

## INTRODUCTION

The contributions in this symposium were inspired by the celebration of the 10<sup>th</sup> anniversary of the Australian Red Cross Chair of International Humanitarian Law at The University of Melbourne. In recognition of the significant contribution the Chair has made to international humanitarian law, we invited leading scholars and practitioners to provide their perspectives on current trends and issues in the law of armed conflict.

It has always been the aim of the *Melbourne Journal of International Law* to promote discussion and debate of issues in international law. In keeping with this tradition, this edition features a collection of 'think pieces' designed to encourage reflection and provoke debate on present challenges and future developments in international humanitarian law. These think pieces are complemented by more traditional case notes, commentaries and book reviews dedicated to issues in international humanitarian law.

The contributors to this symposium have concentrated on four broad themes: before war, during war, after war, and law's response to war.

Three contributors seek to define the limits of war. Michael N Schmitt's commentary analyses the convergence of *jus ad bellum* and *jus in bello* in 21<sup>st</sup> century conflicts. Alison Duxbury draws on her own experience as a lecturer in international humanitarian law to consider how the preoccupation with defining conflict affects the application of international humanitarian law. Helen Durham examines the philosophical foundations of international humanitarian law by reference to ancient Greek mythology in order to explore the current embrace of international humanitarian law by the humanitarian sector. Continuing with the notion of 'before war', Robert J Mathews considers the contribution of major non-proliferation treaties and other efforts to control the tools of warfare.

Various perspectives are provided in regard to events occurring during war. Michelle Lesh examines the targeted killing judgment by the Israeli High Court of Justice, focusing on the Court's characterisation of the conflict between Israel and terrorist organisations as an international armed conflict. John Tobin reflects on the complementary relationship between humanitarian law and human rights law in situations of armed conflict in light of recent practice by international bodies. Peter Rowe questions whether rules of engagement applicable to occupied territories should be published, and examines the consequences of publication from the perspective of both the civilian and the soldier. Timothy L H McCormack, the current holder of the Red Cross Chair, draws on his personal involvement in the David Hicks proceedings before the US military commission to highlight what he believes are three fundamental injustices of the military commission process.

The challenges faced by states dealing with the aftermath of war are the subject of considerable analysis by several contributors. Bruce Oswald reflects on the type of legal regime that should regulate the taking and handling of detainees in contemporary peace operations. Hilary Charlesworth explores the role of international humanitarian law in post-war Iraq, focusing on whether it can play a greater role in democracy building. Nicole Rogers' commentary

examines the role of the court trial in legitimating regime change through a theoretical critique of the first trial of Saddam Hussein and his co-defendants. Ralph Henham's book review of Mark A Drumbl's *Atrocity, Punishment and International Law* examines the punishment of crimes committed in times of conflict. Continuing with the theme of punishment, David Turns' case note on the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* considers the issue of state responsibility for the crime of genocide.

The final symposium theme reflects on the way in which law has been used to respond to war. Gerry Simpson examines the increasing juridification of war, using the example of the death of Baha Mousa to highlight the consequences of law's hegemony over war. This concept is further analysed in Dale Stephens' review of David Kennedy's account of the influence of law over military decision-making in *Of War and Law*.

The traditional paradigm viewing international humanitarian law as a *lex specialis* regime of international law is then disrupted by reflections on the broader human consequences of conflict. B S Chimni, a leading scholar in third world approaches to international law, exposes the link between international law and colonialism before revealing how contemporary international law continues to alienate the 'Other', the third world subaltern. The theme of the Other is also explored in Fleur Johns' review of *International Law and its Others*, edited by Anne Orford. The contributors to Professor Orford's book engage in diverse interdisciplinary analyses of the relationship between international law and those it defines as the Other.

This edition concludes with a comment by Gregor Noll responding to the publication of James C Hathaway's 'Why Refugee Law Still Matters' in volume 8(1) of the *Journal*. Our aim in publishing Professor Hathaway's feature was to provoke reflection and debate on the role of refugee law in balancing the human rights of refugees and the sovereign rights of states. In his response to Professor Hathaway, Dr Noll seeks to focus attention on the implications of Hathaway's proposal on the rights of the refugees, drawing on both international human rights law and the Kantian right to hospitality.

We would like to thank those who have made this special edition possible, especially the Australian Red Cross for its generous support as a sponsor of this edition of the *Journal*. We would also like to thank Mr Bruce Oswald for his enthusiasm, energy and guidance.

BRONWYN REDDAN, NATASHA SUNG AND ROB WALKER

Editors, *Melbourne Journal of International Law*  
October 2007