

ANNUAL REPORT 2010



**British Institute of
International and
Comparative Law**

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IN MEMORIAM

THE RT HON LORD BINGHAM OF CORNHILL KG

13 October 1933–11 September 2010

In his public life Lord Bingham, who has died after several months of illness, was a towering figure in the law. The first person to hold all three senior judicial positions as Master of the Rolls, Lord Chief Justice of England and Wales and Senior Lord of Appeal in Ordinary, he had an immense influence on the development of the law and, as one of the principal architects of the United Kingdom's new Supreme Court, of its institutions. His many obituarists have been reaching for superlatives, describing him as the greatest judge of modern times, defender of liberty, a man of exceptional brilliance and principle. For the British Institute of International and Comparative Law, it has been an immeasurable privilege to have him, successively, as Chairman of the Council of Management, Chairman of the Institute and, following the retirement of Lord Goff of Chieveley, as our President. In these roles, and especially since his retirement from judicial office, Tom Bingham reached beyond the role of a public figure to bring a real personal commitment to our work. The clarity, breadth and rigour of his thinking, his wisdom, kindness and humanity, coupled with his acute sense of humour, have all contributed to the deep and lasting impression he has made on the life of the Institute. His profound understanding of the importance of international law and of the rule of law in a fast-changing world has been very influential, both within the Institute and much more widely. He was characteristically modest about the Institute's decision to set up the Bingham Centre for the Rule of Law in his honour and, once persuaded of the Institute's commitment to the Centre, was enthusiastically supportive of it. We hope that the Centre will go on to be a fitting and lasting tribute to the memory of this incomparable man.

ALEXANDER LAYTON QC

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Director's Annual Report 2010

The year 2010 concluded with the launch of the Bingham Centre for the Rule of Law in the magnificent setting of the Royal Courts of Justice. This was the culmination of a year in which the Institute's level and quality of research, events and publications moved to an even higher level. It was also the fitting point to recognize the very hard work, energy and determination that had been put in by many people inside and outside the Institute to make the Centre a reality and to establish a clear strategy to take the Institute forward. Sadly, it was also a reminder of the deep loss for the Institute and for society of Lord Bingham, our President and inspirational figure.

The speakers at the launch included Lady Bingham, the two most senior judges (Lord Phillips and Lord Judge), the Secretary of State for Justice (Kenneth Clarke MP) and senior members of the legal profession in the UK and in France (Sir Christopher Bellamy and Roger Errera), as well as Professor Jeffrey Jowell QC, the new Director of the Centre. This quality and diversity of speakers is reflective of the excellent standard at our events, where leading experts in legal practice—including solicitors, barristers, in-house counsel, government lawyers and those in non-governmental organizations—engage with academics, judges and arbitrators, regulators and international organizations, and others from the UK and elsewhere, as well as with those outside the legal world. Indeed our researchers and events team organized about 70 events this year, not including various dinners, receptions and other related activities. These have included many activities by our Forums—the Competition Law Forum, the Investment Treaty Forum and the Product Liability Forum—as well as our major Institute-wide Annual Conference (this year on 'Energy Security and the Impacts on the International Legal System' with a keynote address by Professor Julia King), and the Grotius Lecture by Judge Diane Wood and the Grotius Dinner talk by Sir Bernard Rix.

Our research in 2010 has covered a range of topics. These have included research on Arbitration in Armenia; Armed Conflicts, Peacekeeping and Transitional Justice; Collective Redress; Criminal Law and the Rights of the Child in Muslim States; Conflict of Laws Rules on Assignment and Subrogation; Cross-Border Disaster Response in the European Union; European Contract Law; European Internal Market Law; European Union Regulation on International Successions; 'Hub and Spoke' Competition Issues in the Retail Industry; Human Rights and

Pre-Trial Procedures; Legal Duties and Powers of British Consular Officers; and Look-a-Likes. I am confident of the high quality, and breadth and depth of this research, which is always based on strong conceptual foundations and then applied to practical situations. It often crosses traditional boundaries of law, so as to integrate private and public international law, and engage with national, European and comparative law. In many instances our conclusions provide examples of best practice, and recommendations for policy changes and legal actions. Some of the impacts that our research has made in the past few years is shown on the next few pages. At the same time our researchers have added to our public profile and enhanced our public benefit through their own research, lectures and research related activity.

We have disseminated our research widely. For example, we published three books in the course of the year based on our own research, being *Criminal Law and the Rights of the Child in Muslim States: A Comparative and Analytical Perspective*; *40 years of the Vienna Convention on the Law of Treaties*, and *The Rule of Law in International and Comparative Context*. In addition, the book *A Guide to International Law Careers* has been heavily in demand. We continue to publish our journal, the *International and Comparative Law Quarterly*, which, under its excellent Board of Editors, remains globally acknowledged as one of the leading journals in this area. We are also called upon to provide informed assistance (on a non-legal advice consultation basis) to a wide variety of people and organizations, and we have sent regular electronic newsletters and even Twittered.

All this activity has resulted in a strong performance for the Institute financially. This is a remarkable achievement as the global financial crisis is still very present. Through hard work, and dedicated staff, Trustees, members and others, the Institute has managed to attract funding and donations. In particular, the donations for the Bingham Centre have enabled us to launch the Centre and appoint three members of staff. While there is still much to do, we are very grateful for the continued support of so many people for the vital work that the Institute does in a world in which there are so many important issues of international and comparative law.

This year has also seen a number of new members of staff arrive, including Jill Barrett (Senior Research Fellow in Public International Law); N Jansen Calamita (Senior Research Fellow in International Investment and Trade Law), Sandie Homewood (Executive Assistant to the Institute and Bingham Centre Administrator), Jeffrey Jowell (Bingham Centre Director) and Danielle Wright (Events Coordinator). We were also delighted to have Diane Denny back as our indefatigable Development Director and Justine Stefanelli was appointed the Maurice Wohl European Research Fellow. We are particularly grateful to the Dorset Foundation,

Vivmar Foundation, Potter Foundation, Martin Paisner and other donors for their support for these posts. A few of our staff have left to undertake other activities, though some remain as consultants to the Institute.

We have also had some new Trustees on our Board of Trustees, due to the restriction on the number of consecutive terms that a Trustee can serve. We give sincere thanks to Prof Christine Chinkin, Prof Vaughan Lowe QC, John Merrett and Prof Philippe Sands QC for all their hard work, insights and support as Trustees. We warmly welcome Clare Algar (Reprise), Gary Born (Wilmer Hale), Sir Francis Jacobs QC (KCL), Keith Ruddock (Shell) and Prof Malcolm Shaw QC (Leicester). We are also thrilled that Dame Rosalyn Higgins has agreed to be our new President. They join a body of effective and helpful Board of Trustees, who are continuing to work, along with all the Institute staff, to ensure that the Institute's mission is attained.

Professor Robert McCorquodale
Institute Director

Impacts of the Institute's Activities

Researchers of the British Institute of International and Comparative Law have been providing excellent research for more than 50 years. The majority of research projects delivered demonstrable benefits to public policy in a national and international level. While it is always difficult to both prove the extent and depth of the impact of research and it is selective to choose examples, the following is intended to give a selection of research impacts in recent years up until the autumn of 2010.

A. Specific Research Projects

Administrative Redress

Research relating to Administrative Redress, running joint seminars on the European Commission's report and participating in the Commission's consultation process

- Impact—will influence EU's decision-making and approaches to Administrative Redress

Comparative implementation of key articles of the EC Insider Dealing Directive and the EU Market Abuse Directive

Research for the City of London Corporation on the comparative implementation of key articles of the EC Insider Dealing Directive and the EU Market Abuse Directive in the UK, Germany, France, Spain and the Netherlands. The report was presented to European Commission officials, Members of the European Parliament, trade associations and representatives of Member States.

- Impact—It was described by the Chairman of the Corporation's Policy and Resources Committee as providing 'a fascinating insight into the realities of transforming EU directives into national regulation' and 'demonstrating the need for more attention to be paid to monitoring implementation in practice'.
- Influencing policy, legal and economic actions in London and the EC

Comparative 'Public Authority'

Research on the definition of 'public authority' across the Council of Europe States in order to assist UK government in its contemplation of amendments to the Human Rights Act

- Impact—could lead directly to new UK legislation and clarification by the UK courts on the reach of the Human Rights Act

Consumer Organizations role in the European Union

Research aimed at increasing the capacity and expertise of 14 different EU consumer organizations to represent the consumer cause in the most effective way in the development of competitive markets and competition policy in the EU. This was achieved by undertaking market surveillance into competition within the retail distribution sector.

- Impact—increase the capacity and expertise of 14 different EU consumer organizations

Damages in International Investment Law

Research and discussion on the calculation and understanding of damages in an international investment dispute

- Impact—will influence governments, international corporations, law firms, accounting firms, banks and insurance companies in their decision-making on individual cases and international litigation more generally

EU Regulation on International Successions

Research on UK's adoption of an EU Regulation on international successions for the European Parliament

- Impact—will influence UK's and EU's decision-making and approaches to international successions

European Contract Law

Research for the European Parliament concerning a Multiple Framework Research Contract for the Provision of External Expertise on a potential harmonization of European Contract Law

- Impact—will influence EU's decision-making and approaches to Contract Law

Human Rights and Pre-Trial Procedures

Research on the human rights standards applicable to pre-trial procedures used by the police and prison authorities in some Commonwealth States

- Impact—the goal of the study is to identify lacunae in the protection of human rights standards during the pre-trial stages. As a result, this project may support an increase in the protection of these rights and a uniform application of this protection across Commonwealth Member States

Impact of International Law on UK National Security

Research and discussion with UK government departments on the likely changes in international law over the next 10–15 years on UK national security

- Impact—will influence UK's national security decision-making and approaches to international law-making

Implementation of the Second Money Laundering Directive

Research for the City of London Corporation on the implementation of the Second Money Laundering Directive in the UK, Spain, Italy, Greece, Poland and Lithuania.

- Impact—By demonstrating 'how a combination of imprecise terminology in the Directive itself and differences in existing national and regulatory systems can produce a wide range of implementation results', the Corporation hoped that the report's detailed analysis would 'prove helpful to European policymakers and regulators' in implementing the Third Money Laundering Directive
- Impact on the City Corporation and the UK Law Society and the European Parliament

International Disaster Response preparedness

Evaluated the extent to which the UK and the EU had the appropriate infrastructure and preparedness to be able to deal with major disasters (natural and man-made) and to facilitate and regulate international assistance

- Impact—will enable bodies such as the International Committee of the Red Cross to advise governments and themselves about changes in policies that could have very widespread and significant impacts for millions of people

- Impact—the UK Cabinet Office adjusted its policy in relation to disaster response and assistance from abroad based on conclusions and recommendations in the BIICL UK report on the receipt of cross-border disaster assistance

Legalisation of Public Documents

Research on legalization of Public Documents for the European Commission review about the obstacles that infringe upon EU citizens' rights to move and reside freely in other Member States as regards to the recognition of public documents such as drivers' licences or diplomas

- Impact—The Commission published the Institute's study and considered it during its evaluation of whether existing European legislation should be amended, so it will influence EU's decision-making and approaches to public documents

Reform of Regulation 1/2003 by the Competition Law Forum

Research to respond to the European Commission's consultation on the reform of Regulation 1/2003 correcting the current lack of effective communication

- Impact—Correcting the lack of effective communication within EU competition law

Regulation of Life Assurance Companies

Research for the European Parliament, as part of its inquiry into the crisis at Equitable Life, on the Regulation of Life Assurance Companies in the UK, Ireland, Germany and Spain between 1989 and 2001.

- Impact—will influence the European Parliament's decision-making and approaches to regulation of life assurance companies

Reservations to Human Rights Treaties by Muslim States

Research and training about how different Muslim States use Islamic law in their reservations to human rights treaties

- Impact—could influence Muslim States to remove or modify their reservations to human rights treaties, especially by use of comparative examples
- Impact—on Iranian scholars, civil society and officials in their approach to reservations to human rights treaties
- Impact—enable engagement between Iran and those outside Iran on human rights issues, which is almost non-existent at present

Review of the European Commission's Product Liability Directive

- Impact—increase the capacity and expertise of judges in 14 different EU Member States

Rights of the Child and Criminal Law in Muslim States

Research and training about how different Muslim States protect the rights of the child in their national systems

- Impact—could influence Muslim States to increase effective protections for the rights of the child in their criminal justice systems, especially by use of comparative examples.
- Impact—on Iranian scholars, civil society and officials in their approach to the rights of the child
- Impact—enable further engagement between Iran and those outside Iran on human rights issues

Rights and Responsibilities of Citizenship

Research as part of an independent review of Citizenship by former Attorney General Lord Goldsmith to evaluate whether Britain needs a Bill of Rights

- Impact—the report contributed directly into policy formation of the UK government

B. Events

Annual Conference on Business and International Law

Dealt with issues of international and comparative law in areas such as human rights and corporations, competition law, international investment issues, damages actions against corporations, international crimes, and conflict and development

- Impact—influence on governments, corporations, lawyers and activities in relation to the actions of business in the international legal system

Annual Conference on Climate Change and International Law

Dealt with issues of climate change and its impact on the international legal system, including treaty negotiations and the effects of climate change

- Impact—influenced governments, NGOs and scholars in the ways forward to deal with climate change in a legal context

Annual Conference on Energy Security and International Law

Dealt with issues of international and comparative law in relation to energy security, from national security to indigenous rights and investment to competition law

- Impact—influenced governments, NGOs and scholars in the ways forward to deal with energy security in a legal context

Global Financial Situation

Events—eg *Collective Redress against Financial Institutions*, and *Credit Crunch Litigation: Offshore, Domestic and International Perspectives*

- Impact—offered knowledgeable insights, and international and comparative legal perspectives, on this situation, which could influence government, corporations, lawyers and regulatory bodies

Grotius Lecture 2008

Lord Bingham on ‘The Rule of Law’

- Impact—considerable public awareness (front page newspapers)
- Impact—helped to change UK government policy and perhaps led to Chilcot Iraq Inquiry

Rule of Law 50th Anniversary event

A series of five lectures with eminent speakers on aspects of the rule of law

- Impact—influence on all those interested in issues of international and comparative law and the rule of law

Other Events

Events across the whole field of public international law, private international law, comparative law, competition law, human rights, European law, international investment and trade law, and the rule of law

- Impact—informing the general public on important contemporary issues of international and comparative law

C. Publications

Institute Journals

Four volumes per year of the internationally respected *International and Comparative Law Quarterly*.

- Impact—influence on the general public, judges, governments, corporations, lawyers and others generally

Institute Books

The Institute publishes a number of books on a range of international topics.

- Impact—influence on the general public, judges, governments, corporations, lawyers and others generally
- For example: *A Guide to International Law Careers* has been a significant success in terms of bringing awareness about international law areas and the diversity of careers

Researcher's Publications

The Institute staff published a large number of articles, books and other publications on matters of public international law, private international law, comparative law and European law.

- Impact—These publications make an impact through their effect on, for example, government bodies, the European Commission, the United Nations and other inter-governmental bodies, legal practitioners, corporations and non-governmental bodies, in their giving of legal advice, drafting of regulations and legislation, and affecting public, social, economic and legal policies

Quotes from reviews of Institute Publications

***Evidence before the International Court of Justice* by Anna Riddell and Brendan Plant**

Reviewer: Simon de Smet
Cambridge Law Journal, 2009

'For those working in the international judicial system and for the students of this discipline, "Evidence before the International Court of Justice" is a long-awaited and much overdue book. Although there are a number of earlier publications on the topic of evidence before international courts and tribunals, some better and more useful than others, there has never been a comprehensive study focusing on evidence before the International Court of Justice (ICJ). This may be surprising, considering that the ICJ is the principal judicial organ of the United Nations system and has been in existence for over six decades. Indeed, because this is the first comprehensive publication on the topic, the authors are almost guaranteed wide attention and readership. One clearly gets the impression that one of the motivations behind this study of the British Institute for International and Comparative Law was to make a contribution towards the formation or consolidation of evidence rules before the ICJ.'

***The Temporal Scope of Investment Protection Treaties* by Nick Gallus**

Reviewers: Walid Ben Hamida, Emmanuelle Cabrol, Ferhat Horchani
International investments: law and practice, I.B.L.J. 2009, 5, 643–664
[International Business Law Journal]

Paragraph 659: ‘The temporal scope of investment treaties and the application of BITs over time is a question that has often been raised before arbitral tribunals considering investment matters. Nevertheless, no systematic studies on this issue have yet been produced. This book provides the first contribution to the analysis of this extremely technical and complex issue. Over eight chapters, the author supplies interesting analyses and considerations of the application of investment treaties over time...

Paragraph 660: ‘For each of these issues, the author reviews the positions taken by various tribunals ruling on investments. However, he does not limit himself to analysing arbitral case law and also draws from the provisions of international law on temporal scope and from international case-law. All in all, this is a well structured study into an issue of which very little analysis has been made and can be used to identify the basic principles governing the temporal scope of investment treaties and the temporal jurisdiction of arbitral tribunals.’

***Damages in International Investment Law* by Sergey Ripinsky with Kevin Williams**

Reviewers: Walid Ben Hamida, Emmanuelle Cabrol, Ferhat Horchani, Anne Cosserat, Rym Ben Khalifa, Anis Bettaieb
International investments: law and practice, I.B.L.J. 2009, 4, 497–511

Paragraph 508: ‘The extremely technical issues of compensation and losses are rarely addressed systematically. In publishing a work on precisely this issue, the two authors touch on one of the most complex questions in international law in general and in investment law in particular...’

Paragraph 509: ‘The work contains very interesting examinations of issues that have rarely been addressed by scholarly work. There are discussions about assessing a loss involving an indirect investment, proof of a loss, nonpecuniary damage, unjust enrichment, mitigation of damages and compound interest. The authors do not settle for analysing only awards rendered under investment treaties, but also refer to decisions issued by the Iran-United States Claims Tribunal and to general international law.

The authors have rendered a great service to investment law specialists in publishing this work.’

Reviewers: Stephan Schill
Transnational Dispute Settlement, 2009 1875–4120

‘Sergey Ripinsky and Kevin Williams now present, as the result of a research project undertaken under the auspices of the British Institute of International and Comparative Law, the first comprehensive and systematic treatment of damages in international investment law, dealing both with damages for unlawful conduct as well as compensation for lawful expropriations.’

***Human Rights Manual and Sourcebook for Africa* by Keir Starmer QC and Theodora Christou**

Extract from the minutes (Feb 2006) of the Bar Human Rights Committee (http://www.barhumanrights.org.uk/minutes/February_2006.doc)

‘Mark Muller noted that Keir Starmer QC, co-author of the Manual, had assisted Ugandan lawyers in drafting legal arguments on the abolition of the death penalty. As a result of this work, the mandatory death sentence for murder and other crimes was declared unconstitutional by the Constitutional Court of Uganda, removing all 417 prisoners from death row.’

Prefaces/Forewords to Institute Publications

***Enforcement Agency Practice in Europe* by Mads Andenas et al**

Foreword by the Right Honourable Lord Justice Mance: ‘One of the achievements of Lord Goff of Chieveley’s chairmanship of the BIICL was the choice of procedure as the main unifying theme of its research programme...In the last five years; the BIICL has undertaken several major research projects in the field.’

***Evidence before the International Court of Justice* by Anna Riddell and Brendan Plant**

Foreword by Sir Franklin Berman KCMG QC: ‘To say that the present study is the first comprehensive review of the question of evidence in international proceedings since the re-issue of Sandifer’s monograph in 1975, although true, would be wholly to underestimate both the scope of the enterprise and its significance. It would be more accurate—and also more illuminating—to say that the study represents the first ever attempt to undertake a thoroughgoing investigation into the way in which the rules and practices governing the investigation and determination of facts operate within the international judicial system...The study’s appearance

marks, therefore, a considerable achievement on the part of the British Institute of International and Comparative Law, and at a particularly appropriate time, as the Institute celebrates its 50th Anniversary....The present volume can be seen as the logical consequence of the attention paid over the years by the British Institute, as a body uniquely combining scholarship with up-to-the-minute practitioner experience, to the healthy functioning of international courts and tribunals.... It has been a privilege to be associated with a project of this scope and of this importance.'

***Human Rights as General Norms and a State's Right to Opt Out* by JP Gardner et al**

Introduction by Rosalyn Higgins: 'On 4 March the British Institute of International and Comparative Law held a timely and important conference on the questions of Reservations to Human Rights Treaties...The British Institute sought to provide that legal analysis through a range commissioned conference papers...'

***Product Liability in Comparative Perspective* by Duncan Fairgrieve**

Foreword by Mr Justice Burton: 'The British Institute of International and Comparative Law has been in the forefront of debate in the field of product liability, organising conferences from which no self-respecting practitioner or academic in the area could afford to be absent.'

***The Changing Constitution of the United Nations* by Hazel Fox**

Preface by Carl August Fleischauer, Judge of the ICJ: 'It is hoped that this book helps to clarify the constitutional realities of the United Nations. The British Institute of International and Comparative Law deserves credit for having organized the series of lectures on which this book is based and for having now made its publication possible.'

Citations of Institute Publications

Citation in International Courts

***Pulp Mills on the River Uruguay (Argentina v Uruguay)* International Court of Justice 20 April, 2010**

In this decision, several individual Judges draw support from the conclusions of an Institute research project that was published as ***Evidence before the International Court of Justice*** by Anna Riddell and Brendan Plant, by quoting from the book, as well as citing argument and using research in it to shape their opinions.

Judges Simma and Al-Khasawneh in a Dissenting Opinion focused on their criticism of the fact-finding aspects of the case, supported the book's assertion that the Court's current approach to evidence is particularly unsuited to dealing with complex matters of scientific or technical evidence, noting the majority of the Court approached the case in a way: 'that will increase doubts in the international legal community whether it, as an institution, is well-placed to tackle complex scientific questions' (Diss Op, para 3), citing argument on p 353 of the book. The criticism expressed in the book of the Court's tendency to try to resolve new scientific challenges by recourse to traditional legal techniques is noted in paragraph 12, citing p 337–339 of the book, and Simma and Al-Khasawneh agree with the conclusion drawn that the ICJ has much to learn from other tribunals in this respect, quoting the authors' opinion on the suitability of the approach adopted by the Annex VII Arbitral Tribunal in the *Guyana v Suriname* arbitration. Judge Yusuf in a Declaration also expresses similar concerns to those expressed in the BIICL book about the Court's approach to expert and scientific evidence, and the unfortunate reluctance to make use of the fact-finding powers available to it.

All three Judges criticized the Court's failure properly to engage with expert evidence by appointing its own experts or hearing party-appointed experts subjected to cross examination—a failing which is emphasized in 'Evidence before the International Court of Justice'. Instead they Court allowed scientific expertise to be supplied by experts acting as counsel on behalf of the parties, which is deemed a regrettable practice in the book.

Judges Vinuesa, Cancade and Keith also discuss the Court's approach to fact-finding, which demonstrates a new-found level of attention to such matters in the ICJ, which 'Evidence Before the International Court of Justice' certainly hoped to encourage. Previous mention of such matters in Judgments and even by individual Judges has rarely been as marked as in the present case, a trend which the authors hope will continue.

Citations in National Courts

Byrne v Motor Insurers' Bureau and another

Court of Appeal, 22 May 2008

[2007] EWHC 1268 (QB); [2009] Q.B. 66

Flaux J Waller , Keene , Carnwath LJJ

2007 May 15, 16; June 5; 2008 May 6, 7; 22

Paragraph 70: Mr Crow on behalf of the Secretary of State relies on ten points in support of his submission that any breach of the Directive by the United Kingdom was not sufficiently serious to attract Francovich/ Factortame damages.

(x) It is relevant to look at what other member states have done. The department commissioned a report from the British Institute of International and Comparative Law on how other member states dealt with limitation in the context of claims by minors against insured drivers on the one hand and uninsured or untraced drivers on the other. In summary this showed a wide disparity as to general limitation periods and three other member states, France, Greece and Luxembourg where the time limit for bringing a claim before the national body which has been designated to comply with Directive 84/5 is less than the general limitation period.

Carty v Croydon London Borough Council

Court of Appeal, 27 January 2005

[2005] EWCA Civ 19; [2005] 1 W.L.R. 2312

Dame Elizabeth Butler-Sloss P, Mummery and Dyson LJJ

2004 Nov 23, 24; 2005 Jan 27

Paragraph 83: One of my concerns in this developing area of the law (we were referred to some interesting papers on relevant topics in Tort Liability of Public Authorities in Comparative Perspective, British Institute of International and Comparative Law, (eds Duncan Fairgrieve, Mads Andenas, and John Bell) (2002)) is that it is all too easy, as apparently happened in some aspects of the presentation of this case at trial, to slip into the fallacy that an education officer owes a duty of care to a child because (a) under the 1981 Act the local education authority has duties and discretions in relation to children with special educational needs and (b) the education officer is employed by the authority to perform functions relevant to the performance of the statutory duties and discretions.

Summers v Stubbs

Queen's Bench Division, 20 December 2002

[2002] EWHC 3213 (QB); Official Transcript

Judge Heppel QC

Paragraph 14: In his expert report prepared for the court Dr Mads Andenas (Director of the British Institute of International and Comparative Law) points out that the objectives of the convention, as set out in the preamble, are to facilitate the recognition of judgments within the Community. He has conducted a comparative survey of laws within member States and finds no general principle with regard to the treatment of actions against a public authority responsible for roads: in some states it is a matter of private law; in others, administrative.

Westminster Property Management Ltd (No.1), Re

Also known as: **Official Receiver v Stern (No.1)**

Court of Appeal (Civil Division), 02 February 2000

[2000] 1 W.L.R. 2230; [2001] 1 All E.R. 633; [2001] B.C.C. 121; [2000] 2 B.C.L.C. 396; [2000] U.K.H.R.R. 332; Independent, February 10, 2000
Henry, L.J.; Robert Walker, L.J.; Scott Baker, J

Paragraph 22: (As a footnote to the above reference to ‘a comparative analysis of national law’, it should be recorded that the Treasury Solicitor commissioned from the British Institute of International and Comparative Law a report on the comparative law issue of disqualification of company directors in different states of the European Union. That report was before the Vice-Chancellor and this court. The Vice-Chancellor has been criticized in the notice of appeal, although not in any oral submissions, for omitting to refer to the report. It is a thorough and interesting report but it does not disclose any regular pattern of national legislation within the Community.)

D. Public Engagement

The Institute staff have given **lectures, seminars and papers** and attended various **events**, on behalf of the Institute. These have been in various parts of the UK, in Europe and around the world.

In the past year, the locations for these events included Australia, Belgium, China, England, France, Germany, Ireland, Italy, Lebanon, Morocco, Northern Ireland, Singapore, and USA

- Impact—Potential effect on, for example, legal practitioners, students, policy makers, government bodies, inter-governmental bodies, corporations and non-governmental bodies, and affecting public, social, economic and legal policies
- Impact—assists in the public awareness of the Institute

The Institute staff have been selected to some public appointments. In the past few years these have included:

- Robert McCorquodale to the Commonwealth Scholarship Commission in the UK; expert assessor for the Australian Research Council; and subject adviser to the British Council’s Development Partnership in Higher Education
- Philip Marsden to the UK Office of Fair Trading and as a non-executive member of the Jersey Competition and Regulatory Authority
- Kristin Hausler to the Cultural Heritage committee of the International Law Association
- Impact—direct influence on bodies and indirect influence on research and scholarly and practice understandings globally

E. Other Impacts

Researchers in Iran

Project—support some individual PhD students from Iran to assist in their research and access to information

- Impact—direct influence on both students' knowledge and research skills and indirect influence on research and scholarly engagement with Iran

Training of Judges in EC Competition Law by the Competition Law Forum

In 2004 The Institute successfully tendered for a European Commission training project on Training Accession State Judges in Competition Law which was implemented in Brussels in March 2005 with 38 judges from 14 Member States in attendance. The CLF Director, Junior Fellow and CLF members provided the expert training.

- Impact—increase the capacity and expertise of judges in 14 different EU Member States

The Competition Law Forum Working Group on Private Actions by the Competition Law Forum

In December 2005 the Commission published a Green Paper on Damages Actions for Breach of the EC Antitrust Rules; it wished to receive replies to this document before 21 April 2006. In January 2006 the CLF set up a working group, chaired by Richard Eccles of Bird & Bird, London, to respond to the issues highlighted in the Green Paper. Peter Whelan of the CLF was the group's rapporteur. This working group completed its work in mid-April and submitted its response to the Green Paper by the 21 April deadline.

- Impact—will influence EU's decision-making and approaches to Private Actions

Interns

Large number of interns from around the world who learn research skills and the importance of international and comparative law

- Impact—direct influence on students' knowledge and research skills and indirect influence on research and scholarly understandings globally

The Bingham Centre for the Rule of Law

Director: Jeffrey Jowell

The Bingham Centre for Rule of Law is devoted to the study and promotion of the rule of law through comparative research, discussion and training. It aims to be the foremost institution of its kind specifically devoted to this vitally important issue worldwide.

The Centre is named after Tom Bingham (The Rt Hon Lord Bingham of Cornhill KG), a man of outstanding professional and human qualities and the first judge to hold all three of the most senior posts in the British judiciary—Lord Chief Justice, Master of the Rolls and Senior Law Lord. He was President and Chair of the British Institute of International and Comparative Law, in which the Bingham Centre is placed.

Report from the Director

This is a report of the activities of the Bingham Centre for the Rule of Law since I took office in mid-October 2010.

The **launch** of the Centre was held in the Royal Court of Justice on 8 December 2010. The speakers were: The Lord Chief Justice, the President of the Supreme Court, The Lord Chancellor, Lady Bingham, Conseiller Roger Errera and myself, the Director of the Bingham Centre. Some of the speeches can be seen on the Bingham Centre website. I made it clear that the studies to be undertaken by the Centre would be of the highest quality, would seek to elicit fundamental principles based where possible on comparative experience, and would always seek a practical outcome.

A provisional **Advisory Council** for the Centre was formed which includes Lord Phillips (Chair), Sir Christopher Bellamy, Shami Chakrabarti, Alex Layton QC and Lord Lester QC. The Council met in December and discussed possible projects for research. Since then the following have agreed to join the Council: Michael Smyth (former public law partner of Clifford Chance), Professor Richard MacRory (environmental law and regulation expert, UCL), Kate O'Regan (former Justice of the Constitutional Court of South Africa) and Margaret Marshall (Chief Justice of Massachusetts, USA)

Justice Stephen Breyer of the Supreme Court of the United States has agreed to become a **Patron** of the Appeal Committee.

I have had **discussions with various bodies** with a similar mission to that of the Centre, so as to define the ways in which we could add value by collaboration, or should avoid overlap. These include: Justice, Liberty, Interrights, the Law Society, The Constitution Unit, and the Institute for Government. In South Africa in January I had meetings with Freedom Under Law. More such meetings are planned. I have been struck both by the desire of all these bodies to collaborate with the Centre and also by the fact that they all believe that there clearly is a great deal of space for the Centre in an area crowded with activity in the general field of human rights and good governance.

It is the firm policy of the Centre to tap into to the wealth of experience not only of academics but also practitioners. A number of leading lawyers in London and abroad have indicated their willingness to volunteer their efforts to the Centre. My visit to the USA in November elicited expressions of support from a number of sources, some of which have or are likely to result in joint projects (see eg the planned project with the American Law Institute below).

Events

The Centre will be holding a number of events in the coming months. Most will be precursors to studies and projects. Others may stand alone. Those already held are:

- *15 March 2011: Associate Justice Stephen Breyer of the US Supreme Court on Courts and Democracy (in discussion with Professor Ronald Dworkin, Lord Lester QC, and Lord Justice Sedley)*
- *31 March : Relationship between ECtHR and Domestic Courts (Lord Hope, Professor Justice Malinverni of the ECtHR; Justice Paczolay of the Hungarian Constitutional Court; Judge Olivier Dutheillet de Lamothe (Constitutional Court /Council of State, France)*

Events planned are:

- *24 May: The Rule of Law in Southern Africa (Professor Hugh Corder, University of Cape Town)*
- *17 June—with 6 members of French Conseil d'Etat and some German judges: The Rule of Law, Etat de droit and Rechtsstaat . This is to be held with the Supreme Court and after a visit to the Centre/ Institute the meeting will take place at the Supreme Court. (This event should be viewed as a precursor to the at All Soul's College, Oxford on 23 September—see below)*
- *28 June—with the London-Leiden Project: Conference on The Rule of Law in the EU*

Projects

It has become clear that the most difficult early task of the Centre will be to limit the potential range of studies and to devise priorities, balance and preferred categories. Looking through the rule of law prism has elicited all kinds of issues—national, international and comparative, that need study with a view to defining principles and acceptable practice. Those at an advanced stage of planning include:

- *The cross-border regulation of financial institutions*: in conjunction with the American Law Institute. A planning meeting will be held on 3 June including Rodgin Cohen of Sullivan and Cromwell, New York. This project will consider ways to remedy the continued uncertainties in this area, which have an adverse effect on international liquidity.
- *The Role of Regional Courts in Africa*: The South African NGO, Freedom Under Law (see above), together with the Commonwealth Legal Association, has agreed to collaborate on this subject, which considers the way regional African courts may establish minimum standards, especially following the suspension of the SADC Tribunal in July 2010. Researchers provided by FUL began work on this project in March.
- *The role of government lawyers*: This topic is of great interest in this country and elsewhere. The Commonwealth Law Association would like to use this research to develop a code of practice, which could be presented to their next international meeting in 2013. Funding is being actively sought.
- *The Scope and Universality of the Rule of Law*: All Souls College in Oxford have agreed to host this meeting on 23 September.

Other projects which are being explored include (note that this is not a full list):

- *The role of in-house lawyers*: Following the *Akzo Nobel* case in the ECJ, the issue of the independence and privilege of in-house lawyers needs scrutiny.
- *Uncertainty in Public Administration*: Public officials in different areas (taxation, immigration, environmental regulation) act on the basis of 'guidelines', 'codes of practice' etc with uncertain constitutional status and which often change without warning. The extent to which this is a problem will require carefully devised initial empirical research. Its findings are likely to be important to individuals and companies with respect to their daily contact and relationship with government.
- *Administrative Justice in Central and Eastern Europe*: Attention has been given to human rights generally there, but much less so specifically

to principles and practice of good administration. The OHDIR (the Office of Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe) have indicated a willingness to fund this project, which may include workshops and education in selected countries.

- *Detention without trial*: There has been much attention given to terrorism etc, but perhaps not enough recently to this issue in relation to remand prisoners, immigration centres.
- *Prosecutorial discretion*: The wide scope of discretion, and the criteria for not prosecuting in the national interest have been causing concern.
- *Institutions to maintain ethical standards in public life*: The Cardozo Centre in Brazil may be interested in collaborating on a study on this topic.
- *Issues concerning the rule of law in the EU*: Justine Stefanelli, the Maurice Wohl Fellow in European Law, is now based in the Bingham Centre. A paper she devised on possible rule of law issues concerning the EU was discussed at a 'brainstorming session' with the country's leading EU lawyers in the Centre on 7 March. We were greatly reassured by the interest in the subject and the number of issues identified as meriting study in the Centre.
- A similar session on *the rule of law and the environment* was discussed with experts on 28 March, and also came up with a number of possible issues to study.

I shall shortly be considering what the Bingham Centre should be doing in the area of **education** after discussion with the Citizenship Foundation. There is a very strong view that this should be a key task of the Centre, but delivery here will require a great deal of thought and planning.

I shall also in due course consider our role in the **training** of legal practitioners, civil servants, judges etc, especially in or for developing countries and the new Europe. I will make contact with the Slynn Foundation and DFID and other government departments. It may be that we should hold regular training sessions in London.

Institute Forums

Competition Law Forum

Director: Dr Philip Marsden
<http://www.competitionlawforum.org>

Introduction

The Competition Law Forum (CLF) of the British Institute of International and Comparative Law is a centre of excellence for European competition policy. It provides a forum in which the practical application of competition policy is considered by lawyers, economists, senior business managers, public servants, consumer bodies and other experts. The CLF identifies areas requiring debate and analysis; provides the required forum and experts, and through discussion and papers contributes to policy initiatives.

The CLF Advisory Board oversees the activities of CLF and to offer guidance to the Forum Director on programme development and research. It has the key responsibility of ensuring the quality standards of the Forum activities are appropriate to a centre of excellence and commensurate with the Institute's other activities.

Publications

Project-based Publications

- P Marsden and P Whelan, 'Selective Distribution and EC Competition Law in the Age of Online Retail' (2010) 31 *European Competition Law Review* 1, 36
- P Marsden and P Whelan, 'The "Consumer Welfare" Standard as a Form of Substantive Protection for Consumers under European Competition Law', Chapter 16, *Own Labels, Branded Goods and Competition Policy: The Changing Landscape of Retail Competition*, Ezrachi & Bernitz (eds), (OUP, Oxford, 2010)

Competition Law Forum Events 2010

10 March 2010: Use (and Abuse?) of the Counterfactual

17 May 2010: Antitrust and the Changing Landscape of the Information Technology Sector

16 June 2010: Gun-Jumping

23 September 2010: CLF-CLA meeting on Akzo legal professional privilege

6 October 2010: Object offences

15 October 2010: Competition in Financial Services

15 November 2010: Hub and Spoke issues, third in our series, offering a comparative view from Germany, Spain and Italy

15 December 2010: The Future of the UK Competition Regime

Competition Law Forum Members

Law Firms

Phil McDonnell, Addleshaw
Goddard

Vincent Power, AL Goodbody
Simon Pritchard, Allen & Overy
Nigel Parr, Ashurst

Samantha Mobley, Baker &
McKenzie

David Harrison, Berwin Leighton
Paisner

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John Davies, Freshfields
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Gavin Robert, Linklaters
Susan Bright, Hogan Lovells

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Mark Jones, Norton Rose

Riccardo Celli, O'Melveny &
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Katherine Holmes, Reed Smith
Richards Butler

Chris Bright, Shearman &
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Elaine Gibson-Bolton, SJ Berwin
Philippe Chappatte, Slaughter &

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Financial Law Chamber, Cour
de Cassation

William Kovacic, US Federal
Trade Commission

Sir John Vickers, All Souls
College

Stephen Walzer, Competition
Commission

Polly Weitzman, Office of
Communications

Sir Derek Morris, Oriel College

CLF Advisory Board

Tim Cowen, Susan Bright, Adrian Majumdar, Gavin Robert, Michael Hutchings,
Peter-Carlo Lehrell, Stephen Wisking, Christopher Vajda, Oliver Bretz
and Simon Pritchard

Investment Treaty Forum

Director: N Jansen Calamita (from September 2010)
<http://www.biicl.org/itf>

Introduction

The Investment Treaty Forum (ITF) at the British Institute of International and Comparative Law was founded in 2004. Its aim is to provide a global centre for serious, high-level debate in the field of international investment law. The Forum is a membership-based group, bringing together some of the most experienced and insightful lawyers, business managers, policy advisers, academics and government officials working in the field. Like the Institute itself, the Forum has a reputation for independence, even-handedness and academic rigour.

The year 2010 was a year of transition for the Forum's leadership. At the end of July, Norah Gallagher stepped down as Director of the Forum for new pastures in Singapore. Her replacement, N Jansen Calamita, took up the role of Director in September 2010, coming from a background in private practice, government service with the United Nations and the US Department of State, and academic appointments at the University of Oxford and most recently the University of Birmingham, where he continues to hold a post.

The Investment Treaty Forum's Activities

The activities of the Investment Treaty Forum are varied and may be distinguished between Private Members' Meetings and Public Conferences and Seminars.

Private Members' Meetings

As the Investment Treaty Forum is a membership-based organization, a principle focus of the Forum's activities is bringing the Forum's membership together with invited guests to participate in the free exchange and debate of ideas on the most important issues in the field of international investment law. As a rule, the Forum holds between three and four such meetings each year, conducted under the 'Chatham House Rule.' For many members, the benefit of being able to attend and participate in these Members' Meetings is creates a unique and valuable opportunity to discuss issues with colleagues, policy-makers and other participants in international investment law in a less formal setting than a classic conference.

By way of example of the topics and speakers involved in recent Members' Meetings:

- ***Lisbon Treaty: The Way Forward for Investment Protection***, by David Fraser, Jean-François Brakeland, Colin Brown and VV Veeder QC (Baker & McKenzie, January 2010).
- ***ICC/ITF Joint Conference: New Directions in Investment Treaty Law***, by Professor Brigitte Stern, Raed M Fathallah, Toby Landau QC, Carole Malinvaud, Loretta Malintoppi, Hamed El Kady, Dr Nikos Lavranos, Nick Minogue, Philippe Pinsolle and Pierre Poret (ICC Paris, July 2010).
- ***EU Law and International Investment Law: Questions of Jurisdiction and Applicable Law***, by Yas Banifatemi, Markus Burgstaller, Dr Stefan Hindelang and Jeffrey Sullivan (Hogan Lovells, March 2011).

Public Conferences

Twice annually the Investment Treaty Forum conducts day-long public conferences during which it opens its discussions to the public for the benefit of all of those interested in the field.

The ITF public conferences in 2010 were a great success. The Fourteenth ITF Public Conference, entitled ***Do Not Pass Go: Jurisdictional and Other Objections Available to the Respondent State***, took place on 7 May 2010. The focus of the conference was recent cases which went no further than the jurisdictional stage due to factors such as: illegality on the part of investor; abusive claims; restrictive dispute resolution provisions; and the scope of the definition of investment. Full details of the event and speakers are available online at: <http://www.biicl.org/events/view/-/id/419/>.

The Fifteenth ITF Public Conference focused on ***Recent Developments in Investment Arbitration Procedure*** and took place on 10 September 2010. This conference provided a fresh look at both emerging and perennial issues in investment arbitration procedure, such as provisional measures and tribunal invitations to comment on legal authority, recent changes to the ICSID Rules (and proposed changes to the UNCITRAL Rules) with respect to transparency and non-party participation, and arbitration costs, both in real terms and as a question for tribunals with respect to pre-award security and apportionment and assessment. Full details of the event and speakers are available online at: http://www.biicl.org/Fifteenth_ITF_Public_Conference/.

The Sixteenth ITF Public Conference will take place on 6 May 2011. The title of the conference is ***Is There an Evolving Customary International Law on Investment?***

Special Programmes

In addition to the twice-annual, day-long public conferences, the Forum also organizes periodic special seminars, sometimes in London, sometimes elsewhere, which are also open to the public.

In September 2010, the ITF co-hosted a **special seminar in Yerevan, Armenia**, for the Armenian Ministry of Justice and the World Bank. Working with local partners, this conference (and the report produced in connection) addressed arbitration systems generally, together with a focused discussion on the development of arbitration in Armenia. The ITF looks to continue working with our partners from this part of the world both to increase the ITF's presence and to expand the diversity of views available to Members.

Other Seminars and Conferences

In addition to seminars and conferences addressed specifically to the international law of investment, the Institute also undertakes a number of other activities within the areas of international trade law.

Annual WTO Conference

The Institute co-hosts the Annual WTO Conference with Georgetown University and the Society for International Economic Law (SIEL). May 2010 marked the 10th anniversary of this conference and featured a two-day programme devoted to exploring both the most recent and interesting developments at the WTO in the previous year but also examining more global trends in the WTO since the conference first began. A highlight of the conference was the discussion on the history and direction of the WTO between Professor John H Jackson of Georgetown University and Professor Sir Francis Jacobs, KCMG, QC.

In May 2011, the Institute, Georgetown and SIEL will again co-host the Annual WTO Conference. As themes for this year's Conference, panels will be addressing the question of subsidies in their various shapes and forms and the trade impact of the recent global financial crisis. As in previous years, this event is kindly sponsored by Sidley Austin LLP and White & Case LLP.

Arbitration-related Events

Over the past year, the Institute has held a number of other seminars and conferences addressed to matter of international arbitration generally, many of which are of considerable interested to members of the ITF.

In 2010 this included a seminar on **Mandatory Laws in International**

Arbitration (11 November 2010) by Marc Blessing (Baer & Karrer, Zurich); N Jansen Calamita (ITF); Stuart Dutton (Eversheds, London); Julian D M Lew QC (20 Essex Street Chambers); Jonas Löttiger (Eversheds, Stockholm); Salim Moollan (Essex Court Chambers); Claudius Triebold (Eversheds, Zurich); Professor Jeff Waincymer (Monash University). Further information about this event is available at: <http://www.biicl.org/events/view/-/id/571/>.

Forum Members

Organizations

Baker & McKenzie LLP	Lalive Avocats
Baker Botts LLP	Linklaters LLP
Clifford Chance LLP	Hogan Lovells LLP
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Eversheds LLP	Salans LLP
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Latham & Watkins LLP	

Individuals

Andrew Berkeley, Arbitrator, London	Lahra Liberti, Organisation for Economic Cooperation & Development (OECD), Paris
Sir Franklin Berman QC, Essex Court Chambers, London	Inga Martinkute, LAWIN, Vilnius
Yuliya Chernykh, Arbitrade, Kiev	Professor Emeritus Maurice Mendelson QC, Blackstone Chambers, London
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Professor Hans Van Houtte, Katholieke Universiteit Leuven, Belgium	VV Veeder QC, Essex Court Chambers, London
Mark Kantor, Arbitrator/Mediator; Adjunct Professor, Georgetown University Law Center, Washington, DC	Todd Grierson Weiler, NAFTAclaims.com
Professor Gabrielle Kaufmann- Kohler, Lévy Kaufmann- Kohler, Geneva	

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Organisations

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*The International Institute for
Sustainable Development*
*The Organisation for Economic
Cooperation and*

Development
*The Permanent Court of
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*The International Law
Programme, Chatham House*

Individuals

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Professor James Crawford SC,
University of Cambridge and
Matrix Chambers
Judge Christopher Greenwood
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Justice
Professor Vaughan Lowe All
Souls College, Oxford, and
Essex Court Chambers
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Watkins LLP, London

Product Liability Forum

Director: Dr Duncan Fairgrieve
Research Fellow: Faria Medjoub
<http://www.biicl.org/plf>

Introduction

The Product Liability Forum allows the practical application of policy and developments in product liability and safety law to be considered by leading lawyers in private practice, industry, academia, regulatory bodies and senior business managers, consumer representatives, public servants, public affairs professionals and other specialist practitioners. Its role is to analyse and improve the conduct of policy and practice in the spheres of product liability, product safety and mass torts.

The academic credentials of the Product Liability Forum set it apart from other bodies. It is not designed as a lobby group, nor is it to be identified with any particular perspective or sector. Mr Justice Burton, who gave judgment in the leading decision on product liability in *A v National Blood Authority*, has written that:

‘The British Institute of International and Comparative Law has been in the forefront of debate in the field of product liability, organizing conferences from which no self-respecting practitioner or academic in the area could afford to be absent.’

(In Duncan Fairgrieve, *Product Liability in Comparative Perspective* (CUP, Cambridge, 2005)).

Product Liability Research

The status of the Product Liability Forum as a leader in the product liability and safety area has been recognized by the European Commission which requested our participation in the review process of the Product Liability Directive. We also produce, together with our partner Linex Legal, the Product Liability Alerter, a fortnightly email alerter which examines the latest developments in the sector and is sent out to thousands of in-house counsel specializing in this area, including Forum members.

The Product Liability Alerter, a cooperation between the PLF and Linex Legal, is proving a big success. Every two weeks this product liability devoted email service reaches over 1500 recipients around the globe, including law firms in China, South Korea, Japan, Australia and South Africa. The idea behind the alerter is a merger of the practice and academic

legal worlds with a strong international presence. Apart from providing our members with valuable resources and legal updates, the alerter also fulfills an important publicity function for the Forum and its members.

Product Liability Database

The Tort Law Centre continues to develop an innovative web-based database of legislation and judicial decisions on product liability, aiming to bring together all judgments under the European Product Liability Directive in all the Member States. Each country report includes an analysis of domestic tort and contract law, the relevant procedural background, as well as the implementation of the Directive. This is then supplemented by case reports of all the major decisions in the country under the implemented Directive. Commentary on each decision is provided by a team of national experts drawn from both academia and practice. This is a major research effort; no similar tool exists. We already have a number of countries online. This database is viewable from the PLF webpage (members' access only): www.biicl.org/plf.

Forum Events

- Over the past year, the following seminars have been organized under the aegis of the Forum, bringing together practitioners, academics and policymakers to examine the practical application of policy and developments in product liability and safety law. This year, we have welcomed many guest speakers from the UK and abroad, including distinguished speakers from the public sector academia, members of the judiciary, as well as other distinguished colleagues.

15 January 2010: **Emergency Vaccines and Liability**

Speakers:

- **Jeff Bucholtz**, King & Spalding
- **Eric Duranson**, Sanofi Pasteur SA
- **Dr Richard Goldberg**, Aberdeen University
- **Professor Sir Gordon Duff**, Co-Chairman, Scientific Advisory Group for Emergencies (SAGE); Chairman, Commission on Human Medicines

This PLF Seminar looked at the topical subject of Emergency vaccines & Liability from a comparative law perspective, looking at the US, UK and Europe.

24 March 2010: **Food and Enlightenment—The Food Information Proposal of the EU**

Joint Event with the Food Law Group

Panel Leaders:

Claire Andrews, Barrister, Gough Square Chambers

Hilary Ross, Partner, Bond Pearce, solicitors

Guest Speakers:

Antoine de Brosse, Avocat à la Cour, Lovells, Paris

Stephen Pugh, Head of Labelling and Marketing Terms, Food Standards Agency

Prof Dr Alfred Hagen Meyer, Meyer-Meisterernst

The development of food information legislation to be transposed directly into the laws of Member States of the European Union raises important issues for food lawyers.

By the date of the meeting, it is expected that the text of the proposed Food Information Regulation will have been considered and voted on by the Environment Committee of the European Parliament, and this event provided an excellent opportunity to focus on the issues that will affect the food industry and consumers in the EU for the foreseeable future.

In particular tackling nutrition and diet issues, as well as clear communication of significant food information, will have the highest priority and lead to major changes in the presentation of food labels and communications through advertising and other channels. For lawyers in this field some of the most important questions are:

- What are the most significant issues?
- How will consumers, regulators and food producers be affected?
- How is legislative process working?
- When will the rules come into effect?

The seminar with a panel of eminent speakers covered these and other questions in order to illuminate and develop the progress of this aspect of food law.

29 April 2010: **International Perspectives on the Recommendations of Lord Justice Jackson's Report on Civil Litigation Costs**

Chair: His Honour Michael Cook

Speakers:

- **Bill Perry**, Carter Perry Bailey LLP

- **Thomas Cottingham III**, partner of Winston & Strawn (Charlotte, North Carolina Office), expert in USA class actions and consumer litigation.
- **James Delaney**, Managing Director of TheJudge, a major UK litigation funder;
- **Gerard McDermott QC**, leading barrister
- **Robert Musgrove**, Chief Executive of the UK Civil Justice Council;
- **Professor Ianika Tzankova**, Assistant Professor of Civil Justice at the University of Tilburg, The Netherlands, and Senior Associate at Nauta Dutilh.

This event discussed the impact of Lord Justice Jackson’s Report on Civil Litigation Costs, including the future of the ‘Loser Pays’ rule and the potential use of contingency fees from a comparative perspective (UK, USA, Netherlands).

29 September 2010: Regulatory Standards and Liability: Developing the Appropriate Model for Medicines

Chair: Professor Sir Alasdair Breckenridge, Chairman, MHRA.

Speakers:

- **Professor Lawrence Phillips**, LSE
- **Professor Vincenzo Salvatore**, Head of Legal Service, European Medicines Agency
- **Alison McAdams**, Davies Arnold Cooper LLP

Commentators:

- **Dr Richard Goldberg**, Aberdeen University
- **Professor Mark Mildred**, Nottingham Law School

Product Liability Forum Members	
Four New Square	Arnold & Porter LLP
Ashurst	Berrymans Lace Mawer
British American Tobacco	Clifford Chance
Covington & Burling LLP	Davies Arnold Cooper
Freshfields Bruckhaus Deringer LLP	Henderson Chambers
Herbert Smith	Kennedys
Hogan Lovells LLP	Old Square Chambers
Reynolds Porter Chamberlain LLP	Shook Hardy & Bacon LLP
Four New Square	Arnold & Porter LLP
Ashurst	Berrymans Lace Mawer

Individual Members

Claire Andrews

Tripp Haston

Irina Bernstein

Research Projects

Armed Conflicts, Peacekeeping, Transitional Justice: Law as Solution (ATLAS)

Project Directors: Sarah Williams and Robert McCorquodale

Research Fellows: Faria Medjouba and Justine Stefanelli

<http://www.biicl.org/atlas/>

ATLAS is the result of a response to a call of the European Commission on the topic 'Articulation of the Rule of Law and Protection of Human Rights at National, European and International Levels' which falls within the scope of 'Conflicts, Peace and Human Rights', within the 7th EC Framework Programme.

The overall objective is to contribute to the reinforcement of the rule of law during and after armed conflicts and to review the current activity of the EU in promoting human rights and international humanitarian law both during and after armed conflicts, mainly through its peacekeeping operations, and to offer recommendations for improvements and best practice in these activities.

Research Partners

1. Centre d'étude et de recherche en droit international—CERDIN—Université de Paris 1 Panthéon-Sorbonne (Co-ordinator of the project)
2. Collège de France
3. Universitat Jaume I de Castellon—Departamento de Derecho Público
4. Universitatea din Bucuresti
5. Magna Carta—Human Rights Network International
6. Centre Perelman de philosophie de droit—Université Libre de Bruxelles
7. Universitat de València
8. University Jaume I de Castellón

Aims and Goals

- Examine the existing international law in regard to the protection of civilians in post-conflict situations, especially in regard to the treatment of women and children.
- Examine the extent to which EU external policy (specifically Common

and Foreign Security Policy) has a human rights and international humanitarian law component and compare this to the development of international law more generally.

- Study selected EU and UN peacekeeping operations to provide a comparison of their mandates and activities, and compliance with international human rights and humanitarian law. Particular attention will be paid to peacekeeping operations in Afghanistan and in Former Yugoslavia.
- Consider how the EU may contribute to promoting respect for human rights and international humanitarian law in its peacekeeping operations. Focus will be on the EU (and some Member States of the EU) peacekeeping operations in Kosovo, Sierra Leone, Haiti and Cambodia.
- Determine how amnesties, impunities and criminal justice contribute to post-conflict national reconciliation. Analyze if they are antagonistic or if they can be reconciled in a manner that satisfies the requirements of international human rights law and the rule of law.
- Offer recommendations, codes of conduct for civil and military peacekeeping personnel, and best practice guidelines for policy-makers in the EU and its Member States. This may include methods to develop and/or strengthen the existing legal framework to increase the legitimacy and consistency of peace operations in conflicts, and to increase compliance with human rights and compatibility with the specific needs of various actors.
- Disseminate results to European institutions, relevant NGOs, representatives of local governments, peacekeeping decision makers, jurists etc

In 2010, The Institute produced reports on the EUPM and EUFOR-Althea missions in Bosnia-Herzegovina, the EUNAVFOR Atalanta and EUTM mission in Somalia, as part of the study of the 25 EU CSDP missions undertaken by various partners of the project. These reports are to be published in 2011.

The Institute was also in charge of organizing four field missions divided in two categories:

- two missions in Kosovo and Bosnia-Herzegovina with the following objectives: to analyse and assess the insertion of a human rights component in the mandates of EUPM and EUFOR-Althea mission and the EULEX rule of law mission; to study the measures taken by the EU and by Member States to integrate the promotion of sex equality in crisis management; and to analyse the interaction between the EU and other international organizations, in particular the United Nations and NATO.

- two field missions relating to transitional justice in Sierra Leone and Cambodia with the following objectives: to assess the context to the establishment of the Special Court for Sierra Leone and the Truth Reconciliation Commission and of the Extraordinary Chambers in the Courts of Cambodia; to examine their mandates and operating methods, to study their interaction, to assess the impact of each mechanism having particular regard to the perspective of victims (especially women and children) and to evaluate the role of the UN, other States, and international organizations in developing and working with these mechanisms.

The final reports are available on the ATLAS website at <http://projetatlas.univ-paris1.fr/>

Human Rights and Pre-Trial Procedures: Requirements for Police and Prison Authorities

Project Director: Robert McCorquodale

Research Fellow: Kristin Hausler

In 2010, the Institute conducted a study for the Commonwealth Secretariat, setting out Commonwealth and international human rights legal standards in relation to pre-trial activities by the police and prison authorities. The scope of the research encompassed the key stages of the pre-trial police investigation and prison use, including police arrest and investigation methods, and conditions of pre-trial detention. This enabled a clarification of the minimum human rights standards in relation to pre-trial procedures. The study was intended to assist the Commonwealth Secretariat and the Law Ministers of the Commonwealth Member States to engage further with justice sector agencies in order to strengthen criminal justice systems through coordinated reform programmes.

Initially, the study placed a particular emphasis on five States which were selected by the Commonwealth Secretariat because their national legal systems are based on civil law or have been strongly influenced by civil law, in contrast to the rest of the Commonwealth Member States. These States are: Cameroon, Mozambique, Mauritius, Rwanda and the Seychelles. Thus the research included a review of the practices of these States in relation to pre-trial detention and sought to detect any distinctive role of civil law with regard to pre-trial detention procedures.

The Institute first conducted background research in order to develop a relatively brief questionnaire that was sent to the Law Ministries in the selected states. A preliminary version of the questionnaire was sent to the Commonwealth Secretariat for review and amendments. Once the questionnaire was finalized, it was sent to the Law Ministries of the five selected States. In the questionnaire, the Ministries were asked 36 questions in order to provide a detailed account of the legislative, administrative and judicial measures regarding pre-trial detention in their State and to provide also a detailed account of pre-trial detention by their police forces and in their prison facilities. The questions also covered other issues, such as the number of pre-trial detainees being held on a yearly basis and the human rights training given to police and prison officers.

The Institute also conducted its own research on each of the five States. The information obtained through the research was subsequently

collated with the answers to the questionnaires that were received back from the States (though two States did not respond). As a result, the report combines desk-based research and responses from the appropriate ministries to the questionnaires. The final report is an analysis of the research and responses to the questionnaire, including the minimum human rights standards in relation to pre-trial procedures and some suggestions of good practices. In addition, the report provides some reflections on the possible differences between common law and civil law systems in terms of the extent that different legal traditions may affect the standards relating to pre-trial activities.

A summary version of the report was presented at the meeting of the Senior Law Ministries in London in October 2010. Revisions to the present report in light of comments at that meeting are currently underway. The final report will be distributed at the meeting of the Commonwealth Law Ministries in July 2011 in Australia, in accordance with its theme: 'Justice and Human Rights'.

International Disaster Relief Preparedness: An Evaluation of the Capacity to Handle Relief

Project Director: Sarah Williams

Research Fellow: Justine Stefanelli

Project webpage: <http://www.biicl.org/research/disasterrelief/>.

The Institute completed in December 2010 a study that commenced in March 2009 concerning the implementation of disaster response laws, rules and principles in several countries throughout Europe. The project was conducted by the International Federation of Red Cross and Red Crescent Societies (IFRC) and the Red Cross Societies of several EU Member States, including the United Kingdom. The Institute's work formed part of an overall project directed by the IFRC, which includes four other national case studies and a final, comparative report.

Recent events have raised the question of whether States are adequately prepared to facilitate and regulate international disaster assistance in the wake of a disaster such as Hurricane Katrina. The response to that disaster demonstrated that even relatively developed and wealthy countries may sometimes need foreign assistance but may be ill-equipped to handle it effectively. In an effort to promote better preparedness for disaster relief globally, the IFRC developed 'Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance' (the IDRL Guidelines) to support governments in improving their domestic and legal framework for disaster preparedness and response. More information on the IFRC's IDRL programme is available at: <http://www.ifrc.org/what/disasters/idrl/>.

The Institute was asked to engage in two related studies, using the IDRL Guidelines as a basis for evaluating the ways in which both the EU and the United Kingdom have addressed potential regulatory problems concerning cross-border assistance. The EU study, which was funded in part by the European Commission, reviewed the technical aspects of the IDRL Guidelines, for example, legal facilities for entry and operations of relief personnel and goods, and legislation relating to temporary domestic legal status for assisting entities and relief from applicable customs duties or any VAT. It also presented an overview of other legal frameworks for the provision of relief, such as international agreements and the NATO mechanism for civil protection.

The UK study was funded in part by the British Red Cross as well as

the European Commission. The study assessed the regulatory issues for the receipt, origin or transit of disaster aid across the UK, taking note of specific areas of EU competence, as derived from the EU study. Both the EU and the UK studies combined research with stakeholder interviews to identify best practice and areas for improvement.

Following the publication of the EU and UK studies in the first half of 2010, a draft synthesis report was produced in October which compared the findings of the six national studies and the EU-level study. The report was presented for comment at a workshop in Brussels on 5 October hosted by the European Policy Centre. The workshop consisted of an audience representing 16 Governments and 21 National Red Cross Societies, as well as representatives from the International Federation of Red Cross and Red Crescent Societies and the European Commission. The results of the workshop were included in the final version of the Synthesis Report, which was published in December and marked the conclusion of the IDRL project.

Following on partly from this study, the Justice and Home Affairs Council adopted a Belgian proposal for 'Council Conclusions on Host Nation Support', which invites the EU Member States to integrate many of the considerations of the IDRL study into their national legal frameworks. The Conclusions also invite the Commission to develop guidelines on Host Nation Support by the end of 2011.

For further information concerning the IDRL project, please contact Justine Stefanelli at j.stefanelli@biicl.org.

Criminal Law and the Rights of the Child in Iran and other Muslim States

Project Director: Nisrine Abiad
Research Fellow: Farkhanda Zia Mansoor
<http://www.biicl.org/iran/>

The Institute conducted a research project on the Rights of the Child in Criminal Law in Iran and other Muslim States. This project's purpose is to enhance the implementation of non-discriminatory laws relating to children in the Iranian and other Muslim States' criminal justice systems through training, research and providing support to advocacy work.

Over the course of the project, a comparative study on the age of criminal liability in Muslim States aimed at providing strong material for advocacy and research on the subject. National Rapporteurs from Muslim and European States participated in completing a questionnaire on the subject.

Project Steering Group: Baroness Haleh Afshar, OBE, University of York; Prof Shaheen Ali, Warwick University; Jeremy Carver, Clifford Chance; Drewery Dike, Amnesty International; Prof Ziba Mir Hosseini, SOAS. Interim research consultants: Mubarka Ahmed, Tonye Clinton Jaja, Safoora Saremi.

On 28–29 June 2010, the Institute held a training workshop to bring together law professionals (lawyers, judges, prosecutors and human rights defenders) from the UK and from a number of Muslim States to consider the rights of children in their criminal justice systems. Through this workshop, law professionals from States such as Iran, Lebanon, Egypt, the United Arab Emirates, Turkey and Pakistan, shared their views on the current criminal justice processes applicable to young offenders. This two-day session was organized as part of the Institute's research project on 'Criminal Law and the Rights of the Child in Muslim States', which aims to enhance the implementation of non-discriminatory laws relating to children in the criminal justice system of Muslim States.

During 2010, the research resulting from the project was also collated and edited. The resulting book, *Criminal law and the Rights of the Child in Muslim States: A Comparative and Analytical Perspective*, was published by the Institute in English and has been translated into Farsi for dissemination among NGOs, lawyers, judges, academics and human rights activists within Iran.

Other Institute Projects

Collective Redress and the Brussels I Regulation

Research Fellows: Eva Lein and Duncan Fairgrieve

This was a research project for the UK Ministry of Justice examining to what extent the current version of the Brussels I Regulation (44/2001/EC) is adapted to the phenomenon of cross-border mass claims. The study also focused on the relatively recent Dutch legislation on the collective settlement of mass claims.

EU Regulation on International Successions

Research Fellow: Eva Lein

This was a research project for the European Parliament evaluating the European Commission's Proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession. A Briefing Note was prepared on a possible decision by the UK not to take part in the adoption of an EU Regulation on international successions and presentation given at a JURI Committee Meeting in Brussels.

Legal Duties and Powers of Consular Officers

Research Fellow: Jill Barrett

The Institute was commissioned by the UK Foreign and Commonwealth Office in September 2010 to conduct research on the duties and powers of British consular staff, where they relate to providing services to individuals or private organizations. The study was completed in October 2010, following which the researchers attended a review meeting at the Foreign and Commonwealth Office to discuss its findings.

The research was carried out by Christopher Reeves, Researcher, engaged by the Institute specifically for this project, assisted by Miranda Rushton, research intern on the public international law programme, under the supervision of Jill Barrett.

The Optional Instrument for European Contract Law

Research Fellow: Eva Lein

This was a research project for the European Parliament on the envis-

aged optional instrument for EU contract law and its relation with rules of private international law including rules on jurisdiction, recognition and enforcement. A Briefing Note was prepared and a presentation given at the European Parliament's Legal Affairs Committee workshop 'An Optional Instrument for EU Contract Law in Brussels'.

Research Profiles

Dr Nisrine Abiad

Nisrine has been Research Fellow at the Institute since February 2007. She has been directing various projects on International Human Rights Law and Iran. She also launched a new research initiative on the relationship between Islamic law and international law and promoted it by collaborating with academics in different Islamic countries, enlarging the Institute's European network in this area, undertaking research and successfully bidding for short and longer terms projects on subjects related to this area. Previously, she taught Public Law at the Lebanese University and the Holy Spirit University in Lebanon and has worked for three years as research associate in Public Law at the University of Pantheon-Assas Paris II in France, from which she holds her PhD.

Jill Barrett

Jill joined the Institute in August 2010 as the Senior Research Fellow in Public International Law (Dorset Fellow) from the Legal Adviser's team at the Foreign and Commonwealth Office, where she was a Legal Counsellor. She now leads the Institute's research and events programme in public international law. Previously Jill was Lecturer in Law at the School of Oriental & African Studies, University of London, specializing in the laws of the People's Republic of China, and Lecturer in Law at the University of Durham. Her research interests include international treaty law and practice, international environmental law, the Antarctic Treaty System and China's practice of public international law.

N Jansen Calamita

Jansen joined the Institute as Director of the Investment Treaty Forum and Senior Research Fellow International Investment and Trade Law in September 2010. Jansen also holds the post of Lecturer in Public International Law at the University of Birmingham Law School. Previously Jansen was a member of the Faculty of Law at the University of Oxford as well as a visiting fellow at Mansfield College, Oxford, and the Department of European, International and Comparative Law at the Law Faculty of the University of Vienna. He has also been an Adjunct Professor at George Mason University in the United States.

Dr Duncan Fairgrieve

Duncan Fairgrieve is Fellow in Comparative Law and Director of the *Tort*

Law Centre at the Institute. He is also Maître de Conférences at Sciences Po, Paris. He holds degrees from Oxford, London and Paris. Dr Fairgrieve's work has been cited by the courts, including judges of the Court of Appeal and House of Lords as well as Commissaire du Gouvernement Seban before the French Conseil d'Etat. Dr Fairgrieve is a qualified French avocat and practices in the field of civil and commercial litigation in Paris. He is a door tenant at *One Crown Office Row*.

Norah Gallagher

Norah was the Senior Research Fellow in International Investment and Trade Law and the Director of the Investment Treaty Forum until July 2010. She has continued since then as a consultant to the Institute. In addition to coordinating its activities she also undertook research projects as well as writing articles and trying to secure funding for future projects. Norah is a qualified lawyer in both England and Ireland and has practised in international law for many years previously at Herbert Smith and the Lauterpacht Centre for International Law, Cambridge.

Kristin Hausler

Kristin joined the Institute in August 2007 to assist on the Evidence in International Courts and Tribunal project. She has undertaken a variety of research projects for the Institute in the general area of public international law, especially human rights. Previously, Kristin worked for several years in Vancouver, Canada, on a repatriation project involving indigenous communities.

Professor Jeffrey Jowell QC

Jeffrey was appointed as the Director of the new Bingham Centre for the Rule of Law in October 2010. He has successfully combined a very distinguished academic career with a legal practice at Blackstone Chambers, and he has assisted the drafting of a number of national constitutions. Previously the Dean of UCL's Faculty of Law, he has been awarded a number of honorary degrees and awards including Honorary Bencher of the Middle Temple, Honorary Fellow of UCL and honorary doctorates from the Universities of Cape Town, Athens, Ritsumeikan and Paris. He is the UK representative on the Council of Europe's prestigious Commission for Democracy through Law ('The Venice Commission'), and was a member of the Royal Commission on Environmental Pollution.

Dr Eva Lein

Eva is the Herbert Smith Senior Research Fellow in Private International

Law. Eva was educated in Germany (legal studies and bar exam) and The Hague. She was a University lecturer in Germany and afterwards a Staff Legal Advisor at the Swiss Institute of Comparative Law (SCIL) in Lausanne (Swiss Federal Department of Justice and Police) and Head of the SICL Continental Law Section. She has lectured in European and international contract law and is Assistant Editor of the Yearbook of Private International Law.

Dr Philip Marsden

Philip is a competition lawyer with research interests relating to consumer welfare, abuse of dominance, international enforcement cooperation, competition law in small and developing economies, and aspects of the law of the World Trade Organization (WTO) relating to competition policy, telecommunications and dispute settlement proceedings. He is a frequent media commentator and conference speaker on competition and trade issues. He is the founder and editor of the European Competition Journal and a Founding Director of World Trade Institute Advisors. In 2008 he was appointed by the Secretary of State to the Board of the Office of Fair Trading for a four-and-a-half-year term.

Dr Farkhanda Zia Mansoor

Farkhanda is Professor of Law at the International Islamic University at Islamabad (IIUI) in Pakistan. After successful completion of the Visiting Research Fellowship at Brunel University, she started working as a Research Fellow at the Institute in 2009. Her project is on the enhancement of the implementation of non-discriminatory laws relating to children in the criminal justice systems through training and research. She possesses a PhD and LLM from the University of Hull and her LL.M and LL.B from IIUI. She has extensively researched and published in international peer-reviewed journals on the following areas: labour and employment law, Islamic law, criminal Law, international and human rights law, and international trade Law.

Faria Medjouba

Faria joined the Institute as a legal intern in April 2006 and worked with the Events team. She became a Research Fellow within the Tort Law Centre in September 2006. Within the Product Liability Forum, she coordinates the events and seminar series and also works on the Product Liability Database, which is a unique source of materials on comparative product liability and product safety law. Faria is now working as a researcher on the ATLAS project.

Professor Robert McCorquodale

Robert is the Director of the Institute and is also Professor of International Law and Human Rights, and former Head of the School of Law, at the University of Nottingham. Previously he was a Fellow and Lecturer in Law at St John's College, University of Cambridge and at the Australian National University in Canberra. Before embarking on an academic career, he worked as a qualified lawyer in commercial litigation with leading law firms in Sydney and London. Robert's research interests are in the areas of public international law and human rights law. He has published widely on these areas, and has provided advice to governments, corporations, international organizations, non-governmental organizations and peoples concerning international law and human rights issues, including advising on the drafting of new Constitutions and conducting human rights training courses.

Justine Stefanelli

Since joining the Institute in 2006, Justine has worked on a variety of projects in European law. She co-directed a study of the rights and responsibilities of citizenship, which included an analysis of citizenship across selected EU Member States and in America and Australia. She is also part of the Institute's ATLAS project, which evaluates the EU's international human rights and humanitarian law policy. She also worked on the study of the EU's and UK's framework for facilitating cross-border assistance in the event of a disaster. In May 2010, Justine was appointed the Maurice Wohl Fellow in European Law, developing the Institute's European law programme, including events and research. Justine obtained her Juris Doctorate from the University of Pittsburgh in 2005 and her LL.M in European law from Queen Mary, University of London in 2006. She is a licensed member of the Bar of the Commonwealth of Pennsylvania in the United States.

Dr Sarah Williams

Sarah was the Dorset Fellow in Public International Law until January 2010. Previously she was a lecturer in law at Durham University, where her teaching and research interests included public international law, international criminal law, legal responses to terrorism and international human rights. Sarah was a legal researcher at the Foreign and Commonwealth Office (2006) and a Visiting Fellow at the Sydney Centre for International Law (2008). She is the co-editor (with Dominic McGoldrick) of the Current Developments (Public International Law) section of the International and Comparative Law Quarterly. She is now a Senior Lecturer at the University of New South Wales in Sydney.

Publications by Staff 2010

Nisrine Abiad

- *Criminal Law and the Rights of the Child in Muslim States: A Comparative and Analytical Perspective* (BIICL, London, 2010).

N Jansen Calamita

- *Rights, Proportionality and Standards of Review in the International Law of Investment: The Problematic Push to Constitutionalism* (in progress).
- *Countermeasures and Jurisdiction: Between Effectiveness and Fragmentation* (2010) 42 *Georgetown J Int'l L* 233–301.

Kristin Hausler

Articles

- With Robert McCorquodale: 'Caucuses in the Caucasus: The Application of the Right of Self-Determination' in Christopher Waters and James Green (eds) *Conflict in the Caucasus: Implications for International Legal Order* (Palgrave Macmillan, London, 2010) 26–53.
- 'Presumption of Innocence and the *Marion True* Trial', *The Art Newspaper*, No. 215, July/August 2010, 25.

Book Review

- *Reparations for Indigenous Peoples—International and Comparative Perspectives* by Federico Lenzerini (ed) (OUP, Oxford, 2008) in 59 *ICLQ* 2 (April 2010).

Eva Lein

Articles

- Les compétences spéciales, A Bonomi and C Schmid, *Successions internationales Publications de l'Institut Suisse de Droit Comparé*, vol 68 (Schulthess, Zurich, 2010) 77–98.
- A further Step towards a European Code of Private International Law, The Commission Proposal for A Regulation on Succession, P Šarčević, P Volken, and A Bonomi (eds), *Yearbook of Private International Law* 2009, 2010, 107–141.

- 'Ideals and Realities: Reflections on Law Reception in Eastern European Private Law' in E Lein, J Skala and L Heckendorn (eds), *Business Law in Transition, A Comparative Perspective on Eastern Europe*, (Schulthess, Zurich, 2010) 13–26.

Book Reviews

- Thomas Thiede, *Internationale Persönlichkeitsrechtsverletzungen durch Massenmedien* (Jan Sramek Verlag, 2010), *Journal of European Tort Law* 2010, forthcoming.
- Jeronimo Hawellek, *Die persönliche Surrogation*, Max-Planck-Institut für ausländisches und internationales Privatrecht, *Studien zum ausländischen und internationalen Privatrecht* (Mohr Siebeck, Tübingen, 2010), INF, forthcoming.

Editing

- *Business Law in Transition, A Comparative Perspective on Eastern Europe* (co-edited), (Schulthess, Zurich).
- *Yearbook of Private International Law 2009* (Sellier, Munich, 2010).

PhD

- European, International and Comparative Contract Law, grade: Summa Cum Laude.

Philip Marsden

- P Marsden, 'Antitrust Marathon IV: With Authority' (April 2010) 6 *European Competition Journal* No 1, (with SW Waller).
- P Marsden, 'The Curious Incident of Positive Comity—The Dog that Didn't Bark', chapter in *Regulation and Competition in the Global Economy: Cooperation, Comity and Competition Policy* (OUP, Oxford, 2010).
- P Marsden, 'Exclusionary Abuses and Competition on the Merits', chapter in *The Reform of Competition Law: New Challenges* (Kluwer Law International, The Hague, 2010).
- P Marsden, 'The Role of Competition and State Aid Policy in Financial and Monetary Law' (2010) 13 *Journal of International Economic Law* 875–892 (with I Kokkoris).
- P Marsden, 'Monopolisation: the Transatlantic Divide on How Best to Protect the Process of Competition' (2010) 55 *Antitrust Bulletin* (with Liza Lovdahl Gormsen).
- P Marsden, 'Monopolisation: What is Behind the Trans-Atlantic

Divide?’ chapter in *Challenges in the Enforcement of Article 82* (OUP, Oxford, 2010).

Robert McCorquodale

- *The Rule of Law in International and Comparative Context* (edited BIICL, 2010).
- ‘The Individual in International Law’ in M Evans (ed), *International Law* (3rd edn, OUP, Oxford, 2010) 284–310.
- ‘Rights of Peoples and Minorities’ in D Moeckli, S Shah and S Sivakumaran (eds), *International Human Rights Law* (OUP, Oxford, 2010) 365–387.
- ‘A Future for Human Rights Law’ in M Baderin and M Ssenyonjo (eds), *International Human Rights Law: 60 Years after the UHDR* (Ashgate, Kent, 2010) 541–553.
- ‘Caucuses in the Caucasus: The Application of the Right of Self-Determination’ (with K Hausler) in J Green and C Waters (eds) *Conflict in the Caucasus: Implications for International Legal Order* (Palgrave, London, 201) 26–53.
- ‘Business, the International Rule of Law and Human Rights’ in R McCorquodale (ed), *The Rule of Law in International and Comparative Context* (BIICL, London, 2010) 27–47.
- ‘International Law and Corporate Complicity’ in V Kuuya (ed), *Report of the Conference on Corporate Complicity in Human Rights Violations* (CUP, Cambridge, 2010).

Institute Publications

Publications Coordinator: Alexa van Sickle

International and Comparative Law Quarterly

Christine Chinkin

In September 2010, Prof Christine Chinkin stepped down from the Editorial Board after serving for two years.

Paula Giliker

Prof Paula Giliker of Bristol University joined the Editorial Board in March 2010, after serving as a book review editor since early 2009.

Christine Gray

Prof Christine Gray of Cambridge University joined the editorial board in November 2010.

Francesco Giglio

Francesco became a book review editor for the journal in July 2010. He is a senior Lecturer at the University of Manchester.

We once again thank Craig Barker, Peter McEleavy, Dominic McGoldrick, Joe McMahon, and Sarah Williams for their contribution to the journal as Current Developments editors.

Young Scholars Prize

The ICLQ Young Scholars prize started in 2009, and continued in 2010. It marks outstanding journal article in the ICLQ by a scholar who was 35 or under at the time of submission. The Prizes, being £250 worth of Cambridge University Press books, are to be given out at the annual ICLQ Lecture.

Book Titles Published in 2010

A Guide to International Law Careers by Anneke Smit and Christopher Waters

The experience of many students studying public international law at university is, 'This is fascinating, but what can I do with it?' While this Guide in no way detracts from the more intangible reasons to study international law, it is practically focused and explores the options available to law graduates beyond traditional or domestic law career paths.

The range of possible careers is vast—from human rights to investment law and from the courtroom or boardroom to the refugee camp—and the Guide offers a step-by-step approach to considering whether and how to pursue a career in one of these areas. The essential message is that international law jobs are out there and attainable if approached strategically and with perseverance. The text—written as a series of questions and answers—is supplemented by practitioners' views and experiences, and appendices containing concrete information on the most useful internships, short courses and Master's programmes.

40 Years of the Vienna Convention on the Law of Treaties edited by Alexander Orakhelashvili and Sarah Williams

This volume presents the reader with insights as to how law of treaties has worked over past 40 years, since the 1969 Vienna Convention was adopted as the comprehensive treaty to regulate the law of international agreements. Treaties form a basis for a daily conduct of international relations and thus it is vital to see how they are made, amended, interpreted and enforced. This volume capitalizes on 40 years of international experience, described and analytically examined by a group of experts on the subject. Multiple issues the Convention covers include the aspects of conclusion, interpretation, reservations, amendment and modification, validity and other issues relating to treaties are covered.

Contributors: Alan Boyle, Malgosia Fitzmaurice, Mary Footer, Anthony Aust, Richard Gardiner, Jan Klabbers, Paul Eden, Alexander Orakhelashvili, and with a preface by Sir Franklin Berman.

Markets and Comparative Law by Guido Alpa

Available for the first time in English, in this latest collection of essays Guido Alpa brings his cosmopolitan approach to current issues in European, private, and commercial law. Covering a broad range of topics,

Alpa provides thought-provoking discussion and insight on the themes of legal harmonization and the influence of comparative law on the evolution of legal forms. Accessible and informative, he writes with unique authority on current developments and issues regarding fundamental rights, the World Bank, contract law, family law and changing social norms, and the effect of modern human rights instruments on private law to name just a few—illuminating different solutions to common legal problems. His observations are an essential addition to the existing literature on European private law, and readers will benefit not only from his own deep interest and research in law but the breadth of his expertise in history, classics, literature and politics.

'Most lawyers will find in this book something of interest as well as plenty of cause for envy for the culture of a man who is not only an exemplar of Italian learning but also a good and loyal friend of our own law. One can thus not only commend this book to one's colleagues...but also congratulate the British Institute of International and Comparative Law on its initiative to make these essays available to English speakers.' —Sir Basil Markesinis

The Rule of Law in International and Comparative Context edited by Robert McCorquodale

If the daunting challenges now facing the world are to be overcome, it must be in important part through the medium of rules, internationally agreed, internationally implemented and, if necessary, internationally enforced. That is what the rule of law requires in the international order.
—Lord Bingham (Chapter 1)

The maintenance and promotion of the rule of law is of fundamental importance for the human dignity and well-being of people everywhere, providing the foundations for good governance, an effective economy and a fair society, and affecting the daily lives of people around the world. Its relevance extends across a wide range in the affairs of people and states: in the laws of armed conflict; laws outlawing corruption and governing constitutional affairs; in energy and environmental rights; the respective roles and powers of the various arms of government and agencies at national, regional and international level; the independence of the judiciary; and in human rights. This book explores some key issues concerning the rule of law in the international and comparative context, clarifying key aspects of the rule of law and applying them to real life examples across the world, including:

- the impact of business on human rights;
- anti-competitive practices and the role of the European Union bodies;
- the development of international investment law;
- the use of comparative law to inform national decision-making; and
- the effects of international criminal law and practice.

The analysis is given by some of the leading lawyers in the world—Yves Fortier, Mary Robinson, Jane Stapleton, Keir Starmer and Lord Bingham—as well as the senior researchers of the British Institute of International and Comparative, as it celebrated 50 years of promoting the rule of law in an international and comparative context.

The **Institute Newsletter** continues to include legal news and analysis from research fellows and interns, as well as coverage of events and news of the Institute staff and members and updating Institute members. The Institute continues to explore further marketing methods for its publications, making contact with online scholarly communities and blogs, and raising its profile on social networking sites including Twitter, which provides a forum for linking the Institute’s research and events with current affairs and relevant issues in international law. Marketing of the ICLQ, working closely with CUP’s marketing team, has continued with new strategies, like providing free access to some articles as ‘tasters’ and selecting standout articles from each issue.

Conferences, Lectures, Seminars and Other Events

The British Institute of International and Comparative Law runs a dynamic programme of events and CPD courses; these reflect the Institute's research interests and the interests of our membership. We produce unique events that include panels of practising lawyers, academics and regulators. We pride ourselves on the high calibre of our speakers and the cutting edge topics discussed. In 2010, 3000 people attended Institute events.

A series of over 65 events are produced each year. CPD courses run throughout the year, which are accredited both by the Solicitors Regulation Society and the Bar Association. Generally, events are open to the Institute's members, as well as students, academics, practising lawyers, barristers and regulators.

The year 2010 saw a busy events schedule. Highlights of this year include the Annual Conference on Energy Security and its impacts on the International Legal System. The keynote speaker was Professor Julia King, Vice-Chancellor of Aston University, member of the UK Committee on Climate Change and of the National Security Forum.

In June the Institute ran a training workshop on Criminal Law and the Rights of the Child in Muslim States. This workshop brought law professionals (including lawyers, judges, prosecutors and human rights defenders) from the UK and from a number of Muslim countries to consider the rights of children in their criminal justice systems. Through this workshop, law professionals from countries such as Iran, Lebanon, Egypt, the United Arab Emirates, Turkey and Pakistan, shared their views on the current criminal justice processes applicable to young offenders. This two day session was organized as part of the Institute's 'Criminal Law and the Rights of the Child in Muslim States' project, which aims to enhance the implementation of non-discriminatory laws relating to children in the criminal justice system of Muslim States.

December saw the launch of the Bingham Centre for the Rule of Law at the Royal Courts of Justice. In attendance was an audience of over 200 contributors and supporters of the initiative. After a welcome by the Rt Hon The Lord Judge, Lord Chief Justice of England and Wales, the event began with a set of speeches from an esteemed panel that included Lady Bingham of Cornhill, Rt Hon Kenneth Clarke QC, MP, Lord Chancellor and Secretary of State for Justice, Roger Errera, former Senior Member of the Conseil d'Etat, Paris and Visiting Professor at

Central European University in Budapest, Professor Jeffrey Jowell QC, the inaugural Director of the Bingham Centre, and Sir Christopher Bellamy QC, Chair of the Bingham Centre Appeal Board.

The Herbert Smith Private International Law series continued to run a highly successful string of lectures throughout the year including 'New Developments in Arbitration Law and Practice: From Class Arbitration to Brussels I' 'Rome II—Case Law and Controversy', and Extraterritoriality and Collective Redress to name just a few.

Lectures and seminars on topical issues included 'The US and counter-terrorism policy since 9/11: Lessons learned and questions raised for human rights and humanitarian law', 'The first verdict of the ECCC—The Duch Case', 'Freedom of Information in the WikiLeaks Era', 'Object/Effect and Information Sharing—the good, the bad and the ugly, and 'Hub and Spoke arrangements: a comparative view'. The environment was at centre of two events, one seminar following the Copenhagen summit and another after the ICJ decision on the *Pulp Mills* case. The ICJ was also the focal point of a rapid-response seminar, organized shortly after its advisory opinion on Kosovo. Throughout the year, the Institute gathered international and comparative law experts from all over the world to take an active part in its dynamic events.

This year's programme contained a diverse range of events and training courses covering subjects such as:

- Arbitration
- Comparative Law
- Competition Law
- Environmental Law
- Energy Law
- EU
- Human Rights
- Humanitarian Law
- International Investment Treaty Law
- Intellectual Property
- Islamic Law
- Law and development
- Private International Law
- Product Liability
- Public International Law
- WTO and Economic Law

We also achieved a spectacular array of annual events which included the WTO conference, The Annual Grotius lecture and the Public Investment Treaty Forum conferences.

We would like to thank the sponsors that have supported this year's events programme. If you are interested in supporting future events please contact the Institute's Events and Marketing Manager.

Institute Development

The Development Appeal

The Institute's Development Appeal was established with the principal objective of raising funds for the Bingham Centre for the Rule of Law and the Arthur Watts Fellowship in Public International Law. A report on the progress of each Appeal is listed below.

We are also extremely fortunate to have had the support of The Dorset Foundation. Their generosity over the years has provided the funding for the Dorset Fellow, a senior research fellow in Public International Law, and the Development Director.

The Bingham Appeal

This year saw great progress towards the goal of raising £2.25 million for the establishment of the Bingham Centre with over £1.6 million raised by the end of 2010. There has been wide support both financially, and in spirit, for the Centre across the legal community, companies and trusts.

We are particularly grateful to Freshfields Bruckhaus Deringer, Linklaters, Clifford Chance, Hogan Lovells, Sidley Austin, Macfarlanes, Allen & Overy, the retired and current partners of Slaughter and May, The David and Elaine Potter Foundation, Shell International Ltd, The International Bar Association Charitable Trust and The Vivmar Foundation for their generous financial support of the Centre.

The Institute is also indebted to our Appeal Board and Appeal Patrons for their unstinting support and efforts over the past year. Details of the Patrons and Appeal Board can be seen overleaf.

Whilst there is still some way to go to fund all of the research posts and office costs needed to establish the Centre for its first five years, the support we have received from the profession and many others has given us the confidence to recruit our first members of staff, launch the Bingham Centre and proceed with activities, research and events.

Launch of the Bingham Centre for the Rule of Law

The Bingham Centre for the Rule of Law was launched at The Royal Courts of Justice on 6 December 2011. The panel included the Rt Hon The Lord Judge, The Rt Hon Lord Phillips of Worth Matravers, Lady Bingham, Rt Hon Kenneth Clarke QC MP, Roger Errera, Professor Jeffrey

Jowell QC (Director of the Bingham Centre for the Rule of Law) and Sir Christopher Bellamy QC (Chair of the Bingham Centre Appeal Board). The panel expressed their admiration for Lord Bingham, the importance of the Rule of Law and their support of the Bingham Centre. All donors were invited to help us celebrate the establishment of the Centre and we will hold other such events and briefings over the year ahead, when those who have expressed an interest can find out more about the Centre's progress and achievements.

We are extremely grateful to all of those donors listed below who have contributed so much both in funds and in the giving of their time and effort.

The Bingham Appeal — Benefactors

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All donations over £500 are listed here. For a full list, please see the Institute's website.

The Arthur Watts Appeal

The Institute's appeal for the Sir Arthur Watts Research Fellowship in Public International Law aims to honour the memory of the late Sir Arthur Watts, widely regarded as one of the foremost public international lawyers of his generation. This Fellowship will further secure the place of public international law as a core element of the Institute's work and reflect the special focus Sir Arthur had on the practical operation of public international law.

Areas of law that the Fellow is likely to be involved in through research and organization of events are:

- Damages in International Law
- Evidence before International Courts and Tribunals
- Comparative International Law

The initial fundraising target for the Sir Arthur Watts Fellowship is £500,000. This will cover the running costs for the Fellowship for five years. The Institute wishes to thank Sir Franklin Berman KCMG QC, who has led the fundraising for this Fellowship, raising approximately £230,000 to date from the international community.

The Watts Appeal — Benefactors

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Sir Franklin Berman KCMG QC
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All donations over £500 are listed here. For a full list, please see the Institute's website.

Donations to the Institute

Susan Bright
The Dorset Foundation
Sir Sydney Kentridge KCMG QC
Sir Jeremy Lever KCMG QC

We would like to thank all of those individuals and organizations who have supported the Development Appeal.

If you wish to make a donation to The Institute, or to The Bingham Appeal or The Watts Fellowship specifically, please contact Diane Denny, Development Director on 020 7664 4871 or on d.denny@biicl.org.

Company Registration No. 615025
Charity Registration No. 209425

The British Institute of International and Comparative Law

Summarised Financial Statements

**For the Year Ended
31 December 2010**

**THE BRITISH INSTITUTE OF INTERNATIONAL AND
COMPARATIVE LAW**

**SUMMARISED STATEMENT OF FINANCIAL ACTIVITIES
(Incorporating an Income & Expenditure Account)
FOR THE YEAR ENDED 31 DECEMBER 2010**

	Unrestricted Funds £	Restricted Funds £	Endowment Funds £	Total 2010 £	Total 2009 £
INCOMING RESOURCES					
Incoming resources from generated funds:					
Voluntary Income	1,788	701,427	–	703,215	264,427
Activities for generating funds:					
Grant income	70,000			70,000	62,438
Rental income	24,100	–	–	24,100	19,435
Investment and other income	13,872	2,679	–	16,551	17,061
Incoming resources from charitable activities:					
Member services	279,251	–	–	279,251	299,728
Publications and journals	233,337	–	–	233,337	285,420
Conferences and seminars	187,883	–	–	187,883	226,818
Research programmes	312,023	217,707	–	529,730	288,594
Total incoming resources	1,122,254	921,813	–	2,044,067	1,463,921
RESOURCES EXPENDED					
Costs of generating funds:					
Fundraising costs	61,468	16,096	–	77,564	62,787
Charitable activities:					
Member services	142,985	–	–	142,985	219,017
Publications and journals	61,355	–	–	61,355	155,447
Conferences and seminars	137,306	–	–	137,306	177,171
Research programmes	202,040	244,105	–	446,145	262,063
Support costs: Staff costs	205,423	–	–	205,423	245,073
Support costs: Premises & other costs	109,243	18,420	–	127,663	156,790
Depreciation & loss on disposals	13,851	–	–	13,851	19,345
Governance costs	9,402	–	–	9,402	8,072
Total resources expended	943,073	278,621	–	1,221,694	1,305,756
Net incoming resources before other recognised gains and losses	179,181	643,192	–	822,373	158,156
Other recognised gains and losses					
Unrealised net (losses)/gains on investments	5,275	–	–	5,275	13,868
Net movement in funds	184,456	643,192	–	827,648	172,024
Reconciliation of funds					
Total funds brought forward	407,737	338,165	402,042	1,147,944	975,920
Total funds carried forward	592,193	981,357	402,042	1,975,592	1,147,944

CONTINUING OPERATIONS

None of the charity's activities were acquired or discontinued during the above two financial years.

TOTAL RECOGNISED GAINS AND LOSSES

The charity has no recognised gains or losses, other than the above movement in funds for the above two financial years.

**THE BRITISH INSTITUTE OF INTERNATIONAL AND
COMPARATIVE LAW**

**SUMMARISED BALANCE SHEET
AS AT 31 DECEMBER 2010**

FIXED ASSETS	£	2010 £	2009 £
Tangible assets	54,362		64,736
Investments	246,012		234,052
		300,374	298,788
CURRENT ASSETS			
Stocks	19,533		22,237
Debtors	215,559		220,530
Cash at bank and in hand	1,821,529		1,071,923
	2,056,621		1,314,780
CREDITORS: amounts falling due within one year	(381,403)		(465,624)
NET CURRENT ASSETS		1,675,218	849,156
TOTAL ASSETS LESS CURRENT LIABILITIES		1,975,592	1,147,944
ENDOWMENT FUNDS			
Sunley—Percy Rugg Endowment Fund	140,255		140,255
Sunley—Sebag Shaw Endowment Fund	140,255		140,255
Barnett Shine Charitable Foundation Fund	121,532		121,532
		402,042	402,042
RESTRICTED FUNDS		981,357	338,164
UNRESTRICTED FUNDS			
General Fund	537,831		343,001
Fixed Assets Fund	54,362		64,736
		592,1937	407,737
		1,975,592	1,147,944

These summarised accounts have been prepared from the draft full annual accounts of the British Institute of International and Comparative Law. As such these accounts have *not* been extracted from the final full annual accounts and therefore have *not* been audited.

Their purpose is therefore to provide limited financial information as to the financial activities and results of the Institute for the year ended 31 December 2010 together with its financial position as at 31 December 2010. They may not contain sufficient information to allow for a full understanding of the financial affairs of the charity.

For further information, copies of the full audited accounts can be obtained from the British Institute of International and Comparative Law, Charles Clore House, 17 Russell Square, London WC1B 5JP.