

# Human Rights 2003: The Year in Review

On 4 December 2003 the **Castan Centre for Human Rights Law** held the first of what is anticipated to be an annual conference at which key human rights developments from the previous 12 months are reviewed.

The 2003 conference focused on the human rights implications of the Iraq War in 2003 and the continuing 'War on Terror'. It also covered important developments in the areas of international criminal law, refugee and indigenous rights, and the potential human rights impact of the Australian Government's new interventionist approach to Pacific relations. The conference was attended by a mix of lawyers, academics, government officials, NGOs, social justice practitioners and students.

Draft conference papers are available on the Castan Centre website. The finalised conference papers will soon be issued in a collected form as a Print-On-Demand item that can be purchased via the Castan Centre website at [www.law.monash.edu.au/castancentre](http://www.law.monash.edu.au/castancentre)

## Session 1: The War on Terror: International Law and Politics

**Prof Hilary Charlesworth** (ANU) delivered *Is the War on Terror Compatible with Human Rights?: An International Law Perspective*, and argued that a human rights framework is critical for the success of such a 'war'. Meeting the terrorist threat by transgressing that framework will not address the long-term problem.



**Tony Parkinson** (International Editor, The Age), argued that *The Political Realities of the War Against Terror* meant that intervention was sometimes required to preserve the liberal system on which international law itself is based. In the face of UN failure to respond to terrorism, political realism dictates that action such as that in Iraq may be necessary.

## Session 2: The War on Terror: State Responses

**Simon Bronitt** (Director, National Europe Centre, The ANU) explored in his paper, *Australia's Legal Response to Terrorism: Neither Novel nor Extraordinary?*, the extent to which recent terrorism laws, with their wide powers of investigation, reverse onus clauses, strict liability and inchoate offences, threaten to undermine human rights.

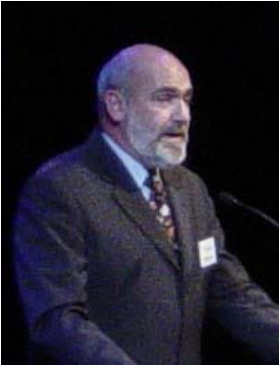


**Dr David Wright-Neville** (Politics Dept., Monash) addressed the question *Australian Anti-terrorism Measures: Are they warranted?* He concluded that available terrorism assessment evidence suggested these measures were not necessary, and would not, in any case, deter terrorists, or proto-terrorists.

**Dr Jawahir Thontowi** (Universitas Islam Indonesia, Yogyakarta) provided *The Islamic Perspective of the War on Terror and Current Indonesian Responses*. He focused on the multiple Islamic perspectives on terrorism and the difficulties the Indonesian Government is having in implementing anti-terrorism activities without abusing human rights.



## Session 3: International Criminal Law & Human Rights



**Prof Tim McCormack** (Uni of Melbourne) presented *Bright Moments In a Frustrating Year: Developments in International Criminal Law* and asked whether the frustrations of 2003 constitute a backlash against the advances of international criminal law in recent years.

**Gwynn MacCarrick** (former Defence Counsel in East Timor) explored *Human Rights and Defending War Crimes*. She examined the international justice system in East Timor; the Panel for Serious Crimes as a creature of the UN; the hybrid criminal trial system; the rights of the accused before international tribunals; and the role of defence counsel in this context.



**Assoc Prof Susan Kneebone** (Monash Law School) examined recent developments in refugee law and policy and the interaction between the Australian courts and the legislature in her presentation, *Bouncing the Ball between the Courts and the Legislature: What is the score on refugee issues?* She considered how the courts have responded to recent legislative measures to limit the application of the Refugees Convention in Australian law by narrowing the refugee definition, and to restrict judicial review. She argued that this legislation is inconsistent with international law and international jurisprudence and has led to confusion and increased litigation. Ultimately, the application of the refugee definition should be left to the courts to apply in accordance with the Refugees Convention.

**Nic Maclellan** (Journalist and Researcher on the Pacific) addressed the issue of *Australian Neo-colonialism in the Pacific: Human Rights Implications*. 2003 witnessed Australia’s intervention in the Solomon Islands, proposals to study the use of the Australian dollar as the shared currency among Pacific island states, and an emerging clash with PNG and other countries over the placement of Australian officials and police in senior positions as part of the aid program. He asked: Is Australia’s renewed engagement with the region based on neo-colonial policies on self-determination, collective human rights, “good governance” and regional intervention?

**Session 4: Indigenous Rights, Refugees and the Pacific**

**Melissa Castan** (Monash Law School) presented a paper entitled *Indigenous Australian Rights in the Courts: The Jurisprudence of Denial*. In this she argued that a number of Australia’s most senior judiciary have invited the courts to embrace a beneficial interpretation of the law when ambiguity is evident. Yet the current High Court has largely declined to adopt any interpretations supportive of, or reflective of, the human rights standards regarding the concerns of, and obligations to, Indigenous Australians. This presentation examined the jurisprudence of denial in relation to international and domestic human rights standards regarding land, culture and self determination for Australian Indigenous peoples.

**Print-On-Demand**

**Human Rights 2003:  
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Conference Papers**

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Our publications will retail at a low, subsidised rate. And, as always, the Castan Centre will provide free-of-charge copies of all its public lectures and draft papers online.

**The 2003 conference papers will soon be available in print-on-demand format.**



*Speakers from the fourth session of the Human Rights 2003: The Year in Review Conference. From L to R: Nic Maclellan, Assoc Prof Susan Kneebone & Melissa Castan*