



# British Institute of International and Comparative Law

## Director's Notes



Happy New Year! My warm thanks to our staff, trustees, members, attendees, donors, sponsors and so many others who have supported the Institute in the past and will continue to do so this year.

As you will see in this Newsletter, there is much that the Institute did in 2012. During the course of the year we employed new staff as we were successful in some research project funding applications, had a range of interesting events on contemporary issues, undertook and completed high quality applied

research, and we remain on a solid foundation financially despite the ongoing tough global financial situation and the lack of core funding. This year also marks the tenth anniversary of the Competition Law Forum, so there is much to celebrate.

One exciting new research project is on *Collective Redress*, where we were successful in an application to the European Commission. This project will provide a much needed web resource of European cases and legislation on collective redress, and we will be working with institutions across Europe. As the Commission refuses to fund such projects completely, we are currently seeking private funders to enable it to be fully funded. We also have a research project on *Immigration Detention and the Rule of Law* funded by the Nuffield Foundation. This will consider the problems and challenges of immigration detention and appropriate rule of law standards in Europe, with the intention to provide guidelines for governments for their detention policy. Sophie Palmer has joined us as a Research Fellow on this project. In addition, we are working in partnership with the British Red Cross, which has funded a research project on *International Humanitarian Law and Media Professionals* to provide a guide for journalists working in conflict situations as to the relevant international humanitarian law. Another new staff member is Ghislain Guillaume who is a Research Fellow in Comparative Law. These indicate some of the diverse areas of important conceptual and practical research that we undertake.

The Institute's Annual Conference and Grotius Lecture was a success, with Professor Cherif Bassiouni and Sir Frank Berman giving excellent and insightful talks, as well as the FA Mann Lecture given by Professor Hazel Genn. We welcomed Sir Paul Jenkins, the Treasury Solicitor, and Loretta Malintoppi of Eversheds, who joined us as Trustees.

The Bingham Centre continues to develop well, especially with training courses in Libya and Bahrain, and we held an event in Belfast as part of our wish to hold some Institute events around the UK. In 2013 there will be two public international law seminar series, kindly sponsored separately by Temple Gardens Chambers and Volterra Fietta. The inauguration event of the Arthur Watts Senior Research Fellowship in Public International Law was also a success. I do hope that you continue to enjoy reading about the many and various activities of the Institute as set out in this Newsletter. Please also look at our website or contact us if you want to know more.

**Professor Robert McCorquodale**  
Institute Director

## Staff News

The Bingham Centre welcomes **Sophie Palmer** as Research Fellow in Detention and Rule of Law on the immigration detention study, funded by the Nuffield Foundation. Sophie holds a BA in Jurisprudence and an MSc in Criminology and Criminal Justice from Keble College, Oxford. Her doctoral research at the University of Oxford considered through ethnography the experience and effect of imprisonment and 'privatisation culture' on men in two private prisons in England. She was previously Stipendiary Lecturer in Law and Admissions Coordinator at Balliol College, Oxford and Lecturer in Law at the University of Buckingham.



**Ghislain Guillaume** joined the Institute in January 2013 as a Research Fellow in Comparative Law. He earned a postgraduate degree (DEA) in Business Law from the University of *Paris Est* and an LLM in International Business Law from King's College London. Ghislain is currently undertaking a PhD on the Termination of contracts in European Private Law.

**Gabriella de Sena** joined the Institute in November in a supporting role for Development, fundraising for the Bingham Centre, the Arthur Watts Appeal and Institute-wide. Her background is in fundraising for children's charities (NSPCC, Roald Dahl's Marvellous Children's Charity).



**Fleur Adolphe** joined the Institute in January as an interim Events and Marketing Manager, and will be with us until April. Her role focuses on developing and implementing coherent and consistent marketing strategies across all parts of the Institute.

# Institute Research

## *Temple Garden Chambers Seminar Series on International Adjudication*

The Institute is delighted to announce a new series of events on public international law entitled 'Temple Garden Chambers Seminar Series on International Adjudication'. This seminar series, kindly sponsored by Temple Garden Chambers, will serve as an intellectual forum for substantial debates on brand new developments that arise before international tribunals. The series will consist of evening seminars with participation of prominent guests with expertise and knowledge of international adjudication. The focus of the Temple Gardens Chamber seminar series in 2013 will be on legal and institutional developments of the European Court of Human Rights, the International Criminal Court, the International Court of Justice and investment arbitration tribunals.

## *Media Professionals in Armed Conflict*

In September 2012, BIICL commenced a project commissioned by the British Red Cross, undertaking research into the legal position of media professionals in armed conflict. This research examines how International Humanitarian Law (IHL) protects the media in conflict zones. It also considers the IHL responsibilities of those media professionals who report from armed conflict.

The research will result in the publication of a Handbook and a Field Guide for media professionals on dangerous professional missions in conflict zones. These publications will provide information to members of the media about their legal position under IHL. This research builds on the ongoing work of the British Red Cross aimed at increasing awareness and understanding of IHL among media professionals.

The research team consists of Nicole Urban, Research Fellow in International Humanitarian Law, and Dr Andraz Zidar, Senior Research Fellow in Public International Law.

## Forum News

### Investment Treaty Forum

Looking forward to 2013, the Investment Treaty Forum will be organizing its annual series of invitation-only seminars for members of the Forum. Last year's members' seminars addressed the relationship between 'green growth' energy policies and international investment law and also examined the on-going evolution of Europe's international investment policy following the Treaty of Lisbon. To kick-off the series for 2013, the Forum will be convening a seminar on 28 February at Eversheds offices in Paris addressing the relationship between international commercial arbitration and the investment treaty regime. The seminar will explore whether arbitration agreements and arbitral awards can qualify as "investments" under investment treaties, and whether investment treaties can be used as a mechanism for "enforcement" of commercial arbitration awards as compared with more traditional enforcement mechanisms, i.e. under the New York Convention. Speakers for the evening are Andrea Carlevaris (Secretary General, ICC), Hussein Haeri (Eversheds, Paris) and Professor Guglielmo Verdirame (King's College London). The discussion will be chaired by Professor Brigitte Stern (Université Panthéon-Sorbonne (Paris I)).

### Competition Law Forum

This year sees the tenth anniversary of the Institute's Competition Law Forum and to celebrate we are planning a special series of events and workshops along a range of themes, relating to pressing issues, comparative analysis and inter-disciplinary work.

## Publications

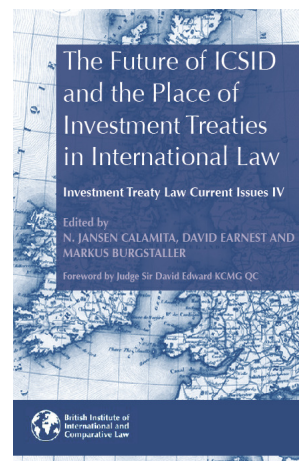
### The Future of ICSID and the Place of Investment Treaties in International Law: Investment Treaty Law Current Issues IV

*Edited by N. Jansen Calamita, David Earnest and Markus Burgstaller*  
Forthcoming March 2013  
ISBN: 978-1-905221-50-9

From the Foreword by Judge David Edward:

*"This book offers a rich exploration of important and timely themes. Not only are the contributions from some of the most experienced and astute thinkers in the field, but they shed new light on a host of emerging issues."*

The chapters in this volume bring together papers of the Investment Treaty Forum at the British Institute of International and Comparative Law and represent contributions by some of the leading practitioners and scholars in the field. The issues raised and discussed in this volume are as important for practitioners as they are for policy-makers and academics.



### International and Comparative Law Quarterly

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is out now and free online access is available to Members via our website. Hard copies are available by subscription. For more details, visit: [www.biicl.org/iclq](http://www.biicl.org/iclq)

# The Bingham Centre for the Rule of Law

## The Bingham Centre's 2<sup>nd</sup> Anniversary

In December 2012, the Bingham Centre for the Rule of Law celebrated its 2<sup>nd</sup> Anniversary. Its Director, Sir Jeffrey Jowell QC, spoke about its work to Frances Gibb of The Times. To read the article, which appeared in The Times on 6 December, please visit our website.

## 'Diminishing judicial review will reverse 50 years of legal progress'

Responding to the Government's announcement that it planned to reduce the opportunity for judicial review of official decisions, the Bingham Centre's Director published an article in The Guardian Online on 19 November, a link to which can be found on our website. The Bingham Centre also plans to submit comments on the proposals for reform to the Government's consultation on the subject.

## The Justice and Security Bill: an Update

The Justice & Security Bill was sent to the House of Commons in November. In advance of the Bill's second reading in the Commons on 18 December, Professor Adam Tomkins and Dr Tom Hickman prepared a further briefing for MPs on behalf of the Bingham Centre. To read the briefing in full see our website. This follows earlier briefings by the Bingham Centre during the Bill's passage through the House of Lords. On 21 November, speaking in the House of Lords, Lord Wallace of Tankerness recognised the Centre's contribution – *"I am particularly grateful to the Bingham Centre for taking time to scrutinise the Bill and for writing to me and asking the Government to rethink. The Centre is an important legal research institute and the Government welcome its contribution to make sure that the Bill is suitably drafted"*.

## Event on 'The Proposal to Codify Principles of Good Administration in European Institutions: Advancing the Rule of Law?'

The Bingham Centre has been working with the Italian Council of State (Consiglio di Stato) to review and comment on the proposal before the EU Parliament (EP) to codify good administrative practice within EU institutions ([EU \(2012/2024\(INI\)\)](#)). An initial meeting was held at the Bingham Centre in June to discuss ways forward, and to begin planning a conference to be held in London on the subject. This took place in November and was organised by Justine Stefanelli, the Maurice Wohl Fellow in European Law. The first of its kind in the UK, the conference presented a comparative overview of the merits and disadvantages of codification, through the perspectives of two diverse panels of speakers, which included Professor Paul Craig (Oxford), Professor Mario Chiti (Florence), Professor Luigi Berlinguer (European Parliament), Professor Cora Hoexter (Witwatersrand), Dr Jeff King (UCL) and Professor Emeritus Carol Harlow (LSE). The Bingham Centre and the Italian Council of State intend to take forward this study so as to contribute to the development of the EU proposals.

## Event on 'The Inadvertent Criminal: The Rule of Law and the New Cartel Offence'

Ashurst kindly hosted a meeting with the Bingham Centre and the Institute's Competition Forum (directed by Dr Philip Marsden) in November to discuss the proposed reform of the criminal cartel offence in section 188 of the Enterprise Act 2002. Key to the proposed amendments is the suggestion to remove the word 'dishonesty' in respect to an agreement to make or implement cartel arrangements. The merit of this omission was discussed, and in particular the rule of law implications of such an omission which could result in a finding of culpability against innocent individuals. This issue was analysed against a backdrop of general criminal law and the various elements of crimes requiring *mens rea* and strict liability offences. The Bingham Centre submitted a number of observations on the proposed amendments, and the response can be read in full on our website.

## Director visits China and Taiwan

In October, the Centre's Director participated in a one-day symposium and mock trial at Renmin University Law School Beijing, organised together with Hong Kong University Law School and UCL Law Faculty, to an audience of administrators, judges and academics (including members of the Chinese Academy of Social Science). The meeting was generously supported and encouraged by the distinguished Hong Kong lawyer and environmentalist, Winston Chu, who is a member of the Bingham Centre's Advisory Council. Lord Justice Goldring delivered the judgment in the mock trial and the debate following this focussed on rule of law issues and was joined by the senior government minister in charge of Chinese legal reform. A further such event is being planned for late 2013 in Hong Kong.

Following this, the Director was a guest of the National Taipei University and the Judicial Yuan of Taiwan. Sir Jeffrey lectured on the rule of law on the 60th anniversary of the Law School and also to the Supreme Court of Taiwan and the Judicial Yuan.

## Bingham Centre Cont.

### In Memoriam: Chief Justice Arthur Chaskalson, Bingham Centre Patron

It is with regret that the Bingham Centre announced in December the death of Arthur Chaskalson, former Chief Justice of South Africa and a Patron of the Bingham Centre.

### Funding

The Bingham Centre is enormously grateful for two generous grants:

**An anonymous donor in the USA** has kindly agreed to provide \$190,000 to support the administration costs of the Centre over a three year period.

**The David and Elaine Potter Foundation** has agreed to provide funding this year for the post of a Deputy Director in the Centre, which has been advertised.

For more information on the work of the Bingham Centre, please visit our website at:

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

## Arthur Watts Exchange Programme

This January we have welcomed two people to the Institute thanks to the collaboration between the Institute and Melbourne Law School, made possible by the generous donation of Allan Myers AO QC.



Visiting Fellow **Professor Cally Jordan** joined the Institute in January. She has degrees in civil and common law (LLB/BCL) from McGill University and a graduate degree in civil law (DEA) from the Université de Paris I (Panthéon-Sorbonne), and is admitted in Canada, New York, California and Hong Kong.

She spent several years in the New York office of Cleary, Gottlieb, Steen & Hamilton practising International finance and has spent over a decade working in many capacities with the World Bank, the ADB, UNDP, CIDA and the IFC. She is a full time faculty member at Melbourne Law School in Australia and teaches Business Associations, International Capital Markets Regulation, International Perspectives on Corporate Governance and

Comparative Law.

**Joshua Anderson** is the second Arthur Watts Research Intern. He is about to enter into the final year of his JD at the University of Melbourne having completed his BA degree majoring in International Relations and Indonesian Language and Culture. Last year, Joshua represented Melbourne Law School at Washington DC for the International Rounds of the Jessup International Law Moot Court Competition in which his team made the Quarter-Finals and Joshua was ranked as Best Oralist.



## Visiting Fellows

**Barrie Sander** is a PhD candidate in International Law at the Graduate Institute of International and Development Studies (IHEID) in Geneva, conducting research in the field of international criminal law. He is research assistant to Professor Paola Gaeta and teaching assistant to Professor William Schabas. Barrie is also currently involved in a range of professional activities. He is founder of Just Innovate, an educational initiative whose mission is to inspire and facilitate student social innovation. He is also a Policy Officer at ARC, an initiative run by the International Criminal Law Bureau and focused on securing justice and strengthening the rule of law in Africa.

Former Visiting Fellow **Conor McCarthy** has been awarded the *Journal of International Criminal Justice* Prize for 2012 for his article 'Victim Redress and International Criminal Justice: Competing Paradigms, or Compatible Forms of Justice' (10 *JICJ* (2012) 351-372) written during his time at the Institute, which also gains a mention in the winning article.



**Naoyuki Kanno**, Assistant Professor from the Graduate School of Public Policy at the University of Tokyo visited the Institute in November and December 2012, working on a paper on suppressing piracy in international law.

## Recent Events

### **Annual Conference/Grotius Lecture**

On 25 October 2012 the Institute organized the Annual Conference followed by the Grotius lecture. Both events addressed the topic of the Arab Spring and its bearings upon international law. The prominent speaker for the Grotius lecture was Chief M. Bassiouni, Emeritus Professor of Law at DePaul University and expert in international criminal law. In a lively speech that addressed the theme from historic, humanistic and legal perspectives Bassiouni underlined that the process of the Arab Spring is still in a nascent stage and requires assistance from the West – also with a view to enhance tradition of the rule of law in the Arab countries – more than ever. The Annual Conference, which brought together a number of distinguished speakers from legal practice and academy, dealt with more specific topics related to the Arab Spring in the framework of the rule of law, public international law and international investment law. You can find a detailed report of the event on our website.

### **Piracy, Terrorism and War**

On 6 November 2012 the Institute organized a seminar on 'Piracy, Terrorism and War: Clarifying the Concepts Involved'. Participants Douglas Guilfoyle (UCL), Nihan Unlu (IMO) and Stephen Askins (Ince & Co) broached upon the issue of the definition of piracy in international law and its implications for the law of the sea, maritime law and criminal law.

### **UNCLOS at 30**

On 22 and 23 November 2012 the British Institute of International and Comparative Law in conjunction with the Law Society of Northern Ireland hosted a special event commemorating the 30<sup>th</sup> anniversary of the signing of the UN Convention on the Law of the Sea (UNCLOS) in Belfast. 'UNCLOS at 30' was the first BIICL event ever to take place in Northern Ireland. It began with a warm welcome from Right Honourable Sir Declan Morgan, Lord Chief Justice of Northern Ireland, and Mr Justice Mark Horner, a Judge of the High Court. The conference brought together more than 20 speakers and 100 delegates from all over the world. The one and a half day event brought together renowned practitioners and prominent academics to discuss recent developments and future challenges for the law of the sea. The collected papers of the conference will be published by the Institute.



*L-R: Mr. Justice Mark Horner, Jill Barrett (BIICL) Lord Chief Justice Sir Declan Morgan, Alan Hunter, Head of the Law Society of Northern Ireland.*

## Forthcoming Events

### **Good Faith in Contract Law**

Wednesday 20 March 2013, 17:00 to 19:00

### **Global Health Law**

Thursday 21 March 2013, 17:30 to 19:30

### **22nd Joint BIICL/Society of Legal Scholars' Conference**

Monday 29 April 2013, 14:00 to 19:00

### **Public International Law in the Courts of the United Kingdom**

Tuesday 30 April 2013, 17:30 to 19:30

### **20th Public Investment Treaty Forum Conference**

*London House, Mecklenburgh Square, London, WC1N 2AB*

Friday 10 May 2013, 09:00 to 16:30

### **13th Annual WTO Conference**

*BMA House, Tavistock Square, London, WC1H 9JP*

Wednesday 15 May 2013, 09:00, to Thursday 16 May 2013 17:00

### **The European Convention of Human Rights and the Right to Privacy**

Thursday 23 May 2013, 17:30 to 19:30

For further information and to book these events, please go to [www.biicl.org/events](http://www.biicl.org/events).

3rd Annual ICLQ lecture  
**Why the French Don't Like the Burqa:  
Laïcité, National Identity and Religious  
Freedom**

by **Dr Myriam Hunter-Henin, UCL**  
Monday 15 April 2013, 17:30 to 19:00