EDITORS’ WELCOME

Welcome to the third edition of Ad Hoc, the biannual online newsletter of the Melbourne Journal of International Law.

We are pleased to announce the imminent release of volume 8(1). This volume includes a feature from Professor James C Hathaway challenging contemporary understandings of international refugee law. Continuing with the theme of migration, volume 8(1) also includes an article analysing the position of irregular migrant workers under international human rights law and a case note on a recent Federal Court decision considering the applicability of international humanitarian law to refugee claims made under Australian law.

Other contributions to volume 8(1) have focused on recent events occurring in central Africa. We are delighted to be publishing a case note on the ICJ’s 2005 decision on the Armed Activities on the Territory of the Congo and a commentary reflecting on the role of the International Criminal Court in bringing to justice the leaders of the Lord’s Resistance Army responsible for countless atrocities in Uganda.

The issue of jurisdiction is another theme explored in volume 8(1). The extraterritorial application of domestic competition laws is addressed in a substantial and thorough article. Two commentaries consider jurisdiction in a maritime context, examining the enforcement of Australian whale protection legislation in Antarctica and security threats emerging from the global commons.

Volume 8(1) concludes with a timely reflection on the institutional impediments within the WTO that have hindered the successful conclusion of the Doha Round of multilateral trade negotiations.

In this edition of Ad Hoc, Dr Michelle Foster reports on the Allen Hope Southey Memorial Lecture given by Professor James C Hathaway earlier this year. Megan Donaldson, 2005 MJIL Editor, provides insight into the Third Melbourne Legal Theory Workshop, ‘Limit, Exception, Emergency, Miracle’ and Dr Andrew D Mitchell shares the success of the Melbourne Law School’s WTO Moot Court team. Our Alumni Update section brings together MJIL’s Founding Editors in a special feature reflecting on their experiences during their editorship and beyond.

We hope you enjoy this edition of Ad Hoc.

Bronwyn Reddan, Natasha Sung and Rob Walker
2007 Editors

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‘WHY REFUGEE LAW STILL MATTERS’


To accompany the feature article of volume 8(1), Dr Michelle Foster reports on the 25th Allen Hope Southey Memorial Lecture.

On 22 February 2007, the Melbourne Law School was honoured to host the 25th Allen Hope Southey Memorial Lecture delivered by Professor James C Hathaway, Director of the Program in Refugee and Asylum Law at the University of Michigan. Professor Hathaway is one of the world’s leading authorities on international refugee law. His work is regularly cited by the most senior courts in the common law world.

Professor Hathaway’s thought provoking speech, ‘Why Refugee Law Still Matters’, provided a timely analysis of the challenges faced in refugee protection today. He identified those current state practices (including those undertaken by Australia) threatening to undermine the international system of refugee protection, including the practice of forcibly transferring refugees to a ‘safe third country’ and of penalising refugees who arrive ‘unlawfully’. Professor Hathaway explained that while states argue that such practices are justified by reference to principles such as ‘burden-sharing’, this rhetoric is a distortion of the true objective and purpose of the Refugee Convention.

Professor Hathaway also challenged both the government and the refugee advocacy community to recognise that the core aims and objectives of the Refugee Convention have enduring relevance, and must guide any reform agenda. His valuable insights acknowledged the considerable challenges faced by those concerned to advance the rights of refugees, while instilling a sense of optimism that reform is capable of being effected in a way that upholds and advances such rights.

Professor Hathaway’s speech had particular resonance in light of recent controversy in Australia concerning refugee protection. The event provided a unique opportunity for Australian refugee judges, administrative decision-makers, advocates, scholars and students to hear the views of a leading authority on international refugee law.

Dr Michelle Foster
Senior Lecturer
Director of the International Refugee Law Research Programme in the Institute for International Law and the Humanities

Dr Michelle Foster, Professor James C Hathaway
© Michael Silver (Photonet)

THE THIRD MELBOURNE LEGAL THEORY WORKSHOP

The Third Melbourne Legal Theory Workshop was held on 22 – 24 November 2006. Workshop participants included some 30 overseas and Australian scholars, working in disciplines as diverse as international law and legal theory, international relations, anthropology and philosophy.

The Workshop theme, ‘Limit, Exception, Emergency, Miracle’, reflects current interest in the work of theorists such as Carl Schmitt and Giorgio Agamben. The insights of Schmitt, Agamben and others concerning the relation between the law and the exception are of particular importance in the context of the ‘war on terror’, the dominance of executive government in Western democracies and the pressure to compromise juridical and humanitarian principles in the name of state security. However, the Workshop questioned the frequent assumption that any exceptional moment is necessarily dangerous; speakers also explored the implications of refusing any exception to, or opening in, the current legal order.

Despite addressing a wide variety of topics, the Workshop papers came together into several ongoing conversations. The first concerned the Kantian legacy and what it offers the discipline of international law, next, the different ways in which disciplinary and conceptual boundaries constitute communities were investigated, and finally the complex array of ‘exceptional’ institutions and practices implemented by the modern nation state were explored.

Megan Donaldson
2005 MJIL Editor
FIRST TIME ENTRANT MELBOURNE LAW SCHOOL WINS WORLD MOOT COURT COMPETITION

Melbourne Law School has beaten 64 other teams from across the globe to win a moot court competition in Geneva on World Trade Organization law.

The competition, organised by the European Law Students’ Association, required each team to argue a hypothetical case concerning the topical issue of access to patented drugs in order to address a serious public health crisis in a fictitious country. It was the first time the University had entered the competition, which has been running since 2002.

After winning the regional round in Adelaide, the team proceeded to Geneva early last month, where it defeated teams from the London School of Economics and Duke University and entered the semi-final ranked first on the basis of written submissions and oral argument. Melbourne prevailed over the University of Sydney in the semi-final and the University of Hong Kong in the grand final on 5 May, which was argued in the WTO before a panel of seven experts.

Jayashree Watal, Counsellor in the WTO’s Intellectual Property Division, praised the University of Melbourne’s performance in the final: ‘I was quite frankly amazed at the level of professionalism exhibited … and at the excellent grasp of the complex legal, technical and political issues that the case brought up’.

The winning team included law students David Heaton, Chian Kee (2006 MJIL Editor), Sarah Kemeny and Elizabeth Sheargold, and was coached by Dr Andrew Mitchell (1997 MULR Editor), a Senior Lecturer at Melbourne Law School.

Chian Kee said being able to provide a meaningful contribution to the world health debate was a great experience: ‘There are so many developing and least-developed countries that are faced with life-threatening diseases but are unable to effectively combat them due to poverty or lack of infrastructure. This moot was a fantastic opportunity to engage with this important issue and explore the possibilities and limits of the flexibilities in the TRIPS Agreement’.

David Heaton agreed that the experience was amazing: ‘Being lucky enough to advance to the final in Geneva and moot within the walls of the WTO was a pinnacle, but there has been so much more to the Moot than the actual competition itself, such as meeting competitors from around the world’.

It was an incredibly successful trip for the University team, which claimed all but one of the awards for which it was eligible including winning team and best written submissions for the complainant, respondent, and overall. Elizabeth Sheargold also won best orator in the elimination rounds.

The team’s prizes include full scholarships to the World Trade Institute’s Postgraduate Diploma in International Trade Law and Economics in Bern.

WTO Moot Court will become a subject later this year and next year’s team will be coached by two members of Faculty, Dr Andrew D Mitchell and Dr Tania Voon.

Dr Andrew D Mitchell
Senior Lecturer
NEW-LOOK MJIL WEBSITE

MJIL is proud to launch its new website presenting a wealth of information pertaining to the Journal in a clear and professional style. At each stage of the design process, the Editors sought to make it easier for site visitors to quickly locate information.

The new website features clean lines and more white space in order to enhance functionality and readability. It also retains all the positive features from the old website — our archived issues are still freely available to view and download. Site visitors can also access all the important information relating to the Journal, including submissions deadlines and subscription details. Complete with links to the Melbourne Manual for International Law Citation and issues of Ad Hoc, the website is now a comprehensive and fully integrated destination for authors, practitioners and students.

It is our hope that the new MJIL website will become an important destination for anyone with an interest in international law. We would greatly appreciate feedback in relation to our new website, which can be found at the same address as before: <http://mjil.law.unimelb.edu.au>.

<http://mjil.law.unimelb.edu.au/>
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Edition 8(1) will be available in June 2007

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INTERNATIONAL LAW @ MELBOURNE

As a leading centre for international law scholarship and teaching, the University of Melbourne continues to attract world-renowned scholars, teachers and practitioners of international law. Each year, the Law School hosts a variety of events and workshops to facilitate and promote these distinguished guests.

In recent weeks …


- Mr Andrew McLeod, Senior UN Advisor to the Government of Pakistan presented ‘The Road from Relief to Recovery and the Pakistan Earthquake’ on 2 April 2007 (Human Rights Rights Forum, Public Lecture Series).

- Professor Timothy McCormack (Foundation Australian Red Cross Professor of International Humanitarian Law at the University of Melbourne and expert consultant on international humanitarian issues to the David Hicks defence team) and Mr Terry Hicks (father of David Hicks, former Guantánamo Bay detainee) presented a lecture organised by the Postgraduate Law Students Association with the assistance of the Law Students Society and Civil Rights Defence. The Lecture was entitled ‘Guantánamo Bay: The David Hicks Case’ and was held at the University of Melbourne Law School on 20 April 2007.


And coming up …

- On 6 June 2007, the 2007 Sir Kenneth Bailey Memorial Lecture: ‘Third World Approaches to International Law: Past, Present and Future’, will be presented by Professor B S Chimni, Jawaharlal Nehru University. Professor Chimni is an internationally renowned legal academic and a major figure in the Third World Approaches to International Law (‘TWAIL’) network of scholars — formerly a member of the Academic Advisory Committee of the UN Office of the High Commissioner for Refugees. His publications on contemporary approaches to international law in the third world have provided a key contribution to critical study in this field.

- On 18 July 2007, the Melbourne Law School Distinguished Visitors Program Public Lecture: ‘The WTO and Human Rights’, will be presented by Professor Robert Howse, University of Michigan. Professor Howse is an internationally recognised authority on international economic law, as well as a regular consultant to government agencies and international organisations such as the OECD, UNCTAD, the Law Commission of Canada, the Inter-American Development Bank, and the UN Office of the High Commissioner for Human Rights. His publications on global governance have provided a major contribution to study in this area of international law.

NEW APPOINTMENTS TO MJIL

The Editors would like to congratulate the following Journal members on their appointment to the Editorial Board:

Executive Board:
Simon Chen (Marketing Manager)
Lily Fordyce (Marketing Manager)
Errrol Lloyd (Case Note Editor)
Simin Ngan (Production Editor)

General Members:
Laura Bellamy
Ranjit Bhatia
Sara Dehm
Tim Farhall
Erica Hamence
Chris Hibbard
Jeff Holowaychuk
Jensen Li
Molly McCaffrey
Jonathan Mitchell
Stephanie Morrow
Mevelyn Ong
Michael Power
Adelaide Rief
Minjie Shen
Naomi Smith
Jordan Wilson-Otto
Tiffany Wong

The Editors would like to thank Associate Professor Kristen Walker for her valuable contribution to the MJIL Advisory Board since the inaugural edition in 2000. We wish her well for her future endeavours.

The Editors would also like to congratulate Dr Andrew D Mitchell, Senior Lecturer at the University of Melbourne Law School, on his appointment to the MJIL Advisory Board.
MJIL would like to thank its sponsors for their generous support

Allens Arthur Robinson

BLAKE DAWSON WALDRON

LAWYERS

Mallesons Stephen Jaques

RIO TINTO

THE UNIVERSITY OF MELBOURNE
ALUMNI FEATURE — THE FOUNDING EDITORS OF MJIIL

MJIIL was established in 2000 by five ambitious law students with the vision of creating a forum facilitating scholarly research and discussion of international issues. It is with great pleasure that we reunite the Founding Editors to provide an update of their achievements since leaving University and reflect on their time working on MJIIL.

Amanda

What is your current employment?
Associate at Allen & Overy, Projects Group.

Where are you based?
Dubai. I started in the London Office of Allen & Overy and was there for six months before a secondment opportunity presented itself. What was meant to be a three to six month secondment has now become almost two years in the Dubai Office!

Since leaving the University of Melbourne, what other activities have you been involved in?
After leaving Melbourne University, I worked as an Associate to Justice Balmford in the Supreme Court of Victoria. I then completed my articles at Freehills and worked there for three years after that in the Projects Group before heading to London.

Are you still in contact with the other Founding Editors?
Yes, I am still in contact with the other Founding Editors, particularly Suzan and Kalika, who are two of my best friends.

Please tell us a bit about your time as a Founding Editor.
One of the first challenges we faced with MJIIL was actually getting people to believe that it could work as much as we did. Melbourne University already had a well established and well respected journal in the form of the MULR, so to try to launch another publication which would be of the same calibre as the MULR was always going to be difficult. But we had some great support and advice from within the faculty, in particular from Gillian Triggs and Tim McCormack, who were as excited and passionate about this project as we were. Some of my fondest memories of MJIIL are, believe it or not, the late nights spent together in our (very small!) office working towards the launch date for the inaugural edition. It was such a great feeling when it all came together.

Suzan Davies, Amanda Rologas, Tracy Whiriskey, Kalika Jayasekera and Peter Henley
(August 2000)
Kalika

What is your current employment?
I am Head of Legal at RAB Capital plc, an AIM listed London-based investment manager of hedge funds.

Where are you based?
I am currently based in London. I moved here in August 2004 to do my Master of Laws at the London School of Economics. After finishing my LLM in September 2005, I started working at RAB and have been here for about 20 months now.

Since leaving the University of Melbourne, what other activities have you been involved in?
- After graduating in 1999, I completed my articles at Corrs Chambers Westgarth in 2000;
- In 2000 (which was when we were setting up MJIL), I worked as a legal intern at the UN in the Office of Legal Affairs, Treaty Section (for four months in New York);
- In January 2001, I returned to Corrs and subsequently completed my articles in September 2001;
- From 2000–03, I volunteered with the Red Cross International Humanitarian Law Unit in Melbourne;
- In January 2002, I moved to ANZ Investment Bank to work as Assistant Legal Counsel in the derivatives area and in 2003 – August 2004, I was Principal Lawyer running the Derivatives Legal Team for ANZ Investment Bank globally;
- From August 2004 – September 2005, I took a career break from ANZ to do my Master of Laws at the London School of Economics. I specialised in Corporate and Securities Law and obtained a first class honours degree;
- In May 2006, I was admitted as a solicitor in the Supreme Court of England and Wales;
- In June 2006, I completed a finance industry qualification called the Investment Management Certificate; and
- In March 2007, I was nominated for the Hedge Fund Journal’s 2006 ‘Who’s Who of European Hedge Fund Lawyers Awards — In-House Counsel of the Year’.

Are you still in contact with the other Founding Editors?
Yes. I am also in touch with Gillian Triggs regularly, as a result of the relationship we developed whilst establishing MJIL.

Please tell us a bit about your time as a Founding Editor.
The 18-month period in which we established MJIL was one of the most rewarding experiences I have been involved with. The most difficult challenge was winning the support of the Law School to set up MJIL alongside the well-established MULR and then prove to all interested parties (both within Melbourne University and in the broader international law community) that we could produce a journal of the highest quality. As most of us were also working full-time, there were several late nights during the week and most weekends were given up to MJIL. It made things a lot easier to have such enthusiastic support from the student body and to have such dedicated and talented members of the Foundation Committee. The time we spent together has definitely bonded the five Editors for life and we often look back to those days fondly. It is incredible to see the momentum the MJIL has picked up over the last seven years. I have found the skills that I used as an editor and setting up a journal have translated into my professional career; we were essentially setting up a small business with an academic focus.
Peter

What is your current employment?
I am a Senior Associate at Mallesons Stephen Jaques, and concentrate mainly on commercial contracting, off-market M&A transactions and general corporate advisory work. For the last few years, I have been the Coordinator of the Melbourne Human Rights Law Group. I have also been a member of the Melbourne centre of the firm’s Pro-Bono and Charities Committee since 2001.

Where are you based?
Melbourne.

Since leaving the University of Melbourne, what other activities have you been involved in?
Some of the things that I have been involved with recently include:

- Acting as an adviser to a person in immigration detention in bringing an individual communication under the First Optional Protocol to the ICCPR alleging breaches by Australia of arts 7, 9(1) and 9(4) of the ICCPR (the case is still running);
- Assisting the Australian Red Cross with the process of approving and formalising significant governance changes to its Charter and Rules;
- Publishing an article in the December 2006 edition of the Law Institute Journal on the potential impact of the new Victorian Charter of Human Rights and Responsibilities on Victorian law; and
- Organising an annual fundraising concert for Urban Seed to raise funds for its operations and raise its public profile.

In August 2007, I will start an LLM at the School of Law, Bloomington, Indiana University, focusing on environmental regulation and public resources law.

Are you still in contact with the other Founding Editors?
We write every so often when one of us has a major event (new job, new city, new family member etc), but I think we all live on opposite sides of the world at the moment!

Please tell us a bit about your time as a Founding Editor.
The biggest challenge was actually getting through all the work we had to do. In terms of gaining support, approvals, funding, submissions, and new members, everything went really well. But wading through all the articles we had received, and then actually doing the editing (most of us for the first time ever) was an enormous challenge! But we all had fun doing it, and all the new MJIL members quickly developed a good group feeling. We had a highly supportive and enthusiastic bunch from the very beginning, and it made the long hours an absolute delight. I made some friends during the editing process who are still good friends of mine today.

I have too many fond memories to choose from, none of which I could elevate to the status of a ‘favourite’. But along with those memories is the curious feeling of nostalgic excitement I experience — which I'm sure the others share — when I see MJIL produce edition after edition of great work, and when I meet so many successive years of students at Melbourne who are deriving so much enjoyment, and learning a great deal, from being involved with MJIL. I see them fairly frequently now as new articled clerks around the various firms, too, which is great. Of course, achieving those results were some of the main motivations behind establishing MJIL. It is really lovely to see it flourishing in the way it currently is.

http://mjil.law.unimelb.edu.au
Suzan

What is your current employment?
I am currently a stay at home mum, raising my 13-month old twins Dylan and Yasmin. Dylan is two minutes older, but in all aspects of his life his little sister rules. They are both crawling and have 19 teeth between them.

Where are you based?
I have been living in London since 2004. My husband and I relocated here so that I could read Masters in Public International Law at the London School of Economics. The twins were an unexpected, but wonderful surprise. Otherwise I was planning on working in the field of international law, but stopped during the interviewing process after I discovered I was pregnant.

Since leaving the University of Melbourne, what other activities have you been involved in?
After I graduated from Melbourne University, I undertook an internship at the UN Headquarters in New York. I was in the Treaty Section, which is a part of the Office of Legal Affairs. The work was really fantastic; writing advice for member states and attending Security Council sessions were a highlight.

After my internship I returned home and completed my articles at a Melbourne law firm. I then completed my BA Honours in International Relations. Then in January 2003, I relocated to Sydney so that I could take up the position as the Associate to the Honourable Justice Peter Hely at the Federal Court of Australia. This has been so far the best professional experience I have had. Applying international law in our own domestic system was interesting.

At the conclusion of my Associateship, we sold our home in Australia and embarked on a six month road trip around the US. We started in Los Angeles in February, where we bought a car and set off to visit a total 45 States. By mid-July, we had driven approximately 38 000 kilometres, and taken 6000 photos.

In 2004–05, I read my Masters at the LSE. I studied a wide range of subjects, including the protection of Women’s and Children’s Rights, Refugee and Immigration Law, International Criminal Law and UN Law. During this time I also worked as Research Assistant to Professor Christine Chinkin. This was an incredibly rewarding job as some of the research I did made its way into several publications.

Are you still in contact with the other Founding Editors?
I am definitely still in touch with all the other Founding Editors. I visited Tracy in Tokyo a few years back and she has visited me here in London. I regularly speak with and email Peter and Amanda. I see most of Kalika as she is also here in London. We were both studying at LSE which was fun, and since then she has been a great support as I adjust to this new phase in my life (probably the most challenging role ever).

Please tell us a bit about your time as a founding Editor.
Some of the challenges that still resonate with me are getting the backing of the faculty and the Law Council. Also, obtaining financial support from both public and private sectors was incredibly hard. We had to sell our faith in the journal to total strangers. My absolute favourite memories are of all-nighters spent in our tiny, stuffy office and of the delicious early huge breakfast at Trotters on Lygon Street. We were so driven, almost possessed! We really wanted to pull off the concept so that the journal would endure beyond our time at the University.

It is wonderful how successful the Journal has been, and I still get such a buzz every time I see it on a shelf in a library.
Tracy

What is your current employment?
Senior Associate, Clifford Chance.

Where are you based?
Tokyo, Japan.

Since leaving the University of Melbourne, what other activities have you been involved in?
Allens Arthur Robinson (including secondment to Nagashima, Ohno & Tsunematsu in Tokyo, Japan).

Are you still in contact with the other Founding Editors?
Yes. I have now been working overseas for almost five years but have still have had various opportunities to catch up with the Founding Editors in various locations (in fact, at one point four of us were able to catch up in London which was lovely).

Please tell us a bit about your time as a Founding Editor.
One of my fondest memories is of the Founding Editors sitting in the coffee lounge brainstorming ideas of how we could make a contribution to scholarly knowledge over a few coffees and coming up with the idea of an international law journal. It is really amazing now to look back and know that in around a little over a year from those coffees that we would hold in our hands the inaugural issue of MJIL and hand MJIL over to the next Editors.

Having been on the editorial board of MULR I had some familiarity with law journals but it was a completely different challenge to start a journal from the very beginning. With the kind support of various academics and professionals and lots of enthusiasm and hard work from the editorial board members, from a tightly packed room with no windows in the old law school in a short space of time we had a functioning organisation. There were so many challenges in the start:

(i) what to call the Journal;
(ii) what the Journal would look like (structure, layout);
(iii) what would be its objectives;
(iv) how would we source contributions for a journal with no previous editions; and
(v) who would be the target audience?

The list at times seemed endless.

To have been involved with MJIL is undoubtedly one of the best things that I did while at university and I hope that is the same for everyone else associated with MJIL over the years. One of the things that I value the most is the MJIL community. Even in Tokyo, many miles away from the MJIL office, I have come across alumni from MJIL in job interviews, seminars and socially. Even after your time at MJIL there are various ways in which it will play a role in your life.
MJIL Honours Graduates

MJIL would like to congratulate the following alumni on their recent graduation with Honours in Law from the University of Melbourne:

- Wai Kit Angus Chan
- Claire Davie
- Matthew Davis
- Laura Deschamps
- Frances Dunn
- Andrew Emmerson
- Anna Hood
- Hayley Jones
- Michael Jukes
- Louise Parrott
- Luke Raffin
- Andrew Saunderson
- Benjamin Silverstein
- Laura Vickers
- Lydia Wong

Do You Have Any Alumni News?

If you are a member of MJIL’s alumni and your contact details or situation have changed or are about to change, please drop us a line so that we can update our records: <law-mjil@unimelb.edu.au>.

If you would like to be featured in Alumni Updates in the next edition of Ad Hoc, we would be delighted to hear from you.

Feedback

If you have any contributions, feedback or suggestions regarding Ad Hoc, or if you no longer wish to receive the newsletter, please let us know by emailing us at <law-mjil@unimelb.edu.au>.