

# jurist · diction

A MAGAZINE OF THE SYDNEY LAW SCHOOL FOR ALUMNI AND THE LEGAL COMMUNITY  
WINTER 2012

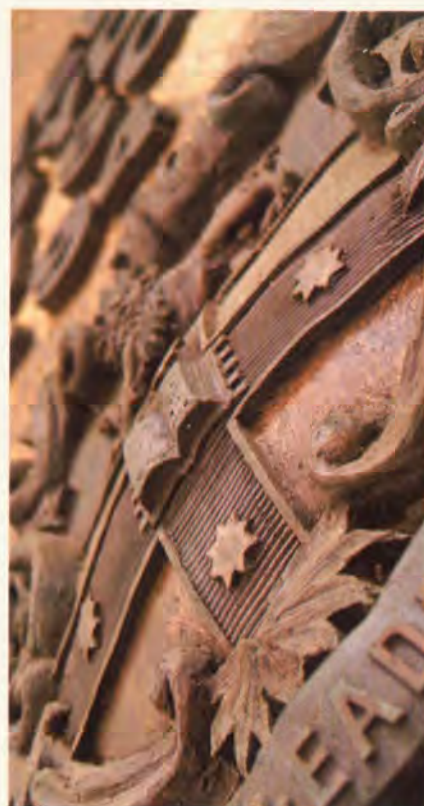


FORCING THE ISSUE: INTERNATIONAL LAW IN A TURBULENT WORLD



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Law School for alumni and  
the legal community.

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#### Design

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#### Publishing and Production

Semi-annually by 10 group  
for University of Sydney,  
Faculty of Law,  
10 group Level 1,  
30 Wilson Street  
PO Box 767  
Newtown NSW 2042  
www.10group.com.au

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## 2012 PRIZE GIVING CEREMONY AND GRADUATION PARTY





# A Message from the Dean

Professor Gillian Triggs

As the tragic loss of life continues in Syria, one might ask if the rule of law in international armed conflict has become little more than camouflage for national interests. International law scholars at the Sydney Law School are frequently challenged by our students to answer the question posed by HLA Hart: 'Is international law really law?' While today's newspapers suggest otherwise, my answer is that most states abide by the rules of international law almost all the time because it is in their mutual interests to do so. As Franck observes, international law is broken on the relatively rare but sensational occasions when vital national interests are perceived to be at risk. He argues that violence in international affairs is 'fortunately a one-in-a-million deviance from the pacific norm'. Is this true today? Are the normative principles prohibiting the use of force, but permitting a state to defend itself against an 'armed attack', capable of application in the contemporary context of technological warfare and terrorism?

This edition of *JuristDiction* is dedicated to examining the legal principles that apply in civil conflict. Dr Alison Pert examines the right of self-defence in Afghanistan. The report by

one of our alumni, Kelisiana Thynne, who now lives and works in Kabul, provides a personal account of the realities of life in civil conflict. Dr Emily Crawford looks at the role of the Security Council veto in the conflicts in Libya and Syria, and Professor Ben Saul considers whether the killing of Osama Bin Laden was the act of 'soldiers or assassins'. An Israeli perspective is provided by Ben Wahlhaus, who points out the dangers of 'lawfare'; the abuse of legal avenues as a means of waging war. I look at the no-fly zones established by the UN Security Council in Libya, Iraq and Bosnia and Herzegovina, and observe the phenomenon of 'mission creep' under the guise of UN resolutions. Finally, Chris Rodley describes the experiences of ABC reporter Geoff Thompson in 'the line of fire' in East Timor and the Middle East.

In concluding, I would like to acknowledge the significant contribution made to the legal profession in New South Wales by the Hon Mahla Pearlman AO, who has been a generous supporter of the Law School and a special inspiration to women lawyers.

I do hope you enjoy this edition of *JuristDiction*. Please let us have your comments and ideas.

While welcoming you to this edition of *JuristDiction*, I must also say a fond farewell and thank you to all our alumni and friends. I will be taking up the position of President of the Australian Human Rights Commission on 30 July and, with mixed feelings, will step down as Dean. I have had five very happy years with the University of Sydney and the Law School and am proud of the international reputation of the Faculty.



# David Re – Trial Chamber Judge

Chris Rodley

David Re (BA 1985, LLB 1986, LLM 2000) has spent the past decade prosecuting or judging some of the most internationally significant criminal cases of our time.

**A** former prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY) and judge of the Court of Bosnia and Herzegovina, he is currently serving as a trial chamber judge of the Special Tribunal for Lebanon in The Hague. The international tribunal was set up by an agreement between the United Nations and Lebanon to try those accused of the 2005 terrorist attack in Beirut, which killed former Lebanese prime minister, Rafik Hariri, as well as 21 others, and any attacks held to be connected. His appointment makes him one of only two Australians working as judges in international criminal tribunals or courts.

Judge Re's legal career began in 1980 when he was accepted into Sydney Law School. Back then, he says, the Law School had a black-letter approach to law, which was taught in 'enormous and anonymous lecture halls', while its competitors were more progressive in their teaching. 'The recent move to the main campus is very positive,' he says.

Soon after graduating, he landed a job as a junior solicitor for the team representing Lindy and Michael Chamberlain at the Royal Commission inquiring into their convictions. Among other tasks, he was given responsibility for assisting with submissions relating to the scissor-like action of dogs' teeth on clothing. 'I was pinching myself and asking, how did I get here?' he recalls.

He went on to work as a solicitor in private practice, for the NSW DPP, at the Criminal Law Review Division of the NSW Attorney-General's Department, and in the DPP Director's chambers, before going to the Bar, where he had a mixed practice. He returned to complete an LLM at Sydney Law School, where two courses — on the law of the Antarctic, and on heritage law — reignited a long-held interest in an international legal career. In 1998, he was an observer for Australian Lawyers for Human Rights at the Rome Conference negotiating the International Criminal Court (ICC). He also appeared, with Tim Game SC, for the New South



Wales Bar Association, before the Joint Standing Committee on Treaties inquiring into Australia's ratification of the ICC.

In 2002, Judge Re decided to leave Australia to take up an appointment as a prosecutor at the ICTY in The Hague. 'The last case I was involved in at the Sydney Bar was an arbitration in the Local Court about the intensity of the paint colour in a North Shore mansion,' he says. 'The next time I was in court on my feet was cross-examining a professor of constitutional law from the University of Belgrade on the legitimacy of the breakaway of the Bosnian Serb Republic. That was a very steep learning curve.'

During six years at the ICTY, he worked on cases across the political and ethnic spectrum of the former Yugoslavia, including the 1991 siege of Dubrovnik, a case against a chief of staff of the Bosnian Army, an appeal relating to the notorious Omarska concentration camp in Bosnia and Herzegovina, and the trial of Slobodan Milošević. He finished his career there leading the prosecution of a Prime Minister of Kosovo and two others accused of crimes against humanity.

He was then appointed as an international judge of the Court of Bosnia and Herzegovina, sitting in mixed panels

of three national and international judges in its war crimes chamber in Sarajevo. (The court is in a former military barracks, renovated with international aid, although still bearing some obvious shelling scars; one courtroom is in a converted basketball court.) His experience there included judging a trial of one of the 1995 massacres at Srebrenica, in which over 8,000 Bosnian Muslims were murdered, making him the only Australian to have judged in a genocide trial.

This led to his appointment in 2010, by the Secretary-General of the UN, to the Special Tribunal for Lebanon; before taking up the appointment, he also consulted for the UNDP in South Sudan during the secession referendum, and for the OSCE in Macedonia on comparative international criminal procedural law.

In February, the Tribunal's trial chamber released its decision that four accused would be tried in absentia, the first such finding in an international legal forum since the trial of Martin Bormann at Nuremberg.

The Special Tribunal applies the substantive law of Lebanon in relation to terrorism, but uses international criminal law procedures derived from both common law and civil law systems. It requires consensus decision-making from the three judges of the trial chamber and its two alternate judges who come from divergent legal backgrounds. 'Every day working in international criminal law is both rewarding and challenging at the same time,' says Judge Re.

His advice to early-career lawyers looking to specialise in international criminal law is first to gain a minimum of five years' experience at home in Australia, preferably as a prosecutor or defence lawyer. A Master's degree in international law or an internship in The Hague can be very helpful, but these are no substitute for hands-on domestic experience, according to the judge.

'Once you learn your own system, then you can really offer something internationally,' he says. **jd**



# Syria, Libya, and the Use of Force under International Law

Emily Crawford

For over a year now, Syria has been beset by internal violence and upheaval, part of the so-called 'Arab Spring' of anti-establishment protests that have toppled entrenched regimes in Egypt, Libya, and Tunisia. The conflict in Syria has been one of the more protracted and deadly, with the higher end of estimates placing the death toll at over 10,000.

**T**he United Nations is now involved in attempting to broker peace in Syria. Former Secretary-General, Kofi Annan, is serving as a peace envoy to the Arab League, trying to negotiate a cease-fire between the parties. These measures come after the League — the regional inter-governmental body — condemned the violence, especially as perpetrated by the al-Assad regime, and expelled Syria. Prior to negotiations, the UN General Assembly condemned the Syrian government's crackdown on protestors.

Criticism of the al-Assad government has been almost universal. With a few notable

exceptions, such as Iran, the international community has denounced the authoritarian Syrian government. Yet the violence continues. Why, therefore, has the UN not authorised the use of force in order to halt the violence, as it did in Libya in 2011? The complex answer to this question is tied up in the international law relating to the use of force.

The foundation document of the modern international order — the UN Charter — provides, in art 2(4), that 'all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State,



or in any other manner inconsistent with the purpose of the United Nations'. This provision is also considered declaratory of customary international law.

However, this prohibition on the use of force is not absolute; there are exceptions to the rule in art 2(4) — they include, the right of self-defence, and the right of the UN, under Chapter VII of the Charter, to authorise collective action to respond to a perceived threat to international peace and security. Collective action may range from the imposition of a no-fly zone — as was authorised in Libya — to deploying a peacekeeping force on the ground. However, in order to authorise such action, the perceived threat to peace and security must first be determined by the Security Council (SC). Herein lies the problem. Any action taken by the SC is subject to the veto — the right of any of the five permanent members of the Council (the US, UK, France, China and Russia) to veto any proposed action, for any reason whatsoever. In the case of Syria, both China and Russia have vetoed any attempts by the SC to respond to the violence. Russia has a long-standing military relationship with Syria; Russia maintains a naval base in the Syrian port of Tartus, which provides the Russian navy with vital access to the Mediterranean Sea. Russia also has a thriving arms trade with Syria. China maintains trade relations with Syria. Thus, both countries have vested interests in Syria, prompting US Secretary of State Hillary Clinton to label China and Russia 'despicable' for vetoing a February 2012 UN SC resolution that would have implemented a plan by the Arab League to resolve the crisis.

Routinely, both Russia and China have employed the foundation terminology of the UN Charter in resisting attempts to intervene in the conflict; they condemn, as Chinese ambassador to the UN Li Baodong has done, what they perceive as international disrespect of the sovereignty, independence and territorial integrity of Syria. This is the one of the conundrums of the international legal system



and the international community. The very system that protects states from the arbitrary involvement and interference of other states in their internal affairs, essentially allows those same states to act arbitrarily towards their own citizenry. The shield of sovereignty and independence can often be used to protect states wanting to wield the proverbial sword in their internal affairs. Often, the ability (or inability) of the international community to intervene when states systematically violate the rights of their people depends on which of the permanent five members of the UN SC the aggressor state has the backing of; this can often lead to the perception of bias in the Council, or the belief that the UN is powerless to act. The Syrian situation reminds us of the problems, and the promise, inherent in the international legal system. *jd*



Dr Emily Crawford is a post-doctoral fellow and associate at the Sydney Centre for International Law (SCIL). She has taught international law and international humanitarian law, and has delivered lectures both locally and overseas on international humanitarian law issues, including the training of military personnel on behalf of the Red Cross in Australia. A member of the International Law Association's Committee on Non-State Actors, as well as the NSW Red Cross IHL Committee, Emily's current research project is looking at major developments in the conduct of armed conflicts in the 21<sup>st</sup> century, such as cyber warfare and targeted assassinations, and the implications for both domestic and international law.







# Soldiers or Assassins?

## America's Killing of Osama Bin Laden

Ben Saul

Was America's spectacular killing of Osama Bin Laden a lawful act of war, or an illegal extrajudicial assassination? The answer depends on two key areas of international law: the law on the use of force, and international humanitarian law.

Under the law on the use of force, it is prohibited to use military force on the territory of a foreign country except in self-defence against an 'armed attack'. The US might argue that it is the victim of an ongoing 'armed attack' by Al-Qaeda, beginning with the attacks of 9/11. Attacking Bin Laden as the military commander of Al-Qaeda could possibly be justified in self-defence.

There is, however, controversy in international law about whether self-defence is permitted against a non-state actor (Al-Qaeda) on the territory of a foreign state (Pakistan) where the foreign state does not control or direct the non-state actor. Most countries accepted the right of the US to do so in Afghanistan after 9/11, where the Taliban government did not control Al-Qaeda, and actively shielded them. Countries such as Turkey and Israel have also occasionally used force against non-state groups in neighbouring countries.

On the other hand, the International Court of Justice has been reluctant to acknowledge a right of self-defence in such circumstances. The practice of most countries also still weighs against it. For example, Colombia attacked FARC rebels in Ecuador (which did not direct FARC) a few years ago. Colombia later apologised and compensated Ecuador, after the Organisation of American States condemned the incursion as illegal.

The ordinary expectation is that a host state (in Bin Laden's case, Pakistan) is responsible for dealing with terrorist threats on its territory, and its sovereignty should not be infringed by

foreign intervention to attack terrorist groups. The difficulty with this traditional view is that if the host state is unwilling or unable to deal with terrorism, it may leave foreign states at the mercy of unabated attacks.

Perhaps a better view is that if the host state is unwilling or unable to deal with the problem, a foreign country then becomes entitled to exercise self-defence. The US had a genuine concern that alerting Pakistan to Bin Laden's whereabouts may have tipped him off (because of leakage within the Pakistani security services) or been ineffective (because less well-trained Pakistani forces may have botched the operation). These are legitimate concerns in the circumstances, and may have justified the US acting alone. Even if the US response might seem legitimate, and might point towards a future direction in the law, it was probably not lawful at the time.

The bigger problem for the US is whether Bin Laden was responsible for an ongoing (or imminent) 'armed attack' on the US. With distance from 9/11, Al Qaeda's capabilities have been much degraded, and its activities have reverted to more of an isolated, criminal, terrorist kind rather than remaining on an extensive military scale amounting to an 'armed attack'. Military force is not usually lawful in response to criminal threats, even terrorist ones, for the very good reason that escalating a situation into military violence seldom makes things better.

Even if the operation was lawful under the law on the use of force, it must also comply with international humanitarian law



(the law on the conduct of hostilities, once a war gets underway). Humanitarian law applies if there was an 'armed conflict' in Pakistan at the time, such that special rules on military targeting apply and displace normal law enforcement in peace time.

In my view, there probably was a non-international armed conflict in parts of Pakistan under common art 3 of the four 1949 Geneva Conventions. That is because for some time there has existed intense military violence between a government (the US) and an organised armed group (Al-Qaeda) in the north-west frontier provinces of Pakistan, which is a spill-over of the neighbouring conflict in Afghanistan. The US has been targeting Al-Qaeda with aerial drone strikes since the Bush Administration, and has escalated such attacks under President Obama (without, it must be said, accountability or transparency).

While Bin Laden was not present in the north-western frontier where most of the violence occurs, he is probably proximately connected to it. There is no rule of international humanitarian law which confines hostilities only to pre-existing 'hot' battlefields; logic dictates that the legal rules follow the conduct of those engaged in the conflict, even those hiding in a house in a field far away. The operation against Bin Laden was arguably part of that non-international armed conflict.

The relevant legal question is then whether Bin Laden is classed as a civilian (who cannot be targeted), or is a person 'directly participating in hostilities' (which makes him a legitimate military target). The US could argue that as the military commander of Al-Qaeda, Bin Laden must be regarded as a perpetual 'unlawful combatant' who can be killed at any time. If a person is taking a direct part in hostilities in this way, there is no obligation under humanitarian law to attempt to apprehend or arrest the person before killing them — which is quite unlike the ordinary operation of law enforcement powers against criminals in peacetime.

The difficulty here is that there is a current controversy in humanitarian law about what 'direct participation in hostilities' means. A more traditional view is that it only covers acts of immediate physical participation in fighting, such as carrying a weapon. That view is usually preferable because it better protects civilians not engaged in hostilities at the time, although some governments argue it makes it too difficult to deal with terrorists. A military leader of a non-state group is in a rather different position, since he is continually engaged in a combat function as military leader.

Whether the killing was wise policy is a different question. The US has admitted that Bin Laden was not armed when he was shot, nor apparently was anyone else in the bedroom where he was captured. A US spokesperson said that 'resistance does not require a firearm'. That cryptic comment has not been explained. Perhaps he was physically struggling against capture, and he was a big man with a strong will.

But that hardly explains why a room of highly-trained and well-armed US special forces found it necessary to shoot him, instead of simply overpowering an unarmed man who was not taking a direct part in hostilities. That there was armed resistance in other parts of the compound is irrelevant to what happened to those people, in that room. Humanitarian law requires positive identification of a person taking direct participation in hostilities, not eyes wide shut assumptions about what one might expect to find there. It may have been smarter to show restraint, and put Bin Laden on trial, even if the apprehension might be tainted by the illegality of the incursion into Pakistani territory without its consent.

The US mission was certainly preferable to an original proposal to drop a 900 kg bomb from a B2 bomber to obliterate the compound. From what has been reported, the operation appeared to minimise civilian casualties. A US spokesperson



also said that they were prepared to capture Bin Laden if that were possible. That makes sense since his capture would have intelligence value, enable his criminal prosecution, and bring propaganda benefits.

If that statement is correct, then the failure of the Americans to carry through that plan to arrest Bin Laden must be seen as a considerable mission failure. On the facts so far provided by the Americans, it would have seemed possible to apprehend and detain an unarmed Bin Laden, in a room where there were no other hostile threats to American forces.

His killing therefore may mean one of two things. It could mean that US special forces did not properly follow orders, but messed up the operation by being too trigger-happy, admittedly under the frightening and confusing circumstances of a surrounding battle.

Or it could mean that his killing was planned all along — an assassination order of the US President, coordinated by the civilian CIA (which itself unlawfully participated in hostilities by running the military operation), regardless of the circumstances in which Bin Laden happened to be found — including unarmed, in his bedroom, with his wife.

The outcome has been welcomed by many, and few regret Bin Laden's passing. Bin Laden was as evil a person as can be found: a genocidal, obsessive, odd man whose business was exterminating civilians he didn't like, including fellow Muslims.

But in the long term, lawlessness of our own will not make us safer. It ultimately sends a signal to those despicable terrorists that we will sometimes act like them. That seldom makes them afraid; it tends to steel their will and escalate their savagery against us. The violence is not finished. JD



Ben Saul (BA 1999, LLB 2001) is Professor of International Law at Sydney Law School.



# Challenges in Contemporary Armed Conflicts: A View from Israel

Ben Wahlhaus



Since its establishment as a state in 1948, Israel has been at the forefront of many of the emerging issues in international law; from the negotiation of peace agreements to the conduct of hostilities, dealing with issues such as water rights, the law of occupation, refugees and the negotiation of state borders. In the past decade, the focus has been on Israel's engagement in a number of armed conflicts — including with armed Palestinian groups in the West Bank, Hizbollah in Lebanon and the Hamas terrorist organization in the Gaza Strip. These conflicts have involved various challenges, operational and otherwise. Throughout, legal advisers have played a key role in the interpretation, application and enforcement of the law of armed conflict.



In April last year, Hamas fired a laser-guided anti-tank missile into Israel. The missile hit a yellow school bus taking students home from school. A teenager was mortally wounded, and emergency services were delayed by rocket fire aimed at their efforts to help the injured.<sup>1</sup>

This type of incident is indicative of the *modus operandi* employed by Hamas and other terrorist organisations — and the shift in the nature of contemporary armed conflicts. These conflicts see the military forces of a democratic state pitted against non-state actors who, for operational and tactical advantage, systematically violate international law governing the conduct of hostilities, called the law of armed conflict (or 'LOAC', and also known as 'International Humanitarian Law'). In violation of LOAC, these groups intentionally target the civilian population. They intertwine their fighting in and among their own civilian population — booby-trapping residential areas, using sensitive sites such as hospitals and religious buildings for weapons storage, and actively using civilians as human shields.<sup>2</sup>

A number of Western democracies mired in conflict in the last decades have faced these circumstances. US forces in the 1990s contended with Somali militants who used women as cover. The Taliban have gone so far as to hold a wedding party hostage as they fired on US forces.<sup>3</sup>

The result is an asymmetry in the way conflicts are conducted. The fact that Hamas and other terrorist organisations flaunt LOAC does not mean that a democratic state can pull off its gloves; in general, observance of LOAC is not based on reciprocity. This poses acute dilemmas for the state forces contending with such threats. Military operations can be significantly hampered by the increased risk to the civilian population placed in the path of hostilities, and make the application of LOAC 'more difficult, and more critical, for the protection of innocent civilians'.<sup>4</sup>

These circumstances complicate the military commander's decision-making processes in the field, and also create challenges for military legal advisers. As the proximity between the civilian population and the hostilities increases, so too do the legal intricacies involved in implementing LOAC in these situations of so-called 'asymmetric warfare'. Lawyers must have an understanding of a wide range of issues covered by LOAC, including treatment of the detainees, legality of weapons and the manner in which they are used, appropriate rules of engagement for different contexts and humanitarian obligations to the civilian population during combat. They also need to be able to provide practical and effective advice that allows military forces to contend with these challenges.

Additionally, military lawyers are increasingly finding themselves in their own fights, beyond the physical battlefield. In contemporary conflicts, the struggle for the 'hearts and minds' is as crucial as the physical fight. Public opinion can be as decisive in a conflict's outcome as military might. Media and PR become tools by which to wage battle and weaken the other side.

One of the incarnations of this new type of conflict is 'lawfare'; the abuse of legal avenues as an alternative method of warfare. Lawfare may be employed in order to obtain an operational objective; for example, the Taliban's campaign to delegitimise aerial drone strikes on the international stage has become their 'principal effects-based air defense methodology', due to their inability to defend themselves adequately against such strikes otherwise.<sup>5</sup> Lawfare also involves the use of legal proceedings in foreign states and international tribunals to delegitimise the manner in which the opposing state implements the use of force.

Lawfare may also be used to undermine public support that

is indispensable to Western democracies. As non-state actors have no regard for the rule of law or their standing in the international community, they have no qualms in bandying about accusations of violations of LOAC by the opposing state. In contrast, these states are committed to spending time and resources to investigate all such claims. Often the damage that the initial accusation has done in terms of media attention and public opinion cannot be undone, even if the accusations are found to be baseless.

The role of legal adviser in contemporary conflicts is multifaceted. They provide advice on intricate aspects of LOAC to forces in the field. They defend a state's actions in foreign courts and international tribunals. They contend with the spread of conflict to the legal and media battlefield. In my involvement with Israel's public service I have been privileged to work on some of the most topical and complex issues in this area. Nowadays, I see SAM as meaning 'surface to air missile' as well as Sydney Alumni Magazine. However, it is the same textbooks that I used at Sydney Law School which now sit on my desk in Tel Aviv and aid me in our work ensuring that the conduct of contemporary armed conflicts abides by international law. *jd*

Ben Wahlhaus (BA 2007, LLB 2008) works as a lawyer in the public service in Israel. The views and statements included above are of the author's only and do not necessarily reflect the views or positions of the Israeli Government or the Israel Defense Forces.

<sup>1</sup> John Lyons, 'School Bus Attack May Spark Gaza War' *The Australian* (9 April 2011).

<sup>2</sup> Steven Erlanger, 'A Gaza War Full of Traps and Trickery' (10 January 2009).

<sup>3</sup> Jason Stratziuso, 'Official: Taliban Tricking the US Into Killing Civilians' *Associated Press* (8 November 2008).

<sup>4</sup> Harold Hongju Koh, 'The Obama Administration and International Law' (Press Release, US Department of State, 25 March 2010).

<sup>5</sup> Charles J Dunlap Jr, 'Lawfare: A Decisive Element of 21st Century Conflicts?' *Joint Force Quarterly* issue 54, 2009.



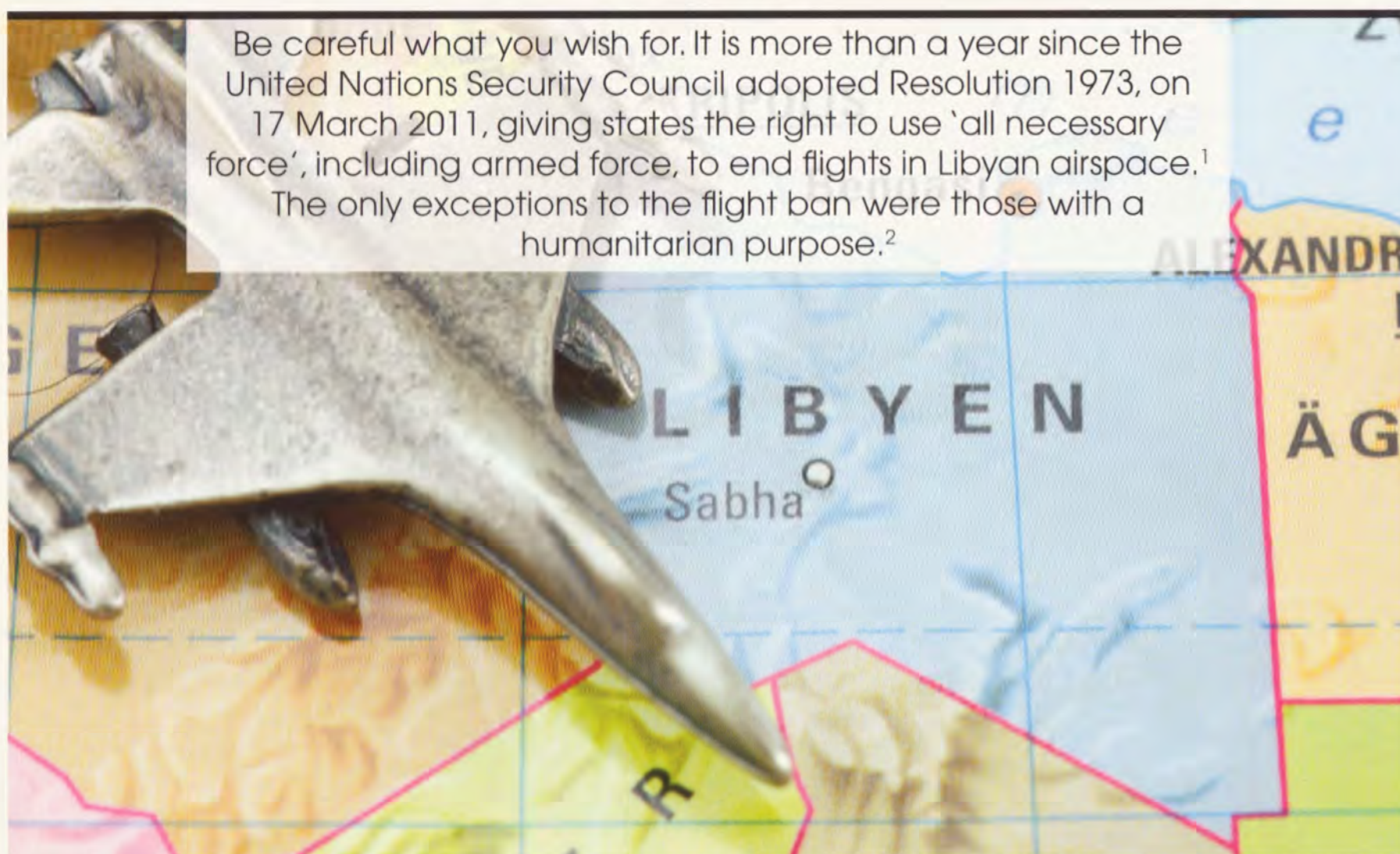
Contemporary armed conflicts typically take place in an urban and often highly populated environment



# Responsibility to Protect or a Slippery Slope?

## No-fly Zones and International Law

Gillian Triggs



Be careful what you wish for. It is more than a year since the United Nations Security Council adopted Resolution 1973, on 17 March 2011, giving states the right to use 'all necessary force', including armed force, to end flights in Libyan airspace.<sup>1</sup> The only exceptions to the flight ban were those with a humanitarian purpose.<sup>2</sup>

One year later, it appears that NATO's enforcement of the ban in Iraq, while bringing an end to civil conflict and the Qaddafi regime, has yet to deliver many of the hoped-for outcomes. National elections, intended to lay the foundations for a modern Libyan democracy, have not taken place, and militia leaders threaten to turn Libya into 'semi-autonomous fiefdoms'.<sup>3</sup> In May 2012, armed men attacked the headquarters of Libya's interim Prime Minister, Abdel Rahim el-Keeb, and Libya has since asked the International Criminal Court in the Hague to withdraw its arrest warrants for the trial of Colonel Qaddafi's son, Sief el-Qaddafi, and others charged with war crimes.<sup>4</sup> The 'Arab Spring' has not yet produced inspiring national leaders and Libya is increasingly unstable.<sup>5</sup>

It is time to assess whether the Security Council's no-fly zone is consistent with international law and whether, in fact, NATO's enforcement of Resolution 1973 meets the test of 'necessary'.

To begin at the beginning, the United Nations has the primary purposes of maintaining international peace and security and taking effective measures to suppress threats to the peace and acts of aggression. The UN Charter of 1945 specifically prohibits

the 'threat or use of force against the territorial integrity or political independence' of a state or intervention by the UN in matters essentially within the domestic jurisdiction of a state (arts 2(4) and 2(7)). There are two express exceptions to these prohibitions. First, all states have an inherent right of self-defence against an armed attack (art 51). Second, the Security Council has the power to decide upon measures to maintain and restore international peace and security (art 39). The core principle of respect for state sovereignty is reflected by the time-honoured rule of international law that foreign intervention is forbidden in a civil war. While one state may invite another to assist in suppressing a minor domestic rebellion, once that rebellion swells to a full-scale civil war, the foreign state must withdraw.

Recitation of these principles does not, however, accurately reflect the realities of 21<sup>st</sup>-century practice. There is growing international community support for bona fide humanitarian intervention where egregious breaches of human rights are threatened. There are three precedents for the adoption of no-fly zones, each of them adopted for broadly humanitarian purposes.



- In the Gulf-Iraq War in 1990–91, the United States, United Kingdom, France and Turkey adopted ad hoc no-fly zones to protect the Marsh Arabs, Shiites and Kurds. While China and Russia denied the legal basis for these zones, the Security Council subsequently recognised that the humanitarian crisis lent them political, if not legal, credibility where the objective is to save civilian life.
- A year later, in 1992, no-fly zones were established in Bosnia and Herzegovina. Security Council Resolutions, 770, 781 and 816 (1992) banned military flights in Northern and Southern Iraqi airspace and authorised states to use 'all necessary measures' for humanitarian purposes and to enforce the flight ban. These resolutions underpinned the subsequent NATO operation to enforce the no-fly zones.
- The third, legally dubious precedent, arose when the 'Coalition of the Willing' justified its war in Iraq in 2003 on the basis of Security Council Resolutions 678 and 687 (1991). These 12-year-old resolutions were employed to support the enforcement of the no-fly zone imposed north of the 36<sup>th</sup> parallel in Iraq.

The adoption of the Libyan no-fly zone by the Security Council in 2011, while based on slender legal precedent, also gives effect to the evolving principle, known as the 'Responsibility to Protect'. In 2006, at the World Summit, states confirmed, by Resolution 1674, that the:

*UN has the collective responsibility to take action...if nations manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.*

As the Qaddafi government used extreme force to quell the rebellion against it, the international community, through the Security Council, had the right to exercise its collective responsibility. Indeed, the Libyan no-fly zone was the first occasion on which the Secretary General, Ban Ki-moon, has successfully invoked the principle.

There is little doubt that a no-fly zone created by the Security Council provides a valid authorisation for states and regional organisations to enforce a flight ban. It is vital, however, that any such action is 'necessary' in all the circumstances. It is the implementation of a no-fly zone that exposes the dangers of

humanitarian intervention. Acting on the basis of Resolution 1973, a coalition of 17 states, including the US, UK, France, Canada, Italy, Spain and Qatar, enforced the no-fly zone and naval blockade, providing military logistical assistance. NATO then took control over the no-fly zone, leaving command of the ground units with the coalition forces.<sup>6</sup>

It is arguable that NATO and the coalition forces went significantly further than was necessary to enforce the flight ban. One hundred and ten Tomahawk cruise missiles were, for example, launched against Qaddafi armour and ground troops.<sup>7</sup> For NATO to arm or actively assist the rebels, especially in light of the arms embargo, appears to be well outside the ambit of the Security Council authority. Moreover, 'regime-change' to oust a leader who has apparently lost his legitimacy, is not a valid basis for foreign intervention.<sup>8</sup>

Adoption of a no-fly zone for *bona fide* humanitarian purposes is a welcome example of collective international responsibility to prevent egregious crimes against civilians. But implementation of that responsibility must not provide camouflage for ulterior strategic motives. The core principle prohibiting intervention in the domestic affairs of a state remains central to the international legal system. The challenge is to ensure that humanitarian objectives are safeguarded, while avoiding the slippery slope towards illegal foreign subversion of national sovereignty. *jd*

<sup>1</sup> Russia and China chose to abstain rather than exercise their veto vote.

<sup>2</sup> Flights to protect civilians and to enforce the no-fly zone, and flights for humanitarian purposes or those deemed 'necessary for the benefit of the Libyan people' were permitted by SC Res 1973, which expressly excludes a foreign occupation force of any form.

<sup>3</sup> Marlise Simons, 'Libya-Revolution and Aftermath' *The New York Times* (17 May 2012).

<sup>4</sup> 'Libya-Hague Court is Act to Stand Down' *The New York Times* (1 May 2012).

<sup>5</sup> Thomas L. Friedman, 'Lead, Follow or Get Out of the Way' *The New York Times, Sunday Review* (5 May 2012).

<sup>6</sup> NATO acted under 'Operation Unified Protector' (23 Mar–31 Oct 2011).

<sup>7</sup> See also, 'Libya: RAF Tornados destroy seven Libyan Tanks' *BBC News* (9 April 2011).

<sup>8</sup> Alison Pert, 'Legality Burred by Libya Intervention' *The Australian* (15 April 2011).





# Fireworks and Other Explosive Devices: Working on IHL in Afghanistan

Kelisiana Thynne (LLM 2008)



The other night, I woke up at midnight to find the windows rattling, the floors reverberating, the air rent with explosions, and what sounded like gunshots. I currently live in Kabul, Afghanistan, and last time such explosions were heard in this part of town, the US Embassy was under mortar attack. Having been here now for six months (coincidentally, that day of the Embassy attack was also my first day in Kabul — an explosive start), I was prepared to dash to the bunker. However, running down the stairs, I happened to glance out the window — to see spirals and whirls of coloured light. Then I remembered: it was Naw Roz (Afghan New Year) and the explosions were fireworks going off over Bibi Maroo Hill, five blocks from our house.

Contrary to public perceptions elsewhere in the world, my life in Kabul is not regularly punctuated by fireworks in the literal sense, but the work can give rise frequently to figurative explosions. I work as Legal Advisor to the International Committee of the Red Cross (ICRC) delegation in Afghanistan. Along with my colleagues in the aptly named Protection Department, I work on two primary areas of international humanitarian law (IHL): protection of the civilian population and protection of those deprived of liberty.

The work flowing directly from the conflict is the protection of the civilian population, more commonly known as conduct of hostilities. However, I sit behind my desk in Kabul and provide advice on the laws applicable to hostilities — precaution in attack, proportionality, not locating operations near the civilian population amongst other issues. It is my colleagues 'in the field' who collect allegations of mistreatment, injuries, and killings of civilians related to night operations, artillery fire, improvised explosive devices (IEDs), and so on. They talk to the family members, the injured in hospital and the people who are alleged to be responsible — with the international military forces, with the Afghan national security forces, with the armed opposition. I have lengthy discussions with the lawyers in the military about who is a civilian and who is a legitimate target based on complex principles of IHL. For the colleagues in the field, what is more important is that they have a dialogue about what behaviour led to the civilian casualties (planting an IED near a school, or not using a wide enough lens when engaging in shooting), and what measures could be taken in future to prevent them.

Detention work (dealing with those deprived of liberty) forms a large part of the job. In any armed conflict, one way of reducing deaths for both sides is to capture rather than kill. Therefore, there are large numbers of detainees in Afghanistan, held in various different facilities around the country — either for criminal prosecution (and thus in prison) or for security reasons (and ▶





When everything had been distributed, the prison director, Mrs Aziza Adalatkhah, signed the official handover certificate. 'What we receive from the ICRC and other organisations who make donations, adds to what we ourselves can supply, and is very welcome,' Mrs Aziza remarked. (c) ICRC/J. Barry

thus in internment facilities) — and held by the Government of Afghanistan, international military forces or the armed opposition. The ICRC aims to visit all detention facilities around the country. While sometimes I visit detention facilities myself, more often I advise my colleagues who conduct the visits about the legal aspects of treatment, conditions in detention (the right to outdoor exercise, minimum standards of clothing etc) and judicial guarantees (the right to a fair trial). Once again, the humanitarian consequences and practical effects of the detention are just as, or even more, important as the legal issues, although it says much of the improvements that have been made over the last 10 years that most of my work focuses on whether detainees have access to a lawyer, or have long delays in their cases.

The ICRC's mandate during a conflict is not to question the reason for the initial use of force that began the conflict, but

rather to promote the application of existing principles of IHL. I like to say, though sounding like a bossy parent, 'I don't care who started it, just make sure that you behave yourselves now it has started'. While the security situation is slowly worsening in Afghanistan, it is this refusal to take sides and the insistence on ICRC's neutrality, impartiality and independence, as well as the ICRC's confidential dialogue with all of the parties to the conflict, which guarantees access to some of the worst conflict affected areas, and a relative degree of security. However, we have to be careful never to do anything to jeopardise our security and we can never take our security for granted. That is why next time when I hear what appear to be explosions, I will still head for the bunker, although taking time to peek out of the window on the way! *jd*



Kelisiana Thynne has an LLB (Hons), BA (Hons) and Graduate Diploma in Legal Practice

(Merit) from Australian National University, and an LLM from the University of Sydney, for which she concentrated on international law subjects, and completed an Independent Research Paper on international humanitarian law — specifically on whether terrorists can be

targeted under international law, and what the boundaries of an armed conflict are (in relation to the so-called war on terror). She was supervised by Ben Saul, and says that the knowledge she acquired from this paper has proven very useful in her current job.

Before commencing her role in Afghanistan, Kelisiana had worked for the ICRC in Sydney, as the Regional Legal Advisor. That involved talking to Pacific Governments about IHL treaties the ratification and implementation of IHL treaties.

Prior to that she had worked for three years with the Office of International Law in the Australian Attorney-General's Department on human rights and IHL. She has also worked for an NGO representing victims of gender-based crimes before the International Criminal Court, and completed internships with the UN Commission on Human Rights and UNHCR.

Asked what inspired her to work for the Red Cross, Kelisiana says, 'The Red Cross provides humanitarian assistance in an impartial way — that is, to

everyone based on needs — and they talk to all parties to the conflict without ever taking sides. This is something that I could relate strongly to — the desire to provide assistance to all, no matter what they do or what their political beliefs are — recognising that we are all human and that if people suffer as a result of war, something must be done to assuage that suffering. Further, the ICRC is seen as the reference point for IHL — and I have always wanted to work in IHL as a legal way of limiting that suffering during such a terrible thing as war.'



# Afghanistan – An Extended Exercise in Self-Defence?

Alison Pert



Alison Pert (PhD 2010)

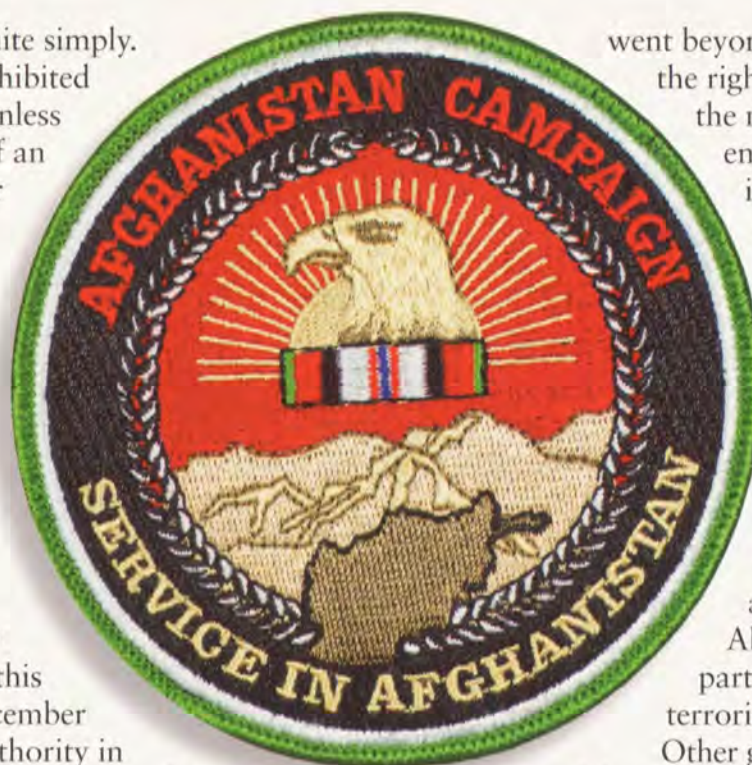
It is now more than 10 years since the United States and its allies — including Australia — invaded Afghanistan in the immediate aftermath of the Al-Qaeda terrorist attacks of 11 September 2001. Questions remain, however as to the precise legal basis for some of these operations and their effect on the development of international law on the use of force.

**T**he relevant law can be stated quite simply. The use of force by states is prohibited by art 2(4) of the UN Charter unless the action is excused as self-defence ‘if an armed attack occurs’, under art 51, or is authorised by the Security Council (SC). But how does this apparently simple proposition apply in the case of Afghanistan?

There are two quite distinct ‘foreign’ operations there. The larger and better-known is the International Security Assistance Force (ISAF), an international coalition led by NATO which currently numbers around 130,000 troops from 50 states, including 1550 from Australia. The establishment of this force was authorised by the SC in December 2001 ‘to assist the Afghan Interim Authority in the maintenance of security in Kabul’ and its mandate has been progressively expanded since then; its legal basis is therefore clear.

Not so, however, for Operation Enduring Freedom, a much smaller US-led operation of uncertain size (probably around 9000 at present, but accurate information on this operation is almost impossible to obtain). It was created within a month after the 9/11 attacks when the US, the UK, and several other states each notified the SC that they were taking military action against Al-Qaeda and the Taliban regime in Afghanistan, in exercise of ‘the inherent right of individual and collective self-defence’. This reference to self-defence echoed many similar invocations by other bodies: the same words appeared in the preamble to resolutions passed by the UN SC on 12 and 28 September 2001 condemning the terrorist attacks; Australia invoked the joint defence provisions of art IV of the ANZUS Treaty for the first time in the treaty’s 50-year history, declaring that ‘an armed attack’ had been made on the US; and a similar provision in the NATO treaty was also activated for the first time.

The legality of Operation Enduring Freedom was not seriously questioned at the time, no doubt because of the sheer scale and horror of the events of 9/11, but notwithstanding the implicit expressions of support, this asserted right of self-defence



went beyond the previously accepted scope of the right. In particular, it appeared to stretch the meaning of ‘armed attack’ in art 51 to encompass an attack by non-state actors, in contrast to the prevailing view that the attack must be by another state or, at most, by non-state actors sent by or behalf of that state. While the links between Al-Qaeda and the Taliban regime were close, it was not suggested that the Taliban had sent the 9/11 terrorists to the US or had been directly involved in the plot; rather, the US and the UK (the only states to offer an explanation) argued that the Taliban ‘supported’ Al-Qaeda and were allowing it to use parts of Afghanistan as a base for their terrorist operations.

Other grounds for doubting the soundness of the self-defence claim were that the requirements of necessity and proportionality (confirmed by the International Court of Justice) were arguably not satisfied: the 9/11 attacks had already occurred, suggesting that the invasion was a response to a past incident (a reprisal) and was not therefore necessary to protect the US from ‘armed attack’, and it has been questioned whether both the mode of response — aerial bombardment followed by invasion — and the duration of the operation were and are truly proportionate responses.

The legal status of Operation Enduring Freedom remains unresolved. Opinion is divided but it would be fair to say that the claim of self-defence is problematic. The operation has never been officially endorsed by the Security Council but in recent years it at least receives acknowledgement in Security Council resolutions on Afghanistan. Perhaps its strongest legal foundation is the implicit consent of the current Afghan government.

Incidentally, it seems that the US ‘global war on terror’ has officially come to an end — in 2009 internal US memo quietly asked government employees to stop using that term, and instead to refer to ‘overseas contingency operations’.<sup>jd</sup>

Sources for this article can be obtained by contacting the author at [alison.pert@sydney.edu.au](mailto:alison.pert@sydney.edu.au).



Within hours of arriving in East Timor for his debut as a foreign correspondent, ABC reporter Geoff Thompson (BA 1992, LLB 1994) was being chased by a gang of Indonesian-backed militia, wielding pipe guns and swords. Yet, in spite of the terror that accompanied that first day reporting from overseas — he remembers it took him five attempts to deliver his story down the telephone line, he was so badly shaken — there was nowhere else he wanted to be.



# In the Line of Fire

Chris Rodley

Since childhood, when he recalls watching George Negus, with his jacket slung over his shoulder, reporting from distant lands on *60 Minutes*, Thompson had dreamed of becoming a foreign correspondent. 'It just seemed there was this big wide world out there and these people were getting paid to learn and tell stories about it, and that seemed incredibly exciting and interesting,' he says.

In order to realise his ambitions, he enrolled in a journalism course after finishing high school, but then changed his mind and decided to study law at Sydney instead, enticed by the sight of the 'gorgeous' main campus. Learning black-letter law — and sometimes cramming entire semesters in one night — honed his ability to rapidly grasp complex information. 'That is an essential journalistic skill,' he says. 'You're very often being asked to understand a new area of knowledge quickly, and to a degree where you can say something meaningful and original about it.' Studying law also ensured he was not intimidated when interviewing powerful individuals: 'I'd often come up against people with these high-falutin' qualifications, and a law degree helps to demystify that.'

After graduating, Thompson landed a job writing on commission for *The Sydney Morning Herald*, and contributed to an investigative report into film industry tax fraud that was shortlisted for a Walkley (he would go on to win three of the prestigious awards). That propelled him into a cadetship at the ABC, where, in 1999, he won another break when he was sent to East Timor to report on the civil unrest in the lead-up to the independence referendum.

'I spent nine months there wanting to be brave but feeling scared,' he says. 'It is still the most raw experience I've had as a correspondent.' Seeing the daily impact of violence on local families, which were constantly holding funerals, taught him about the 'harsh edge of human existence' and changed his perception of law and power: 'You realise, at the end of the day,

that real power comes down to the capacity for violence.'

Thompson was evacuated from East Timor when the violence there rose to a peak in the aftermath of the referendum, and came to regret his decision to leave bitterly when he realised how significant those days were in the eyes of the world. As a result, when the opportunity arose to report on wars in Afghanistan and Iraq, he jumped at the chance: 'I was driven by a feeling of shame that I had pulled out,' he says.

In 2003, while travelling as an embedded journalist with the US army in Iraq and Kuwait, he again saw first-hand the impact of conflict on civilian populations. One indelible experience was watching as the US marines he was sharing a truck with opened fire on nearby cars and houses with a belt-fed machine gun, in the belief they were being ambushed. He later established that the truck was in fact under fire from nearby US forces, and that the marines had most likely killed innocent Iraqi civilians.

As well as witnessing the breakdown of societies during war and conflict, Thompson has also been heartened by watching the process of reconciliation. While serving as the ABC Indonesia correspondent, he saw President Yudhoyono accept the findings of the Indonesia-Timor Leste Commission of Truth and Friendship, which found the Indonesian military responsible for crimes against humanity in East Timor. 'I started out as a foreign correspondent in the last gasps of the Suharto era, and saw the worst of Indonesian brutality, and by the end of my time overseas, I ended up witnessing what may have been the pinnacle of Indonesian democracy,' he says.

Today, Thompson is a reporter for *Four Corners* and no longer takes regular overseas assignments. Although he does not rule out a return to his old job, he sees his role as the father of two young boys as being incompatible for the time being with life as a foreign correspondent: 'It's very valuable, but it's also a little bit selfish in terms of who I need to be looking out for.' *jd*



## RECENT APPOINTMENTS

Congratulations to barrister and Sydney Law School alumnus, his Honour Judge David Arnott SC (LLB 1976), who was appointed a judge of the District Court of NSW in February.

Congratulations are also extended to Magistrate Michael Barko (LLB 1985, LLM 1989) on his appointment as a magistrate of the Local Court of NSW in February, and Magistrate Hugh Radford (LLB 1989) on his appointment to the Victorian Magistrates Court in March.

## AUSTRALIA DAY HONOURS

This year's Australia Day Honours saw nine Sydney Law School alumni recognised:

**The Honourable Justice Virginia Bell, AC** (LLB 1977): for eminent service to the judiciary and to the law through leadership in criminal law reform and public policy development, to judicial administration, and as an advocate for the economically and socially disadvantaged.

**The Honourable Jennifer Boland, AM** (LLM 1992): for service to the judiciary through the Family Court of Australia, to legal education, and to the community, particularly through social welfare organisations.

**The Honourable Kevin Edmund Lindgren, AM QC:** for service to the judiciary and the administration of justice through the Federal Court of Australia, and to legal education in the area of commercial law.

**Mr Richard Michael Haddock, AM** (LLB 1974): for service to business through executive roles with financial institutions, to the law, and to the community, particularly as an adviser to the social welfare organisations of the Catholic Church in Australia.

**The Hon Gregory Reginald James, AM QC** (LLB 1971): for service to the judiciary and to the law as a contributor to mental health reform, to the administration of criminal justice, and to the international community.

**Ms Inaam Tabbaa, AM** (DipLabRel&Law 1987): for service to industrial relations in New South Wales, and to the community, particularly through the Australian Council of Women Affairs.

**Mr Peter James Prineas, OAM** (LLB 1973): for service to conservation and the environment in New South Wales through executive and advocacy roles.

**Mr John Malbon Ralston, OAM** (LLB 1975): for service to education through the Independent Schools Council of Australia and the Association of Independent Schools of New South Wales.

**The Ver Rev William James Uren, AO SJ** (GradDipJur 1968): for distinguished service to education as a philosopher and bioethicist, as a commentator on contemporary issues in Australian society, as a scholar and mentor, and to the Catholic Church in Australia.

## VALE THE HON MAHLA PEARLMAN AO (1937-2011)

Sydney Law School mourns the death of Mahla Pearlman AO (BA 1957, LLB 1960), first female president of the Law Society of NSW (1981-82) and former Chief Judge of the Land and Environment Court (1992-2003). She was also the first female President of the Law Council of Australia (1989-90), Deputy Secretary-General of the International Bar Association (1988-92), and Chairman of the Board of Governors of the College of Law (1983-88).

The Hon Mahla Pearlman is remembered for her significant contribution to the legal profession and to the community. She was named a Member of the Order of Australia (AM) in January 1985 for services to the legal profession; awarded the Centenary Medal for service to the law in April 2003; and in 2004 was made an Officer of the Order of Australia (AO) for service to the law, the judiciary and the community.

## ALUMNA HONOURED BY FRENCH GOVERNMENT

Mary Macken (LLB 1985, LLM 2003) was awarded the Order of Legion d'Honneur at a ceremony in Noumea in March 2012. The award was determined by former French President Nicolas Sarkozy, and is roughly equivalent to a knighthood.

Ms Macken was President of the Law Society of NSW in 2010, and the award is in recognition of her work in promoting and achieving a close relationship between the Law Society of NSW and the French legal system and bar. More broadly, it recognises her dedication to developing amicable relations between France and Australia.

## PROFESSOR LAWRENCE GOSTIN RECEIVES HONORARY DOCTOR OF LAWS

On Friday 25 May, Professor Lawrence Gostin of Georgetown University Law Centre and John Hopkins University was presented with the Doctor of Laws (honoris causa), at a graduation ceremony held in the Great Hall.

Professor Gostin is Associate Dean (Research and Academic Programs) and the Linda D and Timothy J O'Neill Professor of Global Health Law at the Georgetown University Law Center, where he directs the O'Neill Institute for National and Global Health Law. In 2006, Professor Gostin was awarded the American Public Health Association's Distinguished Lifetime Achievement Award 'in recognition of a career devoted to using law to improve the public's health'.





## LAW VS PHARMACY CHARITY RUGBY CUP

Current students and recent alumni of the Sydney Law School will face off an opposing team from the Faculty of Pharmacy in a charity rugby match to be held at 6pm on Friday 17 August at St John's Oval. Entry is on the basis of a gold coin donation, and a bar and bbq will be operating, with all proceeds from the event to go to the nominated charity of the winning team. The event is being coordinated by Sydney University Law Society and Sydney University Pharmacy Association with the support of both faculties. Come along and support the Sydney Law School team!

## ALUMNI AT THE FOREFRONT OF FAMILY LAW AND CHILDREN'S RIGHTS

Three Sydney Law School alumni — The Hon Justice Stuart Fowler AM of the Family Court of Australia; Justin Dowd, President of the Law Society of NSW; and Malcolm Broun OAM QC — are working alongside other leaders in the field to present the 6<sup>th</sup> *World Congress on Family Law and Children's Rights*, to be convened in Sydney, 17–20 March 2013.

The Congress series has built a reputation over the past 18 years as being a major international event in the field of children's rights and family law, and will bring together government officials, family law practitioners, jurists, advocates, policing and protection agencies, medical practitioners, politicians and other organisations and individuals with a common interest in the active protection of children and the promotion of good family law.

## ADRIANA EDMEADES WINS WENTWORTH MEDAL



Congratulations to alumna Adriana Edmeades (BA 2007, LLB 2012) on winning the 2011 Wentworth Medal. Adriana recently completed her final year of law at Sydney and has been an active member of the university community, editing *Honi Soit* and *Hermes* and representing the University of Sydney in first and second grade level hockey as well at a number of University Games. She has also represented the university at a number of international law moots.

The Wentworth Medal, awarded for the best essay in English, prose, was established in 1854. The topic in 2011 was: *China's future is Australia's future?*

## SCHOLARSHIPS NEWS

Sydney Law School congratulates Andrew McLeod, winner of the 2012 Peter Cameron Sydney Oxford Scholarship, and Ryan May, winner of the 2012 Justice Peter Hely Scholarship.



**Andrew McLeod** graduated with a first class honours degree in Law in 2010. He has most recently been working as a senior analyst in the Department of Prime Minister and Cabinet and before that, as Associate to Chief Justice Robert French AC, High Court of Australia.

The selection committee chaired by the Dean, Professor Gillian Triggs was impressed

with Andrew's diverse professional experiences, his excellent academic performance in the Bachelor of Laws, his community experience and his contributions to the Law School and University as a volunteer.

The scholarship will support Andrew during his studies in the Bachelor of Civil Law at Oxford. The Peter Cameron Sydney Oxford Scholarship was established by Sydney Law School and the Cameron family through contributions from the friends and colleagues of the late Peter Cameron to promote further study in law at the completion of a law degree.



**Ryan May** was selected from an outstanding list of candidates and intends to apply the scholarship towards studying the Bachelor of Civil Law at Oxford. He graduated with a first class honours degree in Law in 2010. He was most recently the Associate to the Honourable Justice Dyson Heydon AC of the High Court of Australia and before that Associate to the Honourable

Justice Richard Edmonds of the Federal Court of Australia.

The Justice Peter Hely Scholarship was established by Sydney Law School through contributions from friends and colleagues of the late Justice Peter Hely to promote postgraduate study in the fields of commercial law and equity.

## JCA SCHOLARSHIPS

The Sydney Law School warmly acknowledges the kind and generous support of the Judicial Conference of Australia. Last year the Judicial Conference of Australia Scholarships in Social Justice were awarded to five students enrolled in the Social Justice Clinical Course who demonstrated financial need, reasonable academic performance and engagement in social justice issues. Each scholarship is tenable for one year, and is valued at \$1000.

The Social Justice Scholarship Committee unanimously recommended the following recipients:

Glenn Kembrey  
Giselle Kenny  
Stephanie McNamee  
Mina Nada  
Ming Paul Pang



## UNIVERSITY OF SYDNEY ALUMNI AWARDS 2012

Congratulations to the two Sydney Law School alumni who will be honoured as part of the University of Sydney Alumni Awards 2012, which will be presented at a ceremony to be held in October.

### David Handley (BA 1987, LLB 1989) Alumni Award for Community Achievement

David is the founder of Sculpture by the Sea, with his vision and energy helping grow the public sculpture exhibition over the past 16 years to become one of Australia's iconic cultural events.



### Eric Knight (BA 2006, LLB 2007) Young Alumni Award for Achievement

A former Rhodes Scholar, Eric has made a significant and energetic contribution to both academic and public life, with an influential body of work in media and publishing in the five years since he graduated.



See the current edition of SAM, the University of Sydney Alumni Magazine, for full profiles of award recipients.

## JOHN MCCARTHY QC AWARDED HONORARY FELLOWSHIP

The title of Honorary Fellow of the University was conferred upon John McCarthy QC (BA 1968, LLB 1971) by the Deputy Chancellor Alan Cameron AO at the Faculty of Arts & Social Sciences graduation ceremony on 27 April 2012, in recognition of his outstanding contribution to Senate, to the University and in particular to University sport.

It was also recently announced that Mr McCarthy will be appointed Australian Ambassador to the Holy See in September.



## MOOTING NEWS

Sydney Law School continues to further its exceptional mooting success, with some wonderful results thus far in 2012.

A team from Sydney Law School, comprising Sriram Srikumar, Ramya Krishnan, Michael Forgacs, and Daniel Fletcher, accompanied by coach Patrick Caldwell, won the **2012 Vis Invitational 'Pre-Moot'**, which was held on the weekend of 24-25 March in Düsseldorf, Germany.



The Pre-Moot saw the Sydney team moot against four other law schools in the preliminary rounds before defeating reigning champions The University of Hamburg to secure Sydney's first victory at this tournament. One team member, Daniel Fletcher, was also awarded the prize for the Best Oralist at the Pre-Moot.

The Sydney Law School **Jessup Moot 2012** team, consisting of law students Katherine Connolly, Louise Coleman, Giselle Kenny, Alistair Oakes and Daniel Ward, performed magnificently in this year's national competition. After progressing through the preliminary rounds and defeating Murdoch University in the quarter-final, the team were narrowly defeated by the University of Queensland in the semi-final. The team picked up several prizes, with Louise Coleman named best speaker and Katherine Connolly fourth-best speaker.

The University was represented for the first time in the prestigious **Inter-American Human Rights International Moot Competition** in May 2012 at the American University Washington, a competition attracting around 100 teams from around the world. The team included Sydney Law School students Lan Wei and Domenic Cucinotta. The team did exceptionally well, just missing the finals by one place.

## SHARING OUR ALUMNI NEWS

We are always keen to hear from members of the Sydney Law School alumni community with news of new appointments, special projects, reunions and anything else you think may be of interest to your peers. To let us know your news, contact the Alumni Relations Officer: [law.alumni@sydney.edu.au](mailto:law.alumni@sydney.edu.au)



## LAUNCH OF *RODDY'S FOLLY: RP MEAGHER QC – ART LOVER AND LAWYER*

Over 250 guests gathered on Monday 23 April for a cocktail reception at the old law school building in Phillip Street to launch *Roddy's Folly: RP Meagher QC – art lover and lawyer*, written by Damien Freeman (BA 1999, LLB (Hons) 2000, MA 2003, MPhil 2006) and incorporating drawings by The Hon Michael Kirby AC CMG (BA 1959, LLB 1962, BEc 1966, LLM 1967, LLD 1996).

The audience, which included many current and former senior members of the judiciary, Bar and broader legal profession, were welcomed by Professor Gillian Triggs, Dean

of the Sydney Law School, and addressed by Her Excellency Professor Marie Bashir AC CVO; author Damien Freeman; The Hon Tony Abbott MHR and The Hon Justice JD Heydon AC.

Freeman's biography is the first book-length study of the life and work of RP Meagher QC (BA 1954, LLB 1958, LLD 2000), who passed away in July 2011. It considers his relationship with the Roman Catholic Church, the University of Sydney, the Australian Bar, and the tradition of legal scholarship to which he made a monumental contribution.



## RULE OF LAW LECTURE SERIES FOR 2012

A new lecture series by a former Federal Court judge on the rule of law will enable Sydney Law School students to develop insights into this important cornerstone of democracy, thanks to a generous donation by the Rule of Law Institute of Australia.

The Honourable Kevin Lindgren QC, a retired judge of the Federal Court of Australia and an adjunct professor at Sydney Law School, delivered the first in a series of four lectures in May.

The central principle of the rule of law is that even lawmakers are bound by laws — so Parliament, judges and government executives must abide by the rules they make. The concept was first developed by Aristotle and is enshrined in the Magna Carta and the US Bill of Rights. It continues to provoke debate today, particularly in the fields of administrative and constitutional law.

It plays a major role in some of the key issues affecting contemporary Australian public life, for example in the

debates on immigration and climate change, and is an omnipresent issue in global affairs, such as in the fallout from the 'Arab Spring' and continuing reconstruction efforts in Afghanistan and Iraq.

'These lectures are an excellent opportunity for our students to learn directly from one of Australia's leading legal thinkers,' said Sydney Law School Dean, Professor Gillian Triggs. 'Some of Justice Lindgren's lectures will be targeted at first-year students, and they will find it particularly beneficial to start their legal education with the chance to develop their knowledge of this fundamental democratic principle.'

The Rule of Law Institute has provided funds to Sydney Law School to support the lecture series, as well as research activities on the rule of law. The Institute and Sydney Law School hope to develop other joint initiatives, such as the delivery of a postgraduate and undergraduate program and initiatives on the Rule of Law.



## CLASS REUNIONS



### LLB Class of 1971: 40 Year Reunion

On Saturday 21 April, almost 70 members of the LLB class of 1971 gathered at Sydney Law School for their 40 year reunion, joined by the Dean, Professor Gillian Triggs. Among the guests at the three-course, black-tie dinner were former Chief Justice of New South Wales, the Hon James Spigelman; former Liberal Senator, the Hon Helen Coonan; Australian ambassador to the Holy See and Honorary Fellow of the University of Sydney Senate, John McCarthy; and Deputy Chancellor of the University, Alan Cameron. Guests enjoyed a tour of the New Law Building on arrival, and during dinner were addressed by classmate David Marr, Australian journalist, author and progressive political and social commentator. The organising committee for the event included Alan Cameron, John McCarthy, Paul McGirr (also acting as Master of Ceremonies on the night), Frank Levy and Robert Kirby.



### 10 Year Sydney Reunion: Class of 2002

Sydney Law School alumni graduating in 2002 joined fellow alumni from their year across the university for a special 10-year reunion event, held at Taste Café at Sydney Law School on the evening of Thursday 29 March. Almost 100 alumni from a range of disciplines enjoyed fine food and wines and an opportunity to re-connect with their peers.



### Your reunion

Are you organising, or thinking of organising, a reunion for your Sydney Law School class? Contact the Alumni Relations Officer, who will keep a record of your reunion and can also provide advice and assistance with class lists, promotion and provision of function space in the New Law Building on the Camperdown campus.





# 2012 Prize Giving Ceremony and Alumni Graduation Party

On 24 May 2012, the Sydney Law School held its annual Prize Giving Ceremony to celebrate the achievements of outstanding students.

A crowd of almost 250 people gathered in the Law School's auditorium to witness the awarding of the prizes, as MC Graeme Coss announced prizes for almost 70 students present on the night.

The Dean, Professor Gillian Triggs, acknowledged the efforts of the students and spoke of exciting times ahead for the study of law with the Sydney Law School, and gratefully acknowledged the invaluable support of the community and the profession for the Sydney Law School, thanking all prize and scholarship donors.

University Medallist Chelsea Tabart gave a student address at the ceremony, a recording of which can be found on the Law School website.

Following on from the ceremony, prize winners joined graduands and their families

for a special celebration in advance of their graduation on 25 May.

Almost 300 guests were welcomed by the Dean, Professor Gillian Triggs, who introduced alumna and law school academic Professor Joellen Riley (BA 1979; MA 1985; LLB 1979; PhD 2005) to speak on the benefits of and opportunities for engagement as alumni of the law school and the University.

Special guest speaker for the evening was Naomi Hart (BA (Hons) 2009; LLB (Hons) 2011), University Convocation Medalist in 2011. Naomi spoke on her experiences since her graduation, including spending four months in New Orleans working as a legal clerk defending men on death row, and her recollections of her time at law school. *jd*



Chelsea Tabart speaks at the Prize Giving Ceremony



Naomi Hart addresses the Alumni Graduation Party



## The Sydney Law School congratulates all prize winners:

### **Bibhu Aggarwal**

University of Sydney  
Academic Merit Prize

### **Ginan Louise Ashcroft**

J H McClellens Memorial  
Prize in Criminology No. 2

### **Luke Patrick Atkins**

Wigram Allen Scholarship for  
the Juris Doctor - Merit

### **Yee Lat Aye**

Wigram Allen Scholarship for the  
Juris Doctor - International

### **Patrick Bateman**

Julius and Recca Stone Award in  
International Law and Jurisprudence

### **Sophie Bentwood**

Edward John Culey Prize for  
Real Property and Equity  
Sir John Peden Memorial Prize  
for Foundations of Law, Federal  
Constitutional Law, International  
Law, and Real Property  
Sybil Morrison Prize in Jurisprudence

### **Christopher James Beshara**

Nancy Gordon Smith Memorial Prize  
University of Sydney  
Academic Merit Prize

### **Kieran Riley Bockman**

Playfair Prize in Migration Law

### **Alec John Bombell**

Blake Dawson Prize in Environmental Law

### **Nicholas Andrew Borger**

E M Mitchell Prize for Contracts  
Freehills Prize in Contracts  
LexisNexis Book Prize No. 2 for Most  
Proficient in Combined Law II

### **Rebekah Louise Maree Byrne**

Henry Davis York Prize in  
Environmental Law

### **Joshua John Chalkley**

E D Roper Memorial Prize Second  
in Equity and Corporations Law

### **Aaron Weng Hoe Chan**

Deloitte Indirect Tax Prize

### **Stephanie Ka Yan Cheng**

Law Press Asia Prize for Chinese  
Legal Studies No. 1

### **Jonathan Choi**

Thomas P Flattery Prize for Roman Law

### **Yean Hsia Joanne Chong**

Henry Davis York Prize in  
Environmental Law  
The Marjorie O'Brien Prize

### **Isobel Crumblin**

The Australian Securities and Investments  
Commission Prize in Corporations Law

### **Shane Colin Curran**

ANJEL Akira Kawamura  
Prize in Japanese Law

### **Frank Danielli**

John Warwick McCluskey Memorial  
Prize for Federal Constitutional  
Law and Family Law

### **Christopher Neil Davies**

Wigram Allen Scholarship for  
the Juris Doctor - ACCESS

### **Deborah June Dearing**

Henry Davis York Prize in  
Environmental Law

### **Melanie Anne Dillon-Smith**

The Law Society of New South  
Wales Indigenous Scholarship

### **Adriana Elizabeth Edmeades**

J H McClellens Memorial  
Prize in Criminology  
Tuh Fuh and Ruby Lee Memorial  
Prize in Criminology

### **Jerome Entwistle**

Nancy Gordon Smith Memorial Prize

### **Stephanie Essey**

E D Roper Memorial Prize  
First in Equity and Corporations Law  
University of Sydney  
Academic Merit Prize

### **Thomas Farmakis**

LexisNexis Book Prize No. 1  
for Combined Law I

### **Jeffrey Jingee Fung**

Carolyn Mall Memorial Prize in  
Indirect Taxes (Ernst & Young)

### **Tarsha Gavin**

Minter Ellison Prize for Intellectual Property  
Sir Peter Heydon Prize for Sydney  
Law Review (Constitutional,  
Administrative, or International Law)

### **Emma German**

NSW Women Justices' Association Prize

### **Alison Hammond**

Minter Ellison Scholarship

### **Mark Stewart Hare**

Sir Maurice Byers Prize

### **Nathan Hauser**

Walter Ernest Savage Prize  
for Foundations of Law

### **Christine Karin Heeg-Steldinger**

Law Press Asia Prize for Chinese  
Legal Studies No. 2

### **Mary Qian Hu**

Australian Taxation Office  
Prize in Taxation Law  
Blake Dawson Prize in  
Advanced Taxation  
Blake Dawson Prize in  
Australian Income Tax

### **Heather Yung Huddleston**

Minter Ellison Prize for Intellectual Property  
Nancy Gordon Smith Memorial Prize  
University of Sydney  
Academic Merit Prize

### **Marija Isajlovska**

Kevin Duffy Memorial Prize for Real  
Property and Conveyancing

### **Nikki Andre Syquiao Joson**

Dudley Williams Prize  
Joye Prize in Law  
Nancy Gordon Smith Memorial Prize  
University Medal

### **Thomas Daniel Kaldor**

John George Dalley Prize 1A  
Julius Stone Prize in Sociological  
Theories of Law  
Minter Ellison Prize for Intellectual Property  
University of Sydney  
Academic Merit Prize

### **Giselle Patrice Kenny**

University of Sydney  
Academic Merit Prize

### **David Richard Lewis**

Andrew M Clayton Memorial  
Prize - Clayton Utz  
E D Roper Memorial Prize  
First in Equity and Corporations Law  
George and Matilda Harris  
Scholarship No. 1 for Second Year  
John Geddes Prize for Equity  
LexisNexis Book Prize No. 5 for  
Most Proficient in Law II  
University of Sydney  
Academic Merit Prize

### **Kate Irene Hannah Lindeman**

New South Wales Justices Association  
Prize in Administrative Law  
Pitt Cobbet Prize in Administrative Law  
University of Sydney  
Academic Merit Prize

### **Kane Alexander Loxley**

Gustav and Emma Bondy  
Postgraduate Prize in Jurisprudence

### **Jeremy Tai Ly**

University of Sydney Foundation Prize

### **Daniel Strathallan MacPherson**

E D Roper Memorial Prize Second  
in Equity and Corporations Law  
University of Sydney  
Academic Merit Prize

### **Louisa Manfre**

George and Matilda Harris Scholarship  
No 2.B for Year 3 Combined Law  
LexisNexis Book Prize No.3 for  
Combined Law Year 3

### **Ryan May**

Justice Peter Hely Scholarship

### **Angus McFarland**

University of Sydney  
Academic Merit Prize

### **Andrew McLeod**

Peter Cameron Sydney  
Oxford Scholarship

### **Brent Michael**

Sir Maurice Byers Prize

### **Samuel Murray**

LexisNexis Book Prize No. 1  
Walter Ernest Savage Prize  
for Foundations of Law

### **Mina Wagdy Nada**

Bruce Panton Macfarlan Prize in  
Advanced Corporate Law

### **Matthew David Neeves**

Jeff Sharp Prize in Tax Research

### **Tuba Omer**

Sydney Law School Foundation  
International Scholarship - Juris Doctor

### **Robert James Pietriche**

The Zoe Hall Scholarship

### **Sarah Nadine Pitney**

Caroline Munro Gibbs Prize for Torts

### **Blaise Che Prentice-Davidson**

Margaret Ethel Peden Prize  
in Real Property

### **Manoel Presser Garcez**

ACICA Keith Steele Memorial Prize  
Chartered Institute of Arbitrators Prize

### **Nadia Marie Price**

Alan Ayling Prize in Environmental Law

### **Myles Pulsford**

Pitt Cobbett Prize for Constitutional Law  
The Alan Bishop Scholarship  
The C A Hardwick Prize in  
Constitutional Law

### **Gah Vin Pyeon**

Sydney Law School Foundation  
International Scholarship  
- Combined Law

### **Francisco Junior Rockey**

J H McClellens Memorial  
Prize in Criminology No. 2

### **Katherine Jane Roy**

The Marjorie O'Brien Prize

### **Lucy Saunders**

Harmers Workplace Lawyers  
Prize for Labour Law  
Sir Alexander Beattie Prize  
in Industrial Law

### **Gusel Schneider**

Wigram Allen Scholarship for  
the Juris Doctor - Entry

### **Christopher Slater**

Allens Prize in Competition Law  
Christopher C Hodgekiss Prize  
in Competition Law  
Mr Justice Stanley Vere Toose  
Memorial Prize for Family Law  
University of Sydney  
Academic Merit Prize

### **Lauren Melinda Smith**

Monahan Prize for Evidence

### **Alexander Adrian Spark**

Judge Samuel Redshaw Prize  
for Administrative Law

### **Gabrielle Vivian Starr**

Maddocks Prize in Labour Law  
The Judge Ralph J Perdriau Prize No. 1

### **Erin Stewart**

Wigram Allen Scholarship for  
the Juris Doctor - Entry

### **Hannah Stewart-Weeks**

Peter Paterson Prize for  
Sydney Law Review

### **Nicholas Thomas Sutton**

AMPLA Prize in Energy and Climate Law

### **Chelsea Georgina Tabart**

Ian Joye Prize in Law  
John George Dalley Prize 1B  
Law Society of New South Wales  
Prize for The Legal Profession  
Margaret Dalrymple Hay Prize  
for The Legal Profession  
Nancy Gordon Smith Memorial Prize  
R G Henderson Memorial Prize  
(NSW Bar Association)  
Rose Scott Prize  
University of Sydney  
Academic Merit Prize  
University Medal

### **Chantelle Vigar**

The Law Society of New South  
Wales Indigenous Scholarship

### **Daniel Alexander Ward**

George and Matilda Harris Scholarship  
No 2.A for Year 2 Graduate Law  
The Zoe Hall Scholarship  
University of Sydney  
Academic Merit Prize

### **Jacob Victor William White**

Aaron Levine Prize in Criminal Law

### **Erin Rebecca Wilson**

G W Hyman Memorial  
Prize in Labour Law  
The Judge Ralph J Perdriau Prize No. 2

### **Geoffrey Luke Winters**

Bruce Miles Foundation Prize

### **Ellen Marie Wolfenden**

Edward and Emily McWhinney  
Prize in International Law  
Pitt Cobbett Prize for International Law

### **Rebecca Wong**

Roy Frederick Turner AM Scholarship

### **Sun Ying Wong**

The Marjorie O'Brien Prize

### **Wai Yin Jason Wong**

Freehills Prize in Torts and Contracts

### **Nadia Yetton-Lim**

University of Sydney  
Academic Merit Prize

### **Mi Zhou**

Bruce Panton Macfarlan Prize in  
Advanced Corporate Law





# SULS Support for Success

SULS News by Claire Burke, President

Most students have heard the sentiment that law school can be an isolating experience, and many will shrug it off as melodramatic. The awareness campaigns of the last few years have done a great thing in drawing attention to the effect that is felt by many law students and legal professionals. But in this article I'd like to put forward a more everyday picture of mental health and where it might fit in with Sydney law students and what the Sydney University Law Society (SULS) offers.

Another way of expressing the problem is that law school can isolate you from yourself. In a demanding degree with an obvious career path, and with fellow students of staggering academic ability, it's easy to lose perspective. SULS provides programs and services to Sydney law students to make sure they have opportunities to broaden and maintain their other interests while at university.

To support students in their studies, SULS has expanded the Peer Assisted Study Sessions (PASS) Program in 2012, with the generous support of the Faculty of Law. Students can attend weekly sessions run by senior student facilitators, to improve their skills in answering legal problem questions on specific content. After the success of the SULS-funded pilot in Semester 2, 2011, PASS is available in four subjects this year.

PASS addresses one concern in the Law School, namely the highly competitive atmosphere among students. Sydney Law School has the good fortune to attract some of the brightest minds in the country, but studying law can still be a foreign experience for many

people, and the 'bottleneck of talent' has an overwhelming effect on many. The feedback from students who attended PASS last semester was overwhelmingly positive, and highlighted the relaxed atmosphere and collaborative environment as helpful to studying law.

It is also easy to ignore your other interests in favour of core curricular content and academic demands. SULS tries to encourage students to engage with broader issues beyond the law through panel discussions and public forums. We hope to continue our collaboration with the Faculty to provide students with excellent speakers on interesting topics. Interfaculty sports and a team entry in the City2Surf encourage students to keep up those interests.

One difficulty for SULS is catering for the diverse career interests of students. Our Careers portfolio provides valuable information about entry into commercial law firms under the NSW Clerkship Scheme, as well as applications for Tipstaves' and Associates' positions. SULS also publishes a comprehensive guide to public interest career opportunities. However, there is still a gap between those two paths, and many students feel that neither of those options reflects their goals. SULS is working with other law student societies to offer students more exposure to other career paths.

The programs and events SULS offers address some of these everyday factors that can make law school an uncertain time. It's been a great year so far, and SULS has provided students with more opportunities than ever and have reached out to even more students. *jd*





# Recent Publications

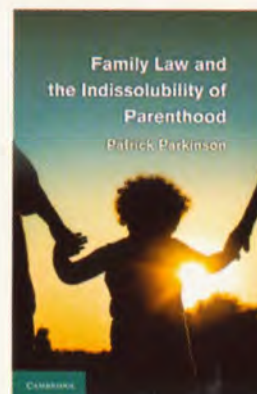
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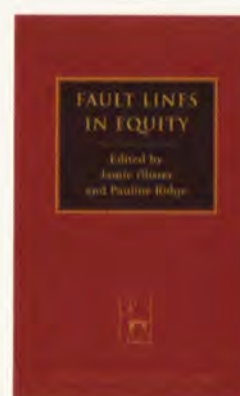
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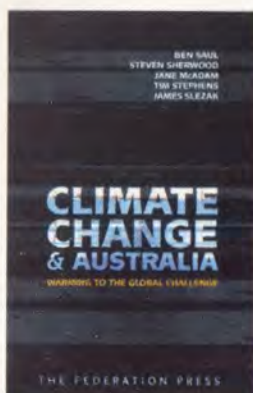
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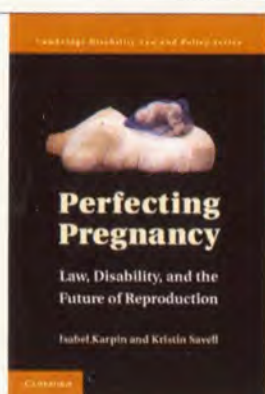
Amanda Sainsbury, Louise A  
Baur, Stephen M Twigg and  
Roger S Magnusson (eds)  
Sydney University Press  
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## A modern epidemic



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Isabel Karpin and Kristin Savell  
Cambridge University Press  
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Ben Saul (ed)  
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