monograph will explore whether and why this is justified.



Dr Surabhi Ranganathan

*Surabhi will be based at the Centre for three years as the LCIL/Kings College Junior Research Fellow in Public International Law.*

# ILR Milestones

## ILR: One Hundred and Fifty Volumes and Counting

When this Centre was established in 1983, the *International Law Reports* (ILR) became one of its principal publications. The series had been started by Arnold McNair and Hersch Lauterpacht in 1929 and was edited by Hersch Lauterpacht until his death in 1960. I then succeeded him. By that time, 23 volumes had been published. A further 126 volumes have since appeared, though in recent years my participation has been reduced. The real burden rested upon Gillian White between 1961 and 1967 and, since 1979, on Christopher Greenwood (now Sir Christopher, since 2009 the British judge at the International Court of Justice). For the last twenty years the volumes have been sub-edited and seen through the press with scrupulous care and attention to detail by Karen Lee, a Fellow of the Centre and of Girton College, since 1992 called ‘Assistant Editor’. The indexes have been compiled with the highest degree of skill and devotion by Miss Maureen MacGlashan CMG. Published now by Cambridge University Press, the series has additionally gone online at <http://www.justis.com/data-coverage/international-law-reports.aspx>. The principal features of the series remain the helpful summaries of each case, the detailed index, consolidated from time to time, and the translation into English of foreign language decisions.

The purpose of this note is to announce the prospective appearance in the early autumn of Volume 150 in the series, an event which we hope then to celebrate with a reception in the Wren Library of Trinity College.

We look forward to the continuation of the series with much hope, but with some concern as our income increasingly falls short of the growing editorial costs. The coffers of the Centre cannot long stand this drain; they remain open for any contribution which will help in the survival of the series.

Sir Eli Lauterpacht  
July 2012

[Update: Volume 150 of the ILR was published in October. A report on the reception will hopefully appear in the next FTD]



Sir Eli introduces Prof Yuval Shany at the 2012 Hersch Lauterpacht Lectures

## ILR Milestones

### Karen Lee: Twenty years in the ILR Hot-Seat

July 2012 marked the twentieth anniversary of my starting work at the Lauterpacht Centre when I was employed as a Research Assistant to work on the *International Law Reports*, edited by Eli Lauterpacht and Christopher Greenwood. The occasion was celebrated in customary fashion, namely with cake at morning coffee-time kindly arranged by the current Director, Marc Weller. I was also grateful to receive a most beautiful bouquet of flowers from Sirs Eli and Chris. The close relationship between the Centre and the ILR cannot be understated. The ILR is one of the Centre's principal publications, bearing the Centre's imprint on its title page. Indeed I have been told that one of the reasons that Eli established the Centre in 1983 was to house the reports started by his late father, Sir Hersch Lauterpacht, and continued under his editorship, which until then had operated from Eli's study at his home! The Centre was renamed the Lauterpacht Centre for International Law in honour of Eli and his father.

My role at the Centre has changed over the years. I have become a Research Associate and then Senior Research Associate and was made a Fellow of the Centre in 1999. When starting to think of looking for new jobs and challenges, I was encouraged to stay at the Centre by the then Director, Daniel Bethlehem. I was appointed Centre Director of Publications in 2002 and have edited volume 5 of the *International Environmental Law Reports*, volumes 6 to 15 of the *ICSID Reports* and volume 34 onwards of the *Iran-US Claims Tribunal Reports*. I became Assistant Editor of the ILR in 2003. Unfortunately, funding could not be found for the planned publications assistant until 2005, when Tara Grant started to work part-time on the various law reports, assisting me until 2011. I continue as Centre Director of Publications but, since resources are very limited and the decision was taken to prioritize

the ILR to ensure its survival, I now focus on the ILR, which is the principal law report produced from the Centre. Much of my time is spent researching and selecting cases and writing the case summaries that are published in the volumes as well as seeing the volumes through the press, which always presents a challenge, and performing the many unseen but essential tasks involved in law reporting and editing. I am very grateful to Sir Christopher Greenwood for finding the time to continue as Editor since assuming his very important role as judge at the International Court of Justice in 2009.

The Centre has expanded greatly since 1992 – No 5 Cranmer Road has been extended and No 7 Cranmer Road purchased and the number of Visiting Fellows has increased, many of whom I have had the pleasure of meeting over the years and some of whom have become close friends. During my time the Centre has flourished under the directorship of Eli Lauterpacht, James Crawford (twice!), John Dugard, Daniel Bethlehem, Charlotte Ku and now Marc Weller. Volume 150 of the ILR has just been published and I continue the uphill struggle of doing all I can to ensure, with limited resources, the survival of the series. Any support or contributions will be very gratefully received. If anyone has an interesting case suitable for inclusion in the ILR (we aim to cover all national jurisdictions and international tribunals) or would like to summarize a case with which you are familiar, please do get in touch with me ([karen.lee@law.cam.ac.uk](mailto:karen.lee@law.cam.ac.uk)). Hopefully the ILR will survive to see many more volumes published in the future!

Karen Lee  
Centre Fellow and Director of Publications



Sir Eli with Finola O'Sullivan, Law Commissioning Editor, Cambridge University Press. The CUP teams do a wonderful job producing & marketing the ILR



Karen consults a case report with Sir Eli



Sir Christopher Greenwood browses ILR online following its launch on Justis.com in 2008

# Punting, Pimm's and Public International Law: a social-judicial perspective on life and work at the Lauterpacht Centre and in Cambridge by Moritz Moelle

In a letter to John Adams, Thomas Jefferson wrote that "I cannot live without books" and I dare say that all of us visiting fellows will willingly subscribe to this statement regarding our daily academic work. Jefferson continued saying "but fewer will suffice where amusement, and not use, is the only future object." A very pragmatic and down-to-earth remark and although one might be inclined to argue – as lawyers enjoy to do – that books can and are read purely for amusement, one can distill from this quotation an appreciation for an equilibrium between "arbeit" (work) and amusement. This short, humorous piece, after giving an overview of the life and work at the Lauterpacht Centre and in Cambridge, argues that work and pleasure are often intertwined. Consequently, it is not possible to separate punting and Pimm's from public international law.

Many people describe Cambridge and living in Cambridge as living in a bubble; a small and somehow secluded, distinct world, the ivory tower or for some the "lost paradise". Whatever the personal preferences are, the Lauterpacht Centre is the bubble within the bubble, the micro-cosmos of international law within the Faculty and the University. Working and living in two old Victorian houses with beautiful gardens just out of the centre, allows to pursue research in tranquility and peace – away from the crowded and noisy city-centre of Cambridge. (Relative) seclusion of any entity and rituals such as the daily morning coffee-break always trigger and create unity of the respective constitutive elements.

In this context, visiting fellows are more than visitors within the centre – we are part of it. The daily coffee-break is the time of the day to gather in the kitchen, to mingle and to discuss not only legal issues, but also non-law related events and topics. Being a legal research centre, there have to be legal rules



governing the daily life. The welcoming atmosphere of the centre is supported by at least two (emerging) customary norms. First of all, the "first name" rule and the advantage of the English language not to distinguish between a formal and informal "you". Secondly, the (emerging) customary norm to bring cakes, biscuits, chocolate and other culinary delicacies to the coffee-break while returning from trips or while arriving or leaving the centre. The strict enforcement of the second rule has proven rather effective, notwithstanding some contrary practice. The contrary practice and its overwhelming condemnation however only support the rule as the International Court of Justice held in the Nicaragua decision. These daily breaks are the best opportunities to approach and to talk to other researchers within the centre. A very popular event is also "mugging", the ceremonial handing over of the centre mug to any leaving

visiting fellow. With the Faculty of Law and the University Library in reach within a 5 minutes walk, the working conditions are equally excellent and altogether it is thus not surprising that many of us have, are planning to, or will return to Cambridge.

The centre is also a bubble for visiting fellows on the basis of the legal status within the University. Being members of the University, but normally not of any college puts us in a somehow bizarre situation as it becomes more difficult to engage in social activities within the university. With the colleges being the social hubs of university life, many activities take place within college walls. Nevertheless, various activities within and outside college or centre walls have been attended organised and enjoyed (such as, *inter alia*, (formal hall, garden parties, May balls, May Bumps, concerts, evensong, barbecues). The recently founded Lauterpacht Punting Society (est. 2012) has proven to

be a big success and one has been able to witness diverse punting techniques and styles à la chinoise or as in a certain other English university town which shall not be named. To come full circle and to return to the premise of

this short contribution, punting is one of the prime examples of the connectivity between "arbeit" and amusement as it led to a discussion on the "right of navigation" on internal water-ways and in



the international context. Is the rule to pass opposing traffic in the form of other sailing-boats on the open sea on the port-side also applicable to internal water-ways? Is this “navigation on the left side” based on English street traffic rules and was it consequently used as a model for open sea waterways?

The learned reader might now wonder how to connect Pimm’s and (public) international law. The answer is really simple. The fact that UK legislation prescribes the retail industry to request an official government-issued i.d. from anyone who might be younger than 25, although the legal age to buy alcoholic beverages is 18, has led to a comparative analysis and discussion of the incentives of this rule and contrasting national legislations in other countries. The traditional “mugging” also gave rise to a discussion on national criminal law. These are only a few of many examples. They highlight not only the connectivity between “arbeit” and amusement, but they also justify activities of the latter kind; creativity, new ideas do only come to one’s mind when one has the time to reflect upon the issues which is normally not possible during academic activities in stricto sensu; the reading and writing of articles, book-chapters etc. One does not have to roam too far from the Lauterpacht Centre for another example. The famous apple-tree of Newton, which allegedly triggered his thought on gravitation stands, in front of the Great Gate of Trinity College. More practical combinations of “arbeit” and amusement” come to mind, i.e. the sake-testing in the WTO.

Therefore, I would like to conclude with another citation of Thomas Jefferson: “Wine is a necessary of life.”

*Moritz Moelle*

*Visiting Scholar, Jan - Sept 2012*

*(VF profile: <http://www.lcil.cam.ac.uk/news/article.php?section=35&article=1737>)*

## A view from...

**Professor Yao Huang**  
Professor of Law, Sun Yat-sen  
University, China

**Research Topic:**  
**Impacts of international  
organizations on the implementation  
of international law**



The Lauterpacht Centre is the place where I have been dreaming of studying and researching. In fact, Oppenheim’s international law edited by Professor Hersch Lauterpacht is my favourite textbook when I was an undergraduate. Now my eight-month visit at the Centre has proven that my choice of coming is completely correct. The following three aspects are the most valuable during my visit.

The Centre has some institutional forms of activities to help visiting fellows or scholars to research and study international law. For instance, the term-time Friday lunchtime lectures have contributed a better understanding of hot issues and dynamics in international law and thus a broadened academic view. Meanwhile, through the daily meeting at coffee time of 11:00 a.m., I have got chances to discuss my interested questions with researchers of the Centre and consult them for advice and opinions, as well as communicate with them and with other visiting scholars. Additionally, the visiting fellow’s round table sessions provide us with the opportunities of exchanging academic opinions on our research topics.

A group of international law academics exists in Cambridge. Hence, each visiting scholar can find relevant professors, researchers or colleagues to discuss her/his research project face-to-face to improve their research and benefit from broad academic thought and intellectual exchange. Also, the professors and lecturers at the Centre and Faculty of Law are very nice, easy-going and always happy to talk with visiting scholars about their research work - although they are quite busy.

Living in the Centre’s house, Bahrain House, makes me feel so happy and lucky. On the one hand, I feel very convenient both in life and in research work since the Centre accommodation is close to the University Library and Squire Law Library and not far from the town centre. On the other hand, living in the same house with the colleagues from all over the world brings me an international experience, where I have the chance to contact different cultures, and this has promoted peer communications, understandings and friendships.

*Yao Huang*

*Visiting Fellow: Oct 2011 – May 2012*

*(VF profile: <http://www.lcil.cam.ac.uk/news/article.php?section=35&article=1809>)*

## Visiting Fellows facebook Group

Membership seems to be growing of a recently discovered Visiting Fellows facebook group. Moritz, former VF seminar coordinator (see left), comments:

“A place to get in touch, to stay in touch and to reconnect with other visiting fellows from the Lauterpacht Centre of International Law, University of Cambridge. Whether you are about to move to Cambridge, whether you are here, whether you have been here. Join the community, discuss and share your research, socialize, network and simply connect.”



## Events Diary

### Michaelmas Term Lecture Programme

Lectures are subject to change without notice.

Unless otherwise stated, lectures take place in the Centre's Finley Library, with Friday lunchtime lectures usually preceded by a sandwich lunch, supported by Cambridge University Press, from 12.30 pm.

Friday	5 Oct	1pm Law Faculty LG19	<b>PROF JAMES CRAWFORD, PROF CHRISTINE GRAY, PROF VAUGHAN LOWE, PROF COLIN WARBRICK AND PROF MARC WELLER (CHAIR)</b> <b>PANEL DISCUSSION AND BROWNLIE BOOK LAUNCH: 'The Scholar and International Legal Practice: a Panel Discussion on the Occasion of the Launch of the 8th Edition of Brownlie's Principles of International Law'</b> [video & audio on the LCIL website]
Friday	12 Oct	1pm	<b>PROF MALCOLM SHAW (ESSEX COURT CHAMBERS/LEICESTER UNIVERSITY)</b> <i>'The International Court of Justice and Territorial Questions'</i>
Friday	19 Oct	1pm	<b>PROF SIR ELIHU LAUTERPACHT (FOUNDING DIRECTOR, LCIL)</b> <i>'International Law: Recollections and Reflections'</i>
Friday	26 Oct	1pm	<b>PROF MARK DRUMBL (WASHINGTON &amp; LEE UNIVERSITY, USA)</b> <i>'Reimagining Child Soldiers in International Law and Policy'</i>
Friday	2 Nov	1pm	<b>PROF MAD S ANDENAS (UNIVERSITY OF OSLO)</b> <i>'Centre Reasserts Itself - The ICJ and the Unity of International Law'</i>
Friday	9 Nov	1pm	<b>PROF MARC WELLER (DIRECTOR, LAUTERPACHT CENTRE)</b> <i>'Mediating the Arab Spring: Some Legal Issues'</i>
Friday	16 Nov	1pm	<b>DR CATHERINE MCKENZIE (UNIVERSITY LECTURER/SELWYN COLLEGE)</b> <i>'Wombats, Weapons and Water: Environmental Protection and the Law of Armed Conflict'</i>
Monday	19 Nov	5pm	<b>DR SONIA E. ROLLAND (NORTHEASTERN UNIVERSITY, BOSTON, USA)</b> <i>'Development at the WTO: Looking beyond the Doha Round'</i>
Friday	23 Nov	1pm	<b>PROF MARCELO KOHEN (GRADUATE INSTITUTE, GENEVA)</b> <i>'The Falklands/Malvinas and the Peaceful Settlement of Disputes?'</i>
Friday	30 Nov	1pm	PANEL DISCUSSION: (chair and discussants to be confirmed): <i>'International Law: the Year in Review'</i>

### Dates for your Diary

26-28 February 2013	6pm	Sir Hersch Lauterpacht Memorial Lectures delivered by <b>PROF PHILIPPE SANDS QC (MATRIX CHAMBERS/UCL)</b>
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