

EDITORIAL

When reviewing the developments in international law in the year 2004, it is very difficult to define the year in any definitive context. However, one thing is certain: it was certainly an eventful year, with much of the focus of the international community placed on Guantanamo Bay, the war on terror and the occupied territories in Palestine. It is hard to think of a time when so much attention has been placed on the role and importance of international law in the conduct of international relations, especially by the popular media. In the *Outlook for International Law*, Brierly wrote:

Too many people assume, generally without having any serious thought to its character or its history, that international law is and always has been a sham. Others seem to think that it is a force with inherent strength of its own, and that if only we had the sense to set the lawyers to work to draft a comprehensive code for the nations, we may live together in peace and all would be well with the world. Whether the cynic or the sciolist is the less helpful is hard to say, but both of them make the same mistake. They both assume that international law is a subject on which anyone can form his opinions intuitively, without taking the trouble, as one has to do with other subjects, to inquire into the relevant facts.¹

Guantanamo Bay and the War on Terrorism

In the field of international humanitarian law and international criminal law, it is definitely worthy of note that the International Criminal Court commenced its operations in 2004 with the initiation of investigations into the Democratic Republic of Congo and Uganda.² Meanwhile, the work of the International Criminal Tribunal for the Former Yugoslavia continues, with a record number of appeals heard and disposed in 2004;³ and the International Criminal Tribunal for Rwanda announced in November

¹ Brierly, *The Outlook for International Law* (1944), pp. 1-2.

² International Criminal Court, "Situations and Cases" (2005) <<http://www.icc-cpi.int/cases.html>>, at 1 November 2005.

³ International Criminal Tribunal for the former Yugoslavia, *Ninth Annual Report of the International Tribunal for the former Yugoslavia* (2004) U.N. Doc. A/59/215-S/2004/627.

2004 that its work would be complete in 2007 or 2008.⁴ While these efforts may be seen as positive developments in the evolution of international humanitarian law from a global perspective, the focus placed on individuals held by the United States in Guantanamo Bay has often been linked to a negative reflection on the observance of international law.

There is no doubt that the legal issues arising from Guantanamo Bay and the broader issues of the “war on terror” as waged by the “coalition of the willing” are certainly worthy of academic and legal debate. This is particularly so in the context of need for a reassessment of the evolving role of international law in international relations. It is perhaps helpful to recall that Senator Robert A. Taft gave an address in 1946 at Kenyon College, in which he spoke out in principle against the “international” war crime trials in Germany and Japan after the Second World War:

The trial of the vanquished by the victors cannot be impartial, no matter how it is hedged about with the forms of justice. I question whether the hanging of those who, however despicable, were the leaders of the German people will ever discourage the making of aggressive war, for no one makes aggressive war unless he expects to win. About this whole judgment there is the spirit of vengeance, and vengeance is seldom justice. ... By clothing policy in the forms of legal procedure, we may discredit the whole idea of justice in Europe for years to come. In the last analysis, even at the end of a frightful war, we should view the future with more hope if even our enemies believed that we had treated them justly in our English-speaking concept of law, in the provision of relief and in the final disposal of territory.⁵

It is hoped that the present journal would contribute to this debate.

In “**Responding to Torture**”, Professor Carl Q. Christol conducts a detailed analysis on the detention and alleged torture of detainees conducted by the United States in Guantanamo Bay and elsewhere as well as the domestic judicial responses. In addition, Mr. Sebastian de Brennan

⁴ International Criminal Tribunal for Rwanda, *ICTR Completion Strategy* (2004) <<http://65.18.216.88/ENGLISH/completionstrat/191104.pdf>>, at 1 November 2005.

⁵ Reproduced in William Safire (ed.), *Lend Me Your Ears: Great Speeches in History* (2004), at p. 713.

presents a passionate argument in **“The Internationalisation of Terrorism: Winning the War, While Preserving Democratic Rights — A Balance Gone Wrong”**, which highlighted the political and legal difficulties involved in combating international terrorism in liberal democracies. These articles are ably supplemented by a case note on the **“Guantanamo Bay Cases”** of the domestic courts of the United States by Ms. Laura Thomas.

The International Court of Justice

Similarly, the International Court of Justice has achieved a level of activity in 2004 that was “unprecedented in the history”, as the Court “held five sets of oral hearings relating to no less than 12 cases ... rendered a final judgment in three cases and has delivered one Advisory Opinion”.⁶ The historical focus of the present journal on the workings of the Court continues with a substantial part of this volume dedicated to such analyses, particularly with the article on **“The International Court of Justice and Recent Orders on Provisional Measures”**, written by the late Associate Professor Alexis Goh and Mr. Steven Freeland. Further, the case notes **“Case Concerning Avena and Other Mexican Nationals (Mexico v. United States)”** by Dr. Natalie Klein, the **“Legality of the Use of Force (Serbia and Montenegro v. United Kingdom and Others)”** by Ms. Anita Gauja and the **“Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Terrorism, Jurisdiction and the Application of International Law”** by Mr. Binoy Kampmark complete our 2004 review of the workings of the International Court of Justice.

It is perhaps opportune to note at this point that, from the next volume, this journal will contain a commentary on the judicial workings of the Court (as it has done in previous volumes), but will be expanded to take into consideration judgments decided in other international courts and tribunals. The journal is grateful to Dr. Christopher Ward, the present case notes editor, for agreeing to take a lead role in compiling and

⁶ International Court of Justice, “Speech by H.E. Judge Shi Jiuyong, President of the International Court of Justice, to the General Assembly of the United Nations, 4 November 2004, <http://www.icj-cij.org/icjwww/ipresscom/SPEECHES/iSpeech_President_Shi_Speeches_GeneralAssembly_20041104.htm>, at 1 November 2005.

developing this commentary and continuing the work that Associate Professor Alexis Goh has done in previous volumes of this journal.

Air and Space Law

One of the areas in which Associate Professor Alexis Goh has shown a great interest is in the fields of air and space law. Reflecting this, the present volume has selected three articles on these subjects.

In “**The Transportation of Animals by Air: Regulatory Aspects**”, Prof. Dr. Isabella Diederiks-Verschoor presents a fascinating study into the application of existing international legal principles to the transportation of animals and the prevailing practice of commercial passenger airlines. Further, some of the legal issues arising from the application of international space law to contemporary space applications are also considered. Dr. Zhao Yun, in “**Revisiting the 1975 Registration Convention: Time for Revision?**”, highlights some of the problems arising from the obligations on the registration of space objects for the commercial space sector. The writer, in “**Article II of the Outer Space Treaty: Prohibition of State Sovereignty, Exclusive Property Rights, or Both?**”, attempts to contribute towards resolving a space law controversy by suggesting that Article II prohibits only sovereignty and not the creation of exclusive property rights on celestial bodies.

Book Reviews

There are two book reviews. The first is provided by Prof. Ivan Shearer on *The United States and the Rule of Law in International Affairs* by John F. Murphy. The second is a book review note by Dr. Keith Suter on *The United Nations and the Indonesian Takeover of West Papua 1962-1969* by John Saltford.

Acknowledgements

It is with sadness that the Editorial Board notes the passing of our leader, Associate Professor Alexis Goh, who as Editor in Chief has left a lasting imprint on the quality and direction of this journal. It is impossible to reduce to mere words the efforts that she has made over the last twelve years to develop the present journal.

The International Law Association (Australian Branch), its space law committee, the Australian International Law Journal and the Australian international law community at large will be forever in her debt. She has left very large shoes to fill, and although the new Editorial Board will try hard to fill them, it is evident that such a mission is impossible.

This volume would not have been possible without the efforts made by the Committee of Management of the International Law Association, particularly Mr. Steven Freeland, who took over the editorial leadership of the present volume under sad circumstances. Further, our gratitude must also go to Prof. Ivan Shearer for his Foreword and to Prof. David Flint for writing the lead article, “**In Memoriam: Tribute to Alexis Goh**”.

Personally, Alexis was a great teacher, doctoral supervisor, employer, colleague, mentor and friend and her continuing guidance, support and encouragement had been invaluable and is now sorely missed. The writer is honoured and humbled by the opportunity given by the International Law Association to be the new Coordinating Editor and will work hard to continue the best traditions of editorship that Alexis has established in the Australian International Law Journal.

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