

Director's Annual Report 2009

It has been a year of significant events that have had global impacts: from military operations to climate change; and from financial crises to the Lisbon Treaty. The Institute continues to respond energetically where these events affect international and comparative legal developments, especially on public international law, private international law, comparative law, investment law, competition law and European law.

Our research in 2009 has covered a range of topics. These have included research on Armed Conflicts, Peacekeeping and Transitional Justice; Criminal Law and the Rights of the Child in Iran and other Islamic States; Comparative Alternative Dispute Resolution; Comparative Approaches to 'Public Authorities' under the European Convention on Human Rights; Cross-Border Disaster Relief in the European Union; 'Hub and Spoke' Competition Issues in the Retail Industry; and Review of a Proposed European Convention on Public Health and Drugs. I am confident of the high quality, and breadth and depth of this research, which is always based on strong conceptual foundations and then applied to practical situations. It often crosses traditional boundaries of law, so as to integrate private and public international law, and engage with national, European and comparative law. In many instances our conclusions provide examples of best practice, and recommendations of policy and legal actions.

We have disseminated our research widely, including publishing books both independently and based on our research. For example, the book *Evidence before the International Court of Justice* was written by our Research Fellows Anna Riddell and Brendan Plant, and assisted by the commitment of a number of our members, in particular Dame Rosalyn Higgins and Sir Frank Berman. In addition, we continue to publish our journal, the *International and Comparative Law Quarterly*, which, under its excellent Board of Editors, remains globally acknowledged as one of the leading journals in this area.

We have also held a wide range of conferences, seminars, lectures and other events. In fact our efficient events team, with our researchers, organize about 70 events a year, not including various dinners, receptions and other related activities. These have included many activities by our Forums, being the Competition Law Forum, the Investment Treaty Forum and the Product Liability Forum. We completed our very successful 50th anniversary lecture series in 2009. This series was led by each of the

Senior Research Fellows (Duncan Fairgrieve, Norah Gallagher, Philip Marsden and Sarah Williams) and me, and had leading experts speaking, being Tim Cowen, Yves Fortier, Jeroen Kortmann, Mary Robinson, Jane Stapleton and Keir Starmer.

One area where international and comparative law has become increasingly important is in relation to business activity. Accordingly, the Annual Conference of the Institute held in June 2009 dealt with a range of issues of relevance to business. These included cartel enforcement, human rights, damages actions against transnational corporations, development, international crimes, and investment. The keynote address was given by Paul Skinner, former Chair of Rio Tinto, who spoke of the various ways in which business people and lawyers can relate to each other effectively in regard to the many international issues, such as globalisation, that they face. Our next Annual Conference, which will be on Friday 11 June 2010, will focus on energy security issues and the challenges that they create in the international system.

The Institute has been affected by the global financial crisis, particularly as some of its regular and potential funders, sponsors and attendees have been facing their own financial difficulties, which has had an impact on our research projects and events. We are very grateful for those funders and members who remain committed to the Institute, and continue to support us in both financial and practical ways. Both I and the rest of the senior management of the Institute, under the guidance of the Board of Trustees, have worked very hard this year to ensure that our expenditure is controlled and effective, and to generate income. Sadly, this has meant that we have had to make a few redundancies of staff, ceased production of the *Bulletin of International Legal Developments*, and have limited some of our activities. Despite our best endeavours, the Institute made a deficit on its unrestricted funds in 2009, though it has recorded an overall surplus, as it has received some generous donations for particular aspects of its work.

These donations have mainly been for the creation of the Bingham Centre for the Rule of Law and the Arthur Watts Fellowship. While there is a separate report on these innovations in this Annual Review, it is important to note that both developments honour members of the Institute who are preeminent in their fields, whose activities directly move forward the mission of the Institute, and who are, or have been, respected and delightful individuals. In particular, we remain honoured by Lord Bingham taking on the Presidency of the Institute, as well as remaining its Chairman, and thank Lord Goff for his sterling service. It is also important to record the vital work of the Development team, headed by Diane Denny and (during her maternity absence) Rozelyn Bristowe, ably supported by Orsi Deák, who have enabled the Institute to move forward in confidence about these developments. We very much appreciate all these donations and hope that others will be inspired to contribute.

The year 2009 has also seen new members of staff arrive, including Eva Lein, the Herbert Smith Senior Research Fellow in Private International Law (for which we are enormously grateful to Herbert Smith LLP for their support); Dr Farkhanda Zia Mansoor, Research Fellow on the Criminal Law in Iran project; and Rozelyn Bristowe. A few of our staff have left to undertake other activities. We are also grateful for the vital financial support from the Dorset Foundation and Martin Paisner for the work of Institute staff.

We have also had some new Trustees on our Board of Trustees, due to the restriction on the number of consecutive terms that a Trustee can serve. We give sincere thanks to David Anderson, Jeremy Carver, Sir Francis Jacobs, Peter Roth and Sir Michael Wood for all their hard work, insights and support as Trustees. We warmly welcome Sir William Blair (High Court), Susan Bright (Lovells LLP), Paul Lomas (Freshfields Bruckhaus Deringer LLP), Professor Stephen Weatherill (Oxford University) and Dame Juliet Wheldon (former Treasury Solicitor amongst other posts). They join a body of effective and helpful Board of Trustees, who are continuing to work, along with all the Institute staff, to ensure that the Institute's mission is attained.

Indeed, the events worldwide that have relevance for the work of the Institute are also reflected in the number of direct references to international law, and comparisons with other national legal systems, that are increasingly found in national court cases and in the media. These highlight the importance of knowing about international and comparative law, and a need to ensure that the information about international and comparative law is accessible and up-to-date. In all these instances, the role of the Institute is essential. Indeed, the number of areas where the Institute has made an impact on law, on policy and on action is impressive. These range from changes to national legislation and European Commission approaches, to the provision of events that have a public benefit in terms of informing many people about important matters of international and comparative law.

Professor Robert McCorquodale
Institute Director

Institute Forums

Competition Law Forum

Director: Dr Philip Marsden

Research Fellow: Peter Whelan

<http://www.competitionlawforum.org>

Introduction

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

Competition Law Forum Research Initiatives and Projects

'Hub and Spoke' Project

This project involves legal analysis of the treatment of hub and spoke agreements (in particular those in the retail sector) under UK and EU competition law. Particular issues addressed by this project include: what constitutes an agreement; the burden of proof; other evidential requirements; and the ramifications of such an 'offence' within a criminal vs civil regime. The research for this project has been carried out by Peter Whelan under the supervision of Dr Philip Marsden. As a result of this project an article was published in the *European Competition Journal*: P Whelan, 'Trading Negotiations between Retailers and Suppliers: A Fertile Ground for Anti-Competitive Horizontal Information Exchange?' (2009) 5 *European Competition Journal* 3, 823.

The research for this project is ongoing. This project includes the organization of two events focused on the concept of 'hub and spoke' agreements. The first was held on 15 October 2009; the second will be held on 19 April 2010.

Selective Distribution and Online Retail

Traditionally, the competition law rules have not been an insurmountable

obstacle in relation to the conclusion of selective distribution agreements—unless of course they restrict parallel trade. Provided certain criteria have been fulfilled, such agreements, while necessarily restrictive of intra-brand competition, have generally been seen as pro-consumer as they help to reduce the likelihood of free-riding by others on the (required) investment of the retailers subject to the selective distribution system. An extremely important, and relatively recent, phenomenon challenges such traditional thinking: the development of the Internet as a mechanism for purchasing retail goods. In 2009, Marsden and Whelan analysed the effectiveness of EC competition law, as it currently stands, in dealing with selective distribution agreements in the age of online retail. The result of their research was published in 2010 in the *European Competition Law Review*: P Marsden and P Whelan, 'Selective Distribution and EC Competition Law in the Age of Online Retail' (2010) 31 *European Competition Law Review* 1, 36

Consumer Detriment Project

This study of EC and UK competition legislation, soft law and cases aimed to examine whether the objective of the maximisation of consumer welfare is pursued in practice by the competition authorities. This study produced published articles in the *European Competition Law Review* and the *Consumer Policy Review* and also provided the basis for an article in the *Competition Law Journal*. In 2010, this project produced the following publication: P Marsden and P Whelan, 'The "Consumer Welfare" Standard as a Form of Substantive Protection for Consumers under European Competition Law' Chapter 15, in Ezrachi & Bernitz (eds), *Own Labels, Branded Goods and Competition Policy: The Changing Landscape of Retail Competition*, (Oxford University Press, Oxford, 2010)

Examining Trans-Atlantic Divergences

While comments in the US media concerning the interventionist, and perceived anti-business, aspect to EC antitrust and merger law are not uncommon, there is more commonality between the competition laws of these jurisdictions than there is conflict. That is not to say, however, that important differences do not exist. In fact, there are a number of differences concerning not only the substantive application of the competition law rules, but also the procedures employed. An important question that should be considered is whether these substantive and procedural differences are a problem. That is, are they so significant that they amount to a problem that needs to be 'solved'? How do we solve it? Can cooperation help? Is convergence an answer? If so, what rules exactly should converge and to what standard: US, EU, or some other 'best practice'?

And perhaps even more difficult, how does one achieve such convergence in practice? Marsden and Whelan conducted research in order to address these issues. The result of their research was presented in Florence, Italy at the Sedona Conference. This paper will be published in the 2009 edition of the *Sedona Conference Journal*: P Marsden and P Whelan, 'Re-Examining Trans-Atlantic Divergences in Substantive and Procedural Competition Law' (2009) 10 Sedona Conference Journal 23

Competition Law Forum Members

Law Firms

Phil McDonnell, Addleshaw Goddard	Susan Bright, Lovells
Vincent Power, AL Goodbody	Frances Murphy, Mayer Brown Rowe & Maw
John Wotton, Allen & Overy	Brian Sher, Nabarro LLP
Nigel Parr, Ashurst	Mark Jones, Norton Rose
Samantha Mobley, Baker & McKenzie	Riccardo Celli, O'Melveny & Myers LLP
David Harrison, Berwin Leighton Paisner	Alastair Gorrie, Orrick, Herrington & Sutcliffe LLP
Richard Eccles, Bird & Bird	Katherine Holmes, Reed Smith Richards Butler
Alex Noury, Clifford Chance	Chris Bright, Shearman & Sterling LLP
Vincent Smith, Cohen Milstein Sellers & Toll LLP	Elaine Gibson-Bolton, SJ Berwin
George N Addy, Davies Ward Phillips & Vineberg LLP	Philippe Chappatte, Slaughter & May
John Davies, Freshfields Bruckhaus Deringer	Nathalie Jalabert-Doury, Sokolow, Carreras & Associés
Stephen Wisking, Herbert Smith Trevor Soames, Howrey Simon Arnold & White	Margaret Moore, Travers Smith Suyong Kim, WilmerHale
Bernard Amory, Jones Day	Bernadine Adkins, Wragge & Co.
Gavin Robert, Linklaters	

Corporates

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

Economists

Cristina Caffarra, CRAI
Thomas Hoehn,
PricewaterhouseCoopers
Helen Jenkins, OXERA

Adrian Majumdar, RBB Economics
David Squires, Deloitte
Mark Williams, NERA

Barristers

Michael Bowsher QC, Monckton Chambers

Consultants

Peter Carlo Lehrell, FIPRA

Consultative Members

Sir Christopher Bellamy, Linklaters
Prof. Margaret Bloom, Kings College
London

Philip Collins, Office of Fair Trading
Dr John Fingleton, Office of Fair
Trading

RJP Jansen, Netherlands
Competition Authority

Judge Frédéric Jenny, Commercial,
Economic & Financial Law
Chamber, Cour de Cassation

William Kovacic, US Federal Trade
Commission

David Lawsky, Thompson Reuters

Zoltán Nagy, Hungarian Competition
Authority

Peter Oliver, European Commission

Andrej Plahutnik, Republic of
Slovenia Competition Protection
Office

Magistrate Dr Silvio Meli LLD, Malta
Commission for Fair Trading

Sir John Vickers, University of
Oxford

Stephen Walzer, Competition
Commission

Polly Weitzman, Office of
Communications

Competition Law Forum Events

Forum events

10 March 2009

Competition Policy and the Public Interest

Location: Brussels

Speakers: Dirk Hudig, FIPRA, (Chair); Georges Siotis, DG COMP; Nicola Pesaresi, DG COMP; Stephen Ryan, DG MARKT; Nicola Pesaresi, DG COMP; Emmanuelle Maincent, DG ECFIN; Jacques Steenbergen, Director General, Belgian Competition Authority, Belgium; David Spector, Paris School of Economics and MAPP

1 July 2009

Behavioural Economics

Location: London

Speakers: Michael Bowsher QC, Monckton Chambers (Co-Chair); Adrian Majumdar, RBB Economics (Co-Chair); Dr Amelia Fletcher, Office of Fair Trading; Dr Alison Oldale, Competition Commission; Dr Mark Williams, NERA; Professor Maurice Stucke, University of Tennessee, College of Law

30 September 2009

Public Health

Location: London

Speakers: Gavin Robert, Linklaters (Chair); Ann Pope, Office of Fair Trading; Geoff Steadman, Office of Fair Trading; Chris Jenkins, Office of Fair Trading; Phil Hand, Office of Fair Trading; Fod Barnes, Oxera; Andrew Taylor, Cooperation and Competition Panel; Catherine Davies, Cooperation and Competition Panel

29 October 2009

Article 82 and the Courts

Location: London

Speakers: Dr Philip Marsden, BIICL (Chair); Robert O'Donoghue, Brick Court Chambers; Jorge Padilla, LECG; Christian Ahlborn, Linklaters; Vincenzo Denicolò, University of Bologna; Judge Nils Wahl, Court of First Instance; Vivien Rose, Competition Appeal Tribunal

General members' events/ public lectures etc

30 April to
1 May 2009

The Annual Trans-Atlantic Antitrust Dialogue

Location: London

Speakers: Rod Carlton, Freshfields Bruckhaus Deringer LLP; Mark Clough QC, Addleshaw Goddard; Michael Hutchings OBE, Competition Law Forum; Dr Philip Marsden, Competition Law Forum, British Institute of International and Comparative Law; Dr Gunnar Niels, Oxera; Philip Collins, Chairman, Office of Fair Trading; Melanie Aitken, Canadian Competition Bureau; Dr Alexander Birnstiel, Noerr Stiefenhofer; William Blumenthal, Clifford Chance LLP; Dr Lorenzo Coppi, CRA International; Lowri Evans, DG Competition, European Commission; Dr Amelia Fletcher, Office of Fair Trading; Dr John Fingleton, Office of Fair Trading; Bill Kovacic, US Federal Trade Commission; Johannes Luebking, DG Competition, European Commission; Paul Lugard, Philips International B.V.; Ali Nikpay, Office of Fair Trading; Michel Petite, Clifford Chance LLP; Brian Sher, Nabarro LLP; Professor Erika Szyszczak, University of Leicester, Littleton Chambers; Deirdre Trapp, Freshfields Bruckhaus Deringer LLP; Debra Valentine, Rio Tinto

15 October 2009

Vertical Collusion: Hub and Spoke, RPM and Category Management

Location: London

Speakers: Dr Oke Odudu, Cambridge University; Dr Oliver Black, Linklaters LLP; Alan Overd, CRA; Professor Richard Whish, King's College London; Jeremy Scholes, City University London; Dr Ioannis Lianos, University College London; David Stallibrass, Office of Fair Trading; Sean-Paul Brankin, Crowell & Moring; Andrew Trollope QC, 187 Fleet Street; Michael Hutchings OBE, Competition Law Forum

27 October 2009

Antitrust Marathon IV: With Authority

Location: Dublin

Speakers: Philip Marsden, British Institute; Spencer Waller, Loyola University Chicago School of Law; Stanley Wong, Irish Competition

Authority; Melanie Aitken, Canadian Competition Bureau; Bruno Lasserre, Autorité de la concurrence; Giorgio Monti, London School of Economics; Matthew Newman, Bloomberg News; Barry Rodger, Strathclyde University; Vincent Power, AL Goodbody; Edward Janger, Brooklyn Law School; Max Huffman, Indiana University-Indianapolis School of Law; Francisco Marcos, Instituto de Empresa Business School; Maurice Stucke, University of Tennessee College of Law; Cavendish Elithorn, Office of Fair Trading; Isolde Goggin, Ofcom's Advisory Committee for Northern Ireland; Imelda Maher, University College Dublin; Anna Louise Hinds, NUI Galway; Philippa Watson, Essex Court Chambers; Carlos Orci, Basham Ringe y Correa; Kings College London; Paul Gorecki, ESRI; Ann Fitzgerald, National Consumer Agency; Gerald FitzGerald, McCann Fitzgerald; Emily Gibson, Irish Society of European Law; Paolo Palmigiano, ComReg; Bill Prasifka, Irish Competition Authority; Declan Walsh, University College Cork; Moore McDowell, University College Dublin; Patrick Massey, Compecon; Gerald Fitzgerald, McCann Fitzgerald; Emily Gibson, Irish Society of European Law

26 November 2009

8th Annual Merger Conference

Location: London

Speakers: Simon Bishop, RBB Economics; Derek Ridyard, RBB Economics; Amelia Fletcher, Office of Fair Trading; Diana Guy, Competition Commission; Antonia Horrocks, Shearman & Sterling LLP; Alistair Lindsay, Monckton Chambers; Johannes Luebking, DG-Competition, European Commission; Frank Maier-Rigaud, European Commission; Miguel de la Mano, Chief Economist's Office, DG-Competition, European Commission; Philip Marsden, British Institute of International and Comparative Law; Alison Oldale, Competition Commission; Kay Parplies, DG Trade, European Commission; Matthew Readings, Shearman & Sterling LLP; Nick Scola, Office of Fair Trading

Investment Treaty Forum

Director: Norah Gallagher

Research Fellow: Dr Sergey Ripinsky (until July 2009)

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

The Investment Treaty Forum (ITF) is an important enterprise ensuring ongoing debate between lawyers, corporations, academics, arbitrators and government officials on the impact of the rapidly changing legal framework relating to foreign investment. The Forum holds two annual conferences on contemporary topics of interest open to the public.

Forum Events

As 2009 was the 50th anniversary of the signing of what is widely regarded as the first modern form Bilateral Investment Treaty (Germany/Pakistan 1959), the ITF in May 2009 was entirely dedicated to the form and content of BITs. The Conference *Investment Treaties at 50: Host State Perspectives* had almost entirely government officials speaking about investment treaties, significant developments and possible future directions. The second public conference in September 2009 on *Ethics, Issue Conflicts and Arbitrator Challenges* covered the sensitive topic of arbitrator challenges in investment arbitration. Despite the initial concern that there might be a reluctance to take a position on these issues there was a lively debate on what the appropriate standard to challenge should be at ICSID.

In addition, the Forum arranges smaller roundtables for members only to encourage more open discussion on new developments, such as relating to the impact of the Lisbon Treaty on investment. These events are kindly hosted by our members. The Forum membership is growing and we continue to engage government officials interested in ongoing dialogue on developments in this field of international law.

We were also proud to be co-hosts of a conference in Brussels on the Energy Charter Treaty in October 2009 along with the Energy Charter Secretariat, Stockholm Chamber of Commerce, ICC, ICSID and the PCA. The conference on *Energy Dispute Resolution: Investment Protection, Transit and the Energy Charter Treaty* brought together opposing counsel in many the ECT claims which was a novel approach that worked very well largely due to the co-operation of the participants. It also generated very interesting discussions on how the Treaty is being applied by tribunals in the growing jurisprudence. It will result in a publication of the papers by Juris Publications later this year. The ITF will continue to

expand its events programme and will also co-host another event outside London in Paris with the ICC next July 2010.

Annual WTO Conference

The Institute co-hosts the Annual WTO Conference with Georgetown University and the Society for International Economic Law. Next year in May 2010 will be the 10th Anniversary of this conference. Professor John H Jackson and Professor Jane Bradley work closely with Norah Gallagher and Dr Andrew Lang on the programme each year to try to ensure that it covers the most recent and interesting developments at the WTO for the previous year. The Tenth Anniversary Conference will look at what the major developments have been at the WTO over the past ten years. This event is kindly sponsored by Sidley Austin LLP and White & Case LLP.

Annual Review of the Arbitration Act 1996

The Institute has hosted the Annual Review of the Arbitration Act each year since the Act came into force in January 1997. The Thirteenth Annual Review of the Arbitration Act 1996 was held on 8 February 2010 and considered whether it was time to review its provisions. Stewart Shackleton, who has been involved with the Annual Review since the beginning, produced a programme that was both interesting and provocative covering enforcement issues, both awards and arbitration agreements, as well as a panel proposing improvements to the Arbitration Act 1996. The Fourteenth Annual Review will take place in February 2011.

Investment Treaty Forum Membership

Law Firms

Baker & McKenzie LLP	Lovells LLP
Baker Botts LLP	Mannheimer Swartling
Clifford Chance LLP	Mayer Brown Rowe & Maw LLP
Debevoise & Plimpton LLP	Ogilvy Renault LLP
Denton Wilde Sapte LLP	Salans LLP
DLA Piper Rudnick Gray Cary LLP	Shearman & Sterling LLP
Eversheds LLP	Sidley Austin LLP
Freshfields Bruckhaus Deringer LLP	Simmons & Simmons
Fulbright & Jaworski LLP	Skadden Arps Slate Meagher & Flom LLP
Herbert Smith LLP	Weil, Gotshal & Manges LLP
King & Spalding LLP	White & Case LLP
Latham & Watkins LLP	WilmerHale LLP
Lalive Avocats	
Linklaters LLP	

Individuals

Andrew Berkeley Arbitrator	Professor Gabrielle Kaufmann-Kohler Lévy Kaufmann-Kohler
Sir Franklin Berman QC Essex Court Chambers	Professor Emeritus Maurice Mendelson QC Blackstone Chambers
Juliet Blanch McDermott Will & Emery	Andy Moody McDermott Will & Emery
Domenico Di Pietro Chiomenti, Rome	Sophie Nappert 3 Verulam Buildings
Raéd M. Fathallah, Bredin Prat	Sergey Ripinsky
Luis Gonzales Garcia, Matrix Chambers	Ana Stanic E&A Law, London
Professor Hans Van Houtte Katholieke Universiteit Leuven, Belgium	Christopher Thomas QC Thomas and Partners
Mark Kantor Arbitrator/Mediator; Adjunct Professor, Georgetown University Law Center	VV Veeder QC Essex Court Chambers
	Todd Grierson Weiler NAFTAclaims.com

Consultative Forum Members Organisations

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

Individuals

Graham Coop Energy Charter Secretariat	Dr Federico Ortino School of Law, King's College London
Professor James Crawford SC University of Cambridge and Matrix Chambers	Antonio Parra Visiting Professor, University College London and former Deputy Secretary General, ICSID
Judge Christopher Greenwood QC International Court of Justice	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	Judge Stephen Schwebel
Professor Loukas Mistelis Centre for Commercial Law Studies, Queen Mary University of London	Professor M Sornarajah University of Singapore
Professor Peter Muchlinski School of Oriental and African Studies,	Adrian Winstanley London Court of International Arbitration

Honorary Member

The Rt Hon Lord Bingham of Cornhill KG

Investment Treaty Forum Advisory Board

Nigel Blackaby Freshfields
Bruckhaus Deringer, Paris
Professor A Vaughan Lowe All
Souls College Oxford and Essex
Court Chambers
Loretta Malintoppi Eversheds, Paris

John Savage Shearman & Sterling,
Singapore
Audley Sheppard Clifford Chance
LLP, London
Robert Volterra Latham & Watkins
LLP, London

Product Liability Forum

Director: Duncan Fairgrieve

Research Fellow: Faria Medjouba

<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.

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

Product Liability Research

The status of the Product Liability Forum as a leader in the product liability and safety area has been recognized by the European Commission which requested our participation in the review process of the Product Liability Directive. We also produce, together with our partner Linex Legal, the Product Liability Alerter, a fortnightly 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.

The Product Liability Alerter, a co-operation between the PLF and Linex Legal, is proving a big success. Every two weeks this product liability devoted email service reaches over 1500 recipients around the globe, including law firms in China, South Korea, Japan, Australia and South Africa. The idea behind the alerter is a merger of the practice and academic legal worlds with a strong international presence. Apart from providing our members with valuable resources and legal updates, the alerter also fulfills an important publicity function for the Forum and its members.

Product Liability Database

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

Forum Events

Over the past year, the following seminars have been organized under the aegis of the Forum, bringing together practitioners, academics and policymakers to examine the practical application of policy and developments in product liability and safety law. This year, we have welcomed many guest speakers from the UK and abroad, including distinguished speakers from the public sector (**Professor Sir Alasdair Breckenridge CBE**, Chairman, Medicine and Health Regulatory Agency; **Roy Alder**, past Director of Policy at the Medicines and Healthcare products Agency; **Nathalie Rampal Olmedo**, European Medicines Agency, **Professor Kent Woods**, Chief Executive, Medicine and Health Regulatory Agency, **Dame Deirdre Hutton**, Chair of the Food Standards Agency), academia (**Professor Martin Chalkley**, University of Dundee.; **Professor Geraint Howells**, Lancaster University, **Professor Mark Mildred**, Nottingham Law School, **Professor Munir Pirmohamed**, University of Liverpool), members of the judiciary (**The Hon. Mr Justice Underhill**, **Konrad Schiemann**, Judge at the European Court of Justice), as well as distinguished foreign colleagues (**Bernard Stirn**, Président of the Section du Contentieux, French Conseil d'Etat, **Fabienne Bartoli**, Deputy Director General, Agence française de sécurité sanitaire des produits de santé (Afssaps); **Stijn Franken**, Nauta Dutilh, and **Dr Ianika Tzankova**, Nauta Dutilh/Tilburg University).

6 February 2009: **The Future of Mass Tort Claims**

- **Donald F. Zimmer**, Jr, King & Spalding
- **Professor Ina Ebert**, Munich Re
- **Rod Freeman** and **Marion Palmer**, Lovells

With comments from:

- **Marcus Pilgerstorfer**, Old Square Chambers
- **Dr Duncan Fairgrieve**, British Institute of International and Comparative Law, 1 Crown Office Row

28 April 2009: **Recent developments in health care product liability – The impact of *Wyeth v Levine***

Chair:

- **Professor Sir Alasdair Breckenridge CBE**, Chairman, Medicine and Health Regulatory Agency (MHRA)

Speakers:

- **Tripp Haston**, Bradley Arant Boult Cummings LLP
- **Andrew Baum**, Morgan Stanley
- **Professor Dr Ina Ebert**, Munich Re
- **Stefan Lenze**, Freshfields Bruckhaus Deringer LLP
- **Professor Mark Mildred**, Nottingham Law School

This seminar considered the latest developments in the area of healthcare product liability in the US and Europe. In the highly significant case of *Wyeth v Levine*, the US Supreme Court earlier this month held that a drug manufacturer may be liable for injuries caused by medicines even if they carry health warnings approved by the US Food and Drug Administration (FDA). A day after the decision, democratic lawmakers in both the House of Representatives and the Senate moved to propose new legislation that would make it easier to bring claims against manufacturers of medical devices. It is expected that these developments will contribute to rendering product liability litigation a continuing, and significant, risk to manufacturers of health care products. The impact of these developments is likely to reach beyond the US market, potentially giving fresh impetus to the pursuit of claims at a time when there has been a significant increase in the number of law suits being filed against pharmaceutical companies in Europe.

1 October 2009: **CLAF: Towards a self-funding scheme for civil litigation?**

Chair

- **Mr Justice Underhill**

Speakers

- **Guy Mansfield QC**,
- **Professor Mark Mildred**, Nottingham Law School
- **Professor Martin Chalkley**, University of Dundee.

A Group led by former Bar Chairman Guy Mansfield QC (and commissioned by the Bar Council's Policy Advisory Group) has recently considered the adoption of a Contingent Legal Aid Fund (CLAF), whereby a pooled fund would be created which would be financed by sums derived

from successful civil litigation. The fund would then fund further litigation. This seminar will examine and evaluate the concept, and compare the similar schemes which exist in other commonwealth countries.

Members

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

Individual Members

Claire Andrews
Tripp Haston
Irina Bernstein

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.

On 13 March 2009, the Institute organized a very successful seminar on the topic of **EC Public Procurement Law: Damages as an effective remedy?** We were fortunate enough to have high-profile pan-European speakers including: **Konrad Schiemann**, Judge at the European Court of Justice; **Bernard Stirn**, Président of the Section du Contentieux, French Conseil d'Etat; **Professor Steen Treumer** from Copenhagen Business School, **Professor Dr. iur. Martin Burgi** from Ruhr-Universität Bochum, and **Professor Robert Caranta** from Turin University, which allowed for very interactive discussions & questions from an audience of over 120 delegates. Topics covered included a review of the latest case law across Europe, views from the European Commission, conditions for claims, quantum, causation and loss of a chance.

On 11 June 2009, we ran in conjunction with Henderson Chambers and Freshfields the **2009 Food and Drink Law Conference**. Speakers included: **Dame Deirdre Hutton**, Chair of the Food Standards Agency, **Dr David Atkins**, Head of the Chief Scientist Team at the Food Standards Agency, **David Herman**, Senior Counsel, Grocery Manufacturers Association US, **Edward Mitchell**, Senior Underwriter Product Recall, XL Insurance Company Ltd, **Fiona Anderson**, Managing Director of The Food & Drink Forum. This conference brought together industry

members, lawyers, insurers and regulators to discuss the practice and principles of food and drink law.

This conference focused on how the sector is affected by developments in: consumer information and product labelling regulation; consumer litigation and collective redress; trends in regulatory enforcement; and insurance, recalls and risk management. The papers for that event are available on the Institute website exclusively for members.

On 30 June 2009, we ran a successful conference on the topic of Credit Crunch Litigation: Offshore, Domestic and International Perspectives. This brought together bankers, litigators & academics from around the world to examine ongoing domestic, offshore and international litigation. The papers for that event are available on the Biicl website exclusively for members. Speakers included: **Michael Swainston QC**, Brick Court Chambers; **Professor Kern Alexander**, University of Cambridge; **Richard Andrews**, KPMG LLP; **Javier Cremades**, Cremades & Calvo-Sotelo, Madrid, Chairman of the Global Alliance of Law Firms: Madoff Case; **Tom Custance**, Fox Williams LLP; **Richard East**, Quinn Emanuel Urquhart Oliver & Hedges LLP; **Dr Duncan Fairgrieve**, British Institute of International and Comparative Law; **Michael J Fay**, Ogier; **Gaetano Iorio Fiorelli**, Baker & McKenzie, Milan; **David J. Grais**, Grais & Ellsworth LLP; **Julien Hay**, avocat à la cour, Hay & Mendelsohn France; **Peter Hayden**, Mourant du Feu & Jeune, Cayman Islands; **Gaytri Kachroo**, McCarter & English LLP; **Stephen L Ratner**, Proskauer Rose LLP; **Daan F Lunsingh Scheurleer**, NautaDutilh, Amsterdam; **Professor Davide Sola**, ESCP Europe; **Professor Michael Troege**, ESCP Europe.

On 18 November 2009, we organized an event entitled **A Model Civil Code for Europe?** The event was chaired by **The Rt Hon Lord Justice Rix**, Lord Justice of Appeal with a key note speech from **Prof Dr Dr h c Christian von Bar**, FBA, Chair for Civil Law, European Private Law, Private International Law and Comparative Law Universität Osnabrück. Discussants consisted of **Professor Simon Whittaker**, Professor of European Comparative Law, St John's College Oxford and **Professor Ken Oliphant**, Director, Institute for European Tort Law, Vienna.

On 13 March 2009, an event was organized along with a large number of French participants on the topic of **EC Public Procurement Law: Damages as an effective remedy?** The speakers included **Bernard Stirn**, Président of the Section du Contentieux, French Conseil d'Etat; and **Rémy Schwartz**, French Conseil d'Etat.

Research activities

Civil Procedure

The Product Liability Forum has followed closely the ongoing debate on

the reform of civil procedure at a domestic and international level. The reform of group procedures for damages actions is a particularly topical one with developments at both European and Member State level. The Forum has organized a series of events on this topic and conducted research on the comparative and European perspective.

Duncan Fairgrieve and Geraint Howells have jointly produced a paper entitled 'Collective Redress Procedures—European Debates' which compares and contrasts the position in a number of European countries and assesses the role of the European Union in both promoting reforms at a supranational level and also indirectly fostering developments in Member States.

This paper has recently been published in the journal *International and Comparative Law Quarterly* as follows: 'Collective Redress Procedures—European Debates' (2009) 58 ICLQ 379–409.

RESEARCH PROJECTS

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

Project Director: Faria Medjouba

Research Fellow: Justine Steffanelli

Supervisor: Sarah Williams

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

ATLAS is the result of a response to a call of the European Commission on the topic 'Articulation of the Rule of Law and Protection of Human Rights at National, European and International Levels' which falls within the scope of 'Conflicts, Peace and Human Rights', within the 7th EC Framework Programme. The overall objective is to contribute to the reinforcement of the rule of law during and after armed conflicts and to review the current activity of the EU in promoting human rights and international humanitarian law both during and after armed conflicts, mainly through its peace-keeping operations, and to offer recommendations for improvements and best practice in these activities.

Research Partners

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

Aims and Goals

- Examine the existing international law in regard to the protection of civilians in post-conflict situations, especially in regard to the treatment of women and children.

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

The second phase of the project commenced in late 2009. This part of the project will focus on transitional justice and national reconciliation mechanisms. The Institute is responsible for studying transitional justice and accountability mechanisms in Sierra Leone and Cambodia, including the dispatch of field missions to these countries. The Institute is also arranging the dispatch of field missions to Kosovo and Bosnia and Herzegovina, aiming to analyse and assess the inclusion of a human rights component in the mandate of ESDP missions in these countries, as well as the interaction between the EU missions and other international organizations.

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

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

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

During the last year, the focus was put on the research activity of the project: a comparative study on the age of criminal liability in Muslim States aimed at providing strong material for advocacy and research on the subject. National Rapporteurs from Muslim and European States have participated in completing a questionnaire on the subject. This research will be translated into Farsi and disseminated among NGOs, lawyers, judges, academics and human rights activists.

Interim research consultants: Mubarka Ahmed, Tonye Clinton Jaja, Safoora Saremi

Project Steering Group: Baroness Haleh Afshar, OBE, University of York; Prof. Shaheen Ali, Warwick University; Jeremy Carver, Clifford Chance; Drewery Dike, Amnesty International; Prof. Ziba Mir Hosseini, SOAS

Event: Islamic Law before the Courts: An Analysis of Reach and Application

In the context of its initiative launched in 2007 on the relationship between Islamic Law and International Law and as part of its aim to engage in research and events on subjects relevant to Muslim States, a conference on 'Islamic Law Before Courts' was held on 13 November 2009 in collaboration with Brunel University. At this event chaired by Professor William Ballantyne, Judge Awn Shawkat Al-Khassawneh of the International Court of Justice carried out a thorough examination of the role and influence of Islamic Law before international courts of law and Professor Tarik Ramadan focused his presentation on Islamic law before the national courts and tribunals.

'Hub and Spoke' Project (Competition Law)

Project Supervisor: Philip Marsden

Research Fellow: Peter Whelan

This project involves legal analysis of the treatment of hub and spoke agreements (in particular those in the retail sector) under UK and EU competition law. Particular issues addressed by this project include: what constitutes an agreement; the burden of proof; other evidential requirements; and the ramifications of such an 'offence' within a criminal vs civil regime. The research for this project has been carried out by Peter Whelan under the supervision of Dr Philip Marsden. As a result of this project an article was published in the *European Competition Journal*: P Whelan, 'Trading Negotiations between Retailers and Suppliers: A Fertile Ground for Anti-Competitive Horizontal Information Exchange?' (2009) 5 *European Competition Journal* 3, 823.

The research for this project is ongoing. This project includes the organization of two events focused on the concept of 'hub and spoke' agreements. The first was held on 15 October 2009; the second will be held on 19 April 2010.

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

Project Director: Sarah Williams

Research Fellow: Justine Stefanelli

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

The Institute is participating in a study concerning the implementation of disaster response laws, rules and principles in several countries throughout Europe. The project is conducted by the International Federation of Red Cross and Red Crescent Societies (IFRC) and the Red Cross Societies of several EU member States, including the United Kingdom. The Institute's work forms part of an overall project directed by the IFRC, which includes four other national case studies and a final, comparative report.

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

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

The UK study is funded in part by the British Red Cross and in part by

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

In addition to the UK report, the Institute co-organized a workshop with the British Red Cross in December 2009. The Cabinet Office kindly hosted the workshop. The workshop brought together stakeholders from national, regional and local government offices, statutory bodies, academic institutions and the charity sector. The purpose of the workshop was to assist the Institute in drafting its national case study. The information considered at the Workshop and the input of the participants greatly assisted the Institute's research and will be included in the report's findings.

The Institute completed the EU Report and it is due for publication early in 2010. The UK aspect of the study will continue until April 2010, following which the UK Report will also be published. Both reports will be available on the project website. The national reports and the EU study will feed into a third stage of the overall IDRL project which consists of a comparative synthesis report of all the findings and recommendations to be submitted to the European Commission. For further information concerning the IDRL project, please contact Justine Stefanelli at j.stefanelli@biicl.org

Institutional Scope of National Human Rights Protections: A Comparative Study in Relation to 'Public Authorities'

BIICL Project Director: Anna Ridell

Research Fellows: Kristin Hausler and Justine Stefanelli

Supervisor: Sarah Williams

In 2009, the British Institute of International and Comparative Law completed a six month research project for the Ministry of Justice. This comparative study, which started in August 2008, focuses on the meaning of 'public authority' and 'public function' for the purpose of the application of the European Convention on Human Rights at the national level.

This question has arisen particularly frequently in cases involving the privatization of services by the State. In the latest relevant case, *YL v Birmingham City Council and Others* [2007] UKHL 27, the House of Lords decided that a private care home, when providing accommodation and care to an elderly resident, pursuant to arrangements made with a city government body, was not performing 'functions of a public nature' and thus should not be considered a 'public authority' obliged to comply with the ECHR. However a strong minority opinion was of the view that a wide definition should be given to 'functions of public nature' to ensure that such services would be subjected to the ECHR. This study analysed whether an amendment to the Human Rights Act 1998 should be envisaged to provide a clear definition of the scope of protection to be applied in such issues.

To complete this study, Anna Riddell, Kristin Hausler and Justine Stefanelli sent questionnaires to rapporteurs of a selection of 20 Member States of the Council of Europe. In addition, the researchers visited the European Court of Human Rights in Strasbourg in order to better understand the views on the question at the European level. Over the course of two days, several eminent members of the Court, including The Hon Sir Nicholas Bratza, also a member of the Institute's Advisory Council, kindly agreed to meet and discuss the study's research questions.

The report was completed at the end of January 2009, when it was sent to the Ministry of Justice for its review.

Mediation and Other Forms of Alternative Dispute Resolution: A Study of Selected National Systems

Project Directors: Kristin Hausler and Anna Riddell (until July 2009)

Research Fellows: Faria Medjoubia and Camilla Bernacchi
(until August 2009)

Supervisors: Dr Sarah Williams and Professor Robert McCorquodale

This project, commissioned by the Ministry of Justice, began in 2009. It was designed to respond to the growing interest in alternative dispute resolution (ADR) among the judiciary and legal profession within the United Kingdom over the last decade. A significant step was taken with Lord Woolf's 1986 report 'Access to Justice', which identified the need for fair, speedy and proportionate resolution of disputes, and which provided considerable impetus to the drive to introduce a greater range of ADR mechanisms in the United Kingdom. As he noted, ADR provides the potential for significant efficiency gains, notably in terms of reducing the waiting times currently facing litigants within the court system. More recently, the European Parliament and the Council have both approved a Directive on mediation covering civil, commercial and family matters in cross-border disputes, which is to be implemented by 2011.

This research project identified the approaches to ADR that have been adopted in legal systems other than the United Kingdom. It did so by conducting a comparative study of ten countries. The countries selected by the Institute, with the kind advice of Michael Cohen and Bill Marsh, were: Australia, Austria, Canada, Germany, the Netherlands, New Zealand, Norway, Poland, Singapore and the United States. The Institute engaged national rapporteurs to provide reports for each selected jurisdiction.

The scope of the project included a variety of forms of ADR techniques, other than litigation and arbitration, within the civil and administrative law fields, including mediation, conciliation, neutral evaluation, expert determination or adjudication. Once the most relevant comparative models of ADR had been identified, the research examined the characteristics of such models, such as the preconditions for their application, the compulsory or voluntary nature of such measures, the legal framework, and the nature of the personnel conducting the resolution process. Other specific legal issues, including the confidentiality of ADR proceedings, were also analyzed where relevant.

The study was finalized by Kristin Hausler and Faria Medjoubia in October 2009.

Research Profiles

Dr Nisrine Abiad

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

Orsolya Deák

Orsolya Deák joined the Institute as an Administrative Coordinator in June 2008, and is now the Development and Research Administrator. In this role she assists the Development office in its fundraising activities and also helps research staff to secure funding for their research projects. She holds a law degree awarded by University of Szeged in Hungary in 2004. She obtained an LLM in European and International Law from the University of Bristol in 2007. Orsi previously worked in the areas of EU and public procurement law in Hungary and in Brussels.

Norah Gallagher

Norah is the Senior Research Fellow in International Investment and Trade Law and the Director of the *Investment Treaty Forum*. In addition to coordinating its activities she also undertakes research projects as well as writing articles and trying to secure funding for future projects. Currently, funding is being sought for research on *Evidence before International Investment Tribunals*. This follows on from the Institutes successful completion of the book on *Evidence before the International Court of Justice*. Norah is a qualified lawyer in both England and Ireland and has practiced in international law for many years previously at Herbert Smith and the Lauterpacht Centre for International Law, Cambridge.

Kristin Hausler

Kristin Hausler joined the Institute in August 2007 to assist on a study relating to international courts and tribunals. Subsequently, she worked on two projects commissioned by the Ministry of Justice, as a researcher on a project relating to human rights and as a director for a comparative study on access to justice. She has also written numerous articles and case notes on major court rulings within the fields of public international law and human rights for the Institute's Bulletin of International Legal Developments. Previously, Kristin worked for several years in Vancouver, Canada, on a repatriation project involving Indigenous communities.

Eva Lein

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

Farkhanda Zia Mansoor

Farkhanda is Professor of Law at the International Islamic University at Islamabad (IIUI) in Pakistan. After successful completion of the Visiting Research Fellowship at Brunel University, she started working as a Research Fellow at the Institute in ??? Her project is on the enhancement of the implementation of non-discriminatory laws relating to children in the criminal justice systems through training and research. She was called to the Bar and became member of the Abbottabad Bar Association in the same year. She possesses a PhD and LLM from the University of Hull UK and LLM, LLB from IIUI. She has extensively researched and published in international peer-reviewed journals on the following areas: Labour and Employment law, Islamic Law, Criminal Law, International and Human Rights Law, and International Trade Law.

Dr Philip Marsden

Philip is a competition lawyer with research interests relating to consumer welfare, abuse of dominance, international enforcement cooperation, competition law in small and developing economies, and aspects of the

law of the World Trade Organization (WTO) relating to competition policy, telecommunications and dispute settlement proceedings.

He is a frequent media commentator and conference speaker on competition and trade issues. He is the founder and editor of the *European Competition Journal* and a Founding Director of World Trade Institute Advisors. In 2008 he was appointed by the Secretary of State to the Board of the Office of Fair Trading for a four and-a-half year term.

Philip earned his DPhil from the University of Oxford, 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 London, as well as a case officer with the Canadian Competition Bureau. He joined the British Institute as its Director of the Competition Law Forum and Senior Research Fellow in 2003.

Professor Robert McCorquodale

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

Faria Medjouba

Faria joined the Institute as a legal intern in April 2006 and worked with the Events team. She became a Research Fellow within the Tort Law Centre in September 2006. Within the Product Liability Forum, she coordinates the events and seminar series and also works on the Product Liability Database, which is a unique source of materials on comparative product liability and product safety law. Faria acted as co-Director on the 'Rights and Responsibilities of Citizenship' project which was led by former Attorney General Lord Goldsmith and formed part of a wider review of Governance in Britain currently being conducted by the United Kingdom's Ministry of Justice. More recently she took part in a project

concerning mediation and other forms of alternative dispute resolution. Since 2008, she is working on the ATLAS project.

Anna Riddell

Until her departure in July 2009 to undertake a PhD in International Environmental Law at the European University Institute in Florence, Anna co-directed the Ministry of Justice-funded study ‘Mediation and Other forms of Alternative Dispute Resolution: A Study of Selected National Systems’ with Kristin Hausler. She was also responsible for organizing the European Law Seminar Series, as well as a full-day conference ‘Celebrating 40 Years of the Vienna Convention on the law of Treaties’ in June, and an evening seminar ‘Is the UN Security Council above the law?’ in conjunction with the Human Rights Lawyers’ Association.

Dr Sergey Ripinsky

Dr Sergey Ripinsky is involved in running the Institute’s *Investment Treaty Forum* and was responsible for the research project on *Damages in International Investment Law*, which resulted in a book by the same title. He takes an active part in the Institute’s other projects in the field of international economic law and co-ordinates the establishment of the *Energy and Natural Resources Forum*. Sergey holds a PhD from St Petersburg State University (Russia) and an LLM from Maastricht University (The Netherlands).

Justine Stefanelli

Since joining the Institute in 2006, Justine has worked on a variety of projects in European law. She has studied various areas of civil justice, such as the legalisation of public documents in the EU, the recognition and enforcement of judgments under the Brussels I Regulation and most recently, the impact of collective redress on the Brussels I Regulation. Outside the area of civil justice, Justine has co-directed a study of the rights and responsibilities of citizenship, which included an analysis of citizenship across selected EU Member States and in America and Australia. She is also part of the Institute’s ATLAS project, which evaluates the EU’s international human rights and humanitarian law policy. Her most recent study of European law consists of an appraisal of the EU’s and UK’s framework for facilitating cross-border assistance in the event of a disaster. Justine obtained her Juris Doctorate from the University of Pittsburgh in 2005 and her LL.M. in European law from Queen Mary, University of London in 2006. She is a licensed member of the Bar of the Commonwealth of Pennsylvania in the United States.

Dr Sarah Williams

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

Peter Whelan

Peter Whelan is the Research Fellow in Competition Law at the British Institute of International and Comparative Law. Peter's main research interests are cartel law, comparative competition law, and EU law. He is also interested in international law and human rights law.

Peter holds both a Degree in Law and French (LLB (Ling Fran)) and a Master of Laws (LLM) from Trinity College, Dublin. He started his PhD in Law in September 2006 at St John's College, Cambridge; his chosen topic is 'Competition and the Criminal Law'. Peter is the Consultant Editor of the *Cambridge Student Law Review*. Peter was admitted to the New York State Bar in October 2007.

Publications by BIICL Staff 2009

Dr Nisrine Abiad

- N Abiad, Human Rights Before Courts in Muslim States, (2009) 5 Journal in Islamic Law Practice in International Law (JISPIL) 2, 48–81
- N Abiad and F Zia-Mansoor, 'Criminal Law and the Rights of the Child: Towards Greater Protection A Comparative and Analytical Perspective (BIICL London, forthcoming 2010)

Norah Gallagher

Books

- *Chinese Investment Treaties: Policy and Practice* (OUP, Oxford, 2009) (jointly with Wenhua Shan)

Articles

- 'Energy Charter Treaty' World Arbitration Report (Juris Publications, April 2010)
- 'Investment Protection and the Rule of Law: Change or Decline?' (BIICL, 2010)
- 'The Significance of the Energy Charter Treaty' in G Coop (Ed), *Energy Dispute Resolution: Investment Protection, Transit and the Energy Charter Treaty* (Juris Publication, June 2010)

Kristin Hausler

- 'Reparations for Indigenous Peoples—A Book Review' (2009) 59 ICLQ 2.
- 'The New Bolivian Constitution' (2009) Bulletin of International Legal Developments Issue 4.

Dr Philip Marsden

Chapters

- P Marsden, 'The Curious Incident of Positive Comity—The Dog that Didn't Bark', chapter in *Regulation and Competition in the Global*

Economy: Cooperation, Comity and Competition Policy, (OUP, Oxford, forthcoming, 2010)

- P Marsden, 'Exclusionary Abuses and Competition on the Merits', chapter in *The Reform of Competition Law: New Challenges*, (Kluwer Law International, 2010)
- P Marsden, 'Monopolization: What is Behind the Trans-Atlantic Divide?', chapter in *Challenges in the Enforcement of Article 82*, (OUP, Oxford, forthcoming, 2010)
- P Marsden and P Whelan, 'The "Consumer Welfare" Standard as a Form of Substantive Protection for Consumers under European Competition Law', Chapter 16, Ezrachi & Bernitz (eds), *Own Labels, Branded Goods and Competition Policy: The Changing Landscape of Retail Competition*, (Oxford University Press, Oxford, 2010)
- P Marsden, 'Article 82 and Structural Remedies After *Microsoft*', chapter in *Current Developments on European and International Competition Law*, Baudenbacher (ed), (Helbing & Lichtenhahn Verlag, Basel, 2009)
- P Marsden, 'International Enforcement of EC Competition Law' chapter in D Goyder, *EC Competition Law*, 5th edition, J Goyder (ed), (OUP, Oxford, 2009)

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- P Marsden and P Whelan, 'Selective Distribution and EC Competition Law in the Age of Online Retail' (2010) 31 *European Competition Law Review* 1, 36
- P Marsden and SW Waller, 'The Antitrust Marathon: Part III: The Rule of Law and Antitrust' (2009) 22 *Loyola Consumer Law Review* 1, 1
- P Marsden, 'We Need a Watchdog with More than One Response', *European Voice* (22 October 2009)
- P Marsden, 'Checks and Balances: EU Competition Law and the Rule of Law' (February 2009) *Competition Law International* 24.
- P Marsden, 'Lobbying for Climate Change in EU Competition Policy - Just Don't Talk About the Weather' (2009) 1 *Concurrences* 11.

Robert McCorquodale

Articles in Refereed Journals

- 'Corporate Social Responsibility and Human Rights' 87 *Journal of Business Ethics* (2009) 385-400

Chapters in Books

- 'A Future for Human Rights Law' in M Baderin and M Ssenyonjo (eds), *International Human Rights Law: 60 Years after the UDHR* (CUP, forthcoming 2010)
- 'Group Rights' in D Moeckl, S Shah and S Sivakumaran (eds) *International Human Rights Law* (OUP, forthcoming 2010)
- 'Caucuses in the Caucasus: The Application of the Right of Self-Determination' (with K. Hausler) in J Green and C Waters (eds) *Conflict in the Caucasus: Implications for International Legal Order* (Palgrave, forthcoming 2010)
- 'Poverty and the International Covenant on Economic, Social and Cultural Rights' (with Mashood Baderin) in G. van Bueren (ed), *Law's Duty to the Poor* (OUP/UNESCO, forthcoming 2010)
- 'Non-State Actors and International Human Rights Law' in S Joseph and A. McBeth (eds) *International Human Rights Law* (Edward Elgar, forthcoming 2009) 97–114
- 'International Organisations and International Human Rights Law: One Giant Leap for Humankind' in K Kaikobad and M Budlander (eds), *International Law and Power Perspectives on Legal Order and Justice* (Brill, 2009)
- 'Impact on State Responsibility' in M Kamminga and M Scheinin (eds), *The Impact of Human Rights on General International Law* (OUP, 2009) 235–254
- 'The Rule of Law Internationally' in M Andenas and D Fairgrieve (eds), *Tom Bingham and the Transformation of the Law* (OUP, 2009), 137–146

Peter Whelan

Chapters

- P Whelan, 'Protecting Human Rights in the Context of European Antitrust Criminalisation', chapter in I Lianos & I Kokorris (eds), (Kluwer *The Reform of EC Competition: Towards an Optimal Enforcement System*, International: Amsterdam, 2010)
- P Marsden and P Whelan, 'The "Consumer Welfare" Standard as a Form of Substantive Protection for Consumers under European Competition Law', Chapter 16, Ezrachi & Bernitz (eds), *Own Labels, Branded Goods and Competition Policy: The Changing Landscape of Retail Competition*, (Oxford University Press, Oxford, 2010)

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- P Marsden and P Whelan, 'Selective Distribution and EC Competition Law in the Age of Online Retail' (2010) 31 *European Competition Law Review* 1,36
- P Whelan, 'Trading Negotiations between Retailers and Suppliers: A Fertile Ground for Anti-Competitive Horizontal Information Exchange?' (2009) 5 *European Competition Journal* 3, 823
- P Whelan, 'Morality and Its Restraining Influence on European Antitrust Criminalisation' (2009) 12 *Trinity College Law Review* 40
- P Marsden and P Whelan, 'Re-Examining Trans-Atlantic Divergences in Substantive and Procedural Competition Law' (2009) 10 *Sedona Conference Journal* 23

Case Notes

- P Whelan, 'Resisting the Long Arm of Criminal Antitrust Laws: *Norris v US*' (2009) 72 *Modern Law Review* 2, 272

Book Reviews

- P Whelan, 'Book Review: *Efficiency and Justice in European Antitrust Enforcement* (Wils)' (2009) 34 *European Law Review* 1, 160

Commissioned Reports

- P Whelan, 'Trends in Retail Competition: Private Labels, Brands and Competition Policy: 2009' (BIICL, London, May 2009)

Dr Sarah Williams

Books

- *Internationalized Criminal Courts and Tribunals* (Hart Publishing, Oxford, forthcoming 2010)
- Dixon, R McCorquodale & S Williams, *Cases and Materials in International Law* (5th edition, Oxford University Press, Oxford, forthcoming 2010)

Edited Collections

- *Celebrating 40 years of the Vienna Convention on the Law of Treaties*, edited with A Orakhelashvili (British Institute of International and Comparative Law, London, forthcoming 2010).

Articles

- 'Recent Developments at the ICC: Prosecutor v Germain Katanga and Mathieu Ngudjolo ChuiçA Boost for 'Cooperative Complementarity'? (2010) *Human Rights Law Review* [forthcoming] (with M Cross).
- 'Between The Devil And The Deep Blue Sea: Conflicted Thinking In The *Al-Saadoon* Affair' (2009) 58 *ICLQ* 689 (with M Cross).
- 'The Arrest Warrant for President al-Bashir: Immunities of Incumbent Heads of State and the International Criminal Court' (2009) 14 *Journal of Conflict and Security Law* 71, (with L Sherif).
- 'Recent Developments at the International Criminal Court', (2009) 9 *Human Rights Law Review* 267 (with M Cross).

Book chapters

- 'The UK and Protection of Cultural Property in Times of Armed Conflict' in M Dixon (ed) *Modern Studies in Property Law: Volume 5* (Hart Publishing, 2009) (with J Glistler).
- 'The Legal Bases of the Internationalised Criminal Tribunals' in K Kaikobad and M Bohlander (eds) *International Law and Power: Perspectives on Legal Order and Justice* (Martinus Nijhoff, the Hague, 2009).

Publications

Publisher: Orla Fee (until November 2009)

Publications Coordinator: Alexa van Sickle

International and Comparative Law Quarterly

John Bell

In December 2009, Professor John Bell left the editorial board of the ICLQ. He joined the board in January 1995, serving as editor for 15 years. He has taken over as editor of the *Cambridge Law Journal*.

Book Review Editors

Paula Giliker of Bristol University and **Andrew Lang** of the London School of Economics joined Ralph Wilde as book review editors of the *International and Comparative Law Quarterly* in early 2009.

Young Scholars Prize

In 2009, the ICLQ began its Young Scholars Prize for outstanding article by authors aged 35 and below at the time of submission. The shortlist has been drawn up and the winner will be announced at the Annual Conference.

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

Orla Fee/Institute Publisher

In November 2009, Orla Fee, Institute Publisher and Assistant Editor of the ICLQ, left the Institute after 5 years to take up the post of Head of Publishing at the Royal College of Physicians. Alexa van Sickle has taken on her responsibilities.

Bulletin of International Legal Developments

Sadly, the *Bulletin of International Legal Developments* was discontinued in July 2009. However, a new 'international legal news in brief' section was developed as part of the Institute Newsletter, to provide members

with some brief legal news and analysis on international rulings and new legislation. The newsletter also features more news related to Institute events, providing reports and summaries of key issues discussed. The newsletter welcomes contributions for its legal developments section—please contact a.vansickle@biicl.org if you would like to discuss submitting legal updates.

Other Institute Publications

In 2009, the Institute continued in its publishing programme, reflecting diverse interests and research in areas of law. In February, the book *Evidence before the International Court of Justice* was published, presenting the culmination of a major project. Diverse areas of law were represented with the publication of *Medicinal Bioprospecting* (pharmaceutical law and indigenous rights) *Agriculture and the Polluter Pays Principle* (comparative agricultural law) and *The Public-Private Law Divide* (administrative law). The third book in the *Investment Treaty Law* series was published in May, with the fourth volume currently in production.

The Institute continues to market publications with online and traditional booksellers, working closely with International Specialized Book Services, our North American distributors, to target sales in that region. We also use the Institute's Twitter account and online presence to stay in touch with law firms and the legal community and share news about the Institute and other projects, and to link the publications programme with the Institute's research and events. We have also extended our marketing lists to online resources, such as legal websites, blogs and academic discussion boards. We also continue to create book-related events, holding a successful competition law event combined with the launch for *A Gap in the Enforcement of Article 82*, with a debate linked to the central premise of the book.

The Institute is always pleased to consider proposals for new publications, and the publishing team is happy to discuss new projects. Please contact Alexa van Sickle at a.vansickle@biicl.org.

Titles published in 2009

Evidence before the International Court of Justice

Anna Riddell and Brendan Plant

Some recent contentious issues about the use of evidence in cases before the International Court of Justice have highlighted the importance of fact-finding and the use of evidence before this Court. This major study by the British Institute of International and Comparative Law on the issue of evidence before the International Court of Justice has examined all aspects of the Court's relationship with facts in detail, in both contentious and advisory proceedings, from the recently refined procedure for submitting late evidence, to the hearing of live witness testimony in the Peace Palace.

Considerations of flexibility and respect for the sovereignty of the State Parties before it have traditionally deterred the Court from constructing concrete rules on matters of evidence, but the increasing numbers of cases in which a thorough consideration of the facts has been essential has highlighted that some detailed procedural guidance is necessary in order to ensure a well-functioning system of adjudication. It is apparent that the Court has paid an increasing amount of attention to its evidentiary proceedings as a result, often encountering difficulties in the inherent tensions between the common and civil law traditions and thus a divergence of opinions on the Bench.

The Temporal Scope of International Investment Protection Treaties

Nick Gallus

This book addresses all aspects of investment protection treaty tribunals' temporal jurisdiction. Specifically, the book examines: the application of the temporal rule to investment protection treaties, including the aspect of the rule providing that a State cannot breach a treaty through acts occurring before the treaty comes into force; circumstances under which a State can breach a treaty through continuing or composite acts beginning before the treaty comes into force; the consequence of State acts after the treaty is signed but before it is ratified; time limits; and disputed arising before an investment protection treaty comes into force. The book draws from investment protection treaty decisions, as well as relevant decisions of other international tribunals, and is, therefore, not only a resource for investment protection treaty practitioners, arbitrators, academics and students, but also for those interested in the temporal jurisdiction of any international tribunal.

Investment Treaty Law: Current Issues III

Andrea K Bjorklund, Ian A Laird and Sergey Ripinsky

This is the third volume in a series collecting the work of the Investment Treaty Forum of the British Institute of International and Comparative Law, which brings together eminent practitioners, arbitrators, and academics in the dynamic area of international investment law. Members of the Forum, under the British Institute's auspices, examine and debate the legal and policy issues presented by the increasingly complex web of investment treaties and the disputes that arise under them.

The Forum held two conferences in 2007: the present volume compiles the papers presented at the conferences as well as a transcript of the round-table discussion on the subject of 'precedent' in international investment arbitration that featured some of the foremost authorities on the subject.

Agriculture and the Polluter Pays Principle

Margaret Rosso Grossman (ed)

This volume introduces the reader to the polluter pays principle and addresses the application of the principle to agricultural activities in a number of nations in the EU and North America. It was developed as a follow-up to the XVIIth Congress of the International Academy of Comparative Law (Utrecht, The Netherlands, July 2006).

The polluter pays principle requires the polluter to bear the expense of preventing, controlling and cleaning up pollution. Agricultural practices result in both benefits and burdens to the environment—it often provides attractive rural landscapes and preserves valued habitats, but emissions from agricultural operations (livestock wastes, agricultural chemicals) may pollute water, air and soils or degrade habitat and landscape.

The time is opportune, therefore, to evaluate the application of the polluter pays principle to agricultural activities. Application of the principle to agriculture has raised particular difficulties, in part because the diffuse nature of emissions from agriculture poses regulatory obstacles and because agriculture is sometimes exempt from environmental controls that apply to other industries. Society's recent focus on environmental harms from agriculture, however, suggests that lawmakers may enact more stringent regulation.

The Public–Private Law Divide

Matthias Ruffert (ed)

Administrative law has been the object of thorough reforms in many European countries. Most of the developments are common to the various

legal systems, such as the idea of New Public Management or new patterns like public choice and consumer orientation. There are novel agencies and regulatory concepts, there is deregulation, and the citizen–government relationship has been changed towards openness and mutuality.

Various administrative legal systems' modifications are different with respect to their starting points, but similar in their development. Administrative law scholarship has taken up these challenges. The core scientific development is a shift away from the control (ie courtroom) perspective towards a perspective of governance ('*Steuerung*' in the German terminology). Administrative law should provide means, tools and scales which allow for the effective implementation of legal principles and rules, using resources economically and taking sound decisions which are acceptable to those affected. Considering interdisciplinary input, it is fair to design a 'New Administrative Law' (*Neue Verwaltungsrechtswissenschaft*) as a scientific approach.

In the different European countries, debates on that transformation of administrative law take place from a national perspective and with different intensity. Given the considerable effects such discussion may have on the methods of administrative legal scholarship, an analysis of the developments in a European context promises valuable results.

This volume comprises the results of the second workshop of the Dornburg Research Group of New Administrative Law which took place in London in May 2007. The group scrutinized the public–private law divide in a comparative manner based on the reform approach.

A Gap in the Enforcement of Article 82

Ioannis Kokkoris

The European Commission has acknowledged and respected, in Regulation 1/2003, the ability of the Member States to apply stricter rules than Article 82. There are some types of conduct that cannot be addressed by Article 82 because the undertakings involved are not dominant. One relates to conduct by non-dominant firms against other firms in weaker bargaining positions. A second type of conduct, and the focus of this book, relates to the anti-competitive conducts that non-dominant firms may adopt towards consumers (eg price discrimination and excessive pricing). This book focuses on instances where non-dominant firms have the ability to behave independently of customers and competitors and adopt conducts which will induce consumer harm.

The Commission cannot address anti-competitive conduct of non-dominant firms which induce significant consumer harm. This has resulted from the application of the dominance concept and from the dependence of a finding of a dominant firm on the market share of the firm. The aim of

this book is to illustrate that applying the concept of dominance in that way means that a non-dominant firm in a differentiated market can adopt anti-competitive conducts and not be deterred by the possible application of Article 82.

'This book raises interesting questions concerning competition policy, and more specifically the scope of enforcement under Article 82. It also examines the concepts of superior bargaining power and abuse of economic dependence and discusses how some national jurisdictions in the EU have attempted to address these issues. I am sure that my Commission colleagues and I would strongly agree with Ioannis Kokkoris on some issues and strongly disagree on others. But I very much welcome his lively contribution to this important debate.' Philip Lowe, Director-General DG Competition-European Commission

Medicinal Bioprospecting: Policy Options for Access and Benefit-Sharing

Aphrodite Smagadi

The production of medicines, pharmaceutical and herbal, involves the sourcing of both genetic resources in the natural environment, and local knowledge. Sourcing substances for medicines in the natural environment is known as biodiversity prospecting or 'bioprospecting'. To ensure that benefits resulting from medicinal bioprospecting are brought to those ultimately bearing the costs of conservation and sustainable use, there must be a focus on indigenous peoples' rights-particularly property rights, whether to land, genetic material, intellectual property, or traditional medicinal knowledge.

This study considers the importance of access and benefit-sharing agreements as incentives for biodiversity protection. It analyses the meaning of the objectives set by the Convention on Biological Diversity (CBD) for its implementation, examines selected domestic access and benefit-sharing measures and industry practices and, finally, evaluates the discussions taking place in international fora regarding the Convention and its principles. Finally, it attempts to make recommendations on how to realize the objective of the Convention for 'fair and equitable' benefit-sharing, focusing on enhanced protection of indigenous peoples' rights.

Conferences, Lectures, Seminars and Other Events

The British Institute of International and Comparative Law runs a dynamic programme of events and CPD courses reflecting the Institute's research work and the interests of its wide continuance of members. A series of over 70 events and CPD courses are run throughout the year including seminars, conferences and lectures (most of these events are CPD accredited with both the Solicitors Regulation Authority and the Bar Association). Generally events are open to the Institute's membership, as well as students, academics, practising lawyers, barristers and regulators.

The year 2009 saw a busy and eclectic events programme. Highlights include the Annual Conference on Business and International Law. The Conference began with a welcome address from Professor Robert McCorquodale, Director of the British Institute of International and Comparative Law and The Rt Hon Lord Bingham of Cornhill KG, President and Chairman. The welcome address was followed by the Keynote Address delivered by Paul Skinner, former Chairman, Rio Tinto, one of the world's leading mining and exploration corporations.

The creation of the Herbert Smith Fellowship saw a lively series of Private International law events. Seminars included one on Private International Law—Challenges for Today's Markets. This seminar offered a platform to exchange views of different industry sectors on current Private International Law problems they encounter. The speakers dealt with various issues such as the difficult new rules in the Rome I regulation on financial market contracts, current Private International law problems arising in the field of Swaps and Derivatives and in the Energy sector and will look in a more general way at the pitfalls of Private International Law for business contracts between important market players. Another seminar, on Jurisdiction Agreements on Trial: Current Problems—Future Solutions This seminar was dedicated to problems and new perspectives on choice of court agreements.

The economic situation prompted several financial law events. For example, collective Redress against Financial Institutions: Financial Services Bill, this event examined the proposals found in the Financial Services Bill for the creation of a collective redress mechanism in respect of financial services claims. Distinguished and experienced speakers examined the Bill, considered its effect on civil procedure, the types of claims that will be brought, and consequences of an opt-out regime. Other events included Credit Crunch Litigation: Offshore, Domestic and

International Perspectives, which brought together bankers, litigators and academics from around the world, to examine ongoing domestic, offshore and international litigation.

We also achieved a spectacular array of Annual events including the 8th Annual Merger Conference, The Arbitration Act 1996—Time for Review?, and the Ninth Annual Trans-Atlantic Antitrust Dialogue to name just a few.

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

- Arbitration
- Comparative Law
- Competition Law
- Environmental Law
- European Financial Law
- Human Rights, Humanitarian Law
- Investment Treaty Law
- Islamic Law
- Law and Development
- Law of the Sea
- Private International Law
- Product Liability
- Public International Law
- Public procurement law
- Regulation
- WTO & International Economic Law

Institute Development

The Development Appeal

The Institute is running a Development Appeal, with the principal objectives of raising funds for the Bingham Centre for the Rule of Law and the Arthur Watts Fellowship in Public International Law.

The Bingham Appeal for ‘The Bingham Centre for the Rule of Law

The year 2009 was a successful year for the Bingham Appeal, with donations of almost £900,000 raised towards a goal of £2.2 million for the establishment of the Bingham Centre for the Rule of Law. This success has allowed us to plan for the Centre with confidence and to start the recruitment process for the first two posts—that of the Centre Director and the post of a Fellow in European Law, the latter of which has been kindly funded by the Vivmar Foundation.

The Bingham Centre will be the foremost institution in the world focused solely on promoting and developing the rule of law, understanding it—and the threats that it faces, providing an intellectual framework within which it can operate and creating the legal and policy tools to support it. The Centre will carry out research and training, with a view to influencing policy and law reform around the world.

Key Posts and Activities

In the first phase of the Appeal, in addition to the Centre Director (who will be experienced in one or more of the disciplines below), we aim to secure five-year funding for research senior fellows in selected areas such as those below:

- International Human Rights Law
- International Environmental Law
- European Law
- International Commercial Law
- International Economic Law
- Law and Development

The Centre will also appoint a number of Visiting Fellows, including some of the most eminent people in the field and recruit talented interns from around the world who will be supported by a bursary system. The Centre

will benefit from the guidance of Lord Bingham who will be its Life President.

We are particularly grateful to the Vivmar Foundation, Freshfields Bruckhaus Deringer LLP, Shell International, MacFarlanes LLP, Allen & Overy Foundation, Lord Bingham of Cornhill, The Peter Cruddas Foundation and The International Bar Association Charitable Trust for their generous financial support.

The Institute also wishes to thank Sir Christopher Bellamy, Chairman of the Bingham Appeal; Paul Lomas, Vice Chairman, and all of those members of the Appeal Board who have worked so hard to get us to the point where our ambition of establishing the Centre will soon be realized: David Anderson, QC, the Rt Hon Sir Henry Brooke, Victoria Cochrane, Timothy Cowen, Sir Francis Jacobs, KCMG QC, John Kingston Alexander Layton QC, Professor Vaughan Lowe QC, Martin Paisner, CBE, Francis Neate, Keith Ruddock, Joshua Rozenberg, Professor Philippe Sands, QC, Rabinder Singh, QC and Dame Juliet Wheldon DCB QC.

This is an important project, supported at the highest level of academia, the legal profession, the judiciary, international organisations and business. Properly funded, it has the possibility to make a profound and prolonged contribution to the development of the society in which we live.

The Watts Appeal for ‘Arthur Watts Research Fellowship’

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

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

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

The initial fundraising target for the Sir Arthur Watts Fellowship is £500,000. This will cover the running costs for the Fellowship for five years. The Institute wishes to thank Sir Franklin Berman, who has led the fundraising for this Fellowship, raising over £170,000 to date from the international community.

We are particularly grateful to HSH Prince Hans-Adam II of Liechtenstein, the Government of Brunei and Dame Rosalyn Higgins for their generous financial support. We are enormously grateful to all of

those individuals and organizations who have supported these appeals. For more information or to make a donation to either project, please contact Diane Denny or Orsi Deak at the Institute on 020 7664 4871.

Benefactors

We are grateful to all of those listed below who have contributed, in some cases very generously, to the Institute's Development Appeal.

Bingham Centre for the Rule of Law

The Rt Hon Sir Richard Aikens	The Rt Hon Sir Peter Gibson
The Hon Sir Robert Akenhead	The Rt Hon Sir Iain Glidewell
Allen & Overy Foundation	Sir Roy and Lady Catherine
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Other donations

Sir Sydney Kentridge QC
Sir Jeremy Lever KCMG QC

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

