

# Controversial racism conference previewed in Melbourne

By Kasia Wawrzykowska

When preparations began for an international gathering to review progress made since the UN's 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa, the organisers knew that the event – dubbed the "Durban Review Conference" – would be controversial.

The 2001 Conference culminated in a detailed manifesto on racism and ways to combat it. The positive aspects of the manifesto were eclipsed, however, by instances of anti-Semitism at the conference itself, and at the parallel NGO gathering which preceded it. Indeed, the 2001 Conference was so ill-tempered that the US and Israeli delegations withdrew from the event. In the upshot, Australia and other States including the USA, Canada and Israel, boycotted the Review Conference.

It was against the background of threatened boycott that three experts came together in February to address a Castan Centre forum on the Durban Review Conference.

The first speaker, Richard Clarke, a member of the Durban Conference Secretariat and Human Rights Officer in the Anti-Discrimination Unit at the Office of the High Commissioner for Human Rights in Geneva, believes that the 2001 Conference provided a historic new framework for combating racism in all its manifestations, and finally "gave a voice to many victims." Mr Clarke emphasized the positive outcomes from the 2001 Conference, and said that it had left a "historical legacy" against which to assess efforts to combat this pervasive problem. After all, no country in the world can yet claim to be free of racism. Mr Clarke also outlined the modalities and preparations for the Durban Review Conference and listed its objectives. In addition to reviewing progress since the 2001 event, Mr Clarke stated that the Durban Review Conference was conceived to review measures and initiatives for combating racism, to assess the effectiveness of UN mechanisms dealing with race discrimination and to identify and promote good practices in eliminating racism. It was also hoped that the conference would promote ratification of the *International Convention for the Elimination of all Forms of Racial Discrimination* and promote "proper consideration of the recommendations of the Committee on the Elimination of Racial Discrimination".

Associate Professor Andrea Durbach, the Director of the Australian Human Rights Centre at the University of New South Wales, followed Mr Clarke and directly addressed the issue of whether a boycott of the conference was a useful strategy to combat global racism. She acknowledged that in 2001 racist conduct at the parallel NGO conference had been divisive and had "contaminated the conference as a whole" but claimed that a boycott of the Durban Review Conference would be regrettable and counter-productive. Associate Professor Durbach addressed the stance promoted by prominent Canadian critic of the Durban Review Conference, Professor Anne Bayefsky, and rejected her claim that participation would amount to legitimisation of the "crass sentiments" expressed at Durban and that the 2009 Conference could potentially suffer a similar fate. Rather, Associate Professor Durbach argued that the walkout by the US delegation in 2001 was akin to "a temper tantrum by a country accustomed to acting unilaterally on foreign affairs" which arguably demonstrated a lack



Richard Clarke discussing the review conference as Professor Sarah Joseph looks on.

of a genuine engagement and interest in countering racism, and resulted in the forfeiting of the opportunity to positively influence the conference outcomes.

Much of Associate Professor Durbach's presentation focused on the human face of racism. She spoke of the Rwandan massacre, which claimed 800,000 lives in 100 days, and took place while the UN repeatedly refused to send reinforcements to stop this "grotesque genocide". She contrasted the UN's response to Rwanda with its decision to intervene in the wars in Bosnia and Kosovo, echoing the words of UN general Romeo Dallaire that the people of Yugoslavia were European, "like us". And "yet the problem does not simply reside in far-off places such as Africa, Associate Professor Durbach reminded us. Not so long ago, Australia's treatment of asylum-seekers resulted in the "Pacific Solution" with detention camps in Nauru, Papua New Guinea and Australia becoming "sites of inhuman and degrading treatment where Australia's international obligations towards refugees and our humanitarian sensibility seemed to give way to racist fears and deep intolerance." Associate Professor Durbach also referred to the Stolen Generations, quoting Robert Manne, who referred to it as "the most important contemporary public issue of our time". She noted that even after the Rudd Government's apology to the Stolen Generations, racially discriminatory policies continue under the recent Northern Territory intervention in violation of the Racial Discrimination Act.

Following on from Ms Durbach, Mr Ihab Shalbak, the acting Director of the Racial Discrimination Unit of the Australian Human Rights Commission addressed the specific Indigenous issues likely to be raised at the Durban Review Conference. Mr Shalbak, presenting a paper on behalf of the Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma, stated that the 2001 Conference had shone the international spotlight on the world's most repressed groups, including Indigenous people. Mr Shalbak stated, however, that not enough had been done to meet the goals set at the 2001 Conference, particularly in relation to such issues as Indigenous life expectancy, unemployment, education, and massive over-representation in the criminal justice system.

*continued on page 19*

### Paper

"Community Treatment Orders in the Light of a New Human Rights Framework" presented at the 28th Annual Congress of the Australian and New Zealand Association of Psychiatry, Psychology and Law, Sydney, 23-26 October 2008.

### Susan Kneebone

#### Article

'Trafficking in Women and Forced Migration: Moving Victims Across the Border of Crime into the Domain of Human Rights' (2008) 12, *International Journal of Human Rights* pp 67 – 87 (with B. McSherry)

#### Book

S. Kneebone (ed), *Refugees, Asylum Seekers, and the Rule of Law: Comparative Perspectives* (Cambridge University Press, 2009).

#### Chapters

'Introduction: Refugees and Asylum Seekers in the International Context – Rights and Realities', in *Refugees, Asylum Seekers and the Rule of Law* (Cambridge University Press, 2009).

Chapter 1, 'The Rule of Law and the Role of Law: Refugees and Asylum Seekers', in *Refugees, Asylum Seekers and the Rule of Law* (Cambridge University Press, 2009).

Chapter 4, 'The Australian Story: Asylum Seekers Outside the Law', in *Refugees, Asylum Seekers and the Rule of Law* (Cambridge University Press, 2009).

Chapter 6, 'Conclusions on the Rule of Law', in *Refugees, Asylum Seekers and the Rule of Law* (Cambridge University Press, 2009).

#### Papers

'Researching Trafficking Issues – Australia's Response' presented to the Inaugural Australian Trafficking Forum, Sydney, 24 July 2008.

'457 Visas, Law and Policy: The global context and its importance for Australia' presentation to Research Matters Forum, Melbourne, 26 August 2008.

### Adam McBeth

#### Article

'Every Organ of Society: The Responsibility of Non-State Actors for the Realization of

Human Rights', (2008) 30 *Hamline Journal of Public Law and Policy*

#### Submission

Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, 'A Human Rights Mechanism for the Asia Pacific', (with S. Joseph and E. Contini), November 2008

### Bernadette McSherry

#### Articles

'Trafficking in Women and Forced Migration: Moving Victims Across the Border of Crime into the Domain of Human Rights' (2008) 12, *International Journal of Human Rights* pp 67 – 87 (with S. Kneebone)

'Justice for Individuals with Mental Illnesses', (2008) *Pandora's Box* 39-45.

'Hospital Orders for Offenders with Mental Illnesses: An Appropriate Diversionary Option' (2009) 16(4), *Journal of Law and Medicine* 568-573.

#### Books

*Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law* (ed with Alan Norrie and Simon Bronitt) (Portland: Hart, 2009) Edition in the Onati International Series in Law and Society, 293 pages plus index.

*International Trends in Mental Health Laws* (ed) (Annandale: Federation Press, 2008) Special Edition of Law in Context, 159 pages plus index.

#### Chapters

'International Trends in Mental Health Laws: Introduction' in B McSherry, (ed) *International Trends in Mental Health Laws* (Annandale: Federation Press, 2008) Special edition Volume 26(2) of Law in Context 1-9.

'Protecting the Integrity of the Person: Developing Limitations on Involuntary Treatment' in B McSherry, (ed) *International Trends in Mental Health Laws* (Annandale: Federation Press, 2008) Special edition Volume 26(2) of Law in Context 111-124.

'Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law' in B McSherry, A Norrie and S Bronitt (eds) *Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law* (Portland: Hart, 2009) 1-10.

'Expanding the Boundaries of Inchoate Crimes: The Growing Reliance on Preparatory Offences' in B McSherry, A Norrie and S Bronitt (eds) *Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law* (Portland: Hart, 2009) 141-164.

### Bronwyn Naylor

#### Article

'In the Shadow of a Criminal Record: Proposal for a Just Model of Criminal Record Employment Checks' (with Moira Paterson and Marilyn Pittard ) (2008) 32 *Melbourne University Law Review* 171-198

#### Papers

'Getting the balance right: protecting human rights in custodial settings' (with Inez Dussuyer) paper presented at the ANZ Society of Criminology Conference, Canberra, 26-28 November 2008

'External scrutiny: can it facilitate the application of human rights in custodial settings?' (with Inez Dussuyer) paper presented at the Discovering Balance: Prison reform and Restorative Justice Conference, Murdoch University, Perth, 2-4 October 2008

#### Submission

Submission to the Standing Committee of Attorneys General on Draft Spent Convictions Bill, January 2009.

### Maria O'Sullivan

#### Article

'Withdrawing Protection under Article 1C(5) of the 1958 Convention: Lessons from Australia' 20(4) (2008) *International Journal of Refugee Law* 586-610

#### Chapter

'The intersection between the international, the regional and the domestic: Seeking asylum in the United Kingdom', in S. Kneebone (ed), *Refugees, Asylum Seekers and the Rule of Law: Comparative Perspectives* (Cambridge University Press, 2009).

### Tania Penovic

#### Article

'Testing the Boundaries of administrative detention through the tort of false imprisonment', (2008) 16 *Torts Law Journal* 156-181

## In-House Interns Summer/Sem 1

Olivia Barnes  
Tom Guan  
Courtney Guillatt  
Jane Barnett  
Alyse Richmond  
Erin Collins  
Kasia Wawrzykowska  
Samantha Jeans  
Angus McLeod  
Maida Kopic  
Nick Moodie  
Owen Hardidge

### continued from page 6

Mr Shalbak highlighted the lack of Indigenous representation in political decision-making, made worse by the abolition of the Aboriginal and Torres Strait Islander Commission by the Howard Government, as an impediment to change. Mr Shalbak outlined what is needed to tackle racial discrimination effectively in Australia: a federal bill of rights, a recognition of Indigenous

peoples as a "peoples' under the protection of UN" documents, compensation and reparation for past wrongs, allocation of resources to tackle pressing social problems, and the prohibition on dissemination of racist material. Only when these measures have been taken may Australia have a possibility of overcoming racial discrimination within its own borders.

The forum allowed the three

speakers to air a variety of viewpoints on racism and Indigenous issues, and all were able to agree that racism remains a prevalent problem which the UN must find a more successful way to combat.

**Presentations by all speakers are available on the Castan Centre website under "public events and lecture series".**