

Annual Review 2006: Research and Activities



**British Institute of
International and
Comparative Law**

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Director's Annual Report to Members 18 May 2007

In 2008 the Institute will celebrate the 50th anniversary of its incorporation on 17 November 1958. This event prompts reflection upon the role of the Institute and provides an opportunity to refresh its aims and activities in the first decades of the 21st century.

In 1958, the 'founding fathers'—among them, Dr FA Mann, Lord Diplock, Sir Gerald Fitzmaurice, Sir Hersch Lauterpacht and Professor Georg Schwarzenberger—had the vision to bring together the Grotius Society, established in 1915, and the Society of Comparative Legislation, established somewhat earlier in 1894, to create the British Institute of International and Comparative Law. The Institute has grown over the last few years, reflecting the rising interest in international and comparative law and, today, is widely respected for its contributions to an understanding of the rule of law in international affairs. Over the last 50 years, a notable strength of the Institute has been the active support of its members. Members play a vital role in advisory groups, assisting Research Fellows with their projects and contributing professional experience to workshops, seminars and lectures. As Director, my hope is that 2008 will see increased involvement by members in Institute activities and indeed, the attraction of new members.

2006 has been a 'foundation' year for the Institute. Core research has been commenced, the fruits of which will be published throughout 2007. The efforts of Research Fellows have been focused on four major projects: *Damages in International Law*, *Evidence before International Courts and Tribunals*, *The Promotion of Democratization and Human Rights in Iran* and a European Commission project on *The Legalization of Public Documents in the EU*. Once the preliminary findings of these projects have been presented and debated at workshops, final texts of the research will be published in the autumn of 2007 or, in the case of the Iran project, early in 2008. Along with the research work, staff have been active in developing two new lecture series that integrate public and private international law under the general topics of *Extraterritoriality* and *Jurisdiction*. Over the last year or so we have held over 100 lectures, seminars, workshops and meetings, most of which are open both to Institute members and the public, attracting a total of over 60 CPD points.

On a more personal note, we were delighted to learn that Lady Hazel Fox, Director of the Institute from 1982 to 1989, was awarded a CMG in the Queen's Birthday honours list. All of her colleagues at the Institute offer her their heartiest congratulations. We also congratulate Sir Lawrence Collins who has been elevated to the Court of Appeal. We are fortunate that Sir Lawrence is willing to continue to serve on the Editorial Board of the *International and Comparative Law Quarterly* (ICLQ).

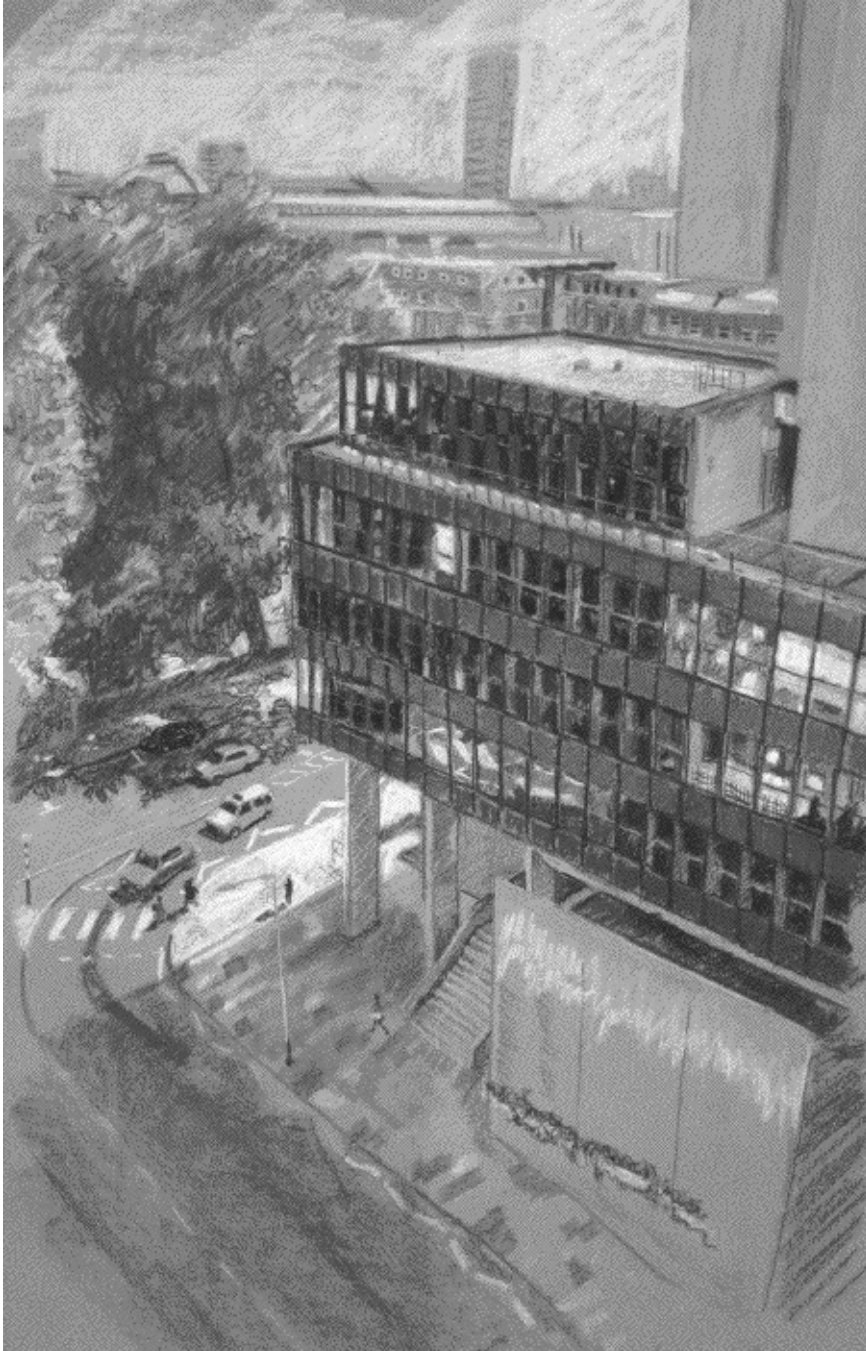


*
Lady Hazel Fox
CMG QC

What Does the Institute Do?

The Institute makes a unique contribution to international and comparative law. It is an independent charitable body reliant upon the financial and professional support of its members who come from all branches of the law including judges, solicitors, barristers, scholars, corporate counsel, government officials and politicians. Funding of the Institute's work is provided not only by the legal profession and Institute members, but also by the United Kingdom's Foreign and Commonwealth Office and Department for Constitutional Affairs, by project funding given by the European Commission and by charitable foundations such as the Nuffield Foundation and the Dorset Trust. Such funding has enabled the Institute to expand its current staff to 22 Research Fellows, most of whom are full-time, supported by 11 administrative staff. A valuable contribution to the research programme is made by about 10 *pro bono* student interns and Visiting Fellows from other academic institutions in the United Kingdom and overseas, facilitating a remarkable diversity of research and activities.

In addition to editorship of our 'flagship' publications, the *International and Comparative Law Quarterly* and the *Bulletin of International Legal Developments*, the Institute publishes analytical texts and collections of edited papers. Publications of research in 2006, published by the Institute and elsewhere, include analysis of evolving jurisprudence on bilateral investment treaties, a report on an 'Amnesty' for an opium export scheme in Afghanistan, papers from a conference on Antarctic law and environment, the proceedings of the annual conference on the World Trade Organization (WTO) and academic journal articles on product liability and transnational competition law. In a new Institute initiative we have collaborated with the London-based NGO, Advocates for International Development (A4ID), to build a bridge between commercial legal skills and the agenda of the WTO and UN for poverty reduction and development. The Institute has worked with A4ID and Manchester University in providing a nine-month pilot course on Trade and Economic Law and Developing States for a group of practising lawyers. This course



Charles Clore House



Dr Hans Blix
(Source: UN Photo/ Paulo Figueiras)

concludes in May 2007 and, I am pleased to report, a second is being planned.

One of the many benefits of the Russell Square home of the Institute is that we are able to take advantage of the presence in London of global leaders in international and comparative law. During 2006–07 the Institute has hosted several lectures open to the public on issues of contemporary relevance. The lecture given by Dr Hans Blix was a key event designed, in part, to secure a higher media profile for the Institute’s activities. In this respect it was modestly successful in that the *Independent* carried the story on its front page. The Institute was not

mentioned until page 2! In February 2006, Louise Arbour, UN High Commissioner for Human Rights, in a joint BIICL/Chatham House event, gave a lecture on ‘Counter-Terrorism and Compliance and Human Rights’. Professor Sauvant of Columbia Law School and Special Advisor to the UN Millennium Project gave the Chalfen lecture on ‘Transnational Corporations and the UN: The Evolution of the International Policy and Legal Debate over 30 Years’ in April 2006. Professor Joe Norton, of Southern Methodist University, will give this lecture in April 2007. In January 2007 Professors Malcolm Evans and Kevin Boyle spoke on the ‘Freedom to manifest one’s religion: what legal restrictions can be imposed on the wearing of the Islamic veil or Christian cross?’ Discussion was ably encouraged from the chair by Lady Justice Arden.



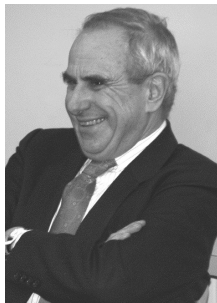
Louise Arbour

Professor Sir Elihu Lauterpacht, along with other distinguished speakers from the United States and United Kingdom, considered the ‘Nuclear Non-Proliferation Treaty: 10th Anniversary of the ICJ’s Advisory Opinion on Nuclear Weapons’. This symposium, held in March 2007, provides a building block for the creation of a new interest group at the Institute on Energy, Resources and the Environment.



Professor Sir Elihu Lauterpacht

The capacity of the Institute to arrange lectures brings with it the opportunity to publish those lectures in the *International and Comparative Law Quarterly*. The Institute, in collaboration with Herbert Smith, hosted the FA Mann lecture followed by dinner on 6 November 2006. Professor Thomas Franck spoke



* Lord Hoffmann



* Judge Kooijmans

about the 'UN Security Council and the Use of Force' and has allowed his speech to be available on the Institute website. The FA Mann lecture to be held on 7 November 2007 will be given by Lord Hoffmann. On 11 December 2006, Judge Kooijmans of the International Court of Justice (ICJ) gave the Annual Grotius lecture on the jurisprudence of the ICJ, arguing that the Court should adopt a more proactive approach. This lecture will be published by the *Quarterly*.

**Strategic Direction of the Institute:
What Do We Want to Do in the Future?**

As Director, I am confident of the Institute's potential to contribute to international understanding of the role and rule of law and to expand its global reach. While the vision may be grand, serious strategic thinking is required to translate the aims of the Institute into practice. The Board of



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Professor Sir Adam
Roberts

Trustees took up the challenge and held an 'Away Day' in September 2006 to look at how the Institute should develop. All were agreed that the work of the Institute is not sufficiently well known, either within the profession or beyond it. Clearly some media exposure is required. With this in mind, we are developing a series of 'Background Briefings' for the website so that journalists and students, among others, can find primary and secondary legal resources on contemporary issues such as the Nuclear Non-Proliferation Treaty and armed conflict in Southern

Lebanon. We are also attempting to ensure a wider readership for the *Bulletin of International Legal Developments* and submitting articles to the major newspapers. Greater efforts are being made to present issues of topical interest. It is hoped that the unified theme of this year's Annual Conference on 'The Rule of Law and Post Conflict States', with speakers including Professor Sir Adam Roberts, the Attorney General Lord Goldsmith QC and Geoffrey



Lord Goldsmith QC

Robertson QC, will be of interest to all our members. This is a start and we will pursue further efforts to gain wider coverage.



Geoffrey Robertson
QC

In addition to the need to reach an expanded audience, there was considerable support at the 'Away Day' for developing closer relations with and knowledge of nations beyond Europe, particularly India and sub-Saharan Africa. It was suggested that we should reinvigorate our links with the Commonwealth by building on the Institute's Commonwealth Legal Advisory Service to develop new research and training initiatives. Having held a meeting some two months ago with London-based Commonwealth NGOs, we arranged a meeting with Ms Betty Mould-

Iddrisu, Director of the Commonwealth Secretariat's Legal and Constitutional Affairs Division and Mr Martin Polaine. We discussed ways in which we could develop initiatives jointly. Subjects that emerged as possible areas for research applications are:

- Asset recovery/mutual legal assistance/extradition
- Prevention of proliferation of small arms and weapons
- Domestic implementation of treaty obligations, eg the Rome Statute of the ICC.

It was agreed that we will jointly identify a suitable project and develop a proposal for funding in early 2007.

Development Committee

The 50th anniversary of the establishment of the Institute provides a timely incentive to seek funding for future research and professional activities. While the Institute is financially stable, existing sources of funding are, in the main, short-term. Sustainable development of the Institute now requires significant core funding to ensure the longer-term viability of major research.

A new Director of Development, Helen Bright, has now taken up an appointment to work with the newly appointed Development Committee, which includes Alan Jenkins, Managing Partner of Eversheds; Tim Cowan, Legal Counsel, BT Telecom; Martin Paisner, Partner at Berwin Leighton Paisner; the chair of the Board of Trustees, Alex Layton QC; and the Institute Director, Professor Gillian Triggs.

International and Comparative Law Quarterly

The ICLQ was under the editorship of Professor Alan Boyle for nine years, until the end of 2006, during which time he significantly strengthened the academic rigour of the journal. Professor Boyle's leadership has ensured that it remains one of the world's leading law journals. The Board of Trustees has appointed Professor Catherine Redgwell of University College London (UCL) and the Director, Professor Gillian Triggs, as the Joint General Editors from 2007.

The Institute held a farewell lunch on 10 December 2006, at the Athenæum Club, for Professor Alan Boyle. It was a most enjoyable event, though Alan was a little overwhelmed by the idea of housing his gift from the Institute, 20 volumes of the *Oxford English Dictionary*. We are delighted that Professor Boyle has agreed to remain a member of the Institute as an Honorary Fellow.



Catherine Redgwell



As from 2008, the ICLQ will be published by Cambridge University Press. We will continue to work with Oxford University Press on other publications of our research, including publication of a collection of case notes on the ICJ and PCIJ. As you

will see from your latest copy, the ICLQ is now in its new Institute colours. I do hope you like the bolder, more contemporary style.

Grotius Library



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Renovation and expansion of the Grotius library is complete and desk space is now available for 6–8 interns and Visiting Research Fellows. The aim has been to keep the texts and journals as a contemporary reference collection, to store any valuable books and to dispose of those that are no longer useful. Institute members are warmly encouraged to come to the Institute and to use the library whenever they would like, Monday–Friday 9.30am–5.30pm. Our Office Manager will be pleased to set you up with a computer and wireless internet access.

Collaboration with Similar Institutes and Universities

In order to expand its reach both within the United Kingdom and abroad, the Institute is developing collaborations with other research bodies including:

- **Consiglio Nazionale Forense:** A one-week course conducted in July 2006, and to be presented again in 2007 on International Commercial Contracts and Trade Law, designed for Italian lawyers, working with Professor Guido Alpa, President of the Italian Lawyers Association and Dr Nello Pasquini of Brasenose College, Oxford.

- **Raoul Wallenberg Institute:** Joint conference on 'Human Rights: mechanisms for enforcement', October 2007.
- **American Bar Association (International Law Section):** BIICL is on the Steering Committee planning the three-day London meeting in autumn 2007.
- **Max Planck Institute:** Collaboration on the *Encyclopedia of Public International Law (2008)*
- **Leiden University Law School:** The London–Leiden European Law Conference is to be held in London on 30 June 2007, and is being organized in collaboration with King's College London and Oxford University.
- **Federico II of Naples:** Comparative research on the role of non-State actors in international law.
- **International Law Association (British Branch):** In June 2006 the Institute, with the ILA (British Branch) and the **Scottish Society of International Law**, hosted a one-day seminar on *Antarctica: Legal and Environmental issues*, to coincide with the hosting by the United Kingdom of a meeting of the Antarctic Consultative Parties in Edinburgh; the papers were edited and published by the Institute in March 2007.
- **Franco-British Lawyers Society:** Annual Conference, June 2007.
- **International Bar Association:** BIICL collaboration on conference to be held in London, spring 2007.
- **Vanderbilt University Law School:** Internship programme under which students provide research for Institute projects, currently WTO law.
- **Australia and New Zealand Society of International Law:** Lecture by Professor Campbell McLachlan, President.
- **Republic of Korea Institute of Comparative Legislation:** A Memorandum of Understanding has been signed to conduct joint comparative research on United Kingdom laws with respect to the legal status of illegal foreign workers for presentation in Korea, September 2007.
- **European Commission:** Study commissioned on the application of the Regulation 44/2001/EC (the 'Brussels I Regulation') on jurisdiction and the recognition and enforcement of judgment in civil and commercial matters in the 25 EU Member States. The study was coordinated by the **Institute for Private International Law in Heidelberg** and the Institute drafted the report for England and Wales.
- **Georgetown University Law Center:** Collaboration on the organization of the annual WTO Conference.

We are grateful to Dr Richard Barnes of Hull University for hosting a regional branch of the Institute to provide members with a local venue for

seminars and to encourage participation in the Institute's research. He has also organized a London seminar with Tim Daniel and Professor Maurice Mendelson QC on *Cameroon v Nigeria*, a decision of the ICJ on maritime and territorial boundaries. Similarly, we have been pleased to work with Dr Dan Joyner of Warwick University on a symposium on nuclear weapons. We hope to establish many more such regional collaborations in the future.

The research work of the Institute is also fostered by its many Visiting Fellows. Professor Don Greig, Emeritus Professor of International Law at the Australian National University (ANU), Canberra, regularly spends six months of each year conducting his research at the Institute, the most recent of which, *Invalidity and the Law of Treaties*, was published by the Institute in 2006. Professor Greig also gave a lecture on this subject in the Grotius library. Dr Elizabeth Batista, having spent six months at the Institute on leave from the University of Dundee, is now working with Institute staff to develop the interest group on Energy, Resources and the Environment.



* Professor Greig

The Promotion of Democratization and Human Rights in Iran

We are pleased to announce that the new Dorset Fellow of the Institute is Dr Aphrodite Smagadi, who has assumed direction of the Iran Project. This project has proved to be topical and stimulating, but has also



© Victor Kattan

presented some challenges. The EU Commission has advised us that the Diplomatic Round Tables planned throughout the three-year contract are to be cancelled and are no longer part of the Institute's responsibilities. We have been supportive of the European Commission in its attempts to keep the prospects of dialogue alive, but accept that this is no longer realistic. We are now working with the European Commission to conduct several workshops on human rights issues, including women's rights, juvenile justice and freedom of expression, over the coming year. Dr Smagadi and Research Fellow Victor Kattan spent 10 days in Iran in late March 2007, working with our partner Iranian NGO in Tehran to plan the first programme in early June 2007 on Women's Rights.

Comparative Law Research

Under the supervision of Dr Duncan Fairgrieve, Faria Medjouba has undertaken several comparative projects commissioned by various government departments.

Constitutional Arrangements

The constitutional amendments for governance of the Institute are now in place and the Directors of the 18-member Board of Trustees and the 50 members of the Advisory Council have been appointed. We are honoured to have Lord Bingham, the United Kingdom's Senior Law Lord, as Chairman of the Institute and Alexander Layton QC as Chair of the Board of Trustees. New faces on the Board include Sir Franklin Berman and The Rt Hon Sir Francis Jacobs and, as special advisors, Lady Justice Arden and Professor Stephen Weatherill. The new structure should ensure more efficient management of the Institute and development of policy in the future. Smaller ad hoc advisory panels have also been created, both from members of the Advisory Council and other experts, to assist with research projects as they arise. Lord Mance has, for example, agreed to chair the Institute's Research Advisory Panel to advise the Director and Board on research directions. Sir Michael Wood now chairs the Public International Law Advisory Panel, replacing Dame Rosalyn Higgins.

Financial Position

As the financial reports at the end of this Annual Report indicate, the Institute's financial position is improving, through members' fees, the seminar programme and the management of expenses. The Institute also receives financial support from the *Legalization of Public Documents between EU Member States* project, *The Promotion of Democratization and Human Rights in Iran* project, and the Department for Constitutional Affairs.

A project on the *Recognition and Enforcement of Foreign Judgments*, proposed by Hugo Warner and Jacob van de Velden, has been selected for funding by the EU Commission. This one-year project commenced in March 2007. I am particularly pleased by the award of this work as it is only the second occasion on which the Institute has proposed a research project to the EU as distinct from responding to an EU request for tenders in an identified area. As is typical of EU funding of such work, there is a 40 per cent deficit to be met from other Institute funds. While it is not our intention to undertake such under-funded projects in the future, we will do so in this case because of the importance of the research that builds upon an earlier project and in light of the increasingly significant place of private international law within the Institute.

The Institute has also been fortunate in gaining funding from some of the major London law and accounting firms to support our current research programmes.

Membership

The three fora of the Institute—Product Liability Forum, Competition Law Forum and Investment Treaty Forum—continue to be significant contributors to the Institute, both financially and in respect of their well-attended seminar programmes. They also provide a vital link to the specialist commercial branches of the practising profession that are a unique feature of the Institute's membership. Memberships of the specialist fora continue to increase and provide opportunities to explore current issues and prompt further research.

Individual membership of the Institute currently stands at around 900, compared with 584 at the same time in 2006. We have 40 corporate members. With the new automated system and direct debits we are able to attract renewals more readily. For example, we had renewals of 11 per cent of our current membership one month before memberships lapsed on 31 December 2006. We are thus optimistic that we will be able gradually to move to a predictable roll-over of memberships each year rather than the nail-biting experience of trying to encourage our members to re-enrol each year.

New initiatives are being adopted to increase membership of the Institute, including the reduction of student subscriptions to £25.00 and more attractive benefits of membership including electronic access to the *Bulletin of International Legal Developments*. On rejoining the Institute, membership will apply to the 12-month period following registration, rather than to the January to December calendar year. With the appointment of the new Institute Secretary, Ruth Eldon, renewed efforts are now being made to encourage corporate membership and sponsorship.

What Are Our Research Programmes?

The research work of the Institute has been organized into programmes, within which the forums and special interest groups are included. We recognize, however, that research crosses traditional categories of law, integrating public and private international law with domestic law, European law and the comparative method as the following current projects and published research indicate:



Research Publications

The Institute's Research Fellows have set out comprehensively in this Annual Report the activities and details of their published research for 2006 and early 2007, along with their lecture series and other activities. My introduction to the Annual Report seeks to highlight the published research outcomes of our work for 2006 and the expected publications in 2007.

Research publications January 2006–March 2007

- D Fairgrieve and H Muir Watt, *Common Law et tradition civiliste: convergence ou concurrence?* (Presses Universitaires de France, 2006).
- D Fairgrieve, B Stirn and M Guyomar, *Droits et Libertés en France et au Royaume-Uni* [Rights and Liberties in France and the United Kingdom] (Odile Jacob, Paris, 2006).
- D Fairgrieve and G Howells, 'General Product Safety—a revolution through reform?' (2006) 69 MLR 59.
- D Fairgrieve and F Medjoub, *La Réorganisation Administrative du Grand Londres: une Volonté d'unification* (Cahiers de la Fonction Publique, January 2007).
- G Canivet, M Andenas and D Fairgrieve, *Independence, Accountability and the Judiciary* (BIICL, London, 2006).
- V Kattan, 'Israel, Hezbollah and the Conflict in Lebanon: An Act of Aggression or Self-Defence?' (2006) 14 Human Rights Brief 26–30.
- V Kattan, 'From Beirut to Brussels: Universal Jurisdiction, Statelessness and the Sabra and Chatila Massacres' (2007) 11 Yearbook of Islamic and Middle Eastern Law (2004–5) 33–83.
- V Kattan, 'The Wall, Obligations Erga Omnes and Human Rights: The Case for Withdrawing the European Community's Terms of Preferential Trade with Israel' (2007) 13 Palestine Yearbook of International Law (2004–5) 71–89.
- P Marsden and S Bishop, 'Editorial: The Article 82 Discussion Paper: A Missed Opportunity' (2006) 1 European Competition Journal 1.
- P Marsden, 'Competition "Micro-management?"' (June 2006) 59 European Lawyer 9.
- P Marsden and P Whelan, '"Consumer Detriment" and its Application in EC and UK Competition Law' [October 2006] European Competition Law Review 569–584.
- P Marsden, 'Article 82 Review' [November 2006] Competition Law Insight.
- P Marsden, 'Stop Micro-managing the European economy: European judges have a unique opportunity to free dominant companies from Über-regulation' [2006] Bulletin of International Legal Developments 74–77.
- P Marsden, *Handbook of Research in Trans-Atlantic Antitrust* (Edward Elgar, Cheltenham, 2006).
- P Marsden and P Whelan, 'When Markets are Failing: Part I' (2007) 6 Competition Law Insight 6.
- P Marsden and P Whelan, 'When Markets are Failing: Part II' (2007) 6 Competition Law Insight 6.
- P Marsden, M Hutchings and P Whelan, *Current Competition Law Volume 5* (BIICL, London, 2007).

- F Ortino and A Shepard, 'International Agreements Covering Foreign Investment: Patterns and Linkage' in L Bartels and F Ortino (eds), *Regional Trading Agreements and the WTO Legal System* (Oxford, OUP, 2006).
- F Ortino and L Bartels (eds), *Regional Trade Agreements and the WTO Legal System* (OUP, Oxford, 2006).
- F Ortino, 'Treaty Interpretation and the WTO Appellate Body Report in *US-Gambling: A Critique*' (2006) 9 *Journal of International Economic Law* 117–148.
- A Smagadi, 'Analysis of the Objectives of the Convention on Biological Diversity: Their Interrelations and Implementation Guidance for Access and Benefit Sharing' (2006) 31 *Columbia Journal of Environmental Law*, 243–284.
- A Smagadi, 'The Impact of the Convention on Biological Diversity in Utilization of Plant Genetic Resources and Benefit Sharing: the Issue currently addressed by the International Organizations' (2006) 6 *Yearbook of European Environmental Law* 120.
- G Triggs and A Riddell (eds), *Antarctica: Legal and Environmental Challenges for the Future* (BIICL, London, 2007).
- G Triggs, *International Law: Contemporary Principles and Practices* (Lexis Nexis/ Butterworths, Australia, 2006).
- C van Dam, *Aansprakelijkheid van Toezichthouders* [Liability of Supervisory Regulatory Bodies] (WODC, Den Haag, 2006).
- C van Dam, *European Tort Law* (OUP, Oxford, 2006).
- *Legalization of Public Documents between EU Member States*: This project is directed by Jacob van de Velden and the 250-page report was completed in February 2007.
- J Welch, *Comparative Implementation of EU Directives (II) Money Laundering* (City of London, December 2006).
- J Welch, 'European Financial Services' in M Blair QC and G Walker (eds), *Financial Services Law* (OUP, Oxford, 2006).
- P Whelan, 'Recent Developments Concerning the Rights of Complainants and Third Parties under both UK and EC Competition Law' [2006] *Bulletin of Legal Developments* 157.
- M Hutchings and P Whelan, 'Consumer Interest in Competition Law Cases' (September 2006) 16 *Consumer Policy Review* 130–136.

Forthcoming research publications

- *Damages in International Investment Law*. This project is carried out by Dr Sergey Ripinsky and Dr Lahra Liberti under the direction of Dr Federico Ortino and with support from members of the Advisory Committee. This is the first phase of a broader project on Damages in International Law; publication is planned for July 2007.

- *Evidence before International Courts and Tribunals*. This project is directed by Research Fellow Anna Riddell, along with Research Fellow Brendan Plant. After some trial and error, valuable in itself, a methodology has been settled by which the practice of specific courts will be examined, rather than topics selected across a range of tribunals. The first phase of the work has focused on the International Court of Justice and an analytical text will be published in September 2007 entitled *Evidence in the International Court of Justice*.
- N Abiad and A Smagadi, *Comparative Study: The Implementation of Human Rights in Islamic States* (BIICL, London, forthcoming, 2007).
- D Fairgrieve and G Howells, *Rethinking Product Liability* (forthcoming, 2007).
- D Fairgrieve and F Medjouba, Report for the French Ministry of Justice: 'La *Societas Europae* au Royaume-Uni' (forthcoming, 2007).
- Victor Kattan, 'The West Bank Wall: Israel's High Court of Justice v the International Court of Justice' (forthcoming, November, 2007) *Vanderbilt Journal of Transnational Law*.
- L Liberti, 'Nationality Cases before International Courts and Tribunals' *Max Planck Encyclopedia of Public International Law* (forthcoming, 2008).
- L Liberti, 'Flegenheimer Claim' *Max Planck Encyclopaedia of Public International Law* (forthcoming, 2008).
- L Liberti, 'SGS v Pakistan and SGS v Philippines Cases' *Max Planck Encyclopaedia of Public International Law* (forthcoming, 2008).
- L Liberti, 'Salem Case' *Max Planck Encyclopaedia of Public International Law* (forthcoming, 2008).
- F Ortino, L Liberti, A Sheppard and H Warner (eds), *Investment Treaty Law: Current Issues Volume II* (BIICL, London, forthcoming, 2007).
- F Ortino and S Ripinsky (eds), *WTO Law and Process: Proceedings of the 2005 and 2006 Annual WTO Conferences* (BIICL, London, forthcoming, 2007).
- A Riddell, 'Administrative Boards, Commissions and Tribunals in International Organisations' *Max Planck Encyclopedia of Public International Law* (forthcoming, 2008)
- A Riddell, 'Procedural Aspects of the Bosnia Genocide Case' (forthcoming, 2007) *20 Leiden Journal of International Law*.
- S Ripinsky and P Van den Bossche, *NGO Involvement in the Activities of International Organizations: A Legal Analysis* (forthcoming, 2007).
- S Ripinsky, *Expropriation and Regulation in Investor-State Disputes* (Universidad Externado de Colombia, forthcoming, 2007).
- A Smagadi, *Human Rights in Iran: A Manual on the International and Iranian Human Rights Standards* (BIICL, London, forthcoming, 2007).
- G Triggs and V Prescott, *Territorial Boundaries: International law, Geography and Politics* (forthcoming, 2007).

- J Welch, 'Better Law Making' in Stephen Weatherill (ed), *Better Regulation* (Hart, Oxford, forthcoming, 2007).
- J Welch and P Schammo, *Cross Border Mergers of Stock Exchanges* (forthcoming, December 2007).
- E Wilmshurst and SC Breau (eds), *Commentary on the ICRC Rules* (CUP, Cambridge, forthcoming, autumn 2007).
- J van de Velden, *Cross-Border Debt Collection: Attachment of Bank Accounts* (forthcoming, late 2007).

I look forward to our celebration of the 50th anniversary of the Institute within a few months and hope that as many of our members as possible will be able to join us in the lecture and seminar programme planned for 2008.

Professor Gillian Triggs
Director

April, 2007

RESEARCH PROJECTS

European and Comparative Law Programme

Coordinated by Dr Duncan Fairgrieve and Dr Philip Marsden

The Institute's European and Comparative Law Programme was officially launched by Sir Francis Jacobs in his excellent Keynote Address at the Institute's Annual Conference on 16 June 2006.

About the Programme

The Programme combines the areas of European law and comparative law. Initially, comparative law was considered to be a useful instrument to get to know other legal systems and to put one's own system into an international perspective. The fruits of comparative law studies have long and mainly been of academic interest: they were considered to be very interesting but not immediately relevant to the daily life of the law.

Over the last decades comparative law has lost its innocence. It is becoming an important source for legislators, judges and lawyers, not only on a national but also on a European level. This evolution is strongly influenced by the process of European integration.

In Community institutions, such as the Council, the Commission and the Court—where lawyers from all Member States work closely together—law-making and solution-finding are activities in which all national legal backgrounds play a role. Recourse to comparative law has essentially become a method of interpretation of Community law itself. It is beyond doubt that the European Courts intensively use the available knowledge about the laws of the Member States when developing Community law, though this remains very implicit. Usually the courts confine themselves to general expressions like 'legal principles common to all or several Member States'. The Opinions of the Advocates-General, however, regularly contain comparative analyses.

Finally, most of the European Commission's research projects include extensive comparative surveys of the laws of the 25 Member States. The Institute has a longstanding tradition and broad experience of conducting comparative research. Today, one of the Institute's missions—in moving

freely over the boundaries that divide the fields of law and bringing out the underlying unities, as Lord Denning stated in 1952—is of major importance in the process of European integration.

The European and Comparative Law Programme brings together various research activities of the Institute, such as competition law, financial and company law, regulation and European private law, including tort law and product liability law.

Other Research Projects and Conferences

In the area of European law and private international law the Institute conducts a major research project on the Legalization of Public Documents between EU Member States. This project is funded by the European Commission and the final report is due for early 2007.

In early 2006 Professor Cees van Dam completed a report for the Netherlands Ministry of Justice on the Liability of Regulators.

The Institute has also prepared several seminars and conferences to stimulate research in various areas of European and Comparative law:

Tuesday 10 October 2006

**Regulation Forum meeting—
Dispute Resolution in Telecoms
(The European Commission’s
Communication on the Review of
the Regulatory Framework for
Electronic Communications)
Liability of Safety Supervisors
The Role and Future of the
European Union Judicial System**

Wednesday 22 November 2006

Friday 16 March 2007

Research Networks

With its European and Comparative Law Programme the Institute builds strong links with other European and comparative law research centres, in London, the United Kingdom and abroad. In particular the Institute cooperates with the Centre of European Law of King’s College, London, the Centre for Commercial Law Studies of Queen Mary University London, and the Institute of European and Comparative Law in Oxford.

For more information on the Institute’s European and Comparative Law Programme, please contact info@biicl.org.

Competition Law Forum

Director: Dr Philip Marsden Research Fellow: Peter Whelan
<http://www.biicl.org/clf/>

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.

Competition Law Forum Research Initiatives and Projects

The Competition Law Forum Article 82 Review Group

The CLF formed an 'Article 82 Review Group' to meet regularly with industry experts, practitioners, economists and competition officials to review the operation of Article 82 EC and the potential for its reform. This group met on a regular basis throughout both 2005 and early 2006 and has produced three papers commenting on the Commission's reforms in this area, including a paper co-authored with the German Bundeskartellamt. Two of these papers were published in the *European Competition Journal* in 2006.



The Competition Law Forum Working Group on Private Actions

Private enforcement of competition law is currently being encouraged within the EU by the European Commission and other competition authorities. The Commission recently published a 'Green Paper on Damages Actions'; it wishes 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. This working group completed its work in mid-April and submitted its response to the *Green Paper* by the 21 April deadline. Peter Whelan was the group's rapporteur.

Consumers International—DG Sanco Project

The primary goal of this project is to increase the capacity and expertise of EU consumer organizations to represent the consumer cause in the most effective way in the development of competitive markets and competition policy. This will be achieved by undertaking market surveillance into competition within the retail distribution sector. The CLF's role in this project involves:

1. undertaking a survey and legal analysis of national and regional competition law, consumer protection, and recent investigations, cases and guidelines in 14 jurisdictions;
2. providing technical assistance and advice to Consumers International;
3. providing training in competition law at regional meetings; and
4. hosting three regional workshops.

The CLF completed its report on the results of the Consumer International survey of 14 different national competition law regimes in November 2006. Its authors were Dr Philip Marsden, Peter Schepens and Peter Whelan.

To date, the CLF has provided training in competition law at the first, second and third regional meetings of the DG Sanco-Consumers International Competition Law Project.

Consumer Detriment Project

The maximization of consumer welfare is consistently presented as the paramount objective of competition law. However, to what extent is this objective pursued in practice by the competition authorities? Dr Philip Marsden and Peter Whelan's detailed study of EC and UK competition legislation, soft law and cases aimed to answer this question and to offer timely observations and suggest important areas for

further study. Two articles have been published by the CLF in relation to this research.

Research on Market Investigations and Sector Inquiries

Both the European Commission and the UK authorities have legislative powers to examine a market that they feel isn't working properly in order to investigate if there are any competition and/or other problems that require remedying; the concepts of 'market investigation' and 'sector inquiry' are used in the UK and EC contexts respectively. The CLF has conducted research into both of these regimes. A recent two-part article was published the *Competition Law Insight* on this subject. This article was written by Dr Philip Marsden and Peter Whelan.

Competition Law Forum Publications

Article 82

The CLF Article 82 Review Group published the following two papers in 2006: 'The Reform of Article 82: Comments on the DG-Competition Discussion Paper on the Application of Article 82 to Exclusionary Abuses' (2006) 2 *European Competition Journal* 169; and 'A Bundeskartellamt/Competition Law Forum Debate on Reform of Article 82: A "Dialectic" on Competition Approaches' (2006) 2 *European Competition Journal* 211.



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Competition Law Forum Working Group on Private Actions

The CLF's response to the European Commission's 'Green Paper on Damages Actions' was published in P Marsden, M Hutchings and P Whelan (eds), *Current Competition Law Volume V* (BIICL, London, 2007).

Price Discrimination Paper for the ABA

In February 2006 Peter Whelan and Dr Philip Marsden co-authored an article on EC and UK price discrimination for the American Bar Association's (ABA) Antitrust Teleseminar Series. The paper, entitled 'The Concept of Price Discrimination under EC and UK Law', comprises both the EC's and the UK's contribution to the ABA's *Review of International Perspectives on Price Discrimination*. It was presented to the ABA by Dr Philip Marsden on 27 February 2006.

Consumer Detriment Project

This project resulted in the publication of two related articles: P Marsden and P Whelan, "Consumer Detriment" and its Application in EC and UK Competition Law' [2006] *European Competition Law Review* 569–584; and M Hutchings and P Whelan, 'Consumer Interest in Competition Law Cases' (2006) 16 *Consumer Policy Review* 130–136

Research on Market Investigations and Sector Inquiries

This project resulted in the publication of a two-part article by *Competition Law Insight* in January and February 2007. The article was entitled 'When Markets are Failing' and was written by Dr Philip Marsden and Peter Whelan.

The European Competition Journal

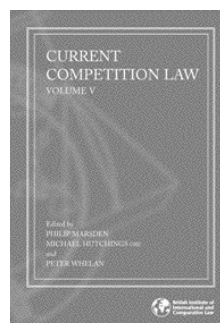
In 2005 the Director of the CLF, Dr Philip Marsden, and Simon Bishop, partner at RBB Economics, created the *European Competition Journal*, a biannual academic publication that is available for sale each spring and autumn. There were three editions of this journal published in 2006, including a special edition on Article 82.

Transatlantic Antitrust Handbook

Edward Elgar published the *Transatlantic Antitrust Handbook* in 2007, edited by Philip Marsden. Philip brought together 28 senior competition law experts from, inter alia, Europe, and both North and South America; its chapters provide both guidance and discussion on numerous contemporary transatlantic antitrust issues.

Current Competition Law Volume V

Current Competition Law is the British Institute's competition law yearbook; it contains a collection of papers and speeches given at the main CLF events during the year, in particular its annual conferences on merger control, competition litigation and transatlantic antitrust. *This publication* is edited by Dr Philip Marsden, Michael Hutchings OBE, and Peter Whelan. The CLF published *Current Competition Law Volume V* in March 2007.



Competition Law Forum Members

Law Firms

Phil McDonnell, Addleshaw Goddard	John Kallaugher, Latham & Watkins
Vincent Power, AL Goodbody	Gavin Robert, Linklaters
John Wotton, Allen & Overy	Susan Bright, Lovells
Nigel Parr, Ashurst	Frances Murphy, Mayer Brown Rowe & Maw
David Harrison, Berwin Leighton Paisner	Scott Megregian, McDermott Will & Emery
Richard Eccles, Bird & Bird	Mark Jones, Norton Rose
Alex Noury, Clifford Chance	Riccardo Celli, O'Melveny & Myers LLP
Shaun Goodman, Cleary Gottlieb Steen & Hamilton	Alastair Gorrie, Orrick, Herrington & Sutcliffe LLP
George N Addy, Davies Ward Phillips & Vineberg LLP	Katherine Holmes, Richards Butler
John Davies, Freshfields Bruckhaus Deringer	Chris Bright, Shearman & Sterling LLP
Alberto Pera, Gianni, Origoni, Grippo & Partners	Elaine Gibson-Bolton, SJ Berwin
Stephen Wisking, Herbert Smith	Philippe Chappatte, Slaughter & May
Trevor Soames, Howrey Simon Arnold & White	Nathalie Jalabert-Doury, Sokolow, Carreras & Associés
Bernard Amory, Jones Day	Margaret Moore, Travers Smith
	Suyong Kim, Wilmer Cutler & Pickering
	Bernadine Adkins, Wragge & Co

Corporates

Chris Parker, Microsoft	Carol Walsh, Visa International
Tim Cowen, BT	Karim Nath, BAT
Beverley Robertson, mm02	Eva Bishop, Coca-Cola Enterprises
Anne Riley, Shell International Limited	

Economists

Dr Cristina Caffarra, CRAI	Adrian Majumdar, RBB Economics
Thomas Hoehn, PricewaterhouseCoopers	Dr David Squires, Deloitte
Dr Helen Jenkins, OXERA	Dr Mark Williams, NERA

Barristers

Michael Bowsher, Monkton Chambers

Consultants

Peter Carlo Lehrell, FIPRA

Consultative Members

Dr Cezary Banasinski, Office for Competition and Consumer Protection, Poland	Knut Eggum Johansen, Konkurransetilsynet Norwegian Competition Authority
Dr Walter Barfuß, Federal Competition Authority of Austria	William Kovacic, US Federal Trade Commission
Sir Christopher Bellamy, Competition Appeal Tribunal	David Lawsky, Reuters SA Professor Abel Mateus, Competition Authority of Portugal
Margaret Bloom, King's College London	Zoltán Nagy, Hungarian Competition Authority
Dr Ulf Böge, Bundeskartellamt	Peter Oliver, European Commission
Philip Collins, Office of Fair Trading	Andrej Plahutnik, Republic of Slovenia Competition Protection Office
Dr John Fingleton, Office of Fair Trading	Magistrate Dr Silvio Meli LLD, Malta Commission for Fair Trading
Alberto Heimler, Italian Antitrust Authority	Sir John Vickers, University of Oxford
RJP Jansen, Netherlands Competition Authority	Stephen Walzer, Competition Commission
Judge Frédéric Jenny, Commercial, Economic & Financial Law Chamber, Cour de Cassation	Polly Weitzman, Office of Communications

Competition Law Forum Events

Forum events

13–14 March 2006

OFT/CLF Workshop on Article 82

Location: London

Speakers: Dr Philip Marsden, BIICL (Co-Chair); Dr Amelia Fletcher, Office of Fair Trading (Co-Chair); Professor Steven Davies, University of East Anglia (Co-Chair); Professor Richard Whish, King's College, London (Co-Chair); Robert O'Donoghue, Clearly Gottlieb Steen & Hamilton (Co-Chair); Dr Renato Nazzini, Office of Fair Trading (Co-Chair); Professor Sir John Vickers, University of Oxford (Co-Chair); Professor Sir David Edward QC, University of Edinburgh; Luc Gyselen, Arnold & Porter; Dr Gregory Werden, US Department of Justice; Professor Bruce Lyons, University of East Anglia; Professor Thomas Eilmansberger, University of Salzburg; Paolo Buccirossi, LEAR, Italy; Michael Albers, European Commission; Dr Simon Bishop, RBB Economics; Richard Wainwright, Allen & Overy; Peter Roth QC, Monckton Chambers; Jon Turner QC, Monckton Chambers; Giorgio Monti, London School of Economics; Alberto Heimler, AGCM, Italy;



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Vincent Smith, Office of Fair Trading; Ali Nikpay, Office of Fair Trading; Professor Janusz Ordovery, New York University; Professor Eleanor Fox, New York University; Thomas Hoehn, PriceWaterhouseCoopers; Paolo Palmigiano, British Telecom; Philip Collins, Chairman, Office of Fair Trading; Professor David Spector, Centre National de la Recherche Scientifique, Paris; Dr Patrick Rey, Institut d'Economie Industrielle, Université des Sciences Sociales, Toulouse; Dr Simon Bishop, RBB Economics; Professor John Kallaugher, Latham & Watkins; John Ratliff, Wilmer Cutler Pickering Hale and Dorr LLP; Dr Pierre Regibeau, University of Essex; Alden Abbott, US Federal Trade Commission; Professor Damien Geradin, College of Europe, Bruges; Aidan Robertson, Brick Court Chambers; Bernard Amory, Jones Day; Dr Jorge Padilla, LECG Ltd; Dr Christian Koboldt, DotEcon Ltd; Christian Ahlborn, Linklaters; Ron Stern, GE Corporate; Dr Mark Williams, Nera Economic Consulting; and Professor Michael Waterson, University of Warwick

15 March 2006

Private Actions

Location: London

Speakers: Richard Eccles, Bird & Bird (Chair); Donncaadh Woods, European Commission; Nicholas Good, KPMG; John Fingleton, Office of Fair Trading; Eleanor Fox, New York University School of Law; and Konrad Ost, Bundeskartellamt

21 June 2006

Competitiveness vs Competition

Location: Paris

Speakers: Peter-Carlo Lehrell, FIPRA (Co-Chair); Jean-Francois Guichard, FIPRA (Co-Chair); Humbert Drabbe, European Commission; Udo Nothelfer, AMD Germany; Pierre Buigues, Toulouse Business School; LECG; and Nathalie Jalabert-Doury, Sokolow, Carreras & Associés

18 October 2006

Market Investigations

Location: London

Speakers: Gavin Robert, Linklaters (Chair); Peter Freeman, Competition Commission;

- Jonathan May, Office of Fair Trading; Frank Maier-Rigaud, European Commission; and Gunnar Niels, Oxera
- 6 December 2006 **Competition Issues in the Media Sector**
Location: London
Speakers: John Wotton, Allen & Overy (Chair); David Aitman, Freshfields Bruckhaus Deringer; Simon Bishop, RBB Economics; Andrea Coscelli, CRAI; Tim Cowen, British Telecom; Nynke Tigchelaar, DG Competition, C-2; and Polly Weitzman, OFCOM
- 14 March 2007 **Buyer Power**
Location: Brussels
Speakers: Suyong Kim, *Wilmer Hale* (Chair); Damien Neven, Chief Economist, European Commission DG-Competition; Dan O'Brien, Chief, Economic Regulatory Section, Antitrust Division, US Department of Justice; Helen Jenkins, Director, Oxera; Pieter Kuipers, General Counsel, Unilever; and Zoltan Biro, Director, Frontier Economics

General members' events/public lectures etc

- 20 January 2006 **GE/Honeywell Post-Mortem Practitioner Workshop**
Speakers: Simon Baxter, Clifford Chance (Chair); Hendrik Bourgeois, GE; Matthias Pflanz, CRA International; Miguel de la Mano, European Commission, Chief Economist Office; Francisco Enrique González Díaz, Cleary Gottlieb Steen & Hamilton LLP; and Carles Esteva-Mosso, European Commission
- 3 February 2006 **Competition Litigation in the EU: where do we stand?**
Speakers: Stephen Kon, SJ Berwin LLP (Chair); Marion Simmons QC, Competition Appeal Tribunal; Vincent Smith, Director of Competition Enforcement, Office of Fair Trading; Polly Weitzman, Director of Competition Law & Head of Legal Team, Ofcom; Paul Lasok QC, Monckton Chambers; Mark Hoskins, Brick Court Chambers; Sam Szlezinger, Denton Wilde Sapte; Donncadh Woods, European



Commission, DG Competition; Vincent Smith, Director of Competition Enforcement, Office of Fair Trading; Joseph Simons, Paul, Weiss, Rifkind, Wharton & Garrison LLP; Alexander Rinne, SJ Berwin LLP; Javier Ruiz Calzado, Latham Watkins; Peter Roth QC, Monckton Chambers; Marc Lévy, SJ Berwin LLP; Weijer VerLoren van Themaat, Houthoff Buruma NV; Mike Walker, Charles River Associates; Lesley Farrell, SJ Berwin LLP; Aidan Synnott, Paul, Weiss, Rifkind, Wharton & Garrison LLP; and Simon Persoff, Wanadoo

24 February 2006

Reform of Article 82

Speakers: Dr Philip Marsden (Co-Chair); Bill Allan, Linklaters (Co-Chair); Philip Collins, Office of Fair Trading; Felix Engelsing, BKartA; Simon Bishop, RBB Economics; Emil Paulis, European Commission; Professor Emeritus Valentine Korah, UCL; Gunnar Niels, Oxera; Lucas Peeperkorn, European Commission; Johanne Peyre, Michelin Group; Sir John Vickers, Oxford University; Greg Werden, US Department of Justice; Professor Thomas Eilmansberger, University of Salzburg; Kelyn Bacon, Brick Court Chambers; Christian Ahlborn, Linklaters; Professor Ulrich Ehricke, Dusseldorf Court of Appeal and University of Cologne; Gerald F Masoudi, US Department of Justice; and Ali Nikpay, Office of Fair Trading



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6–7 July 2006

6th Annual Transatlantic Anti-Trust Dialogue

Speakers: Philip Marsden, BIICL (Co-Chair); Michael Hutchings OBE, Competition Law Forum (Co-Chair); Richard Whish, King's College London (Co-Chair); Mark Clough QC, Addleshaw Goddard (Co-Chair); Anne Riley, Shell (Co-Chair); Oliver Bretz, Clifford Chance LLP (Co-Chair); **Margaret Bloom, Freshfields Bruckhaus Deringer (Co-Chair); Phil Evans, Consumer Policy Team, FIPRA International (Co-Chair); Lesley Ainsworth, Lovells (Co-Chair);** Cristina Caffarra, CRA (Co-Chair); Damien Neven, Graduate Institute of International Studies; John Davies, Competition Commission; Carles Esteva Mosso, European Commission; Bruce McDonald, Antitrust Division, US Department of Justice; **Colin Brown, Office of Fair Trading; Judge Frédéric Jenny, Cour de Cassation; Michael O'Kane, Peters and Peters; John Hardy, 3 Raymond Buildings; Brad Ockene, Lovells;** Adrian Majumdar, RBB Economics; Johanne Peyre, Michelin; James Flynn, Brick Court Chambers; Andrés Font-Galarza, European Commission; Bill Kovacic, US Federal Trade Commission; Allan Fels, Australia-New Zealand School of Government; Alan Riley, City Law School; **Sean Greenaway, European Commission; Alan Ainsworth, Barclaycard;**

- 11 October 2006 **Diana Chan, Citigroup; Pinar Bagci, CRA;** Stuart Davis, BG Group PLC; Duncan Sinclair, OFGEM; Ricardo Cardoso de Andrade, European Commission; Luis Gomez, Baker & McKenzie; **Philip Lowe, European Commission;** John Fingleton, Office of Fair Trading; William Prasifka, Irish Competition Authority; and Rimantas Stanikunas, Lithuanian Competition Council
- 8 November 2006 **Conceptual and Empirical Issues in the Analysis of Local Competition: Boots/ Alliance Unichem and Other Recent Mergers**
Speakers: Simon Baker, RBB Economics (Chair); **Bojana Ignjatovic**, Office of Fair Trading; and Paula Riedel, Linklaters
- 24 November 2006 **Annual Joint Symposium between BIICL and Competition Law Association: Competition Law Developments in Member States**
Speakers: Peter Roth QC, Monckton Chambers, UK (Chair); Antonio Guerra, Tribunal for the Defence of Competition, Spain; Rene Jansen, Netherlands Competition Authority, Holland; Konrad Ost, Bundeskartellamt, Germany; Simon Priddis, Office of Fair Trading, UK; and Francois Souty, Conseil de la Concurrence, France
- 5th Annual Merger Control Conference**
Speakers: Philip Marsden, BIICL (Co-Chair); Chris Bright, Shearman & Sterling LLP (Co-Chair); Adrian Majumdar, RBB Economics (Co-Chair); Matthew Readings, Shearman & Sterling LLP (Co-Chair); George Addy, Davies Ward Phillips & Vineberg LLP (Co-Chair); Nadia Calviño, Deputy Director for Mergers, DG Competition, European Commission; Gabriel Bleser, Rapporteur Général, Competition Inspection, Luxembourg; Miguel Odriozola, Clifford Chance LLP (Counsel to Endesa); Götz Drauz, Howrey; Adrian Payne, Office of Fair Trading; Benoit Durand, Competition Commission; Oliver Bretz, Clifford Chance LLP; Simon Pritchard, Director of Mergers, Office of Fair Trading; Philippe Chappatte, Slaughter and May; Simon Bishop, RBB Economics; Beau Buffier, Shearman & Sterling LLP; MJ



* Dr Philip Marsden

2 February 2007

Moltenbrey, Freshfields Bruckhaus Deringer;
and Frederic Depoortere, Skadden Arps
**International Cartels—Comparative
Perspectives on Practice, Procedure and
Substance**

Speakers: **Don Baker**, Baker and Miller PLLC
(Co-Chair); **Subrata Bhattacharjee**, Heenan
Blaikie LLP (Co-Chair); **Sir Jeremy Lever**, QC,
Monckton Chambers (Co-Chair); **Vincent
Power**, A&L Goodbody (Co-Chair); **Michael
Egge**, Latham & Watkins; **Paul Gallagher**,
Cohen, Milstein, Hausfeld & Toll PLLC; **Philipp
Girardet**, Office of Fair Trading; **Nicholas
Green QC**, Brick Court Chambers; **Leon
Greenfield**, WilmerHale; **John Hardy**, 3
Raymond Buildings; **Julian Joshua**, Howrey;
Kris de Keyser, European Commission;
Graham Reynolds QC, Osler, Hoskin &
Harcourt LLP; and **Luke Tolaini**, Clifford
Chance LLP

27 February 2007

Stock Exchange Mergers

Speakers: **Jane Welch**, BIICL (Chair); **Sir
Adam Ridley**, Equitas Trust; **Helen Jenkins**,
Oxera; **Simon Pritchard**, Office of Fair Trading;
Ioannis Kokkoris, Office of Fair Trading; and
Nick Weinreb, Euronext LIFFE



Product Liability Forum

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

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.



*
Dr Duncan Fairgrieve

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).

Members of the Product Liability Forum include:

Four New Square	Henderson Chambers
Arnold & Porter LLP	Irwin Mitchell
Ashurst	Kennedys
British American Tobacco	Lieff Cabraser Heimann & Bernstein LLP
Clifford Chance	Lovells
Covington & Burling	LLP Lungershausen & Smith
Davies Arnold Cooper	Reed Smith LLP
Dechert LLP	Reynolds Porter Chamberlain LLP
Fountain Court Chambers	Sidley Austin LLP
Freshfields Bruckhaus Deringer	Shook Hardy & Bacon LLP
Gough Square Chambers	

Benefits of Membership

- An invitation to exclusive Forum events. These are all CPD-regulated.
- 12 months' subscription to the Product Liability Alerter.
- Access to a web-based database of legislation and judicial decisions on product liability, which is regularly updated, authoritative and user-friendly, and includes analysis from a European-wide network of academics and practitioners. Members of the Forum are allowed exclusive access to the legal materials (statutes, regulations, decisions etc) in their original language, and in a translated summary. Exclusive access is granted to Members for access to the analytical materials. The database covers all relevant legal sources applying to product liability in the relevant countries, whether that be legislation, regulations or case law. It is regularly updated whenever new information becomes available. National experts alert the team of new developments within their country. (A recent example of this was the next day report from Denmark on an important Salmonella Case).
- The opportunity to participate in an independently-run Forum that aims to influence policy and which provides an arena for ongoing and constructive debate with regulators and other decision-makers. A recent example of this was the PLF response to the European Commission questionnaire on the application of the Product Liability Directive.
- The opportunity to act as speakers at both PLF and public events.
- Attendance at a preferential rate to all public events related to the field.

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 who requested our participation in the review process of the Product Liability Directive. In recognition of this work, the member of the European Commission responsible for the review, Mr Luis Gonzalez-Vaqué, formally presented the results of the review at a British Institute's seminar in December 2006.

We have also introduced an exciting new product, together with our partner Linex Legal, known as the Product Liability Alerter. It is a fortnightly e-mail 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. It has proved to be a very successful innovation.

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: <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 policy-makers 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 (Luis Gonzalez-Vaqué and Erik Hansson, of the European Commission; Professor Vincenzo Salvatore, Head of Legal at the European Medicines Agency; and Rob Hemmings, a Senior Statistician with the MHRA), academia (Professor Jane Stapleton, Professor Geraint Howells, Professor Marco Bona and Professor Mario Calderini), members of the judiciary (Mr Justice Underhill and Judge Marcio Mafra), as well as distinguished foreign colleagues (Elizabeth Cabraser and Robert Lief, founding partners of Lief, Cabraser, Heimann & Bernstein, LLP; Luanne Sacks, DLA Piper, California; Sarah Gourley, Sidley Austin, Chicago; John Sherk, Shook Hardy Bacon; Richard Berkman, Dechert LLP; and Timothy Smith, managing partner for Europe of Lungerhausen & Smith).

26 January 2006

PLF Seminar: Which Forum? Choice of Forum in Product Liability Litigation

Chair: Mr Justice Underhill

This seminar brought together a number of leading academics and practitioners to discuss a topic of current interest, most notably in the light of a recent US decision in *Gullone v Bayer Corp*. The discussion looked at different jurisdictions, noting both the domestic and international law considerations behind the choice of forum. Diverging perspectives on this issue were presented by **Robert Lief**, founding partner of Lief, Cabraser, Heimann & Bernstein LLP, by **Richard L Berkman**, Partner, Dechert LLP and by **Timothy Smith**, managing partner for

2 March 2006

Europe of Lungerhausen & Smith. These contributions were commented upon by **Professor Mark Mildred** and **Professor Marco Bona** (University of Milan).

PLF Seminar: 'Recent Developments Concerning Group Actions'

An Expert Conference, co-financed by the European Commission, covering the theme of consumer protection through class actions, took place on 24 February 2006 in Vienna.

With recent developments at a national level, it became clear that the theme of group actions would feature on the agenda of the Austrian European Presidency. This marks a general European trend. After the introduction of legislation on class actions in Sweden, other European countries are making an effort to review their law in this area. In its consumer strategy, Extending Competitive Markets, the UK Government has examined plans to introduce representative actions for consumers and will consult further on how this might be done. The Forum met to discuss the recent developments with leading practitioners from across the globe.

Worldwide Developments in the Area of Class Actions, with a Particular Focus on Recent US Developments.

Chair: **Phillip Brook Smith QC, Fountain Chambers**

Marcio Mafra, Federal Judge in Brazil since 1999, Professor at the Universidade Federal da Bahia, at the moment writing a DPhil on Collective Actions at Freiburg University, Germany

Tim Smith, Lungershausen & Smith, Managing Partner, Europe Representatives of Lief, Cabraser, Heimann & Bernstein, LLP, a leading American plaintiff law firm

EU and European Jurisdictions

Chair: **Lord Hunt of Wirral**

Professor Geraint Howells, commenting on EU developments and reporting on a formal EU conference organized by the Austrian Ministry of Justice

- Paul Llewellyn**, Partner, Reed Smith LLP—class actions from a practitioner’s view
Commentators: **Arundel McDougall**, Partner, Ashurst LLP; and **Mark Boleat**, Boleat Consulting
PLF Seminar: Drug Induced Injury—Risks and Causation.
 Seminar with the MHRA and Professor Jane Stapleton, world’s leading expert on questions of causation
- 11 May 2006
- PLF Seminar: How is the Product Safety Working in Practice?**
Chair: **Justin Fenwick QC**, 4 New Square
Speakers: **Erik Hansson**, SANCO, European Commission: ‘The View from the Commission’; **Andrew Austin** and **John Blain**, Freshfields: ‘Challenges in Coordinating a Pan-European Recall’; **Mark Kendall**, Reynolds Porter Chamberlain LLP: ‘Product Recall and Guarantee insurance coverage: benefits, pitfalls, and implications of the General Product Safety Regulations’; and **Jonathan Hemus**, Porter Novelli presented the angle of ‘Crisis Communications’
- 12 October 2006
- PLF Seminar: Reviewing the Review: The European Commission’s Third Review of the Product Liability Directive**
Chair: **Charles Gibson QC**, Henderson Chambers.
Speakers: **Luis Gonzalez-Vaque**, European Commission; Comments by **Rod Freeman**, Lovells
- 5 December 2006
- PLF Seminar: Regulation and Consumer Protection for Healthcare Products—are we being safe and effective?**
Chair: **Mr Justice Underhill**, TBC.
Speakers: **Professor Sir Alasdair Breckenridge**, Chairman, MHRA; **Professor Kent Woods**, CEO, MHRA; Peter Littlejohns, Chairman, Nice; and **Prof Angus McKay**, Chairman, Scottish NICE
- 13 March 2007
- Joint IADC/PLF Seminar: ‘An EU/US Roundtable Perspective on Current Issues in Pharmaceutical Litigation—Insurance, Corporate & Private Outside Counsel’**
 This joint event brought together PLF members
- 16 May 2007

with prominent IADC participants and addressed recent issues relating to pharmaceutical product liability and insurance. Speakers included James Bird, partner at the Life Science Group at JLT Risk Solutions Limited.

Public Conferences and Seminars

In April 2006, we ran a hugely successful conference on 'Product Liability and Pharmaceuticals', sponsored by Lovells and 4 New Square. Speakers included Mr Justice Underhill; Jeremy Stuart-Smith QC, 4 New Square; Sarah Houlton, Global Correspondent, Pharmaceutical Executive Magazine; John Meltzer, Lovells; Paula M Stannard, Acting General Counsel, US Department of Health & Human Services; Professor Salvatore Vincenzo, Head of Legal, EMEA; Dr Peter Feldschreiber, MHRA; Jeffrey Bucholtz, US Department of Justice; Simon Gregor, Director of Communications, Medicines and Healthcare products Regulatory Agency; Andrew Baum, Pharmaceutical Research Team, Morgan Stanley; Martyn Day, Leigh Day and Co; Nicholas Diamand, Lieff, Cabraser, Heimann & Bernstein, LLP, New York; Ina Brock, Lovells; Professor Marco Bona, Università «Bocconi» di Milano; and Rob Weiner, Arnold & Porter.

On 25 April 2006, in association with CLAN, we ran an international conference sponsored by Which? Speakers included Richard Alderman, Susan Block-Lieb, Jean-Sébastien Borghetti, Peter Cartwright, Lorna Gillies, Karen Gross, Nicola Howell, Edward Janger, Paul Edgar Micallef, Hans Micklitz, Rae Nield, Gail Pearson, A Rajendra Prasad, Jules Stuyck, Iain Ramsay, Peter Rott and Christian Twigg-Flesner.

The Tort Law Centre ran a parallel panel session at the 2006 Institute's Annual Conference on the topic of 'Comparative Law: Pitfalls in Comparative Law (Use and Abuse of Comparative Law)', chaired by The Rt Hon Lord Mance.



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Tort Law Centre

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

The objective of the Tort Law Centre, which was founded in 2002, is to promote research, policy discussion and development in the field of tort law, and to strengthen the link between the law and policy-making in this field. Legal research in this area has been traditionally limited by national jurisdictions. This is unsatisfactory for several reasons. First, because of the international and cross-border nature of the services and products. Secondly, because of the considerable reform activity in the different countries which has highlighted the need for comparison. Finally, because of the impact of regulation by the European Union, in areas such as product liability, requiring a shift of focus from the national to the international perspective. The aim of the Tort Law Centre is to facilitate the finding of equitable solutions for national law through its research programme and the organization of academic events.

The past months have been very busy for the Tort Law Centre. A large number of conferences and seminars have taken place under the auspices of the Centre. Research activities have flourished.

Research activities

Product Liability

Good progress has been made on the web-based database of legislation and judicial decisions on product liability. This is a unique initiative in the sphere of product liability, and proves to be an important research tool. A demo giving access to France and Canada may be accessed at www.biicl.org/plf. We are currently seeking the expertise of National Rapporteurs from new countries.

A major publication was published in September 2005 entitled *Product Liability in Comparative Perspective* (CUP, Cambridge, 2005). This publication was edited by Duncan Fairgrieve, with contributions from Professor Jane Stapleton, Professor Geraint Howells, Professor Dr Taschner, Mr Justice Burton, Michael Brooke QC, Ian Forrester QC, Professor Miller, Professor Cees van Dam, Professor John Miller, and Professor Mark Mildred, amongst many others. In the foreword, Mr Justice Burton writes:

'This is an extraordinary book, in which I am honoured to be included, and which I am even more privileged to be able to introduce. It contains contributions from an array of the leading thinkers in the field of product liability; and it provides substantial food (non-standard, and certainly not defective) for thought for practitioners, academics and students alike.'

Product Safety

Over the past year, the team has worked closely with the Department of Trade and Industry (DTI) on the UK implementation of General Product Safety Directive 2001/95/EC (GPSD). We organized a very productive meeting with Graham Bartlett in March 2004 to discuss the DTI strategy for implementation of the GPSD. This was followed by a public seminar in February 2005 following the publication of the DTI proposals. As part of the DTI consultation process, the Product Liability Forum submitted an official response to the DTI's proposals in the form of a paper, covering issues such as the notification obligation, borderline industries, compensation, professional secrecy and the precautionary principle.

Duncan Fairgrieve and Professor Geraint Howells have jointly produced a piece on the topic of the implementation of the General Product Safety Directive. This was fast-tracked for the January edition of the *Modern Law Review*: Duncan Fairgrieve and Geraint Howells, 'General Product Safety—a Revolution through Reform?' (2006) 69 MLR 1.

Comparative Law

Duncan Fairgrieve published in 2006 at the Institute a book on *Independence, Accountability and the Judiciary*, co-edited by the Lord Chief Justice of France, Guy Canivet, Duncan Fairgrieve and Dr Mads Andenas.

Duncan Fairgrieve published a book on *Droit et Libertés au Royaume Uni et en France* (Editions Odile Jacob, Paris, 2006), with Monsieur Bernard Stirn, Président Adjoint de la Section du Contentieux, Conseil d'Etat, and Monsieur Mattias Guyomar, Maître des Requêtes, Conseil d'Etat. The co-authors were awarded the prestigious Henri Texier Prize by the French Academy for this book at a formal ceremony in November 2006.

In 2006 Duncan Fairgrieve also published a book entitled *Common Law et tradition civiliste—Convergence ou concurrence?* This book was published in pocket format by French publishers, Presses Universitaires de France. The publication examines the architecture, institutions and socio-legal context of the common law and civil law systems, as exemplified by France and England.

The Institute's Tort Law Centre has also undertaken various comparative law research work commissioned by various government departments.

Personal Injury Evening Seminars

The well-established series of Personal Injury Evening Seminars has continued, with leading speakers from the personal injury bar, such as Lizanne Gumbel QC, Tim Kerr QC, James Badenoch QC, as well as from academia, speaking about controversial topics of tort law, including:

29 March 2006

This House Has Seen the Collapse of Principle in the Tort of Negligence.

An Oxford-style debate chaired by Lord Hoffmann.

Supporting the motion: Martin Spencer QC, Hailsham Chambers; Elizabeth Gumbel QC, 1 Crown Office Row; and Andrew Edis QC, Atlantic Chambers

Opposing the motion: Nicholas Davidson QC, 4 New Square; Guy Mansfield QC, 1 Crown Office Row; and Susan Rodway QC, 39 Essex Street

Panel of Debate Judges, led by Mr Justice Jackson: David Howarth MP; Laura Hoyano, Wadham College, Oxford; Professor Ken Oliphant, University of Cardiff; Roderick Bagshaw, Magdalene College, Oxford; and Robert Stevens, LMH, Oxford

5 June 2006

Barker v Corus: The Emergence of a New Tort?

Chair: Charles Gibson QC

Speakers: Elizabeth-Ann Gumbel QC, 1 Crown Office Row; Colin Ettinger, Irwin Mitchell; Roderick Bagshaw, Magdalen College, Oxford; Thomas Lakenberg, Pauly Rechtsanwaelte, Bonn; Dr Ariane Dahan; Dr Duncan Fairgrieve, British Institute of International and Comparative Law; Jeremy Stuart-Smith, 4 New Square; and Alan Gore, 12 King's Bench Walk.

The Centre of French Law

Director: Duncan Fairgrieve

Research Fellow: Faria Medjoub

This Centre brings together within an institutional structure our events and projects linked to the study and research of French law. We have established a lively events programme, often in collaboration with French institutions.

Recent Activities

The Centre has developed a number of projects and events relating to French law:

A book on the bicentenary of the French Civil Code, entitled, *The Influence of the French Civil Code on the Common Law and Beyond*, will be published by the Institute in 2007, bringing together the proceedings of the conference organized in June 2004 to celebrate the bicentenary. The book is edited by Duncan Fairgrieve.

Duncan Fairgrieve and Faria Medjoub co-authored a short piece on 'La Récente Réorganisation Administrative du Grand Londres: une Volonté d'Unification' for the French publication, *Cahiers de la fonction publique*.

Duncan Fairgrieve and Faria Medjoub co-produced a paper for a French governmental project on the topic of 'La *Societas Europae* au Royaume-Uni'.

On 6 June 2007, we will hold an international conference, jointly organized with the Franco-British Lawyers Society on the topic of commercial Law: 'French Commercial Code & British Commercial Law within a Global Market-Place: Celebrating the Bicentenary of the French Commercial Code'. This will be a prestigious event, bringing together speakers from Britain and France including Guy Canivet, premier Président de la Cour de cassation, and Lord Phillips, the Lord Chief Justice. Various topics of commercial law will be covered, including commercial contracts and the attractiveness of Civil law systems.

European Financial and Corporate Law Centre

Director: Jane Welch Research Fellow: Dr Pierre Schammo
<http://www.biiicl.org/efcl>

The aim of the Centre is to provide an informed, independent forum for research and debate on European financial services and company law. The Centre has taken over the work of the Company Law Centre, which completed an extremely successful three-year research programme in December 2005, under the direction of Professor Jonathan Rickford CBE.

Dr Pierre Schammo was appointed as part-time Research Fellow in November 2006, taking up a full-time position in January 2007.

The specific objectives of the European Financial and Corporate Law Centre are to:

- clarify the increasingly complex maze of legislative measures affecting financial institutions operating in the EU. Banks, investment firms and insurance companies are subject to a wide range of 'vertical' and 'horizontal' directives, supplemented by further layers of secondary legislation;
- explore ambiguities in the drafting of EU legislation and follow the interpretation and implementation of legislation in the UK and other Member States;
- identify and analyse possible conflict between European legislation and Community law;
- analyse the remaining obstacles to the establishment of a genuine single market in financial services; and
- explore the impact of EU legislation on non-EU institutions and monitor developments in the US and WTO affecting European financial services.

Research

Market Abuse

A research report commissioned by 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 United Kingdom, Germany, France, Spain and the Netherlands was published at the start

of 2006. The research was carried out by Jane Welch, with the assistance of Dr Matthias Pannier (Research Fellow in Company Law at the British Institute) and other national rapporteurs (see <www.cityoflondon.gov.uk/economic>).

The Brussels office of the City Corporation organized a seminar in Brussels in March 2006 at which Jane Welch and the other authors of the report presented the results of the research to European Commission officials. The seminar was also attended by trade association representatives, practitioners and officials from the Permanent Representations to the EU.

Implementation of EU Legislation

Jane Welch was invited to give evidence to the Davidson Review of the Implementation of EU Legislation, set up by the Government to assess the extent of 'gold-plating' in the UK implementation of EU legislation.

Money Laundering

The City Corporation commissioned a second research report, comparing the implementation of the Second Money Laundering Directive in the UK, Spain, Italy, Greece, Poland and Lithuania. This report was also written by Jane Welch and a team of national lawyers, including Lorenza Ragnolini and Javier Munoz del Guayo, both research assistants at the British Institute. The report was completed and published at the end of 2006. (see <www.cityoflondon.gov.uk/economic>)

Insurance Regulation

In August 2006, the British Institute was commissioned by the European Parliament to produce a report on the Regulation of Insurance Companies in the UK, Ireland, Germany and Spain during the period 1989–2001, for the Parliament's Enquiry into the Crisis at Equitable Life. This report was written and edited by Jane Welch with the assistance of a team of lawyers from Ireland, Germany and Spain. The report was completed in February 2007. The report is confidential and will not be published.

Transatlantic Exchange Mergers

In 2007, Jane Welch and Pierre Schammo will undertake a major research project on the Legal and Regulatory Implications of Transatlantic Exchange Mergers.

Events



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12 May 2006

**The Future for Takeovers in the EU-
Implementation of the Takeover Directive**
*Chairs: Professor Jonathan Rickford CBE,
and Professor Dan Prentice*

*Speakers: Mark Warham, Director-General,
Takeover Panel, UK; Professor Peter
Muelbert, University of Mainz, Germany;
Pierre-Henri Conac, University of Paris I,
France; Professor Rolf Skog, Stockholm
Centre for Commercial Law, Sweden; Mike
Edbury, DTI, UK; Professor Marco
Ventoruzzo, Bocconi University of Milan, Italy;
and Daniela Weber-Rey, Clifford Chance,
Frankfurt*

31 May 2006

**The Law on Secured Transactions: The Need
for Reform**

Chair: Professor Ross Cranston QC, LSE
*Speakers: Spiros V Bazinas, Senior Legal
Officer, Secretary of WG VI (Security Interests),
UNCITRAL; Professor Hugh Beale QC, FBA,
Law Commission; Professor Michael Bridge,
Dean of the Faculty of Law, UCL; Frederique
Dahan, Senior Counsel, European Bank for
Reconstruction and Development; Herbert
Kronke, Secretary General, UNIDROIT; and
Philip Wood, Special Global Counsel, Allen &
Overy LLP*



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30 October 2006

Recovering Stolen State Assets and the Proceeds of Grand Corruption

This was the first lecture organized by research fellows at the Institute, in the series sponsored by Clifford Chance on the theme of 'State Jurisdiction in a Global Environment: Rethinking Territoriality'

Chair: **Martin Polaine**, Commonwealth Secretariat

Speaker: **Monty Raphael**, Peters & Peters

12 December 2006

Cross Border Abuse: Investigations and Protection?

This seminar was sponsored by Omni Bridgeway and was the second in the series organized by research fellows at the Institute on the theme of 'State Jurisdiction in a Global Environment: Rethinking Territoriality'

Chair: **Nina Hall**, Omni Bridgeway

Speakers: **Julian Knowles**, Matrix Chambers;

Frances Berger Paulsen, Forensic Risk

Alliance; **Jack Baughman**, Paul, Weiss; and

Paul Lomas, Freshfields Bruckhaus Deringer

27 February 2007

Stock Exchange Mergers

This lunchtime workshop was organized in conjunction with the Competition Law Forum and looked at competition law and financial regulation issues in the context of recent bids for the London Stock Exchange and Euronext



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Chair. **Jane Welch**, British Institute of International and Comparative Law
Speakers: **Sean Greenaway**, European Commission; **Dr Helen Jenkins**, Oxera; **Ioannis Kokkoris**, OFT; **Simon Pritchard**, OFT; **Sir Adam Ridley**, Equitas Trust; and **Nick Weinreb**, Euronext LIFFE

Legalization of Public Documents between EU Member States

Jacob van de Velden
<http://www.biicl.org/legalisation>

A comparative study covering 25 legal systems in the EU on difficulties faced by citizens and companies resulting from formalities applicable in Member States with regard to the recognition of foreign public documents, and the possible options for abolishing unnecessary and/or simplifying indispensable formalities.

History and Objectives

In December 2005 the British Institute of International and Comparative Law was awarded a contract by the European Commission in the 2005 EU Framework Programme for Judicial Cooperation in Civil Matters.



The contract consists of a study to be carried out by the Institute on the difficulties faced by citizens and economic operators because of the obligation to legalize documents within the Member States of the European Union, and the possible options for abolishing or simplifying this obligation.

The study will identify the sources of requirements for legalization or related requirements, describing their implementation and evaluating their effect in the 25 EU Member States. Secondly, the study will consider legal and practical difficulties resulting from the process of implementing legalization or related requirements. Finally, the project will address the difficulties identified and propose effective solutions.

Background

The study is connected with the Community's goal of establishing a proper functioning area of freedom, security and justice, by means of furthering judicial cooperation in civil matters and with the firm establishment of the principle of mutual recognition as its cornerstone.

This objective is formulated in the fourth indent of Article 2 of the EU

Treaty, which envisions the maintenance and development of the Union 'as an area of freedom, security and justice, in which the free movement of persons is assured (...)'. Article 61 of Title IV of the EC Treaty concerning visas, asylum, immigration and other policies related to the free movement of persons links this area to 'measures in the field of judicial co-operation in civil matters' as provided for in Article 65 EC.

Article 65 enumerates a set of measures which concern civil matters having cross-border implications, in other words matters pertaining to private international law. Those measures include, amongst others, 'improving and simplifying the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases', but are restricted by the proviso 'insofar as necessary for the proper functioning of the internal market'.

Mutual Recognition

As mentioned, the principle of mutual recognition is destined to be the cornerstone of the EU's justice area as endorsed in 1999 by the European Council in Tampere. The joint programme on mutual recognition of judgments, adopted on 30 November 2000, foresees the implementation of the principle of mutual recognition through the progressive abolition of the exequatur for all decisions in civil and commercial matters. Its ultimate goal, to be achieved in three stages, is the abolition of all intermediate measures for the recognition of judicial decisions between Member States.

As a result, judicial decisions will no longer be treated differently or be subjected to additional procedures because they are issued in another Member State. In its Communication of 2 June 2004 (COM(2004) 401 final), the Commission stressed that the 'development of judicial cooperation in civil matters must continue to make tangible improvements in the daily life of individuals and businesses by enabling them to assert their rights at Union level'. It mentioned as one of the priorities the need to extend the facilitation of mutual recognition into new fields. The present study may be seen partly as an exploratory evaluation of the possibility to extend the scope of mutual recognition between Member States to cover public documents related to the exercise of Community rights.

In a number of Community policy areas the matter of legalization of public documents has in fact been harmonized, for example in specific measures relating to the Community's area of Justice, the free movement of goods and the free movement of workers. In those situations the mutual trust between competent public authorities was deemed sufficient in order to exempt documents from legalization requirements applicable at Member State level.

Great significance is attached at Community level to stimulating mutual trust between the Member States' competent authorities. Mutual trust is recognized as being indispensable in the process of fully completing the Community programme on mutual recognition. Measures that have been taken in order to further mutual trust include the introduction of lists of competent national authorities which are to implement specific Community instruments. Such lists are subsequently annexed to the relevant Community instrument which greatly enhances administrative transparency for the authorities in question.

Another measure is the introduction of standard forms at Community level, for the purpose of transmitting information between Member States' authorities, or for the purpose of certifying the authenticity of domestic public documents which are to be used in other Member States.

Legal Framework

Notwithstanding the fact that the cross-border use of public documents is addressed in subject-specific Community instruments as indicated above, the regulation of the use throughout the EU of public documents generally remains within the remit of the individual Member States.

The result is a complex legal picture including 25 diverse national legal systems; the Hague Convention of 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents; the 1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular Officers; the 1987 Brussels Convention Abolishing the Legalisation of Documents in the Member States of the European Communities; several ICCS Conventions, such as the 1957 Convention on the Issue free of Charge and the Exemption from Legalisation of Copies of Civil Status Records, and the 1977 Convention on the Exemption from Legalisation of certain Records and Documents; and numerous relevant bilateral agreements or State practices.

The study evaluates whether EU Member States' practice in regulating the cross-border use of public documents is compatible with Community law, which requires respect for rights guaranteed under Community law in relation to, for example, EU citizenship, free movement of workers, freedom of establishment and the provision of services, and free movement of capital.

Timeframe

The study commenced in March 2006 with a meeting of the project's Advisory Board members (7 March 2006). Subsequently the study's Questionnaire was prepared and sent to the project's National

Rapporteurs in all 25 EU Member States at the beginning of May 2006. An interim report was then successfully drafted and submitted to the European Commission in September 2006. By the end of December 2006, 23 national reports were completed. The final report was formally submitted to the European Commission by the end of March 2007.

The Application of the Brussels I Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters in England and Wales

Jacob van de Velden
http://www.biicl.org/brussels_i

In July 2006 the Institute conducted a comprehensive study on the application of the Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters in England and Wales.

The final report, which was drafted in cooperation with Andrew Dickinson, Visiting Fellow of the Institute; Martin George, postgraduate teaching assistant at Birmingham University; and Dr Robert Murphy, Groningen University (The Netherlands), is based on a representative analysis of the domestic legal practice and benefits from the input of leading academics, practitioners and senior members of the judiciary.

The report features a critical analysis of the functioning of the Regulation as well as the interpretative case law of the European Court of Justice. The report further puts forward important conclusions for the improvement of the Regulation and the delimitation of its scope of application.

International Law Programme

Coordinated by Dr Federico Ortino

Overview

A core activity of the British Institute of International and Comparative Law is the research, consultancy and events programme in international law, including both public and private international law. Since its founding, the Institute has always conducted an active programme of events, research and consultancies in this broad and ever-expanding field. This was particularly the case during the inspired leadership of Lady Fox, QC, for whom our international law research room is now named.

The strategy envisioned in consultation with the Public International Law Advisory Panel led by Sir Michael Wood (and previously by Dame Rosalyn Higgins) is to have an active programme of international law events together with a thriving research programme. Since 2005, Dr Federico Ortino, Fellow in International Economic Law, has coordinated activities relating to international trade, investment and development. In 2006, Dr Aphrodite Smagadi joined the Institute as Dorset Fellow and Manager of the project on *Promotion of Democratization and Human Rights in Iran*. In addition, the activities in private international law have continued to expand under the direction of Jacob van de Velden.

Mission

Given the increasing breath of the field, our research and events activities encompass a wide variety of areas. It is a goal of our research programme that the compilation of materials in each project will result in scholarly publications which will be of interest both to the academic and practitioner community. In light of the fluidity of the boundaries dividing the various specialized fields, links with the activities of the European and Comparative Law programme as well as with the Law and Development programme are increasing. A common theme in all of our projects is the development of the rule of law in the international community as an essential instrument in helping to achieve sustainable development, human security and peaceful integration among nations. Our research programme currently includes:

Evidence in International Courts and Tribunals
Damages in International Law

Investment Treaty Forum
State Jurisdiction in a Global Environment: Rethinking Extraterritoriality
The Promotion of Democratization and Human Rights in Iran
International Economic Law and the WTO
Private International Law

Events

In 2006 and 2007, major events included:

- The Sixth Investment Treaty Forum Public Conference on **Expropriation in Investment Treaty Law** (5 May)
- The **Sixth Annual WTO Conference**, jointly organized with Georgetown University Law Center, focusing on *WTO Dispute Settlement: Current and Future Challenges* (23–24 May)
- A seminar on the **2006 Amendments to the ICSID Arbitration Rules** with Antonio Parra, former Deputy Secretary General of ICSID hosted by the Investment Treaty Forum (12 July)
- The Seventh Investment Treaty Forum Public Conference on **Procedural Aspects of Investment Treaty Arbitration** (8 September)
- A seminar on **Energy Investment in Russia** (24 January 2007)
- **The 10th Annual Review of the Arbitration Act Conference** (31 January 2007)
- A seminar in **China and International Investment Law** (2 April 2007)

Private International Law

Jacob van de Velden

http://www.biicl.org/private_international_law_seminar_series/

Introduction

Rules of private international law determine questions of applicable law, international adjudicatory jurisdiction and recognition and enforcement of foreign decisions in civil or commercial cases connected with multiple jurisdictions.

The object of private international law is the just, effective, and efficient regulation of international affairs of a civil or commercial nature. Achievement of this objective is increasingly dependent on an integrated approach towards processes of regional and global economic and social integration, and the need to promote fundamental rights.

The activities of the Institute are naturally focused on the development of private international law and practice in the UK, and in this regard on the growing interaction between domestic, European and international sources of private international law. The research of the Institute is, however, comparative in nature in order to determine how the Common law develops in parallel with other legal systems.

As can be seen from the following summary, the Institute has been increasingly active in the field of private international law and aims to continue this expansion in order to reinstate private international law to the prominent position within the Institute which its contemporary importance calls for.

In 2007 the Institute aims to expand its research activities to cover all areas of material and formal private international law: conflict of laws, international jurisdiction, and the recognition and enforcement of foreign judgments.

People

The Institute's Private International Law Programme is directed by Jacob van de Velden, Research Fellow at the Institute, under the supervision of Professors Gillian Triggs. Guidance for the programme is provided by Alex Layton QC, Chairman of the Institute's Board of Trustees; and Andrew Dickinson, Visiting Fellow of the Institute.

On the basis of highly selective criteria the Institute will further re-establish project-related private international law advisory panels which will provide guidance on ongoing projects that the Institute undertakes.

The Institute is at present enlarging its research capacities, which is reflected in the appointment in 2006 of two further research fellows, Marsela Maci and Justine Stefanelli.

Recent Research

The Application of the Brussels I Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters in England and Wales

For details of this project, please see the European and Comparative Law Programme section of this report, at page 52.

Current research

The Legalization of Public Documents between EU Member States

The Institute is currently coordinating a project on the cross-border use of public documents in the EU that involves the comparative analysis of the 25 legal systems of the Member States. The study identifies formalities applicable at the Member State level to the recognition and use of foreign public documents in domestic judicial and administrative situations. The aim of the project is to scrutinize, on the basis of Community law, any identified formalities whose fulfilment is conditional for the use of foreign public documents in the Member States' legal orders.

Further details of this project can be found in the European and Comparative Law Programme section, at page 48 of this report.

Prospective research

The Effect in the European Community of Judgments in Civil and Commercial Matters: Recognition, Res Judicata and Abuse of Process

In 2007 the Institute submitted research proposals to the European Commission's 2006 framework programme for judicial cooperation in civil matters, to cover subjects such as the effect of judgments in the EC; the application of prospective conflict of laws instruments in the field of international contract law and tort law; and the recognition of civil status in the EC.

Consequently, in December 2006 the Institute was awarded a contract to conduct a comparative study on the effect in the European Community of judgments in civil and commercial matters, which will address vital aspects of recognition in relation to *res judicata* and abuse of process (*the Judgments Project*).

Authority and Effectiveness of Judgments

Article 33.1 of the Judgments Regulation (No 44/2001(EC)), reflecting its predecessor Article 26, para 1 of the Brussels Convention (1968) provides: 'A judgment given in a Member State shall be recognised in the other Member States without any special procedure'.

The ECJ has stated, in connection with the Brussels Convention, that '[r]ecognition must have the result of conferring on judgments the authority and effectiveness accorded to them in the State in which they were given' (*Hoffmann v Krieg* (Case 145/86) [1988] ECR 645, para 10, citing the Report of Professor Jenard).

Mutual Recognition

This principle of mutual recognition lies at the heart of the Regulation regime. But its precise limits and effectiveness have been little considered in the case law of the ECJ, of the Member States and in texts on the Regulation. Instead the focus has been upon the enforcement of judgments.

This project seeks to redress that balance. A better understanding of the principle of mutual recognition requires familiarity with the rules of each Member State concerning the authority and effectiveness of both domestic and foreign judgments. These rules determine, among other matters, the conclusive and preclusive effects of judgments.

Diverging Member States' Legal Systems

The Project will look at the effects on third parties alongside named parties to civil proceedings, since there is significant divergence in Member States' practice (see, for example, para 191 of the report by Professor Schlosser on the accession of Denmark, Ireland and the UK to the Brussels Convention [OJ C59 5.3.79, p 127]).

Significant differences between the authority and effectiveness of judgments in the Member States may create impediments to the free movement of judgments in the EC. The project will ascertain and compare the relevant rules in selected Member States.

EC-Wide Rules on Res Judicata and Abuse of Process

The study will further consider, based on as full a study of Member States' practice as is practicable, whether there is scope for developing EC-wide rules on *res judicata* and abuse of process, by developing the principle recognized by the ECJ in *De Wolf v Cox* (Case 42/76) [1976] ECR 1759).

Project outcome

The project will lead to a full-day conference open to delegates from all Member States and a final report, published as a book. This final report will include: (a) selected country reports, (b) detailed analysis and recommendations, and (c) edited conference papers, to promote better understanding of issues raised by the cross-border recognition of judgments in the EC.

Activities to date

With the support of Herbert Smith LLP the Institute was able in 2006 to launch a new programme of seminars on topical private international law issues, with the theme 'Private International Law in the UK: Current Topics and Changing Landscapes'. To date the series has featured eight highly successful seminars:

Wednesday 26 April 2006

The 'Rome I' Proposal: The Law Applicable to Contractual Obligations

On Wednesday 26 April 2006 the British Institute of International and Comparative Law provided a platform for the discussion of the proposal for a Regulation of the European Parliament and Council on the law applicable to contractual obligations ('Rome I') which was adopted and made public by the European Commission in December 2005. Prior to a discussion on the floor, the Commission proposal was analysed by four experts.

Chair: The Rt Hon Lady Justice Arden

Speakers: Andrew Dickinson, Consultant, Clifford Chance LLP; Professor Jonathan Harris, University of Birmingham; Oliver Parker, Department for Constitutional Affairs; and Jacob van de Velden, British Institute of International and Comparative Law

Monday 26 June 2006

The Cross-Border Use of Public Documents: European Law Programme Experts' Meeting

The Institute hosted an expert meeting in relation to the European Commission project it carries out in 2006–2007 on

difficulties faced by citizens and companies resulting from formalities applicable in the Member States with regard to the recognition of foreign public documents, and the possible options for abolishing unnecessary and/or simplifying indispensable formalities.

Chair: David Anderson QC

Speakers: Peter Beaton, European Commission, DG Justice, Freedom and Security; Dr Christophe Bernasconi, First Secretary, Hague Conference on Private International Law; Andrew Dickinson, Consultant, Clifford Chance LLP; Dr Richard Hansberger, National Notary Association (USA); and Professor Jukka Snell, Professor of European Law, University of Wales, Swansea

Tuesday 24 October 2006

The Future of Private International Law in England and Wales

This seminar officially launched the Institute's seminar series on private international law, which is kindly sponsored by Herbert Smith LLP. The seminar evaluated the future of this dynamic field of law from three interesting perspectives: the academic's, the practitioner's and the academic/practitioner's. The seminar was dedicated to a re-evaluation of the British landscape in the field of private international law, which is and will be subject to increasing processes of cultivation at the European Community level, and important developments at the international level, for example with the establishment of several important Conventions at the Hague Conference for Private International Law.

Chair: The Rt Hon Lord Mance

Speakers: Professor Jonathan Harris, Birmingham University and Brick Court Chambers; Adeline Chong, Nottingham University; and Adam Johnson, Herbert Smith

Tuesday 21 November 2006

**Substance and Procedure in the Law
Applicable to Torts: *Harding v
Wealands* and the Rome II Regulation**

Foreign scales of compensation in English courts? In the law of damages, a deceptively simple distinction is drawn between categories of damages (substantive) and the quantification of damages (procedural). Despite this simple distinction, the boundaries between procedural and substantive issues in damages claims can be blurred. The seminar featured an in-depth discussion of the recent HL decision in *Harding v Wealands*, illustrating the deceptive nature of the substance/procedure distinction in the law of damages. The seminar further provided an interesting look at the relevant rules under the prospective European Rome II Regulation on the law applicable to non-contractual obligations which was set to be adopted by the European Parliament by December.

Chair: The Rt Hon Lord Justice Lawrence Collins

Speakers: Dr Janeen Carruthers University of Glasgow; Charles Dougherty 2 Temple Gardens; and Dr George Panagopoulos Richards Butler

Monday 18 December 2006

**Civil Remedies for Torture in the UK
Courts: *Jones v Saudi Arabia***

Torture by officials of a foreign State: can that State or its officials be sued in the courts of the victim's own country? Despite the fundamental nature of the prohibition against torture, State immunity currently bars the bringing of proceedings for torture in a national court against a foreign State. Claims to exercise universal civil jurisdiction for reparation of torture are at the present time controversial and excite very different responses. This seminar explored the scope of State

immunity in relation to allegations of torture. Central to the analysis and discussion of the topic was the decision of the House of Lords in *Jones v Saudi Arabia* [2006] UKHL 26. The case in question featured a civil claim for damages brought in the English court against the individual official perpetrators as well as the State and its Department of the Interior in respect of acts of torture inflicted in a Saudi prison made in respect of torture.

Chair: Professor Gillian Triggs

Speakers: Professor Craig Barker, University of Sussex; Richard Hermer, Doughty Street Chambers; and Joanne Foakes, Foreign & Commonwealth Office

Monday 15 January 2007

Non-Justiciability: Reappraisal of Buttes Gas in the Light of Recent Decisions

Chair: The Rt Hon Lord Bingham

Speakers: Lady Fox CMG QC, Vice President British Institute of International and Comparative Law; Professor Richard Garnett, University of Melbourne; Dapo Akande, St Peter's College, Oxford; and Henry Forbes Smith, One Essex Court

Monday 22 January 2007

Jurisdiction in IP Disputes

Two ECJ judgments of 13 July 2006—*GAT v LuK* and *Roche Nederland BV*—have stirred much concern in the patent community. It was ruled that contrary to practice presently established in some Member States the courts in the country of registration are exclusively competent to adjudicate validity, even when the issue of validity only arises as an incidental matter. Further it has been held that it is also not possible to join claims against affiliated companies for coordinated infringement of European bundle patents before the courts in the country where the principal office steering the activities has its seat. The seminar featured an

Monday 22 January 2007

in-depth discussion of the implications for the English practice of the recent ECJ cases referred to. It further explored current issues in England and Wales and other European jurisdictions relative to the subject of jurisdiction in cross-border IP cases.

Chair: The Rt Hon Lord Justice Jacob

Speakers: Professor Gerrit Betlem, University of Southampton; Professor Jan Brinkhof, Brinkhof Advocaten; and Michael Silverleaf QC, 11 South Square

The Future of International Patent Litigation in Europe

At present patents can be awarded either on a national basis or through the European Patent Office (EPO) in Munich, which grants so-called 'European Patents' with a single application and granting procedure. However, once granted the European patent becomes a national patent for the designated Member State which causes difficulties by the need to work in different national legal systems in case of dispute. In view of the difficulties in reaching an agreement on the Community Patent, other legal agreements have been proposed outside the European Union legal framework to reduce the cost of litigation, namely the London Agreement and the European Patent Litigation Agreement (EPLA). The seminar addressed current issues relative to international patent litigation with a particular focus on the practice in England and Wales. It further explored recent and future developments at European Community level which will determine the substance of international patent litigation.

Chair: The Hon Mr Justice Kitchin

Speakers: Harrie Temmink, European Commission; Nick Gardner, Herbert Smith; and Richard Miller QC, Three New Square

Prospective Activities

In 2007 the Institute will continue its annual private international series. Besides addressing topical issues and developments in the field, the series will develop the theme: 'The Role of Principles in Private International Law: Bridging the Civil and Common Law Divide':

Wednesday 7 March	Cross-border Debt Collection: Attachment of Bank Accounts Expert and Stakeholder Meeting
Thursday 10 May	Family Conflicts in the EU: The Changing Landscape
Thursday 17 May	The Road to Rome: Conflict of Laws Developments in the Law of Obligations Seminar organized in cooperation with Glasgow University
Wednesday 6 June	Cross-border Litigation of Competition Disputes
September	Hague Securities Convention: An Impact Assessment
October	Jurisdiction, Review, Recognition and Enforcement of Arbitral Awards
October	Conference on the Report and Conclusions of the Study on the Cross-Border Use of Public Documents in the EU
November	International Protection of Children and Adoption
December	Hague Choice of Court Agreement Convention: An Impact Assessment

Cross-border Debt Collection: Attachment of Bank Accounts

(Expert and Stakeholder Roundtable and Coordinated Report)

Introduction

In order to ensure that the UK adequately contributes to discussion at the Community level about the possible creation of a European instrument of cross-border debt collection and the attachment of bank accounts, the British Institute will host an expert meeting which will conclude in the production and submission to the Commission of a coordinated response of legal experts and stakeholders. The first seminar on 7 March will evaluate the Commission's Green Paper, objectives and questions. The second seminar on 28 March will address the draft coordinated response to the Commission's Green Paper which will be drafted by the Institute.

The Commission's Green Paper

The Commission's Green Paper makes the case for the adoption of a Community-wide instrument for the cross-border attachment of bank accounts held in other Member States. In the consultation part of the paper the Commission invites Member States to comment on whether they share the Commission's perception of a need for a Community instrument in this area and, if so, whether it should be a self-standing European procedure or harmonize Member States' legislation on the attachment of bank accounts. The Commission further asks questions on: appropriate limitations for such an instrument; jurisdictional issues; at what stage during legal proceedings the instrument, if any, could be issued; the conditions for issuing it, including the information required and whether several or joint accounts can be attached; the ranking of debtors; the amount that can be secured including any costs; the protection of debtors both before any attachment and after an order has taken effect; possible reimbursement of costs to banks; and how best to give effect to any order.

Not a new discussion

The Commission first suggested using banking seizures as a means of improving cross-border enforcement in its Communication 'Towards greater efficiency in obtaining and enforcing judgments in the European Union' (COM(97) 0609 final). In 2000 the Council suggested establishing a European system for the attachment of bank accounts in its 'Programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters'. This was followed in 2002 by a study on improving the efficiency of enforcement of judicial decisions within the EU carried out by Professor Dr Burkhard Hess, Director of the Institute of Comparative and Private International Law at the University of Heidelberg.

Too little attention paid

Enforcement law is rightfully acknowledged to be the 'Achilles heel' of the European Civil Judicial Area. Whilst in recent years several Community instruments have been adopted which relate to the jurisdiction of the courts and the recognition and enforcement of judgments, there has not been the same degree of attention paid to enforcement measures. Creditors seeking to enforce a payment order in another Member State are confronted with different legal systems, procedural requirements and language barriers which entail additional costs and delays in the enforcement procedure. In practice, a creditor seeking to recover a monetary

claim in another Member State will most commonly try to do so by obtaining an attachment of his debtor's bank account(s) under the relevant national law(s). Attachment procedures exist in most EU Member States and can be a powerful weapon against recalcitrant or fraudulent debtors. Nonetheless there is at present no legislation at EU level which would allow creditors to obtain an attachment of bank accounts which can be enforced throughout the European Union.

Government position favourable

In principle the Government (Department for Constitutional Affairs) has welcomed the Commission's consultation on this subject. Attachment of bank accounts is a well-established method of enforcement in the UK. It agrees that having procedures that make it easier to enforce judgments across borders will bring real benefits to both Europe's citizens and businesses. It therefore looks favourably on the possible introduction of a European procedure.

Stakeholder involvement in consultation and right balance of interests

The Government considers that the Commission to have chosen the correct issues on which to consult and judges that it will consider carefully the views of stakeholders when responding to the questions. The Government will want to ensure that, when considering how to proceed, the Commission strikes the right balance between the rights of the creditor to recover a debt and the provision of adequate protection for the debtor. This is particularly important when deciding when a creditor can apply for an attachment order.

Adequate impact assessment and restriction of scope to cross-border cases

The Government further welcomed the Commission's commitment to undertake an impact assessment before deciding whether or not to legislate in this area. The results of this assessment will inform the Government's position on any subsequent proposal.

Aim of the meeting

By convening the expert and stakeholder roundtable the Institute aims at facilitating both the stakeholder involvement in the process of consultation and a constructive discussion on the right balance of the interests concerned with the topic, and the thorough evaluation of the principal legal issues involved with the creation of instruments, which could be

aimed at supporting the principle of mutual recognition of judicial transactions within the European Union by helping creditors to access foreign enforcement organs in a smooth and efficient way.

Discussion Forum on Private International Law

The Institute also has an active private international law e-mail discussion forum, with over 170 members. This email discussion list seeks to facilitate discussion of developments and themes in private international law at a domestic, European and international level. The list includes those teaching, practising and studying the subject in the United Kingdom. The private international law discussion list is promoted and moderated by the British Institute of International and Comparative Law. The subject-matter of discussion is selected and developed by list members, who are able to contribute on any topic which they consider of interest to others. Wherever possible the Institute identifies issues of particular currency, which are then included in its programme of seminars, lectures and meetings. The list is moderated by the Institute to ensure a high quality of input. The list is free to join and participate in, and is open to both members of the Institute and non-members.

State Jurisdiction in a Global Environment: Rethinking Extraterritoriality

Dr Federico Ortino and Jane Welch
<http://www.biicl.org/extraterritoriality>

In October 2006 the Institute launched a seminar series entitled 'State Jurisdiction in a Global Environment: Rethinking Extraterritoriality'. The series aims to shed a modern light on the age-old discussion about a State's prerogative to regulate conduct taking place outside of its territory, and on the constraints imposed by international law. The series will focus on recent developments in areas such as competition law, human rights, criminal law, financial and corporate law, investment law and internet law, and develop the themes addressed by policy-makers such as those in the recent report of the International Chamber of Commerce's Task Force on Extraterritoriality. Each seminar will address one specific instance of extraterritorial application and enforcement of laws, the challenges that such application/enforcement raises and the possible mechanisms that may be put in place to meet such challenges.

The series, which follows the successful lecture series held at the Institute in the 2005–06 academic year on 'International Law in Domestic Courts', will consist of evening seminars led by leading academics and practitioners. The series will result in a publication collecting the papers presented as well as reports summarizing the ensuing discussion. The series, which will continue throughout 2007, has been kindly sponsored by Clifford Chance LLP.

The programme included the following events:

30 October 2006	Recovering Stolen State Assets and the Proceeds of Grand Corruption
12 December 2006	Cross Border Abuse: Investigations and Protection?
2 February 2007	International Cartels Comparative Perspectives on Practice, Procedure and Substance
21 June 2007	Extraterritorial Application of Human Rights Law



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This seminar series will run in parallel with the Institute's private international law seminar series entitled 'Private International Law in the UK: Current Topics and Changing Landscapes'. The concurrent launch of these two programmes is an important development intended to ensure that the Institute remains particularly well-positioned to provide an increasingly integrated response founded in private and public international law to global developments and challenges.

Investment Treaty Forum

**Patrons: Professor Florentino Feliciano, Yves Fortier CC QC,
HE Judge Rosalyn Higgins DBE QC**

Director: Dr Federico Ortino

**Research Fellows: Dr Lahra Liberti, Dr Sergey Ripinsky and
Hugo Warner**

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

The Institute has established a centre for investment treaty research and policy discussion—the Investment Treaty Forum. This Forum builds on the Institute’s existing activities in the fields of public international law and international commercial arbitration. It aims to provide a serious depth of debate in a field of law which is rapidly expanding and in need of authoritative comment. It does so by sharing the reputation enjoyed by the Institute for independence, even-handedness and academic rigour, and by drawing on the expertise of Forum and Institute members.

The Forum aims to facilitate debate amongst lawyers, senior business managers, policy advisers, academics, government officials and other specialist practitioners. It conducts public discussions for all of those interested in this field, and provides additional benefits to Forum members to ensure value for money. For example, one fundamental role that the Forum will be able to play is the encouragement of dialogue with State representatives. Clarifying States’ rights and responsibilities under bilateral investment treaties will produce greater legal certainty for investors and practitioners.

Organization of the Forum

The Patrons of the Forum are HE Judge Rosalyn Higgins DBE QC, Professor Florentino Feliciano and Yves Fortier CC QC. Its Director, Dr Federico Ortino, took up his role in early 2005. An Advisory Board consisting of specialist practitioners and academics supervises the work of researchers and staff. The Forum’s seminars and meetings are coordinated by a small steering committee. The Public International Law Advisory Panel of the British Institute also provides much useful advice and support to the Forum. Moreover, the ever-growing base of members of the Forum gives both breadth and depth to its research and discussion.

Forum Membership

The Forum offers many benefits to its members:

- The opportunity to participate in an independently-run Forum that aims to influence investment treaty law and policy, providing an arena for ongoing and constructive debate with relevant actors.
- A direct influence on the agenda of Forum meetings and the opportunity to recommend topics for debate.
- The opportunity to suggest research or other work to be carried out by the Forum staff.
- Access to research carried out by the Forum Director and other staff.
- A place at each Forum meeting, free attendance for up to three nominated Forum members at public conferences and discussions related to the field.
- The opportunity to recommend guest speakers to be invited to Forum discussions and conferences.
- The Forum's activities will be underpinned by web resources—in the form of an extranet—designed for exclusive use by the Forum's members. This will feature the research materials produced for the Forum meetings and all other information pertinent to members' interests.

The Forum's strength is in its membership, which is drawn from as wide a range of backgrounds as possible. Members receive the primary benefits from the Forum and support its activities, and are invited to suggest research topics. Outputs from the Forum are intended for their primary consumption. The Forum then crystallizes these discussions, taking the issues further and, where appropriate, presenting the views of members on issues of concern to governments and decision-makers. The Forum has strong links with related institutions (the UK Foreign and Commonwealth Office, UNCTAD and many others).

Forum membership is limited to ensure the highest quality in its plenary discussions. To guarantee continuity, and manageability of debate, membership is for named individuals only. However, at the time of joining, members may nominate a senior colleague to represent them on those occasions when they are unable to attend meetings. Members then meet as often as possible in order to discuss developments and particular topics with those responsible for shaping practice in this field.

Activities to Date

The Institute has long been a major centre for discussion and research in public international law and international commercial arbitration, and enjoys unrivalled participation in its activities from lawyers and academics. It has established the Forum largely in response to the fast-growing level of interest in its related activities.

Since 2003 the Forum has run a series of highly successful **public conferences**. Just in the last year, the Forum held conferences on



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'Expropriation in Investment Treaty Law' (May 2006) and 'Procedural Aspects of Investment Treaty Arbitration' (September 2006) as well as specific sessions on 'Trade and Investment Disputes: Complement or Conflict?' (May 2006) and 'Protection of Legitimate Expectations in International Economic Law' (June 2006).

In order to encourage dialogue with representatives from States and international organizations, the Forum organizes regular **seminars** inviting key figures from national governments or international organizations to address Forum members on selected topics. Recent seminars were given by Antonio Parra, former Deputy Secretary General of ICSID, on 'The 2006 Amendments to the ICSID Arbitration Rules (July 2006); Graham Coop, General Counsel of the Energy Charter Secretariat on 'Energy Investment in Russia (January 2007); and Professor Wenhua Shan, Oxford Brookes University and Xi'an Jiaotong University, on 'China and International Investment Law' (April 2007).

As part of the **research** project on *Damages in International Law*, the Institute is collecting, reviewing and analysing all relevant sources, with a special focus on international jurisprudence, particularly international investment law. In order to create a firm foundation for further work, the Institute is reviewing each of the arbitral awards where the issue of damages was discussed. The thrust of each case summary is on issues related to the award of monetary compensation. A detailed analytical paper on damages in international investment law will be published upon completion of the research. Summaries of the relevant cases, which are now available only to members of the Investment Treaty Forum, are intended as working documents.

Conference and Discussion Papers

Edited transcripts from selected conferences have been published:

9 September 2005	Fair and Equitable Treatment in Investment Treaty Law
6 May 2005	Nationality and Investment Treaty Claims
10 September 2004	The Relationship between Local Courts and Investment Treaty Arbitration
7 May 2004	Appeals and Challenges to Investment Treaty Awards: Is it Time for an International Appellate System?

Research & Policy Discussion

UNCTAD Monitor on Dispute Settlement

In December 2006, UNCTAD published IIA Monitor No 4 (2006) on the 'Latest Developments in Investor-State Dispute Settlement'. The Monitor is based on a draft prepared by Dr Federico Ortino and includes some trends and analysis of data (focusing on new disputes registered in 2006) and recent decisions with significant implications for the relevant stakeholders.

ASIL 2006 Annual Meeting

In 2005 the Forum answered a call for panel submission for the ASIL 100th Annual Conference in March and April 2006 and submitted a proposal for a panel on Fair and Equitable Treatment. The ASIL Annual Meeting Program Committee accepted this proposal, and a number of the Forum's members sat on the panel.

Assistance to States in Investment Treaty Matters

The subject of how best to equip States in their negotiation of investment agreements, and the handling of disputes under such agreements, has become of considerable importance recently. The Investment Treaty Forum (through appropriate experts) is pleased to facilitate assistance to States when negotiating treaties or when faced with a dispute. Given that the Forum has been established with a view to facilitating discussion amongst lawyers, policy advisers, academics, government officials and other specialist practitioners, and that it is able to draw on the experience of the Institute's Commonwealth Legal Advisory Service, it is in a strong position to provide non-specific advice to States in such matters.

In 2007, the Forum is coordinating with the Institute of International Sustainable Development (IISD) in the organization of a Training Course on International Investment Agreements (in association with the Centre

for International Environmental Law (CIEL) and Advocates for International Development (A4ID)). The training programme is geared specifically to developing countries and to their needs for further development in the field of international investment law and policy. The Course is divided into three components: the first on negotiations, the second on investment arbitrations, and a third addressed to very high level policy-makers in government. The target groups for the training will include high-level government lawyers, senior policy officials and senior academics and representatives of civil society organizations. Training is carried out by several expert instructors identified by the programme partners. The first pilot course will focus on South American countries and take place in Santiago, Chile in 2007.

Consultative Forum Members

The Following are Consultative Forum Members:

Individuals

Graham Coop Energy Charter Secretariat	Professor Peter Muchlinski, School of Oriental and African Studies, University of London
Professor James Crawford SC, University of Cambridge and Matrix Chambers	Antonio Parra, Visiting Professor, University College London
Professor Christopher Greenwood QC, Essex Court Chambers and LSE	Dr Karl P Sauvant, University of Columbia Law School
Professor Vaughan Lowe, All Souls College, Oxford and Essex Court Chambers	Professor Dr Christoph Schreuer, University of Vienna
Professor Andrea Menaker, Georgetown University Law Center	Judge Stephen Schwebel
Professor Loukas Mistelis, Centre for Commercial Law Studies, Queen Mary University of London	Professor M Sornarajah, University of Singapore
	Professor Thomas Wlde, CEMPLP, University of Dundee
	Adrian Winstanley, London Court of International Arbitration

Organizations

The United Kingdom Foreign and Commonwealth Office	The Organisation for Economic Cooperation and Development
The International Institute for Sustainable Development	The Permanent Court of Arbitration
	The International Law Programme, Chatham House

Forum Founding Members

The following are currently Founding Members of the Forum:

Individuals

Professor Emeritus Maurice Mendelson QC, Blackstone Chambers	V V Veeder QC, Essex Court Chambers
Christopher Thomas QC, Thomas and Partners	Todd Weiler, Investmentclaims.com

Organizations

Baker & Mackenzie	Linklaters
Clifford Chance LLP	Lovells
Covington and Burling	M & M Bomchil, Buenos Aires
Debevoise & Plimpton	Mannheimer Swartling
Denton Wilde Sapte	Mayer Brown Rowe & Maw LLP
DLA Piper Rudnick Gray Cary	Ogilvy Renault
Freshfields Bruckhaus Deringer	Shearman & Sterling LLP
Fulbright & Jaworski LLP	Sidley Austin LLP
Herbert Smith	Simmons & Simmons
Hunton & Williams	Skadden Arps Slate Meagher & Flom LLP
Latham & Watkins LLP	White & Case LLP
LeBoeuf, Lamb, Greene & MacRae LLP	WilmerHale LLP

Related Activities at the Institute

The Institute will continue to run its programmes in public international law and international commercial arbitration which will be of interest to Forum members.

On 31 January of each year, the Institute holds the highly successful 'Annual Review of the Arbitration Act'. On 31 January 2007, the Institute held its 10th Annual Review with a one-day conference at Lincoln's Inn.

In October 2005, the Institute launched a lecture series on *Public International Law and Domestic Courts*. This series, proposed by the Head of the Institute's Public International Law Advisory Panel, Sir Michael Wood KCMG, continued throughout 2006. The series encompassed one aspect of a broader issue—the relationship between international law and domestic (internal law) law, or—more specifically—the position of international law in domestic law (monist/dualist and so forth). This lecture series sheds a modern light on this age-old discussion.

In October 2006 the Institute launched a seminar series entitled *State Jurisdiction in a Global Environment: Rethinking Extraterritoriality*. Further details on this seminar series are available at page 67 of this report.

Evidence before International Courts and Tribunals

Project Manager: Anna Riddell Research Fellow: Brendan Plant
<http://www.biicl.org/evidence>

The British Institute of International and Comparative Law has undertaken a major study in the law of evidence before international courts and tribunals. In 2000 the Institute obtained funding from the Leverhulme Trust to conduct a pilot study on evidence before international courts and tribunals. The objective of this study was to explore the usefulness and manageability of the topic and provide an insight into a future major study. The pilot project—completed in 2002—was successful in indicating both the need for further examination of evidentiary questions in international adjudication, as well as the feasibility of such a study.

Following the award of a grant from the Department for Constitutional Affairs, the Evidence Project has become a major endeavour in the public international law department. There is a dedicated research team in the Institute consisting of Project Manager Anna Riddell and Research Fellow Brendan Plant, who joined the Institute in October 2006. The first phase of the project, currently underway, is to examine the issues of evidence before the International Court of Justice. We will then move on to several other international tribunals and courts, before undertaking an overarching comparative study. Research on the International Criminal Tribunals for Yugoslavia and Rwanda is already underway.

Evidence in the International Court of Justice

The purpose of this phase of the Project is a detailed examination of the current rules of evidence in the Court to enable suggestions for the development of a more effective, efficient and workable system, which in turn will maintain and enhance confidence in the Court and its judgments. Experience shows that the quality of the fact-finding process contributes significantly to the acceptance of judicial decisions by the parties to them and more widely. In addition, this drawing together of an authoritative compilation of practices, procedures and techniques employed in the Court will provide a valuable body of material which the Court itself, practitioners and the parties to disputes can use in the preparation of cases.

The importance of the present study has been highlighted by the public hearings in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia*



Herzegovina v Serbia and Montenegro), which has posed several novel evidential questions. It is the first time a charge of genocide has been heard before the Court, giving rise to questions as to the standard of proof to be adopted. The admissibility of evidence which has been brought before the International Criminal Tribunal for the Former Yugoslavia was also discussed in detail in the Peace Palace between February and May 2006. In addition, the case is unusual in that several witnesses were called by both parties, which has only happened in nine previous cases before the Court. Following the Judgment in the case in February 2007, the Court's treatment of these interesting issues will be analysed in detail in the project publication.

Debating the Issue

Further to the work on the publication, the Annual Conference on 16 June 2006 presented an excellent opportunity to showcase the importance of the subject. The plenary session was entitled 'Witnessing Genocide?—Evidence Issues in the International Court of Justice' and brought together a panel of expert practitioners and counsel involved in the *Genocide* case to discuss the various evidential issues that arose in the case following the completion of the parties' submissions. The panelists demonstrated the considerable divergence of opinion on many of the

issues and illustrated many of the difficulties that a study of this subject faces, and the thought-provoking debate which ensued gave rise to many interesting questions from the audience. It also resulted in a high level of interest in the project and offers of contribution from academics and practitioners previously involved in ICJ cases or writings on the subject.

The success of this panel, together with the obvious interest of our members in the workings of international tribunals, has prompted the Evidence Project Team to convene another session for the 2007 Annual Conference on recent progress in the global campaign to end impunity for serious international crimes committed during armed conflict. Several leading practitioners and academics will examine the first prosecutions in the International Criminal Court, and consider current efforts to ensure accountability for the perpetrators of international crimes in Uganda, Darfur, the Democratic Republic of the Congo and Nepal.

Research on the ICJ

The research on evidence in the ICJ has been completed. All the Judgments and Advisory Opinions of the Court have been read and noted to ascertain the manner in which evidence has been treated by the Court over the years and to highlight any trends or issues arising from this. We have also read the pleadings in the cases in which evidence has given rise to considerable discussion. A comprehensive and thorough review of the academic literature presently existing on the subject has been completed and compiled into a searchable database, along with the case law notes, in order to facilitate locating information during the writing phase.

A second visit to the Court is also proposed in early 2007 in order to debate our thoughts and conclusions with the Judges and the Registry of the Court, and to ascertain their views on the practical way in which evidence is dealt with, and to ensure that we have identified and examined all of the problems and issues affecting the current treatment of evidence. They will also be asked for their input on draft chapters of the publication, to keep it as relevant and as useful as possible to all parties who might use it as a tool for reference in the future. Those at the Court are best placed to know the difficulties which arise during cases but which may not be apparent from the pleadings or judgments. For example, one problem uncovered by our research was the matter of the admission of new documents after the close of the written proceedings, since the rules were not sufficiently clear to guide the parties. Evidently the Court also identified this shortcoming and on 13 December 2006 issued new Practice Directions defining the parameters of the provisions of the Statute more clearly (ICJ Press Release 2006/43, available at: http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/eCourt_Practice_Directions.pdf).

The Project Publication

Writing up the findings of our research commenced in February 2007, and it is expected that first drafts will be prepared by early June. A workshop on the subject to which academics, practitioners and Judges will be invited, is being convened on 29 June 2007 to review some of our preliminary conclusions and offer practical insights on the topic. Following this workshop the final draft of the book will be prepared, hopefully for publication in September 2007. The book, with the provisional title 'Evidence in the International Court of Justice', will be co-authored by Anna Riddell and Brendan Plant, but will have benefited at every stage from the guidance and input of our project Advisory Panel, consisting of Professor Gillian Triggs, Professor Philippe Sands, Sir Franklin Berman and Sir Michael Wood.

Damages in International Law

Dr Federico Ortino Dr Sergey Ripinsky
<http://www.biicl.org/damages>

Aims and Scope

The Institute is undertaking a major project on the law relating to damages in public international law. The aim of the study is to identify the detailed rules which govern the basis on which awards of monetary compensation are made under international law. The project will focus on decisions of international courts and tribunals as well as State practice, and will involve an in-depth analysis of the law relating to damages with regard to claims for injury to the State as such, and to natural and legal persons.

The research project will cover the entirety of public international law with a focus on damages in:

- International investment law
- International environmental law
- International law of human rights
- Territorial disputes
- Disputes relating to military actions
- Disputes relating to consular and diplomatic affairs
- International law of the sea

The project will take into account law and practice in all of these fields with special attention paid to areas of ambiguity, and areas which have, or are likely to create, practical problems. The finished study, together with an electronic database, will constitute an invaluable resource for both academics and practitioners involved in research and practice in the area.

Research Team

- Dr Silvia Borelli, University College London, drafted the full-scale research proposal;
- Sir Arthur Watts QC and Professor Vaughan Lowe provide external advice on the content and structure of the work.
- Dr Federico Ortino directs the project at the Institute.
- Dr Sergey Ripinsky is the principal researcher responsible for the section on damages in international investment law.

- Dr Lahra Liberti is responsible for the section on damages in international investment law, dealing with the Iran–US Claims Tribunal.
- John Graham was responsible for the section on damages in international environmental law.

Funding

Deloitte, Lovells, Macquarie Bank Foundation, Clifford Chance LLP and CMS Cameron McKenna have kindly acted as financial sponsors of this research. The Department for Constitutional Affairs provided further funding. Securing other sources of funding is currently underway.

Damages in International Investment Law

The study on Damages in International Investment Law is part of the broader Institute's project on Damages in International Law. The aim of the study on Damages in International Investment Law is to analyse, in a comprehensive and detailed manner, relevant international law applicable to relations between foreign investors and host States. The analysis of various isolated sources will make it possible to gather and evaluate information on legal treatment of numerous issues that arise in relation to the recovery of damages in this particular area of law.

The analysis will cover all identifiable sources of international law. In addition to undeniably important international investment agreements, customary international law and general principles of law, the study will give particular attention to international jurisprudence and, more specifically, the growing number of investor-State arbitrations. The final objective is a systematic synthesis of findings on damages-related issues with a view to providing a comprehensive and up-to-date academic publication and a convenient reference tool for legal professionals.

The research is being carried out by Dr Sergey Ripinsky and Dr Lahra Liberti (Iran–US Claims Tribunal), under the overall supervision of Dr Federico Ortino. An Advisory Committee consisting of academics and legal professionals provides external advice and peer review.

(See: http://www.biicl.org/damages_investment_law/)

Damages in International Environmental Law—Oil Pollution

The study on Damages in International Environmental Law is also part of the broader Institute's project on Damages in International Law. This research focuses on investigating (a) the interpretation of provisions of the Civil Liability Convention for Oil Pollution Damages and the Fund Convention and (b) the development of the Fund as an actor for the

provision of compensation for victims of incidents of oil pollution. The aim is to answer the two principal questions in the area—what measures are deemed to be reasonable and what measures are deemed to be acceptable? John Graham, a part-time researcher, carried out the relative research in this area under the supervision of Dr Federico Ortino.

International Economic Law and the WTO

Dr Federico Ortino
<http://www.biicl.org/wto>

The Institute maintains an active research and events programme in international economic law; its involvement in this field dates back to the 1960s. In 2005 the programme was strengthened with the addition of the Fellow in International Economic Law, Dr Federico Ortino, who coordinates the Institute's activities in this field. Today's focus is on different aspects relating to the law of the World Trade Organization (WTO), which include trade negotiation, dispute settlement and development concerns. This programme builds on other research activities within the Institute such as the Competition Law Forum, the European Financial and Corporate Law Centre and the Investment Treaty Forum. Research staff involved in this area are: Dr Lahra Liberti, Dr Philip Marsden, Dr Federico Ortino, Dr Sergey Ripinsky, Professor Gillian Triggs and Jane Welch.

Annual WTO Conference

In 2001 the Institute organized, in conjunction with Georgetown University Law Center, the first of its Annual WTO Conferences, chaired by then Advocate General Francis Jacobs and Professor John Jackson, the nestor of international trade law. By now these annual conferences are firmly established as the most important annual event for international scholarship and policy discussion. Judges, officials and policy-makers of different sorts have met with both established scholars and recent recruits to the discipline, and participation in the Institute's Annual WTO Conference has provided all a venue to confront experiences and reflections about the functioning of the WTO and its dispute settlement system. Topics covered have included the jurisprudential and procedural features of the dispute settlement system, institutional issues such as the allocation of powers between different organs within the WTO as well as between the organization and its members, the relationship between the WTO legal system and international law, compliance issues, the interrelation between trade liberalization and other non-trade concerns such as environmental protection and labour standards.

In order to preserve the rich and insightful ideas that have been shared by conference participants, the Institute makes an effort to collect the papers submitted and presented as well as the following discussions held



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in the course of these conferences. In 2005, *WTO Law and Process* was published, collecting presentations and papers from the 2002–2004 WTO Conferences. In 2007 the Institute will publish a second volume collecting presentations and papers from the 2005 and 2006 WTO Conferences.

In association with the Institute of International Economic Law at Georgetown University Law Centre and the *Journal of International Economic Law*, the Seventh Annual WTO Conference will be held on 22–23 May 2007 at Gray's Inn in London and is kindly sponsored by Sidley Austin LLP. Conference Chairs, Programme Directors and Advisory Committee Members for the 2006 Annual WTO Conference are:

Conference Chairs:

Professor John H Jackson, Georgetown University Law Center
Rt Hon Sir Francis Jacobs KCMG QC, King's College, University of London

Programme Directors:

Professor Jane Bradley, Georgetown University Law Center
Professor Piet Eeckhout, King's College, University of London
Dr Federico Ortino, BIICL
Professor Gillian Triggs, BIICL

Advisory Committee:

Scott Andersen, Sidley Austin LLP
Dr Lorand Bartels, Edinburgh University

Marco Bronckers, Wilmer Cutler Pickering LLP
Professor Thomas Cottier, World Trade Institute, University of Bern
Professor William Davey, University of Illinois College of Law
Professor Donald McRae, University of Ottawa

Research Activities

Current research focuses on the following areas:

Law of the International Economy: in need of a new methodological approach?

Dr Federico Ortino, jointly with Dr Matteo Ortino of the University of Verona School of Law, questions the current validity of the methodological approach followed by the traditional legal theory of international economic law.

The interconnected phenomena of the IT revolution and the globalization of markets have given rise to fundamental methodological questions for the study of international economic law. The underlying issue is whether international economic law should still be understood as a subsection of international law or whether it is now time to study it as a subsection of the law of the international economy. This latter field of law includes any rule relevant to the establishment and functioning of the international economic system. This perspective needs its own methodological approach, one that cuts across the boundaries between legal systems (eg national, regional, international and transnational) and those between traditional fields of law (eg constitutional, commercial and procedural law). Traditional concepts of international law, focused around nation States, national legal systems, and their direct creations (such as international organizations), do not catch all the relevant sources and actors involved in the production and application of the law of the international economy.

With the ultimate aim of sketching the salient features of the new methodological approach to the study of the law of the international economy, the paper examines a few examples demonstrating that the traditional methodology is under stress and inadequate to deal with the legal regulation of cross-border trade, investment and financial flows. These case studies deal with both the issue of the role of stakeholders other than nation States (and international organizations) in the formation and application of the relevant legal rules, as well as dealing with the issue of the legal nature of the rules regulating the international economy.

General Agreement on Trade in Services (GATS)

The General Agreement on Trade in Services (GATS) represents one of the innovative features of the World Trade Organization (WTO) stemming

out of the Uruguay Round as it provides for the first multilateral discipline coverage of trade in services. The impact of such disciplines on the 'expansion of trade in services' and the 'promotion of economic growth of all trading partners' is, however, still difficult to assess. This is perhaps principally due to the fact that (a) the liberalizing provisions of GATS (in particular the Market Access and National Treatment obligations) are only binding in sectors and in the conditions specified in Members' schedules of specific commitments; and (b) the GATS negotiating round, officially started in 2000, has still to bear any substantial fruit. However, it should be stressed that the (perhaps frustrating) state of being of the service liberalization agenda is also the result of a certain level of uncertainty with regard to the precise meaning and scope of GATS disciplines. If one positions this legal uncertainty within the relevant context of trade in services (potentially touching upon very sensitive issues such as foreign direct investment, movement of workers, financial services, etc), it is perhaps easier to understand the very slow pace at which Members have been able to pursue GATS' objectives.

Dr Federico Ortino's paper aims to highlight a few fundamental issues of the GATS, focusing in particular on its two non-discrimination principles—Most-Favoured-Nation (MFN) Treatment of Article II and National Treatment (NT) of Article XVII—and the two main exceptions to these principles—Economic Integration of Article V and the General Exceptions of Article XIV. Given the dearth of WTO dispute settlement reports that have dealt with these GATS provisions (compared to any of the other major WTO Agreements), the analysis will also rely on the interpretation of comparable provisions in other WTO Agreements. The paper only addresses a few selected issues within each provision.

Treaty Interpretation in WTO Law

Treaty interpretation in WTO law continues to represent a topic of highly theoretical and practical importance. Recent panel and Appellate Body reports (*US–Gambling*, *EC–Chicken Cuts*) have critically turned on ascertaining the meaning of Members' Schedule of Commitments and of WTO provisions on the basis of the public international law rules of treaty interpretation as codified in the Vienna Convention on the Law of Treaties. The approach taken by panels and the Appellate Body is still in a state of flux and subject to controversy.

Dr Ortino has explored this subject in a recent paper focusing on the *Gambling* dispute. The paper's principal aim is to review the interpretative approach followed in particular by the Appellate Body in reaching its decision in *US–Gambling*. Its main argument is that, although the Appellate Body appears to be trying to emancipate itself from a rigorous textual approach, it has not yet embraced a holistic approach to treaty



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interpretation, one in which the treaty interpreter looks thoroughly at all the relevant elements of the general rule on treaty interpretation pursuant to Article 31(1) of the Vienna Convention.

The paper is published in the *Journal of International Economic Law*: 'Treaty Interpretation and the WTO Appellate Body Report in *US-Gambling*: A Critique' (2006) 9 *Journal of International Economic Law* 117–148.

The Overlap between Trade and Investment

The overlap between trade and investment is most evident in the service sector. For example, the General Agreement on Trade in Services (GATS) expressly applies to measures affecting the supply of a service by a service supplier of one Member, through commercial presence in the territory of any other Member (Article I.2(c)).

Research carried out by Dr Ortino compares the liberalization of foreign investment in services at the bilateral, regional and multilateral levels. The aim of the research is twofold. First, the study focuses on the patterns of the various international disciplines imposed on States for the liberalization and protection of foreign investment in the service field, in particular with the view of comparing multilateral disciplines under the GATS, on the one hand, and a few selected bilateral investment treaties (BITs) and free trade agreements (FTAs), on the other. The aim is to assess whether the latter achieves a higher level of liberalization (and protection) in the field of investment in services compared to the former.

Secondly, the study focuses on the linkages between bilateral and

regional agreements and the WTO. In particular, the objective is to determine the level of coordination between the myriad of BITs and the multi-lateral regulation of foreign investment in services under the GATS.

A shorter version of the paper is published as a chapter in L Bartels and F Ortino (eds), *Regional Trade Agreements and the WTO Legal System* (Oxford, OUP, 2006).

Cooperation with A4ID

In line with its mandate to provide technical expertise in the field of international economic law (and in particular WTO Law) through research and training activities, the Institute supports and cooperates with Advocates for International Development (A4ID), the culmination of the 2005 Oxfam 1,000 City Lawyers Initiative.

Advocates for International Development was born out of a desire within the legal community to champion the United Nations Millennium Development Goals and to help combat poverty and inequality of opportunity worldwide. It acts as a brokerage service, partnering NGOs and Intergovernmental Organizations (IGOs) within those in the legal profession willing and able to assist.

In particular, during the academic year of 2006–07, the Institute has been delighted to participate in a tailor-made pilot training course for 30 A4ID lawyers in conjunction with the Brookes World Poverty Institute and the School of Law and Institute for Development & Policy Management at the University of Manchester. The purpose of this course is to provide lawyers with an in-depth appreciation of the core legal, social and economic issues in the areas of international trade, debt and development. Key academics and experts in the field will run a series of seminars throughout the year. By obtaining a deeper appreciation of the complexities of international development, those involved in A4ID will be able more effectively to manage and meet the needs of our clients in the developing world.

The Promotion of Democratization and Human Rights in Iran

Project Manager: Dr Aphrodite Smagadi
Research Fellows: Victor Kattan and Dr Nisrine Abiad
<http://www.biicl.org/iran>

The Institute has been awarded major funding from the European Commission and the Foreign and Commonwealth Office to implement a three-year comprehensive project on human rights in the Islamic Republic of Iran. This project aims to continue and further promote human rights as a central part of the EU–Iran dialogue, in which both parties have been engaged since 2002. The project is expected to contribute to the adoption of major human rights instruments and raise legal awareness among the wider population and specific focus groups.

The Institute identified a number of needs to be addressed in order to improve the overall human rights situation in Iran: raise awareness on human rights issues; facilitate access to legal information; foster links between different groups of experts, including academic institutions; support non-governmental institutions working in the area of human rights



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and act at the regional level. Specific target groups, such as lawyers, judges, academics, human rights trainers, law enforcement agencies and women's organizations were designated as the primary beneficiaries of the project.

For the purposes of the project, the Institute is collaborating with a local partner in Iran, the Organization for Defending Victims of Violence (ODVV), a non-governmental, non-profit organization based in Tehran, active in the field of human rights, which has Special Consultative Status to the UN Economics & Social Council (ECOSOC). ODVV has been particularly active in organizing study groups and educational seminars and in promoting a wide number of activities in the field of human rights.

General Objectives

- Actively promote an open dialogue on human rights between the European Union and the Islamic Republic of Iran, taking into account Iran's unique political and cultural context.
- Improve knowledge and raise awareness in Iran regarding key international human rights instruments, with the overall aim of encouraging signature, ratification and implementation of such instruments.
- Establish and strengthen local networks of lawyers, academics and non-governmental organizations.
- Promote human rights values within the Iranian legal system.

Project Activities

Publication of a Human Rights Manual

The manual is a practical guide for lawyers, judges and other human rights defenders. It presents both the international and Iranian human rights systems, and examines in more detail several individual rights, and groups particularly exposed to human rights violations. International and domestic case law is also included, together with a suggested bibliography for further reading. The manual is co-authored by the Institute (international law section of the manual) and ODVV, our partner organization in Tehran (Iranian law section), and it will be available both in English and Farsi.

Comparing Experiences with Other Muslim Countries

Researchers in London and Iran study the policies of other Muslim countries, not only those with a Shi'a presence, like Iran, but also those with a Sunni presence, regarding the signature and ratification of key human rights instruments, with a view to identifying any patterns followed by

Islamic countries in pending declarations, understandings and reservations. More importantly, the researchers will then focus on five or six countries, in which the actual implementation of international human rights norms at the domestic level will be examined in more depth. A comparison of their practices with those of Iran will follow and the conclusions of the study will be presented and discussed at a colloquium with governmental and non-governmental legal experts.

Developing Electronic Resources

The project website offers a summary of the project. During the third year of the project, the various research products will be uploaded and made accessible to the public. Also, a database of European and Iranian legal experts and NGOs specializing in human rights issues has been designed in order to form a network of contacts from academia, governmental and non-governmental institutions, and from other sectors of the legal profession in general.

Training and Workshops

The purpose of this activity is to inform and train the target groups (lawyers, judges, academics, NGOs, legal professionals in general and other human rights defenders) on the international human rights concepts and instruments. More specifically, the objectives of the workshops are to:

- train lawyers and develop their skills as advocates of human rights;
- alert the judiciary to legal developments in human rights;
- train prison officers and policemen against torture practices and human rights abuses in detention; and
- train human rights educators and NGO managers.

Training will be given by selected EU and Iranian experts, such as the International Bar Association, the Bar Human Rights Committee and the Iranian Bar Associations Union. This educational aspect of the project will be emphasized during 2007; three workshops are thus planned during this year with the themes of Women's rights, Freedom of Expression and Juvenile Justice.

Media Monitoring

A methodology has been devised to monitor how the same news stories on human rights are being treated by the local media in Iran and by the international media. The objective is to identify and analyse any

disparities, or differential treatment in reporting and thus to gain an overall picture of the way in which human rights abuses are reported. A number of rapporteurs are working from their home countries (UK, US, France, Canada, Holland, Germany, Austria, Italy, Poland, Russian Federation and the Netherlands) and writing monthly reports, which will be then analysed over a period of approximately three months. At the end of the project a report detailing the findings of the international media's treatment of issues relating to Iran will be produced, recording any perceived attitudes, differences and issues that our monitoring has highlighted.

Introducing Basic Human Rights Concepts into the Legal System

During 2007, researchers in London and Tehran will work on a draft model law for the implementation of human rights standards at the domestic level. It is also envisaged that we will promote discussions on the reservations placed by Iran upon ratification of various international human rights instruments.

Project Teams

The project benefits from two research teams, one placed at the BIICL in London and a second one placed at ODVV in Tehran:

London

Aphrodite Smagadi, London Project Manager
Victor Kattan, Researcher
Nisrine Abiad, Researcher

Tehran

Pouria Askary, Tehran Project Manager
Somaye Hesami, Researcher

Steering Committee

Jonathan Black-Branch, University of Oxford
Jeremy Carver CBE, Clifford Chance
Drewery Dyke, Amnesty International
John Merrett, International Chamber of Commerce and BIICL
Hamid Sabi, Sabi & Associates
David Sarre, BIICL
David Suratgar, BMCE Bank

Expert Adviser:

Professor Malcolm Evans, University of Bristol.

For further information on project activities, proposals for collaboration and internships please contact Dr Aphrodite Smagadi: a.smagadi@biicl.org.



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LAW AND DEVELOPMENT PROGRAMME

International Trade Law Aspects of Exporting Morphine and Codeine from Afghanistan

Dr Sergey Ripinsky
<http://www.biicl.org/morphine/>

The Institute's Report on 'International Trade Law Aspects of Exporting Morphine and Codeine from Afghanistan' was commissioned by the Senlis Council, a security and development policy group that works towards establishing a sustainable system of legal opium-for-morphine production in Afghanistan. Such a system would require export channels for Afghan opium-based products, such as morphine and codeine, which are widely used in the pharmaceutical industry and satisfy pain relief needs throughout the developed and developing world.

With a view to exploring future export opportunities for Afghan morphine and codeine, the British Institute was asked to examine the existing framework of international law in relation to the trade in these narcotic drugs. The Report focuses in particular on the 1961 UN Single Convention on Narcotic Drugs, the rules of the World Trade Organization and the law of the European Community.

Against the backdrop of this legal framework, the Report explored options for promoting exports of Afghan morphine and codeine. It considered several types of intergovernmental agreements as well as private contracts with direct and indirect State participation. With regard to each legal instrument considered, the Report highlighted respective advantages and shortcomings in order to enable interested parties to select the most suitable solution.

The Report was prepared by Dr Sergey Ripinsky with inputs from Greg Falkof, Leonie Heaton and Hugo Warner and under the overall supervision of Dr Federico Ortino and Professor Gillian Triggs.

Armenian Public Sector Reform Programme

From 2003 to 2007 the Institute has been involved in this major project in conjunction with PricewaterhouseCoopers on behalf of the UK Department for International Development (DFID). Its overall aim is to improve the efficiency, effectiveness, accountability, transparency and responsiveness of all levels of public administration within Armenia as part of DFID's ultimate aim of poverty alleviation. The Institute is advising the Government of Armenia on a number of wide-ranging law reforms.

The project is part of a multilateral framework for the reduction of poverty in Armenia. It provides a significant element of the technical assistance within the framework of the World Bank Public Sector Modernization project and is being implemented in close cooperation with the EU-TACIS National Assembly project and the interventions of other bilateral donors.

Work continued in 2006 with a series of field and desk-based studies designed around the most recent developments in the Programme, most notably a comparative review on social security law and a study of the independence of civil servants in the UK and Armenia.

For more information on this initiative please contact Hugo Warner (h.warner@biicl.org) or visit the PricewaterhouseCoopers Armenian Public Sector Reform Programme website.

Advocates for International Development Training Programme 2006–07

Dr Federico Ortino

During the academic year of 2006–7, the Institute is delighted to participate in a tailor-made pilot training course for Advocates for International Development (A4ID) in conjunction with the Brookes World Poverty Institute and the School of Law and Institute for Development & Policy Management at the University of Manchester.

The purpose of the training programme is to provide 30 London-based lawyers, members of A4ID, with an in-depth appreciation of the core legal, social and economic issues in the areas of international trade, debt and development. Key academics and experts in the field will run a series of seminars throughout the year. By obtaining a deeper appreciation of the complexities of international development, those involved in A4ID will be able more effectively to manage and meet the needs of our clients in the developing world.

A4ID was born out of a desire within the legal community to champion the United Nations Millennium Development Goals and to help combat poverty and inequality of opportunity worldwide. It acts as a brokerage service, partnering NGOs and IGOs within those in the legal profession willing and able to assist.

More information on the A4ID initiative can be found at <www.a4id.org>. For further information on the role of the Institute in this work please contact Dr Federico Ortino.

Research Profiles

Dr Nisrine Abiad

Dr Nisrine Abiad joined the Institute in February 2007 as a Research Fellow in Public International Law on the Promotion of Democratization and Human Rights in Iran project. In the framework of this project, she is currently carrying out a comparative study on human rights in Muslim countries.

Prior to this, Nisrine was a Lecturer in Administrative Law at the Faculty of Law at the University of Lebanon, as well as a Lecturer in Public Institutions at the Faculty of Business at the Holy Spirit University in Lebanon. She also gained experience in managing legal projects while working in 2005 and 2006 as the coordinator of a project on Administrative Reform in Lebanon, at the 'Jean Monnet Chair' of European Studies at the Université Saint-Joseph and as a coordinator in the Mallat Law office in Beirut.

Nisrine holds a PhD in Administrative Law with distinction from the Université du Panthéon-Assas Paris II where she worked as a researcher for three years at the Doctorate School of Public Law (Thesis: 'Le Conseil d'Etat, juge de cassation dans le contentieux de la responsabilité administrative'). She also holds a Postgraduate Certificate in Internal Public Law from the same university. In addition, Nisrine has studied Law at the Université Saint-Joseph in Beirut from which she graduated with First Class Honours in both of her majors—private law and public law.

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 research interests focus upon comparative law, spanning both private and public law. In the sphere of public law, he has a particular interest in the liability of public authorities in tort law. He published a monograph on public authority liability in 2003, which examines the topical sphere of governmental liability from a comparative perspective, arguing that there has been an important shift in the traditional English-law approach under the influence of European human rights law and Community law: *State Liability in Tort* (Oxford University Press, Oxford, 2003). He also has an interest in the comparison of

Anglo-French public law, and has recently completed a major publication with two judges from the French Supreme Administrative Court, the *Conseil d'État*, Monsieur le Président Bernard Stirn and Mattias Guyomar. The book is entitled *Droits et Liberts en France et au Royaume-Uni* and is published by Odile Jacob. The co-authors were awarded the prestigious Henri Texier Prize for this book by the French Academy in November 2006.

Duncan Fairgrieve also co-edited a British Institute of International and Comparative Law-published book in 2006 entitled *Independence, Accountability and the Judiciary*, with the Lord Chief Justice of France, Guy Canivet, and Professor Mads Andenas.

In the sphere of comparative private law, Dr Fairgrieve works on a variety of topics, in particular tort law and product liability. He is the founding Director of the Tort Law Centre at the Institute and is responsible for projects on product liability, clinical negligence, and public authority liability. He has recently published a book entitled *Common Law et tradition civiliste—Convergence ou concurrence?*, published in pocket format by the French publishers *Presses Universitaires de France*. The publication examines the architecture, institutions and socio-legal context of the common law and civil law systems, as exemplified by France and England.

Dr Fairgrieve is a qualified French avocat and practises in the field of civil and commercial litigation in Paris. He is also a door tenant at One Crown Office Row.

Victor Kattan

Victor Kattan joined the Institute in December 2006 as a Research Fellow in Public International Law, working on the Promotion of Democratization and Human Rights in Iran project.

He is the assistant editor of the *Yearbook of Islamic and Middle Eastern Law* and the author of several articles on the Arab–Israeli conflict which have been published in international law journals in Europe and the United States. He is currently writing a book on the conflict from an international law perspective which will be published by Pluto Books in 2008.

Victor has some experience of working in the media: he has written several commentaries which have been published in this country and abroad, online and in the print media. He has also appeared on television and was formerly a Director of Arab Media Watch.

Prior to this Victor worked in the Occupied Palestinian Territories as a UN Development Programme TOKTEN (Transfer of Knowledge through Expatriate Nationals) consultant, on secondment to a non-governmental organization specializing in Palestinian refugee and residency rights

(BADIL Resource Center). The research he undertook whilst working for BADIL was subsequently published in the *Nordic Journal of International Law*.

He is a law graduate of Brunel University (LLB (Hons)) and Leiden University (LLM). An abridged version of his Leiden LLM thesis has recently been published in the *Palestine Yearbook of International Law*.

Dr Lahra Liberti

Dr Lahra Liberti holds a law degree from the University of Rome 'La Sapienza' (1998, magna cum laude) and a doctorate in International Law and European Law from both the University of Rome 'La Sapienza' and the University of Paris I 'Pantheon-Sorbonne' (2004). She has worked as a legal consultant for law firms in Rome and has been a visiting researcher at UNCTAD in Geneva and at the Max Planck Institute for Comparative Public Law and International Law of Heidelberg. She has also participated in the Centre for Studies and Research at the Hague Academy of International Law on 'New Aspects of International Investment Law' and was invited to act as Editor-in-Chief for a special issue of the International Law Forum (ILA Review) on the responsibility of transnational corporations under international law. She has lectured students at the University of Rome 'La Sapienza'. She is also a qualified attorney in Italy.

Dr Liberti joined the Institute as a Research Fellow in Public International Law in November 2006. She is involved in research on the Damages in International Law project, in the activities of the Investment Treaty Forum, and is developing research dealing with corporations and human rights. Prior to her appointment at the Institute, she worked as a Research Fellow at the University of Rome 'La Sapienza'.

Her main field of research is international economic law, with particular regard to international investment law and arbitration, corporations and human rights, the WTO and non-trade values.

Dr Philip Marsden

Philip Marsden is a competition lawyer with a particular interest in abuse of dominance, international competition issues and aspects of the law of the World Trade Organization (WTO) relating to competition policy, telecommunications and dispute settlement proceedings.

He earned his DPhil from Oxford University, an LLM in European Law from Leicester University, and an LLB and BA (Hons) from the University of Toronto. He qualified as a Barrister and Solicitor at the Law Society of Upper Canada in 1991, and has been in private practice with law firms in

Toronto, Tokyo and most recently with Linklaters in London. From 1994 to 1996, he was a case officer with the Economics and International Affairs Branch of the Canadian Competition Bureau.

Philip is a frequent media commentator and conference speaker on competition and trade issues. He is editor of the *European Competition Journal* (<www.hartjournals.co.uk/ecj>) and a Founding Director of World Trade Institute Advisors (<www.wtiadvisors.com>). Philip also chairs or advises various committees and has the following affiliations:

- Advisory Council, Advocates for International Development;
- Visiting Faculty, CUTS Institute of Regulation and Competition, India;
- Member, Advisory Board, Loyola Antitrust Institute;
- Member, Advisory Board, American Antitrust Institute;
- UK Representative, Business and Industry Advisory Committee, Competition Law and Policy Committee;
- Non-governmental Advisor, ICN Unilateral Conduct Working Group;
- Member, Law Society of Upper Canada;
- Joint Working Party on Competition and International Trade, International Chamber of Commerce, Paris;
- Member, Society of Legal Scholars; and
- Visiting Faculty, World Trade Institute (Masters of International Law and Economics), Berne.

Faria Medjouba

Faria Medjouba joined the Institute as a Research Fellow within the Tort Law Centre in September 2006. She holds a BA in International Law from the University Paris 1 Panthéon-Sorbonne, a Master of Research (5 years of legal studies, 1st year of doctoral research) in European Law from the University Paris 1 Panthéon-Sorbonne and from the Centre Européen Universitaire (hons), University Nancy 2, France, and a Diploma in Superior European and Legal Studies, from the Centre Européen Universitaire (hons) (Dissertation: 'The Rules of Origin in the Preferential Schemes Granted by the European Community').

Within the Product Liability Forum, Faria 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. An important part of this work revolves around mass torts, especially in the international context.

Within the Tort Law Centre, she is involved in comparative projects commissioned by various government departments. She is also involved in the 'Compensation Culture' project, a research project focusing on how European jurisdictions handle the phenomenon of 'compensation culture'

and whether Europe is experiencing or is about to experience the amount of litigation which the US is famous for.

Faria also has an interest in French law and is assisting in the organization on 6 June 2007 of an international conference, jointly organized with the Franco-British Lawyers Society on the topic of commercial law: 'French Commercial Code & British Commercial Law within a Global Market-Place: Celebrating the Bicentenary of the French Commercial Code'. This will be a prestigious event, bringing together speakers from Britain and France including Guy Canivet, premier Président de la Cour de cassation, and Lord Phillips LCJ.

Other fields of interest include European law and public international law.

Noreen O'Meara

Noreen O'Meara joined the Institute as Editor of the *Bulletin of International Legal Developments (BILD)* in April 2005. In addition to editing the fortnightly publication, she regularly contributes articles and case commentaries on major court rulings within the fields of European law and public and private international law.

Her current research interests focus primarily on comparative public law, European law and international human rights.

Noreen holds an MA from the University of Cambridge (Corpus Christi College), Master of Laws (LLM Public Law) from University College London, and has completed non-degree studies at the European University Institute (EUI), Florence, Italy. She is currently engaged in doctoral research at Queen Mary, University of London and L'Institut de l'Université de Londres à Paris, as holder of the Hamilton Studentship.

Since being called to the Bar of England and Wales by Inner Temple in 2004, her professional legal experience has involved working at the European Commission (DG Legal Service) in Brussels, and in the Chambers of Advocate-General Sharpston, European Court of Justice (ECJ), in Luxembourg. In the European Commission, her work focused on litigation before the ECJ and US Supreme Court; EC–Australia PNR negotiations; and research on EU25 Supreme Court procedures. At the ECJ, she worked on Opinions in a variety of legal fields including taxation, intellectual property law and police and judicial cooperation in criminal matters.

Dr Federico Ortino

Federico Ortino joined the British Institute in January 2005 as Fellow in International Economic Law and Director of the Investment Treaty Forum

(ITF). He is also Adjunct Professor at the University of Florence and King's College London. He is a member of the ILA Committee on International Trade Law and co-rapporteur to the ILA Committee on the Law of Foreign Investment. He is a qualified attorney in Italy and in the state of New York.

Dr Ortino's research interests lie primarily in international economic law, in particular WTO law, international investment law and arbitration, and EC law, with additional interests in international commercial law and litigation.

Dr Ortino is specifically responsible for overseeing the activities of the Investment Treaty Forum, the research project on Damages in International Law and the research activities on International Economic Law and the WTO.

Dr Federico Ortino holds a law degree from the University of Florence, School of Law (1996, magna cum laude), a master of laws from Georgetown University Law Center (1997, with distinction) and a doctorate from the European University Institute, Florence (2002). Before joining the British Institute, he was Emile Noël Fellow and Fulbright Scholar at the NYU Jean Monnet Center in New York. He has worked as legal consultant for law firms in Florence, London and Brussels as well as for the United Nations Conference on Trade and Development and the World Trade Organization in Geneva. He has lectured students at Universities in Edinburgh, Florence, London, Rotterdam, Siena, Trento and Verona.

Brendan Plant

Brendan Plant joined the Institute in October 2006 as a Research Fellow in Public International Law. He works primarily on the Evidence in International Courts and Tribunals project, and is currently researching and co-writing a comprehensive review of the applicable rules of evidence in proceedings in the International Court of Justice. Publication of this study is expected in late 2007. Brendan also assists on the Institute's Promotion of Democratization and Human Rights in Iran project.

Brendan holds undergraduate honours degrees in Economics (Social Sciences) and Law from the University of Sydney, and in 2005 he was awarded a Chevening Scholarship to complete an MSc (Human Rights) degree at the London School of Economics and Political Science (Dissertation: 'Human Rights and the International Protection of Copyright').

Brendan was admitted as a solicitor in the Supreme Court of New South Wales and the High Court of Australia in 2003, and has practised in law firms in Sydney (Allens Arthur Robinson) and London (Latham & Watkins). In Australia, he has published work in the *Communications Law*

Bulletin, along with articles and opinion pieces in numerous non-legal publications.

Previously, Brendan has worked as an intern in the International Humanitarian Law Unit of the Australian Red Cross, and as a legal aid assistant for the Aboriginal Legal Service in Sydney.

Anna Riddell

Anna Riddell joined the Institute as a Research Fellow in Public International Law in October 2005. Prior to that, Anna completed the Bar Vocational Course at the Inns of Court School of Law, and was called to the Bar by Lincoln's Inn in July 2005.

She holds an LLM in European Law with Distinction from the University of Exeter (Dissertation: 'The Rule of Reason in EC Competition Law—Is the Debate Really Over?' (Summer 2004)). As an undergraduate she studied Law at Brasenose College Oxford, spending one summer as an intern at the Brussels Office of the Law Society.

Anna directs the Institute's project on the law of Evidence in International Courts and Tribunals. She is also involved in several other Institute initiatives, having in the past worked on the Promotion of Democratization and Human Rights in Iran project, and currently being involved in editing a collection of papers emerging from a conference in June 2006 on the Antarctic Treaty Regime. She was responsible for organizing the plenary session of the Annual Conference 2006, entitled 'Witnessing Genocide?—Evidence Issues in the International Court of Justice', and assembled a panel of eminent counsel and academics to discuss issues of evidence arising in the ICJ and more particularly in the *Bosnia Herzegovina v Serbia and Montenegro Genocide* case.

Anna visited the International Court of Justice in The Hague last year to attend the public hearings in the *Bosnia Herzegovina v Serbia and Montenegro Genocide* case, following which she was invited to write an article on the procedural aspects of the hearings which will appear in a forthcoming issue of the *Leiden Journal of International Law*.

Dr Sergey Ripinsky

Dr Sergey Ripinsky joined the Institute as a Research Fellow in International Law at the Institute in May 2006. He works on the project on Damages in International Law and, more specifically, on Damages in International Investment Law. In addition, he is involved in the Institute's other projects in the area of international economic law. In particular, he has prepared the Institute's study on 'International Trade Law Aspects of

Exporting Morphine and Codeine from Afghanistan' and, together with Dr Federico Ortino, has edited *WTO Law and Process: Proceedings of the 2005 and 2006 London WTO Conferences*.

Prior to joining the Institute, Sergey was a researcher at Maastricht University, focusing on trade-related matters as well as on NGO involvement in the activities of international organizations. He also has experience of interning and working at the law firm Lang Michener in Ottawa, the World Trade Organization (WTO) and the UN Conference on Trade and Development (UNCTAD) in Geneva. Sergey holds a PhD from St Petersburg State University (Russia) and an LLM from Maastricht University (Netherlands).

Dr Pierre Schammo

Pierre Schammo joined the Institute as a Research Fellow in European Financial and Corporate Law in November 2006. He holds undergraduate degrees and a Master's Degree in Private Law from Robert Schuman University in Strasbourg (France), an LLM (cum laude) in International Business Law from the University of Leiden in the Netherlands and a DPhil degree from the University of Oxford (Magdalen College). Before joining the Institute, he also trained with law firms in Luxembourg (most recently with Allen & Overy, Luxembourg).

Pierre's main research interests are EC securities regulation, comparative securities and financial regulation, the institutional and substantive law of the European Union, as well as regulation more generally. His interests also include the theory of regulatory competition as applied within the EC market integration context. At the Institute, he is currently focusing on the EC law and cross-border dimensions of securities and financial regulation.

Dr Aphrodite Smagadi

Aphrodite Smagadi joined the Institute in October 2006 as the Dorset Fellow and Manager of the Promotion of Democratization and Human Rights in Iran project. She studied law for her first degree (1998) at the Aristotle University of Thessaloniki, Greece, and Maastricht University, Netherlands. She holds an LLM (magna cum laude) from the Albert-Ludwigs University in Freiburg (Magisterarbeit: Umweltshutz in GATT und WTO), Germany (2002), a Master of Research and a doctorate from the European University Institute in Florence, Italy (2006), and is a qualified attorney and Member of the Bar in Greece.

Prior to her joining the Institute, Aphrodite was a visiting scholar at the

Columbia Law School in New York, USA. In the past, she worked as a project assistant for an international association of local governments in Germany, as a lawyer and translator in Greece, and has interned with the UN Office of Legal Affairs in New York and the European Commission, DG Trade, in Brussels.

Aphrodite's research interests lie generally in international environmental, economic, and human rights law, with focus on biotechnology, WTO and indigenous issues. At the Institute she is specifically responsible for the project on Promotion of Democratization and Human Rights in Iran.

Justine Stefanelli

Justine Stefanelli joined the Institute as an intern in European law in August 2006 and became a research fellow in November of the same year. She works primarily with the Legalization and Judgments projects.

She holds an undergraduate degree in Psychology awarded by Duquesne University in the United States, and was awarded her Juris Doctor by the University of Pittsburgh in 2005. Most recently, she obtained an LLM in European Law from Queen Mary University of London in 2006.

Justine is a licensed member of the Bar of the Commonwealth of Pennsylvania, USA, and previously worked in the areas of comparative and international law during her training to become an attorney. She also spent part of her legal training educating foreign LLM students in American legal writing.

Professor Gillian Triggs

LLB (Melbourne, 1968), LLM (SMU, 1972), PhD (Melbourne, 1982). Professor Triggs was appointed Director of the British Institute of International and Comparative Law in July 2005. Before taking up her appointment, she was the Director of the Institute for Comparative and International Law at the University of Melbourne where she held a Chair in Law. Gillian is an international lawyer with publications on WTO disputes resolution, energy and resources law, law of the sea, territorial sovereignty, jurisdiction and immunity, international criminal law, international environmental law and human rights.

Gillian has maintained an international commercial practice as a Consultant (International Law) to Mallesons Stephen Jaques and has advised governments in the Asia Pacific region on questions relating to sovereignty and jurisdiction. Gillian has also directed several projects for

the Asian Development Bank on legal capacity building in Vietnam, Mongolia and Indonesia.

Her current activities include:

- Joint General Editor, *International and Comparative Law Quarterly*
- Australian Representative, Council of Jurists, Asia Pacific Forum for National Human Rights Institutions.
- Member, Editorial Boards of the *Melbourne Journal of International Law* and the *International Journal of Energy & Natural Resources Law*.

Jacob van de Velden

Jacob joined the Institute in March 2006. He has two principal areas of responsibility at the Institute: he coordinates the Institute's research and activities in the field of private international law and he directs a comparative study on the cross-border use of public documents in the EU.

Prior to taking up his position at the Institute Jacob worked at Groningen University (Netherlands) and the TMC Asser Institute (Netherlands) where he conducted research for a PhD on the development of the principle of party autonomy under influence of European integration by means of EC Directives (2003–). This PhD research is carried out under the supervision of Professor Mathijs ten Wolde (Groningen University/Ulrik Huber Institute of Private International Law).

Other prior engagements include working at the European Commission, where he was trainee at the private international law department of DG Freedom, Security and Justice. Jacob was also previously at the European Parliament, where he was assistant to John Bowis OBE MEP. In the European Commission he worked on international tort law (Rome II), international contract law (Rome I), and international jurisdiction (Brussels I). At the European Parliament he worked on the Commission's proposal regarding the registration, evaluation and authorization of chemical substances (REACH).

He has lectured on private international law at Groningen University and the Asser College Europe LLM Programme.

Special interests include:

Private International Law

- Conflict of Laws
- International Jurisdiction
- Recognition and Enforcement

European Community Law

- Free Movement Law
- Mutual recognition
- Harmonization
- Conform Interpretation

Hugo Warner

Hugo Warner has had three principal areas of responsibility at the Institute: in its programme on law and development; in its Investment Treaty Forum and international commercial arbitration programme; and in its business development, devising and drafting research proposals.

In 2006 he made several visits to Armenia as part of the Institute's work on the UK Department for International Development's (DFID's) Armenian Public Sector Reform Programme; worked with Federico Ortino and Sergey Ripinsky on the Senlis Council report on *International Trade Law Aspects of Exporting Morphine and Codeine from Afghanistan*; and contributed to the research and publications of the Investment Treaty Forum. He was also responsible in this period for the total redevelopment of the Institute's website. This project resulted in the creation of (i) extensive new resources for Institute and Forum members, (ii) extranets for use by participants in the Institute's research projects, and (iii) an e-commerce function for events registrations, Institute publications and membership. This project also restructured and expanded the previous site's content and aligned its overall design with that of the Institute's rebranding.

Since October 2006 Hugo has been seconded to the International Development Team at PricewaterhouseCoopers (PwC) in London, located within its Advisory practice. There he has worked on business development, with a particular focus on DFID governance and legal reform projects in conflict-affected countries. It is anticipated that the Institute will continue to be engaged in PricewaterhouseCoopers' international development programme through this work.

In addition, at PwC he has worked on a major evaluation of the UK Department for International Development's budget support programme for the National Audit Office and a parallel study on Sweden's programme for the Reksrevisionen (Swedish national audit office).

Jane Welch

Jane Welch is director of the European Financial Services and Corporate Law Centre. She holds an honours degree in legal science from Trinity College Dublin and an LLM from the University of London. She has

specialized in financial services regulation and company law for the major part of her career. Jane spent four years as the Law Society Senior Research Fellow in Company and Commercial Law at the Institute of Advanced Legal Studies (IALS). During that time she was asked by the European Commission to write a report on the Regulation of Non-Bank Financial Institutions in EC Member States. She was also invited to advise the European Commission on UK company law during the negotiation of the EC Regulation for a European Cooperation Grouping. On leaving the IALS in 1986, she joined the newly-established UK Securities and Investments Board (SIB), later becoming head of its Legal Advice Unit, responsible not only for advice on the Financial Services Act, but also on all aspects of EC law affecting financial services. She was involved in the negotiation and implementation of the Second Banking Directive, the Investment Services Directive and other key financial services directives.

Jane later became Head of European Law at the UK Financial Services Authority (FSA), where she was responsible for advising on all European financial services law and its impact on the domestic regulation of banks, investment firms and insurance companies.

After leaving the FSA, Jane Welch was involved in a number of consultancy projects, including advice to the Hungarian Ministry of Finance on a new securities law, advice to the Czech Securities Commission on securities regulation and investors compensation. She also advised on changes to the system of securities regulation in the former Federal Republic of Yugoslavia.

Since joining the British Institute in 2004, Jane has been responsible for developing the European Financial Law Centre, subsuming the remaining work of the Company Law Centre, which completed its three-year research programme at the end of 2005. She has written and lectured widely on EU financial services.

In 2006 Jane Welch was appointed by the European Parliament as one of four EU experts on European financial services law to advise the Economic and Monetary Affairs Committee of the Parliament.

Peter Whelan

Peter holds both a Degree in Law and French (LLB (Ling Fran)) and a Master of Laws (LLM) from Trinity College, Dublin. In July 2004 he passed the New York State Bar Exam. He began his PhD in Law at St John's College, Cambridge in October 2006; his chosen topic is 'Competition and the Criminal Law'.

Peter joined the Competition Law Forum (CLF) of the British Institute of International and Comparative Law as a legal intern in January 2005. He became the Research Fellow at the CLF in May of that year. In 2006 Peter

was made a co-editor of *Current Competition Law*, the Competition Law Forum's yearbook on competition law.

Since joining the Institute, Peter has worked on various competition law projects including among others:

- CEPR Project on International Competition Cooperation;
- DG Sanco—Consumers International Competition Project;
- CLF Working Group on Private Actions (as rapporteur); and
- CLF Project on Consumer Detriment in EC and UK Competition Law.

Peter is also a regular contributor to the British Institute's *Bulletin of International Legal Developments* on EC, UK and US antitrust and merger law, as well as US constitutional developments.

Peter's main research interests are comparative competition law and comparative criminal law. He is also interested in international law and human rights law.

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The following bibliography provides details of all publications contributed to by research staff at the Institute over the past year, and also includes details of forthcoming publications.

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Dr Duncan Fairgrieve

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Dr Lahra Liberti

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Dr Philip Marsden

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- A Riddell, 'Procedural Aspects of the Bosnia Genocide Case' (Forthcoming, 2007) 20 *Leiden Journal of International Law*

A Riddell and B Plant, *Evidence in the International Court of Justice* (BIICL, London, forthcoming September 2007)

Dr Sergey Ripinsky

F Ortino and S Ripinsky (eds), *WTO Law and Process: Proceedings of the 2005 and 2006 Annual WTO Conferences* (BIICL, London, forthcoming 2007)

S Ripinsky, 'Expropriation and Regulation in Investor-State Disputes' *International Business Law* (Universidad Externado de Colombia, forthcoming)

S Ripinsky and P Van den Bossche, *NGO Involvement in the Activities of International Organizations: A Legal Analysis* (BIICL, London, forthcoming)

Dr Aphrodite Smagadi

A Smagadi, 'Analysis of the Objectives of the Convention on Biological Diversity: Their Interrelation and Implementation Guidance for Access and Benefit Sharing' (2006) 31 *Columbia Journal of Environmental Law* 243

A Smagadi, 'The Impact of the Convention on Biological Diversity in Utilization of Plant Genetic Resources and Benefit Sharing: the Issue currently addressed by the International Organizations' (2006) 6 *Yearbook of European Environmental Law* 120

N Abiad and A Smagadi, *Comparative Study: The Implementation of Human Rights in Islamic States* (BIICL, London, forthcoming, 2007)

A Smagadi, *Human Rights in Iran: A Manual on the International and Iranian Human Rights Standards* (BIICL, London, forthcoming, 2007)

Professor Gillian Triggs

G Triggs and A Riddell (eds), *Antarctica: Legal and Environmental Challenges for the Future* (BIICL, London, 2007)

G Triggs, *International Law: Contemporary Principles and Practices* (Lexis Nexis/ Butterworths, Australia, 2006)

G Triggs and V Prescott, *Territorial Boundaries: International law, Geography and Politics* (Brill, USA, forthcoming, 2007)

Jane Welch

J Welch, *Comparative Implementation of EU Directives (II) Money Laundering* (City of London Corporation, December 2006)

- J Welch, 'European Financial Services' in Michael Blair QC and George Walker (eds) *Financial Services Law* (OUP, Oxford, 2006)
- J Welch, 'Better Law-Making' in Stephen Weatherill (ed) *Regulating the European Market* (Hart, Oxford, forthcoming, 2007)

Peter Whelan

Books

- P Marsden, M Hutchings and P Whelan (eds), *Current Competition Law Volume V* (BIICL, London, March 2007)

Articles

- P Marsden and P Whelan, 'When Markets are Failing: Part II' (2007) 6 Competition Law Insight 6
- P Marsden and P Whelan, 'When Markets are Failing: Part I' (2007) 6 Competition Law Insight 6
- P Marsden and P Whelan, "Consumer Detriment" and its Application in EC and UK Competition Law' [2006] European Competition Law Review 569
- M Hutchings and P Whelan, 'Consumer Interest in Competition Law Cases' (2006) 16 Consumer Policy Review 130
- P Whelan, 'Recent Developments Concerning the Rights of Complainants and Third Parties under both UK and EC Competition Law' [2006] BLD 157

Case Notes

- 'The O2/T-Mobile Judgment of the CFI' [2006] BLD 109
- 'DONG/Elsam/Energi E2' [2006] BLD 61
- 'Gonzales v Oregon' [2006] BLD 20

Book Reviews

- Cseres, Schinkel & Vogelaar (eds), *Criminalization of Competition Law Enforcement: Economic and Legal Implications for the EU Member States* () reviewed by P Whelan in (2006) 2 European Competition Journal 451

Publications

Publisher: Orla Fee
Publications and Marketing Assistant: Gemma Parsons

International and Comparative Law Quarterly

The ICLQ continues to attract a high standard of scholarship from around the world in the fields of public international law, private international law, comparative law, human rights law and European Union law. The journal retains its reputation as a leading academic legal journal, a status which is reflected in the fact that submission of articles increased again in 2006. We continue to encourage innovative and original articles that explore the interconnections between the legal subject areas and to invite discussion of topical legal issues, which is particularly enabled by the 'Shorter Articles, Comments and Notes' and 'Current Developments' sections. The expertise of the board of editors, who have responsibility for the principal editorial decisions, allows the ICLQ to continue to publish only the highest quality articles.

Throughout 2006 the Institute has continued to work in collaboration with Oxford University Press, which markets and distributes the journal. Subscriptions for 2006 increased to 3,683 from 3,555 in 2005. We continue to witness the growing trend for a preference for subscriptions in electronic format as opposed to traditional library subscriptions. We maintain a healthy uptake of consortia and multi-site subscriptions. The ICLQ continues to be a significant benefit to Institute membership, and all 809 members of the Institute receive the ICLQ.

Professor Alan Boyle retired as General Editor and chair of the Editorial Board of the ICLQ at the end of 2006, following nine years in the role. We thank him for the outstanding contribution he has made to the journal during his time as General Editor and for his role in maintaining the ICLQ's strong reputation. Professor Catherine Redgwell succeeded to the role in January 2007; she joins the Institute Director, Professor Gillian Triggs, as Joint General Editor and chairs the Editorial Board.

We once again thank Dr Joe McMahon, Dr Peter McEleavy, Professor Craig Barker, Professor Dominic McGoldrick and Professor Colin Warbrick for their successful contribution to the journal as editors of the Current Developments sections; and also we thank Professor Mads Andenas, Chanaka Wickremasinghe and Dr Ralph Wilde for their continued active role as book review editors.

Readers will have noticed that the design of the ICLQ has changed significantly as of January 2007. This has brought the journal in line with

the Institute's new brand guidelines, and has streamlined the layout of the cover.

The ICLQ's contract with Oxford University Press came up for renewal at the end of 2006, and other publishers were invited to tender. We are pleased to announce that from January 2008 Cambridge University Press will handle the marketing and distribution of the ICLQ. We look forward to working with them and hope that this collaboration will enable us to increase subscriptions to the journal and allow us to develop the international recognition of the ICLQ, particularly in North America.

Bulletin of International Legal Developments

The Institute's *Bulletin of International Legal Developments* (BILD) continues to provide academics, practitioners, government departments, law reform bodies and worldwide university law libraries with concise reports on current legal developments in international law. Topics covered include legislation, international conventions, law reform proposals, treaty ratifications and major decisions of domestic and international courts and tribunals. Regular monitoring of court decisions, government publications, press releases and the media, as well as official websites of organizations and governments, ensures that the BILD provides its subscribers with coverage of key worldwide legal developments.

The BILD is edited by Noreen O'Meara, assisted by Bridget Palumbo (until March 2006); Nam-Ake Lekfuangfu (September–December 2006) and Zabrina Shield (January–April 2007). The base of contributors has expanded during 2006, comprising correspondents from national jurisdictions, research staff and interns within the Institute, and members. The increasing receipt of submissions from Institute members is particularly welcome.

In parallel with the launch of BILD's new look, the *Bulletin of Legal Developments* was renamed *Bulletin of International Legal Developments* in September 2006. The Institute considers that the new name better reflects the *Bulletin's* focus on international legal issues and their impact on the domestic legal arena. The electronic version of the *Bulletin* via email continues to be well received, and is available as a membership benefit.

The printed version of the BILD continues to be a key resource enjoyed by law libraries, academics and practitioners throughout the world. An initiative is currently underway to raise the profile of the BILD internationally, and generate awareness amongst law libraries and legal institutions around the world that may currently be unaware of its usefulness as a research tool. This will allow the printed version of the BILD to develop and maintain its previous success, alongside the electronic format.

Corporate members of the Institute continue to receive the printed BILD as part of their membership package.

Other Institute Publications

The Institute has once again this year produced a diverse range of titles examining contemporary legal issues. The eight new titles published in 2006 and the three new titles published at the beginning of 2007 are a significant addition to the Institute's publishing catalogue, and have been well received.

The financial strength of the publishing programme increased significantly in 2006 and we saw a considerable growth in book sales. This is mainly as a result of the Institute's increased strategic marketing and the growth in our global representation. We continue to work with our US distributor, International Specialized Book Services, who market and distribute our publications in the US, and have also established similar partnerships with representatives in South East Asia and India. We hope to develop similar partnerships in Australia and South Africa during 2007. The launch of the new Institute website has also encouraged book sales. Working closely with authors to develop targeted marketing for their books has also proved fruitful.

Our presence at the XVIIth Congress on Comparative Law in Utrecht and Society of Legal Scholars Annual Conference in 2006 allowed us to successfully increase the profile of the Institute's publishing programme and to actively commission new authors. We have a strong list of forthcoming titles to be published in the next couple of years.

The Institute is always pleased to consider proposals for new publications and the Institute's Publisher, Orla Fee, is happy to discuss new projects with authors. She can be contacted via email: o.fee@biicl.org.

Titles Published in 2006 and 2007

Investment Treaty Law

Federico Ortino, Audley Sheppard and Hugo Warner (eds)

In 2004 The British Institute of International and Comparative Law established its Investment Treaty Forum with the principal objective of carrying out applied research, analysis and policy discussion in the field of investment treaty law and arbitration. As part of its research activities, the Forum held two major conferences in 2004: 'Appeals and Challenges to Investment Treaty Awards: Is it Time for an International Appellate System?' and 'The Relationship between Local Courts and Investment Treaty Arbitration'.

The first conference addressed the feasibility and implications of the establishment of a mechanism for the hearing of appeals from investment awards. It focused in particular on the questions of whether there is an actual demand for an appellate mechanism in investment treaty arbitration and, if so, how best to establish the necessary institution taking into consideration issues such as the role and nature of investment treaty arbitration and the legitimacy of investment awards.

The second conference dealt with issues arising in respect of the co-existence of local and international courts and remedies stemming out of the complex web of international investment agreements and the ever-growing number of legal proceedings 'both at the national and international level' brought by foreign investors against host States.

This publication records the presentations given by some 40 experts in the field as well as the ensuing debate on these two interesting and complex topics, making available an abundance of insights and ideas at a time when the need for addressing the systemic challenges of treaty investment law becomes ever more acute.

Testing the Boundaries of International Humanitarian Law

Susan C Breau and Agnieszka Jachec-Neale (eds)

This collection of essays comes as the first British Institute of International and Comparative Law publication in the field of international humanitarian law in over a dozen years. It was inspired by the extensive work of Lady Hazel Fox and Mr Michael Meyer as well as the Institute's Discussion Group in the area of international humanitarian law, which resulted in the two books in this field in 1989 and 1993.

Contributors to this volume are Professors Charles Garraway, Leslie C Green, Michael Newton, Michael N Schmitt, Col Kenneth Watkin, Dr

Roberta Arnold and Dr Robert Cryer. The Institute's international humanitarian law team, Dr Susan C Breau and Agnieszka Jachec-Neale, also contributed to this publication.

This new book explores the important and topical subject of 21st century conflict and the implications for international humanitarian law. Areas covered include in-depth analyses of such topical issues as terrorism and complex security situations, legal fault-lines, contemporary warfare, post-conflict management and in particular problems relative to occupation, interrelations between humanitarian law and human rights, and the Security Council use of international humanitarian law. A special part is dedicated to the creation and role of the Iraqi Special Tribunal.

Invalidity and the Law of Treaties

Don Greig

The invalidity of treaties is a topic which is scarcely dealt with in legal literature and much the same is said of the separability of invalid treaty provisions.

Don Greig's *Invalidity and the Law of Treaties* is designed to rectify this neglect. It deals with the consideration of the topics by the International Law Commission and how the Commission failed to pick up the defects in its own recommendations, particularly with regard to the difficulty of applying separability to several of the invalidity provisions. It also includes a discussion of the powers of the Security Council as they might affect the validity of a treaty.

Towards an 'International Legal Community?' The Sovereignty of States and the Sovereignty of International Law

Stephen Tierney and Colin Warbrick (eds)

In this collection of essays, a number of the UK's leading international legal theorists consider whether, in light of contemporary legal, economic and political challenges which the State faces, State sovereignty can continue to be viewed meaningfully as a legal principle, the legitimacy of which is generated merely by the factual condition of a State's existence; or whether in fact the international legal system is now better viewed as a self-generating and increasingly sovereign force, founded upon an incipient 'international legal community' which has in large measure redefined State sovereignty as a lower order principle both contingent upon and attenuated by the normative authority inherent in this nascent 'community'. Can we now speak of international law as an embryonic 'quasi-constitutional' system, generated by an international legal community? If so, has this community, although finding its historical origins in the aggregated will of states, assumed a new and immanently-generated legitimacy which is no longer dependent upon state consent for its validity and authority?

The book brings together scholars from the ILA (British Branch) Committee on Theory and International Law and is the result of ongoing work since 2002 involving seminars and conferences at Edinburgh University; Corpus Christi College, Oxford; and LSE. Contributors to the volume include: Colin Warbrick; Stephen Tierney; Patrick Capps; Amanda Perreau-Saussine; Samantha Besson; Nicholas Tsagourias; Bill Bowring; Robert McCorquodale.

Independence, Accountability and the Judiciary

Guy Canivet, Mads Andenas and Duncan Fairgrieve (eds)

This new book explores the important and topical subject of judicial independence and judicial accountability. The tension between judicial independence and accountability leads to frequent controversy and even constitutional crises. Judicial independence and accountability are live issues in most countries. Modern constitutions (and international treaties establishing international courts) will have provisions about the independence of courts and judges. International law and principles are becoming increasingly important sources for the application of the independence principle. The different national solutions, and also those found for international courts, vary considerably. Presently, anti-terrorist measures adopted by national executives and legislatures continue to test judicial independence. The constitutional bases for judicial review, and on several levels, the court systems too, are in a process of change.

This book meets the need for comparative law material and analysis. Contributions from distinguished practitioners and academics place judicial independence and accountability within a comparative law perspective, showing how legal systems across the world have adapted to recent developments in this field.

Representational Fairness in WTO Rule-Making: Negotiating, Implementing and Disputing the TRIPS Pharmaceutical-Related Provisions

Mohamed Omar Gad

This book examines representational fairness in WTO rule-making. The context of examination is the pharmaceutical-related provisions of the TRIPS Agreement and the interests of developing countries and pharmaceutical multinational enterprises therein. The book analyses the negotiation and implementation periods of the specified TRIPS provisions and the legal disputes that arose, covering the period from the mid-1980s, until the adoption of the Doha Declaration on the TRIPS Agreement and Public Health in November 2001.

An imbalance reflected in the negotiated text in favour of pharmaceutical MNEs' interests during the negotiation process is characterized as 'top-down' rule-making. Reacting to this, developing countries exerted pressure from the 'bottom up' hindering the implementation of these TRIPS provisions. This retorting action, while instilling a degree of balance, congests the TRIPS regime and the larger WTO system with additional dispute proceedings leading to strains in North–South relations. The volume concludes with selective suggestions focusing on the rule making process of the WTO and proposes measures to reduce the likelihood of a deficiency in representational fairness occurring in future negotiations.

Corporate Governance Post-Enron: Comparative and International Perspectives

Joseph J Norton, Jonathan Rickford and Jan Kleineman (eds)

No sooner than the Enron scandal (and other major US corporate failures unfolded) it became apparent the sundry issues of corporate governance that were being brought into question and deliberation were not simply issues peculiar to the US corporate governance context (which are covered in detail in this volume by leading US experts), but were of major concern also throughout Western Europe (aspects which are governed by UK, Italian, French and Scandinavian experts and which touch upon European scandals such as Parmalat). In fact, the corporate governance issues of the Enron débâcle are of a broader 'global concern', where the experiences of developing, emerging and transitioning economies present their own special perspectives and lessons to be learned (here experts from Russia and East Asia make significant contributions). In addition, the increasing interconnection of law and accounting rears its head as being of core importance—another topic that is discussed in detail throughout this volume. Further, special types of corporations (eg regulated financial institutions) and transactions (eg mergers and acquisitions) generate their own additional issues: these are also covered within this book.

This publication, comprised of 21 chapters prepared by leading experts from around the world, contributes constructively to the current ongoing comparative and international discussions and debates concerning the appropriate subjects, policies, and rules for modern corporate governance system(s)—as viewed in multifaceted and multi-layered context of true global dimensions. This volume represents the collaborative efforts of the British Institute of International and Comparative Law, the Centre for Commercial Law Studies (Queen Mary, London), the Stockholm Center for Commercial Law (Stockholm University Law Faculty), and the SMU Dedman School of Law and its Institute of International Banking and Finance; and comes as the latest addition to the Studies Series in International, Financial and Technology Law, published in collaboration

with the SMU International Law Review Association and the SMU-London Forum Initiative.

European Banking Law: Policy and Programme Construction

George Alexander Walker

This book is concerned with the nature and content of the underlying policy that has been developed within Europe in the banking and financial law area. While banking and financial markets constitute essential commercial sectors within Europe in their own right as well as provide a number of fundamental support services within any national economy, this is an area that has been given little dedicated attention until now. Only recently, have the importance of financial markets and financial integration within Europe (and elsewhere) been properly and fully realized. This publication attempts to understand the origin, evolution and legal validity of the core policy components involved in securing this integration within Europe and explore the operational effectiveness and value of the final financial programme constructed. This is a seminal work in the area of cross-border and regional banking and financial integration.

Antarctica: Legal and Environmental Challenges for the Future

Gillian Triggs and Anna Riddell (eds)

Since its inception almost 50 years ago, the Antarctic Treaty System has evolved to provide a stable and remarkably effective regime for management of the coldest, driest and windiest continent on earth. New challenges to this legal regime are now posed by contemporary problems such as climate change, tourism, and fishing and whaling in the Southern Ocean. For State Parties to the web of treaties that make up the Antarctic system of governance, the 21st century brings new demands for environmental protection while ensuring reasonable access for scientists and tourists alike. The papers in this collection were presented at a conference organized by the British Institute of International and Comparative Law and the United Kingdom's Foreign and Commonwealth Office to coincide with the Twenty-Ninth Meeting of the Antarctic Treaty Consultative Parties held in Edinburgh in June 2006. The authors, experienced Antarctic 'watchers', discuss their views on:

- 'Illegal, unreported and unregulated' fishing
- Vessel-based pollution
- Navigation through ice-covered waters
- Antarctic Treaty Secretariat
- Liability of operators and their States for environmental damage
- Tourism

Included with these scholarly papers are all the international agreements that make up the Antarctic Treaty System along with the Measures, Decisions and Resolutions of the Twenty-Ninth Consultative Party Meeting and the Edinburgh Declaration supporting the scientific research of the forthcoming International Polar Year starting in March 2007.

The collection provides an accessible analysis of the legal and environmental issues for Antarctica in the first decade of the 21st century for government officials and advisors, scholars, students, legal practitioners and scientists.

Current Competition Law Volume V

Philip Marsden, Michael Hutchings OBE and Peter Whelan (eds)

This book is a collection of papers and speeches given at the following conferences of the British Institute's competition programme 2005–2006:

- the annual Merger Control Conference (November 2005);
- a conference on the Reform of Article 82 (February 2006);
- the annual Competition Litigation Conference (February 2006); and
- the annual two-day Trans-Atlantic Antitrust Dialogue (July 2006).

Research papers written by the British Institute's Competition Law Forum on private actions, reform of Article 82, and consumer detriment are also included.

Areas covered include in-depth analyses of such topical issues as cartels, pricing practices and mergers, and provide comparative perspectives from European and North American experts, as well as important statements of policy by competition officials.

Forthcoming Titles

The Influence of the French Civil Code on the Common Law and Beyond

Duncan Fairgrieve (ed)

On the occasion of the recent bicentenary of the French Civil Code in 2004, this book reassesses the influence of this essential element of European private law. Contributions by distinguished jurists from the judiciary and academia examine the current role of the Civil Code within the French system, as well as its impact beyond the borders of France in other countries in Europe and beyond. Particular examination is made of the influence of the Napoleonic Code within Common Law countries. Authoritative contributions in both English and French offer theoretical and practical perspectives from both common law and civil law jurisdictions.

Investment Treaty Law: Current Issues II Nationality and Investment Treaty Claims and Fair and Equitable Treatment in Investment Treaty Law

Federico Ortino, Lahra Liberti, Audley Sheppard and Hugo Warner (eds)

In 2005, as part of its research activities in the field of investment treaty law and arbitration, the Investment Treaty Forum at the British Institute of International and Comparative Law organized two very successful public conferences in London addressing the issues of 'Nationality and Investment Treaty Claims' and 'Fair and Equitable Treatment in Investment Treaty Law'.

The first conference addressed a central issue in international law. Nationality sits at the heart of the debate over the rights and participation of private parties in international relations. In international investment law, nationality constitutes one of the central criteria defining the scope of application of international investment agreements such as the ICSID Convention or the several thousands bilateral investment treaties (BITs) and free trade agreements (FTAs). It is a very complex and sensitive topic as the debate following the 1970 International Court of Justice decision in *Barcelona Traction* amply demonstrates. Topics addressed at the conference include the issue of nationality of physical and legal persons, the requirements for substantive and continuous nationality, as well as the issue of nationality in derivative actions and indirect claims.

The second conference dealt with potentially the most important and elusive obligation imposed on States by international investment treaties: the fair and equitable treatment standard. The elements that are usually cited by the case law and by legal scholars in the attempt to describe the meaning of the fair and equitable treatment standard include very broad concepts that are open to differing interpretations depending fundamentally on the perceived objectives of the international investment system. Among the topics addressed at the conference were the application of the fair and equitable treatment standard in customary international law and in investment treaty practice; equivalent standards under domestic administrative law; the relationship between the fair and equitable standard and expropriation; and the relevance of the conduct of the investor in determining a breach of the fair and equitable treatment standard.

The present publication records the presentations given by several very distinguished experts in the field as well as the ensuing debate on these interesting and complex topics. The Investment Treaty Forum will continue to explore these topics and the underlying issues through its discussions and research.

WTO Law and Process: Proceedings of the 2005 and 2006 Annual WTO Conferences

Federico Ortino and Sergey Ripinsky (eds)

Each year in May, leading academics, national and international policy-makers, judges, legal practitioners and NGO representatives gather in London to discuss topical issues of the world trading system. London's Annual WTO conference, organized jointly by the British Institute of International and Comparative Law and the Institute of International Economic Law at Georgetown University Law Center, has grown into the most important annual event of its kind in the field.

This book collects the presentations and discussions at the last two Annual WTO Conferences in 2005 and 2006. Each conference addressed a broad range of topics relating to the WTO dispute settlement system (such as treaty interpretation, the Appellate Body's role in public international law, the relevance of non-trade interests and values, challenges of compliance, the principle of judicial economy) as well as broader institutional and constitutional issues facing the WTO (such as the impact of WTO disputes on the Doha negotiations, the relationship between trade and investment disputes and the role of the WTO in regulatory convergence).

This publication seeks to preserve the abundance of insights and ideas that were shared by very distinguished experts in the field as well as recording the ensuing debate on these interesting and complex topics.

**National Treatment and China's Post-WTO Banking Laws:
Restructuring the Banking Law System of the People's
Republic of China**

Wei Wang

The benchmark of analysis of this book on China's banking laws is relevant WTO rules and China's specific commitments relating to national treatment in the WTO. A top priority for China is to annul or revise those banking laws or provisions that accord less favourable treatment to foreign banks than to domestic banks.

The thesis of this publication is that China should restructure its existing foreign banking laws framework so as to be consistent with national treatment obligations provided by GATS/WTO rules and China's commitments under the GATS/WTO. For this purpose, the book proposes the coordination of regulation of domestic banks and foreign banks, in lieu of the current *de facto* dual banking law system. It argues that some of the special provisions for foreign banks in current regulations and rules must remain, and may be gradually upgraded to 'law' level by incorporating them into special chapters of the general banking laws, rather than by forming a separate, all-inclusive foreign banking law. Meanwhile, China's banking laws should accord national treatment to the banks from Hong Kong, Macao, or other regions/countries having FTAs with China under the regional trade framework, which should coexist and coordinate with the national treatment obligations under the WTO.

NGO Involvement in International Organizations: A Legal Analysis

Sergey Ripinsky and Peter Van den Bossche

This book deals with arrangements for the involvement of NGOs in the activities of international organizations. In response to a need for maintaining the balance between the growing influence of NGOs in international decision-making and the adequate formal mechanisms for their involvement in these processes, the book examines and compares rules and practices existing in this area in a number of international institutions.

The analysis focuses in particular on the legal basis for NGO involvement, forms of involvement, criteria and procedures for NGO accreditation with international organizations, and rules on subsequent monitoring of accredited NGOs. International institutions that are covered include the United Nations (UN), the United Nations Conference for Trade and Development (UNCTAD), the International Labour Organization (ILO), the World Intellectual Property Organization (WIPO), the World Health Organization (WHO), the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP), the World

Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO). The study is based on primary and secondary rules and other documents of the international organizations concerned and is complemented by interviews with relevant officials. The final chapter provides a comparative analysis of the examined systems.

A systematic compilation of relevant information, the book will serve as a valuable tool for NGOs that wish to learn about opportunities for engagement with prominent international organizations. The study can also be helpful in assessing relative effectiveness of different modalities for engagement with NGOs and in considering improvements to the relevant systems.

The Age of Rebuilding: Features of the New Italian Law

Guido Alpa

International Legal Limits on Rendition

Silvia Borelli

International Law Careers Guide

Chris Waters

International Child Law

Ursula Kelly

Multilateral Environmental Agreements and Public International Law

Duncan French and Craig Barker

Conferences, Lectures and Other Events

Events Manager: Jane Nicholson-Biss
Events Coordinator: Jacky Rabbolini

Friday 16 March 2007	Nuclear Weapons in International Law and Politics
Wednesday 14 March 2007	CLF Meeting: Buyer Power Regulation and Consumer Protection for Healthcare Products— Are We Being Safe and Effective?'
Tuesday 13 March 2007	
Saturday 10 March 2007	Advocates for International Development Training Session
Thursday 8 March 2007	Maritime Boundaries in the Gulf of Guinea: Latest developments and Implementation of the ICJ <i>Cameroon/Nigeria</i> Judgment
Wednesday 7 March 2007	Elements of Crimes in the Rome Statute of the International Criminal Court
Tuesday 27 February 2007	Stock Exchange Mergers
Friday 2 February 2007	International Cartels—Comparative Perspectives on Practice, Procedure and Substance
Wednesday 31 January 2007	The Tenth Annual Review of the Arbitration Act Gala Dinner
Wednesday 31 January 2007	The Tenth Annual Review of the Arbitration Act Celebrating a Decade of Jurisprudence 1997–2007
Wednesday 24 January 2007	Energy Investment in Russia: What Role for the Energy Charter Treaty?
Monday 22 January 2007	The Future of International Patent Litigation in Europe
Monday 22 January 2007	Jurisdiction in IP Disputes
Thursday 18 January 2007	Freedom to Manifest One's Religion: What Limits Can Be

Monday 15 January 2007	Imposed on the Wearing of the Islamic Veil or Christian cross? Non-Justiciability: Reappraisal of Buttes Gas in the Light of Recent Decisions
Saturday 13 January 2007	Advocates for International Development Training Session
Monday 18 December 2006	Civil Remedies for Torture in the UK Courts: <i>Jones v Saudi Arabia</i>
Tuesday 12 December 2006	Cross Border Abuse: Investigations and Protection?
Monday 11 December 2006	Annual Grotius Lecture: The ICJ in the Twenty-First Century—What Lies Ahead?
Wednesday 6 December 2006	CLF Meeting: Competition Issues in the Media Sector
Tuesday 5 December 2006	Reviewing the Review: The European Commission's Third Review of the Product Liability Directive
Monday 27 November 2006	Nuclear Weapons, Energy and the Environment—The 10th Anniversary of the ICJ's Advisory Opinion on Nuclear Weapons
Friday 24 November 2006	The 5th Annual Merger Conference
Wednesday 22 November 2006	Treaty Invalidity and the Powers of the Security Council
Tuesday 21 November 2006	Substance and Procedure in the Law Applicable to Torts—<i>Harding v Wealands</i> and the Rome II Regulation
Monday 20 November 2006	Finnish EU-Presidency Lecture
Wednesday 15 November 2006	The Arbitration Act 1996 10 Years On: What the Users Say
Wednesday 8 November 2006	Annual Joint Symposium between the British Institute of International and Comparative Law and Competition Law Association: Competition Law Developments in Member States
Tuesday 7 November 2006	The ILC's New Response to the Fragmentation of International Law
Monday 6 November 2006	30th Annual FA Mann Lecture: Collective Security and Non-

Wednesday 4 November 2006	Aggression: The Contemporary State of the Law
Monday 30 October 2006	Advocates for International Development Training Session
Tuesday 24 October 2006	Recovering Stolen State Assets and the Proceeds of Grand Corruption
Wednesday 18 October 2006	The Future of Private International Law in England and Wales
Thursday 12 October 2006	CLF Meeting: Market Investigations
Wednesday 11 October 2006	How is the Product Safety Regime Working in Practice?
Tuesday 10 October 2006	Conceptual and Empirical Issues in the Analysis of Local Competition: Boots/Alliance Unichem and Other Recent Mergers
Monday 4 October 2006	Regulation Forum Meeting
Friday 8 September 2006	Advocates for International Development Training Session
Thursday 13 July 2006	7th Investment Treaty Forum
Thursday 6 July 2006	Public Conference: Procedural Aspects of Investment Treaty Arbitration
Thursday 6–7 July 2006	The 2006 Amendments to the ICSID Arbitration Rules
Monday 26 June 2006	Sixth Annual Trans-Atlantic Dialogue Gala Dinner
Saturday 24 June 2006	The Sixth Annual Trans-Atlantic Antitrust Dialogue
Wednesday 21 June 2006	The Cross-Border Use of Public Documents: European Law Programme Experts' Meeting
Monday 19 June 2006	45th Leiden–London Meeting: Legal Aspects of EU–US Relations—Cooperation and Conflict of Interests
Friday 16 June 2006	Competitiveness versus Competition
	The Internationalization of Public Law: Insidious, Unavoidable, Beneficial?
	Annual Conference

Monday 12 June 2006	Arbitrating Competition Law Issues: A European and US Perspective
Saturday 10 June 2006	The Antarctic Treaty System: Legal and Environmental Issues
Monday 5 June 2006	<i>Barker v Corus</i>—The Emergence of a New Tort?
Thursday 1–2 June 2006	Testing the Boundaries of International Humanitarian Law
Wednesday 31 May 2006	The Law on Secured Transactions: The Need for Reform
Tuesday 23 May 2006	Sixth WTO Conference Dinner
Tuesday 23–24 May 2006	Sixth Annual WTO Conference
Wednesday 23 May 2006	GATS and Financial Services Seminar
Friday 12 May 2006	The Future For Takeovers in the EU—Implementation of the Takeover Directive
Thursday 11 May 2006	Seminar with the MHRA and Professor Jane Stapleton: ‘Drug Induced Injury—Risk and Causation’
Tuesday 9 May 2006	Polemics and Persuasion—the Use of International Law by NGOs
Friday 5 May 2006	Sixth Investment Treaty Forum Public Conference: Expropriation in Investment Treaty Law
Thursday 4 May 2006	Digital Evidence Research Programme: Cost Effective Dispute Resolution in the Electronic Era
Thursday 27 April 2006	Chalfen Memorial Lecture—‘Transnational Corporations and The UN: The Evolution of the International Policy and Legal Debate Over 30 Years’
Wednesday 26 April 2006	The ‘Rome I’ Proposal: The Law Applicable to Contractual Obligations
Tuesday 25 April 2006	The Future of Consumer Law
Wednesday 29 March 2006	‘This House Has Seen the Collapse of Principle in the Tort of Negligence’

Friday 24 March 2006	Regulatory and Corporate Reforms in Italy: How Will They Affect Europe?
Tuesday 21 March 2006	International Law in the European Court of Human Rights
Monday 20 March 2006	A Written Constitution for the United Kingdom?
Wednesday 15 March 2006	Competition Law Forum Meeting
Saturday 4 March 2006	Institut de Droit International Meeting
Thursday 2 March 2006	'Recent Developments concerning Group Actions'—Worldwide Developments in the Area of Class Actions, with a Particular Focus on Recent US Developments. Plaintiff Law Firm
Tuesday 28 February 2006	International Law in the European Court of Justice
Friday 24 February 2006	Reform of Article 82
Wednesday 15 February 2006	British Institute of International and Comparative Law and Chatham House Present: 'Counter-Terrorism and Compliance with Human Rights'
Thursday 9 February 2006	India: An Update on Data Protection Legislation
Friday 3 February 2006	Competition Litigation in the EU: Where Do We stand?
Tuesday 31 January 2006	Ninth Annual Review of the Arbitration Act
Thursday 26 January 2006	Which Forum? Choice of Forum in Product Liability Litigation.
Tuesday 24 January 2006	The Role of Domestic Courts in the Implementation of International Responsibility
Friday 20 January 2006	GE/Honeywell Post-Mortem Practitioner Workshop
Tuesday 17 January 2006	Interpretation under the Vienna Convention on the Law of Treaties—25 Years on.

For a list of Forum events please see individual forum pages.

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Company Registration No. 615025
Charity Registration No. 209425

**The British Institute of
International and
Comparative Law**

**Annual Report and
Financial Statements
31 December 2006**

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

**SUMMARIZED STATEMENT OF FINANCIAL ACTIVITIES
YEAR ENDED 31 DECEMBER 2006**

	Unrestricted Funds £	Restricted Funds £	Endowment Funds £	Total 2006 £	Total 2005 £
INCOMING RESOURCES					
Generated funds:					
Voluntary Income					
Donations	56,921	–	–	56,921	62,070
Activities of generating funds:					
Rental income	13,776	–	–	13,776	12,250
Investment and other income	33,475	–	–	33,475	24,491
Incoming resources from charitable activities:					
Grants	346,360	–	–	346,360	368,275
Membership	345,599	–	–	345,599	452,110
Publications and subscriptions	352,860	–	–	352,860	233,491
Conferences and seminars	227,167	–	–	227,167	198,206
European and Comparative Law research programme	66,996	107,049	–	174,045	121,720
International Law research programme	34,500	264,123	–	298,623	232,521
Law and Development research programme	17,068	–	–	17,068	132,213
Total incoming resources	1,494,722	371,172	–	1,865,894	1,837,347
RESOURCES EXPENDED					
Costs of generating funds:					
Fundraising costs	21,514	–	–	21,514	13,646
Net incoming resources available for charitable application	1,473,208	371,172	–	1,844,380	1,823,701
Charitable activities by objective:					
Membership	379,743	–	–	379,743	436,869
Publications and subscriptions	253,721	–	–	253,721	213,217
Conferences and seminars	241,994	–	–	241,994	251,742
European and Comparative Law research programme	175,809	76,505	–	252,314	213,228
International Law research programme	258,989	95,983	–	354,972	256,832
Law and Development research programme	4,489	–	–	4,489	150,915
	1,314,745	172,488	–	1,487,233	1,528,803
Governance costs:	12,266	–	–	12,266	10,701
Total resources expended	1,327,011	172,488	–	1,499,499	1,539,504
Surplus for the year	146,197	198,684	–	344,881	284,197
Other recognized gains and losses					
Unrealized gains on investments	16,929	–	1,488	18,417	25,553
Net movement in funds	163,126	198,684	1,488	363,298	309,750
Reconciliation of funds					
Balances brought forward	329,120	97,416	394,854	821,390	511,640
Fund balance carried forward	492,246	296,100	396,342	1,184,688	821,390

CONTINUING OPERATIONS

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

TOTAL RECOGNIZED GAINS AND LOSSES

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

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

**SUMMARIZED BALANCE SHEET
AS AT 31 DECEMBER 2006**

FIXED ASSETS	£	2006 £	2005 £
Tangible assets	99,851		76,469
Investments	264,451		240,783
		364,302	317,252
CURRENT ASSETS			
Stocks	45,231		53,249
Debtors	135,330		170,770
Cash at bank and in hand	981,696		522,828
		1,162,257	746,847
CREDITORS: amounts falling due within one year	(341,871)		(242,709)
NET CURRENT ASSETS		820,386	504,138
TOTAL ASSETS LESS CURRENT LIABILITIES		1,184,688	821,390
ENDOWMENT FUNDS			
Sunley – Percy Rugg Endowment Fund	137,405		136,661
Sunley – Sebag Shaw Endowment Fund	137,405		136,661
Barnett Shine Charitable Foundation Fund	121,532		121,532
		396,342	394,854
RESTRICTED FUNDS		296,100	97,416
UNRESTRICTED FUNDS			
General Fund	392,395		252,651
Fixed Assets Fund	99,851		76,469
		492,246	329,120
		1,184,688	821,390

These summarized 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 2006 together with its financial position as at 31 December 2006. 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.