



iarmj

international association of refugee and migration judges

Global Newsletter, Spring 2019

INTRODUCTION

Welcome to the Spring 2019 edition of the Global Newsletter of the International Association of Refugee and Migration Judges (IARMJ). The Newsletter is for the IARMJ membership and is edited by Judith Gleeson. Contact details are at the end of the newsletter.

PRESIDENT'S REPORT

We are well into 2019 now. My yearly wish is for a 'slow' year where people can breathe at ease and work at a reasonable pace. No luck so far. However our time was well spent in 2018, as up to now in 2019. We have fulfilled the decisions taken during the World Conference in Athens, held regional conferences, continued our EASO work on the judicial professional development series, and had many informal and formal exchanges on aspects of asylum and migration law and the work of judges.

The most important task this year was to finish the legal work necessary to formally include migration into our Association, change its name and to make sure our Association remained an institution that corresponds to the growing membership and increasing tasks. It was a journey where we faced the requirements we needed to fulfill under Dutch law: the IARMJ is a professional Association registered in the Netherlands. Former IARLJ presidents Allan Mackey and Sebastiaan de Groot have, in close co-operation and constant dialogue with myself, completed the hard task of rewriting the IARLJ constitution to fit the IARMJ. The final proposal was voted on and officially announced during the Asian Pacific Chapter conference in Wellington, in November 2019. I signed the official text at the notary's office in Amsterdam earlier this month. The IARMJ Statutes have been published at the Chamber of Commerce in Amsterdam and the IARMJ is now the only name to be used. The necessary internal re-organization has been set in motion to meet the criteria of our new Statutes, including the



IARMJ Newsletter

May 2019

IARMJ President:
Vice-President:

Katelijne Declerck
Isaac Lenaola

Newsletter editor: Judith Gleeson

creation of a Supervisory Council with its own President. I am grateful to Joy Torres for taking that role on an interim basis until the next World Conference.

The importance of an independent judiciary can never be underestimated, not only for its direct impact on democracy, on nation building and the rule of law but also on the judge in a personal and professional manner. An independent judiciary is complex. We have discussed aspects of this in our conferences but it remains a continuing theme and there is always more to do, particularly to support judges working in failing democratic systems, or those which are building or rebuilding democratic institutions.

Congratulations are in order to the IARMJ Chapters that held their regional conferences last year. The themes of all conferences reflect the current times. The Americas Chapter (with the help of UNHCR) and the Asia Pacific Chapter (with the support of a New Zealand governmental fund) were able to attract many new members from the Caribbean Islands and Pacific islands. They have few refugees or asylum claims but growing numbers of migrants and trans-migrants.

The Americas conference in Washington D.C. in August 2018, was about resilience of asylum legal frameworks, of the judiciary and of course of the asylum seekers for whom these systems have been set up (see John Bouwman's piece below).

Most IARMJ conferences include an excursion to an interesting event or place. The Washington conference ended with a visit to the Holocaust Museum with presentations on the role of judges and prosecutors in Germany, before, during and after World War II.



The European Chapter Conference took place in September 2018 in Catania, on the island of Sicily, the place where many migrants and asylum seekers set foot on European soil after crossing the Mediterranean. The joint organizers of the conference, the Italian School of Magistrates, hosted us in the beautiful Monastery of San Nicolò l'Arena in Catania (a UNESCO world heritage site) now part of the Department of Humanities of the University of Catania. The Conference theme concerned the right to effective judicial protection

and remedies within the Common European Asylum System and the Charter of Fundamental Rights of the European Union (details in the European newsletters).

The Asia Pacific Conference took place in the Legislative Council Chamber of the New Zealand Parliament Buildings in Wellington in November 2018. The theme of the Conference, "Managing The Clash Of International Law and Domestic Sovereignty" was discussed from different angles including, "Climate Change, Disasters and Protection," "Human Trafficking in Asia Pacific" and "Preserving the Rule of Law in the Decision-Making Process".

The African Chapter Conference will take place in the last week of August 2019 in Cape Town, South Africa. The conference will commemorate the 50th Anniversary of the 1969 Organization of African Union Convention Governing Specific Aspects of Refugee Problems in Africa and examine the contemporary challenges confronting Adjudicators of refugee and migration law at the international, regional and domestic levels.

I'd like to remind all of you that our regional conferences are open to all our members. I thank the African and European members attending the Washington conference and the European and American members who attended the Wellington conference. This international dialogue that is very beneficial to our conferences and our Association. I therefore encourage and welcome IARMJ members from around the globe to attend the African Chapter Conference in Cape Town, from 24-29 August 2019.

As you may remember from my speech at the World conference in Athens, one of my firm intentions was to put the Americas Chapter back on the map. Thanks to the work of the Chapter President Russel Zinn, the IRB Canada and USCIS USA, it was possible to have an Americas Chapter conference in Washington DC last August. It seems appropriate to hold our next world conference in the Americas. I am proud to be able to invite you to the World conference in San Jose, Costa Rica from 17-22 February 2020, with the full support of the Management Board and the Supervisory Council. I thank Judge Esteban Lemus Laporte from Costa Rica for all the work he has done so far. Watch this space!

One more matter I want to share with you is our yearly a bi-lateral meeting between UNHCR and the IARMJ. This year it was on 1 February 2019. We discuss matters that are important for all of us. We take note of our strategies and plans and see where we can meet and strengthen each other.

Boštjan Zalar, the European Chapter president, was so kind as to accompany me. The main aim of this meeting is to co-ordinate the activities of the IARMJ and UNHCR. The day is always extremely full. We have the IARMJ Chapter presidents on the phone as well as the UNHCR regional delegations. Starting with the Far East, New Zealand we continue with discussions with the American, Africa delegations and finish with Europe. The order is simply a matter of timing, it is evening in New Zealand by the time we start the day in Geneva.

UNHCR has been going through an extensive restructuring and regionalization. We therefore decided that one or two intermediate regional follow-up meetings would be appropriate to enable IARMJ better to understand UNHCR's strategy for the judiciary. Ad hoc litigation is one option UNHCR is taking but, seen from the IARMJ side, the long-term option should be to have the judges do their work well and use UNHCR's support sustainably to strengthen our judiciaries. Each of our Regional Chapters will look at how we can best co-ordinate these actions. You may certainly have your own experiences and ideas, so I recommend you to contact the IARMJ and your Chapter presidents with any concrete proposals you may have for your country or area.

At the same time, I realize that the migration legal work now outweighs asylum cases by far in almost all countries. We need to address this more extensively. Your thoughts on the way forward on this are very much appreciated. It certainly will be an important issue during the next World Conference in San Jose, Costa Rica.

Finally we say a fond goodbye to Liesbeth van Meeberg, who was Secretary/office manager to the IARLJ from 2001 to now, with grateful thanks from all of us who have worked with her over the years. Her knowledge and energy has been invaluable to the IARLJ over the years. Liesbeth will continue to support the ongoing IARMJ work with EASO, for which we thank her. We are glad to welcome Melany Cadogan as the office manager of the IARMJ: she is looking forward to working with you all. Melany introduces herself later in this newsletter.

I hope to see you soon at one of the IARMJ events.

*Katelijne Declerck
Global President of the IARMJ*

A word from the Treasurer about the new IARMJ Constitution

Dear friends and colleagues,

I was asked to write something about the things we've been busy with lately, and of course I will gladly do so!

To begin with: on 7 March 2019, the new Constitution of our (as it's now formally called) International Association of Refugee and Migration Judges was executed at the notary's office in Amsterdam. A huge amount of time and energy was spent by Allan Mackey, Katelijne Declerck and Sebastiaan de Groot on writing the new Constitution, which will take us further into the future. I think we owe them a big hand for taking on this tremendous job and, more importantly, succeeding in writing a Constitution that fits an Association with (at this point in time) almost 600 members....



The notary, the junior notary, Katelijne, Sebastiaan and I were present and (as you can see on one of the pictures in Katelijne's contribution) Allan attended by skype and telephone.

The official text of the Constitution has been published on the website in Dutch and in English. Fortunately, Sylvie Cossy from Switzerland has offered to prepare a French translation.

After the official part, we had lunch with Liesbeth van de Meeberg in Amsterdam. Not only to celebrate this occasion, but also (or perhaps, especially) to thank Liesbeth for almost twenty years of hard work for our Association. Because, as most you will know by now, Liesbeth has decided to hand over the office. Which brings me to the next subject: our new office manager.

On 15th April 2019 we could officially appoint Melany Cadogan as our new office manager, thanks to the help of Sebastiaan and the President of the District Court in Haarlem, where Liesbeth still holds office. Over the next months, Melany will be inducted by Liesbeth and by the end of 2019 she will take over fully as office manager.

Luckily, Melany is used to working with websites and she already met with our webmaster, Lisette Giesen. Which is a nice link to my last subject: the IARMJ website. Over the next few weeks changes will have to be made on the website as we now have both a Supervisory Council and a Management Board.

It may take some time before the work is done, but I hope that in the course of May 2019 everything is updated. Take a peek at the time. And while you're on the site, take some time to edit your profile and add a picture! Your profile is only accessible to those who are logged in.

Well, that's it for now. Hope to see you soon somewhere! All the best, till then....

*John Bouwman
IARMJ Treasurer*

Liesbeth van de Meeberg, the IARLJ's first Office Manager

Liesbeth leaves the IARLJ/IARMJ after nearly 22 years of service as our Office Manager, since the very founding of our Association in 1997. She created and inhabited the role of Office Manager with boundless energy and warmth. Liesbeth has been the 'institutional memory' of our Association and the person who we all knew anchored the far flung members of the judiciary, in all corners of globe, from her office in Haarlem, The Netherlands.



*Ave atque vale! Hail and farewell –
and thank you!*



A farewell lunch with good friends

Liesbeth is one of those unique persons who understands what it means to be a tireless, and totally committed administrator who is responsible for ensuring that an international association, comprised of senior members of the judiciary, straddling all time zones across the Northern and Southern Hemisphere, runs effectively and efficiently. Liesbeth has helped to organize umpteen World Conferences, Regional Chapter Conferences, Executive Committees, and other Association meetings, since the very founding of our Association in 1997. This not only entailed working closely

with all of the members of the Executive of the IARMJ, but with its most senior executive officers such as the President, Treasurer, Secretary, and immediate Past-President, as well as its Regional Chapter Heads.

The following thoughts and thanks come from all corners of the globe, as we wish her luck and happiness in her next adventures:

From Katelijne Declerck, IARMJ President in Brussels

"Liesbeth has been more than a secretary to me. I know she stayed on a little longer as we work so well together. I cannot exaggerate the importance of having someone reliable at the office, Liesbeth does not miss emails and kindly stresses urgent actions. We all noticed that she understood that office hours in the Netherlands do not necessarily correspond to the hours in other parts of the world.

I am so grateful for her help to me as President, and to the Association over the last 22 years. Her knowledge and energy has been an invaluable resource and support for the IARLJ."

From Ahmed Arbee, Tjerk Damstra, Sarie Brits and all the Members of the Africa Chapter

"To say goodbye is always hard when you have worked with someone like Liesbeth for so many years. We look back on the many years that we spent with Liesbeth at the various conferences all over the world and are thankful for all the assistance she gave us over the years. She was always willing to give us advice when planning any event and we remember especially her contribution to the World Conference held in Cape Town in 2009.

We wish her much happiness for the future and hope that she will enjoy her retirement after being a pillar of strength all the years she was with the Association.

Wij hopen dat het goed zal gaan in de toekomst en wij denken steeds aan je."

From Tony North in Australia:

"Liesbeth has been a pillar of the Association for as long as I can remember. Ever cheerful and with a boundless can-do attitude, it was a delight and privilege to work with her. I am very grateful for her generosity in her dealings with me, for her kindness, thoughtfulness and support. She holds much of the history of the Association and will leave a big gap in the administration. The Association owes her a debt of gratitude."

From Allan Mackey in New Zealand:

"Liesbeth was always fantastic and went way beyond the call in her work and support for all of the IARLJ's activities."

From Russel Zinn in Canada:

"I met Liesbeth at the first World Conference I attended at the registration desk. It was a delight to finally meet her in person. I was not surprised to find her welcoming and knowledgeable. I came to rely on her during the conference and since then. She was truly the face of the Association. Merci Liesbeth and enjoy your retirement!"

From James Simeon in Canada:

"I have thoroughly enjoyed working with Liesbeth in various capacities with the IARLJ and now IARMJ. She is a very determined, strong willed, highly astute, and a fiercely independent person, with a great sense of humour. But, at the same time, she is also a very kind and caring person who has helped to set our Association on a firm foundation that will be able to sustain itself well into the future. She will always be our colleague and associate, but, even more importantly, our dear friend. All of us will miss her reassuring presence at the very heart of our Association. We wish you all happiness and full contentment as you move on to life's new challenges and endeavours."

From John Barnes in Malta:

"I remember Liesbeth well and with great affection. She did a wonderful job for many years and was always good fun to be with. Please pass on Frances' and my very best wishes to her although she is not, of course, really old enough to retire yet!"

From Martin Treadwell in New Zealand:

"Liesbeth, we will miss you very much! For so many years you have been the rock of the Association, anchoring all of us across such vast distances and being the continuity that we have needed in order to feel that we were a united body. Thank you for all you have done (and put up with!). I hope we will see you in NZ at some time in the future."

Melany Cadogan - our new Office Manager



My name is Melany Cadogan and as you may have heard, I will be succeeding Liesbeth in the role of Office Manager. I was born in Surinam and after various detours I settled in The Netherlands where I currently live. The lights of my life are my three children, my life companion, and my two cats. Over the past ten years I have been working for the Ministry of Infrastructure and Water Management providing organisational support to maritime officers worldwide.

The field of work regarding Refugee Law will be a whole different ballgame for me and I hope you will forgive me while I catch up! I will try my utmost to serve the interests of the IARMJ as best as possible.

I'm enthusiastic about joining the team and looking forward to gradually meeting you and matching up names and faces.

*Melany Cadogan
Office Manager, IARMJ*

AD INTERIM CHAIR OF THE SUPERVISORY COUNCIL

Joy Torres: Women as Catalysts for Change – A view from the Philippines

For my part, it is a great honor to have been requested to assist in the smooth transition of the Association under its reinforced mandate as Ad Interim Chair of the Supervisory Council.

The (former) International Association of Refugee Law Judges (IARLJ) was founded with the aim of fostering “recognition that protection from persecution on account of race, religion, nationality, membership in a particular social group, or political opinion is an individual right established under international law, and that the determination of refugee status and its cessation should be subject to the rule of law”. Since its inception, the IARLJ has brought together hundreds of judges, decision makers, and renowned academic experts, in the area of refugee law, to gather under an atmosphere of continued learning and professional camaraderie.



Recently, given the increase in cutting edge and overlapping issues involving refugees in asylum and migration settings, the international membership agreed upon a change of mandate to include not only refugee issues but also statelessness and other similar migration issues in the age of digitization and globalization. Henceforth, this year, it was reborn as the International Association of Refugee and Migration Judges (IARMJ).

With all due respect and with the kind indulgence of our non-female counterparts, interestingly, at the helm of this transformational force is a woman President – the dynamic and indefatigable Katelijne Declerck.

As I write this in March 2019, we celebrate International Women’s Day around the world. I am inspired by the theme reverberating in my country to commemorate International Women’s Day with the theme “We Make Change Work for Women”. Indeed, this theme runs timely even in an international arena with the transformation of the international group of decisions makers known for their specialization in the practice of refugee law. On the same page, it is noteworthy that women decision makers are contributing to the conversation in the global arena of asylum and migration. To illustrate, the editor in chief who wields the magic stroke of the pen for this newsletter is another indefatigable lady – Judith Gleeson.

Innate in a woman is a heart of compassion. And it can undoubtedly be said that a woman looks at the world from the windows of her heart. Given the hardships experienced by refugees, asylum seekers and migrants, it is unarguable that the issues concerning refugees and migrants must be viewed not only with social justice and the rule of law, but also with a sense of compassion.

My dear colleagues, it is with this humble stance amongst vanguards of human rights and justice, and in celebration of International Women’s Day in March, women empowerment beckons that we step up to the plate and we, as catalysts for change, share our unique and unifying perspective and how they can impact on refugees, asylum seekers and migrants by balancing the rule of law with a sense of compassion.

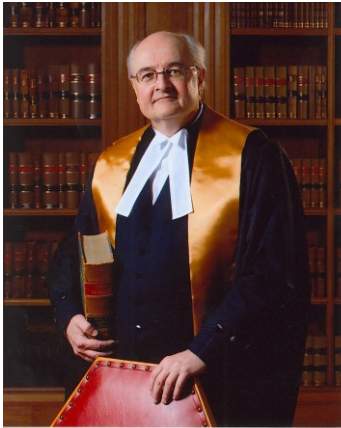
It is my fervent hope that we all make optimum use of this opportunity not just to share our perspective in vital issues and challenges that come our way in asylum and migration settings, but to reinforce our core of champions and expand our network of advocates. May we in the IARMJ keep the flame alive and hand in hand, we renew our commitment and passion to take the road less travelled and make a difference in elevating the plight of refugees, the stateless, migrants and asylum seekers regardless of gender – no borders, no walls, no fences.

*Maria Josefina “Joy” G. San Juan-Torres,
Ad Interim Chair – IARMJ Supervisory Council*

PRESIDENTS' CORNER

In the Presidents' Corner, we bring you news and views from the four corners of the earth, as represented by the IARMJ's four Chapters: Americas, Africa, Asia-Pacific and Europe. More details and reports about recent and forthcoming Chapter Conferences are provided separately, following the Presidents' Corner commentary.

AMERICAS CHAPTER



Hola! ¡Hola!

Save the Date: February 17-22, 2020, IARMJ World Conference, San José, Costa Rica.

The Americas Chapter can hardly contain its excitement that the Executive of the IARMJ has approved in principle our proposal to host the 12th World Conference in Costa Rica.

The planning team, led by our man on the ground, Judge Esteban Lemus Laporte, President of the Migratory Administrative Tribunal, are hard at work speaking with potential partners and developing a conference theme.

Those who have expressed an interest in supporting the event include the Inter-American Institute of Human Rights, the Inter-American Court of Human Rights, the International Organization for Migration, and the UNHCR. Additionally, the Bar Association and the Supreme Court of Justice are also in support of the event. We have the full support of the Ministry of the Interior and the Ministry of Security.

Given the current refugee and migration trends in Latin America, we feel it is appropriate that our next World Conference be in this region. Mark your calendars – we are looking for a huge attendance in this our first World Conference in the region since the 7th World Conference in Mexico City in 2006. We will be providing additional updates, as they are available.

In the interim, we are looking for volunteers to assist us in the preparations for the 2020 San José Conference and to assist at it. Please give this thought and send me your name and details. Thanks in advance.

Americas Chapter Member Communications

Thanks to Brigitte Witzel and Felix Ulloa, we have continued to share information with Chapter Members. In December 2018, we distributed an article written by Maria De Andrade, on the assessment of credibility, including some recent cases of interest shared by Alain Bisonnete, both

from the Refugee Appeal Division of the Immigration and Refugee Board. They are aiming that the next publication will address the recently adopted Global Compact for Safe, Orderly and Regular Migration.

Comings and Goings

Ross Pattee, Secretary of the Chapter, has left the IRB for an exciting new position of Assistant Deputy Minister within the Treaties and Aboriginal Government sector at Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). Ross has been an invaluable Executive member since Athens, and was instrumental in the success of the Washington conference. Although he is no longer working in the refugee and immigration world, he has committed to supporting the chapter and our plans for Costa Rica, until a successor is elected.

In March 2019, Brigitte Witzel left the Immigration and Refugee Board to join the Refugee Affairs Branch at Immigration, Refugee and Citizenship Canada. Brigitte's new position as Senior Policy Analyst includes working on international files such as supporting capacity building in asylum systems in Americas.

Felix Ulloa recently visited his family in El Salvador during the 2019 Presidential elections. The trip provided an opportunity to baptize his second son, Matteo, and support his father, Felix Ulloa, in his successful campaign as the newly elected Vice-President of El Salvador.

Russel Zinn

President, IARMJ Americas Chapter

New York Asylum and Immigration Law Conference 2018¹



*"Is anybody there, does anybody care, does anybody see what I see?"
John Adams, quoted in closing remarks by the Honorable Dorothy Harbeck*

¹ This write-up of the conference was done by two of Judge Harbeck's students in the Columbia University Masters of Law program, Rayna Baum Lifson and Eliza George. Judge Amiena Khan and Judge Dorothy Harbeck participated in the capacities of Executive Vice President and Eastern Region Vice President of the National Association of Immigration Judges (NAIJ). Their views are not necessarily the views of the U.S. Department of Justice, the Attorney General or the Executive Office for Immigration Review. Their views were formed in consultation with the membership of NAIJ.

The fourth annual New York Asylum and Immigration Law Conference was held on March 8, 2019 at New York Law School. It drew lawyers, judges, retired judges, artists, mental health professionals, activists, advocates and law students from throughout the country. The focus of this year's conference was a multidisciplinary examination of the "story" that is the central part of a refugee's asylum application, and of the applicant's experience facing and fearing persecution at home. The story of every asylee is unique. In a wonderfully engaging day filled with scholarship, networking, information and the sharing of stories, the conference emphasized the importance of both narrative and the law in shaping the strategies utilised by immigration attorneys.

The Keynote Welcome was delivered by Commissioner Bitta Mostofi, Mayor's Office of Immigration Affairs. She emphasized New York City's commitment to immigrants, and warned of an 80% increase in immigration enforcement against people with no criminal conviction. She stressed the city's role in working with others to protect immigrants. In addition, the conference featured opening remarks by Elizabeth Stevens, Chair of the Federal Bar Association, Immigration Law Section, and Immigration Judge Amiena Khan, who expressed concerns about the politicization of immigration and asylum, raising due process concerns, and highlighted the backlog of 800,000 asylum cases.

What made this year's conference incredibly memorable was its interdisciplinary focus. For example, the second track, aptly named the "special" track, featured speakers such as filmmaker Susan Margolin (who is documenting the escape from gang violence of a family of children), John Volk from the NY Academy of Art (who works with students to use 3D printed skulls of those who died crossing the desert in Arizona, to create lifelike faces using forensic techniques that help to identify the deceased) and retired Judge and rug hooker, Polly Webber (who displayed her artistic depictions of the refugee's plight). Other panels featured the role of mental health experts in applications where asylees have faced trauma and discussion of new issues impacting detainees. During lunch, the conference attendees joined together to hear Chilean-American writer and poet, Professor Marjorie Agosin, read poems about her family's experiences as immigrants. Lisa Bernstein, a literature professor from the University of Maryland, also discussed the usefulness of classical narrative structure in asylum applications.



The closing plenary featured retired Immigration Judge and former Board of Immigration Appeals Chair Paul Schmidt, retired Immigration Judge Jeff Chase, joined by Skype Professor Blaine Bookey (attorney at the Center for Gender and Refugee Studies at University of Hastings who represented Ms A-B in *Matter of A-B*).

The three explored strategies to preserve the right to asylum for survivors of gender violence in the aftermath of the *Matter of A-B*, a case which departed from decades of precedent regarding the ability of victims of domestic violence to seek asylum. Paul Schmidt inspired the audience with his call for immigration law advocates to become “due process warriors”, and his impassioned discussion about the need for an articulated and independent Immigration Court. His call to action elicited a standing ovation from the audience.

In closing remarks, Judge Dorothy Harbeck and Professor Thomas reemphasized the centrality of the narrative in asylum work, and the need for new ideas and approaches to address the new challenges facing immigration attorneys today. Elizabeth Stevens emphasized the need for immigration decisions to be unbiased and apolitical. She recommended a draft bill to make Immigration Courts Article 1 courts which would no longer be part of the U.S. Department of Justice.

AFRICA CHAPTER



BREAKING NEWS - IT'S OFFICIAL!!!

THE AFRICA CHAPTER HOSTS ITS REGIONAL
CONFERENCE IN CAPE TOWN, COMMEMORATING THE
50th ANNIVERSARY OF THE 1969 OAU CONVENTION

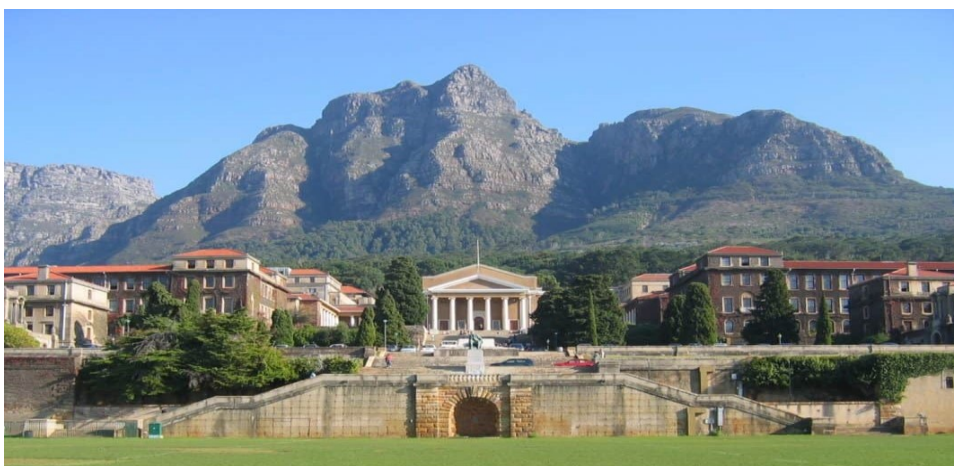
In collaboration with UNHCR and the University of Cape Town, UCT

PREPARING A WORLD CLASS EVENT FOR YOU



Celebrating 50 years of refugee protection under the 1969 OAU Refugee Convention

The big news from the Africa Chapter is that we will be hosting our Chapter Conference in Cape Town from 25-30 August 2019, to commemorate 50 years of the 1969 Organisation of African Unity Charter Convention, in collaboration with UNHCR and the University of Cape Town (UCT).



Adopted in a context of decolonization struggles across the continent, the 1969 Convention is widely considered the most generous and flexible international agreement on refugee protection.

The '69 Convention is ground-breaking as it set out a common framework for refugee protection and the development of jurisprudence in Africa through an expanded definition that includes those fleeing civil war and insecurity. It was also the first instrument of its nature to elaborate on the principles relating to voluntary repatriation, international solidarity and burden-sharing.



Presidents from Europe, Asia Pacific, and the Americas are called upon to support the Africa Chapter event with a sizable delegation from your respective Chapters. If you intend delivering a paper, please contact Ms Sarie Brits email sarie.brits@ymail.com focusing on Refugee and Migration Law.

Conference Details

Delegates are expected to arrive in Cape Town on Saturday 24th August 2019. Pre-conference sessions commence on Sunday 25th August, 2019 and end on Monday 26th. The Tuesday morning is reserved for Conference registration, Chapter and Council meetings with an afternoon break. Conference plenary sessions commence on Wednesday morning at 9am to Friday Lunchtime.

It would be advisable to plan your travel arriving on Saturday 24 August to depart on Saturday 30th August 2019.

..... watch the IARMJ Website for updates.

*Ahmed Arbee,
President, IARMJ Africa Chapter*

An overview of the African Court by Justice Ben Kioko

The African Court on Human and Peoples' Rights (the Court) is a continental court established by African Member States of the African Union to ensure the protection of human and peoples' rights in Africa. It complements and reinforces the protective mandate of the African Commission on Human and Peoples' Rights (commonly referred to as the Banjul Commission).



The Court was established by virtue of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol) adopted by Member States of the then Organization of African Unity (OAU) in Ouagadougou, Burkina Faso, in June 1998.

The Protocol came into force on 25 January, 2004. The following thirty (30) States have ratified the Protocol: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Côte d'Ivoire, Comoros, Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia and Uganda.



Current Judges of the Court, 2019

The Court has two types of jurisdictions: contentious and advisory. Its contentious jurisdiction extends to all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights (the Charter), the Protocol and any other relevant human rights instrument ratified by the States concerned. Its advisory jurisdiction deals with any legal matter relating to the Charter or any other human rights instrument.

The Court is composed of eleven Judges, nationals of Member States of the African Union elected by the African Union Executive Council and appointed by the Assembly of Heads of State and Government. The first Judges were elected in January 2006 and sworn-in before the 7th session of the Assembly held in Banjul, The Gambia in that year. The Judges are elected after nomination by their respective States, in their individual capacities, from among African jurists of proven integrity and of recognized practical, judicial or academic competence and experience in the field of human rights.

The Judges are elected for a six-year term renewable once. The Judges elect a President and Vice-President from among themselves who serve a two-year term and can be re-elected only once. The President of the Court resides and works on a full-time basis at the seat of the Court, while the other ten Judges work on a part-time basis, although they are required to do some work during the intercession. The Court holds four ordinary sessions a year, each lasting four weeks, and may hold extraordinary sessions.



The Bench during one of the public hearings of the Court

Since its establishment, the Court has received a total of 190 Applications in contentious matters and 13 Requests for Advisory Opinion. It currently has a total of 140 Applications and 1 Request for Advisory Opinion pending before it. The Court has delivered landmark judgments on a number of thematic issues, including on freedom of the Press and the rights of journalists, freedom of association, the rights of indigenous populations, the right to fair trial and the right to participate in the government of one's country. For more information, please visit the Court website on www.african-court.org

*Justice Ben Kioko
Vice-President of the African Court
on Human and People's Rights*

ASIA PACIFIC CHAPTER

The 2018 Chapter Conference in Wellington, New Zealand

My very warm greetings to the global membership on behalf of the Asia-Pacific Chapter. Since the last IARMJ newsletter, the Asia Pacific Chapter has held its biennial regional conference, this time in the Legislative Council Chamber at Parliament Buildings in Wellington, New Zealand. The conference (and workshops) took place on 14-16 November 2018. This conference was particularly important for us because it was the first in the region which dealt with the IARMJ's newly expanded migration jurisdiction and the programme was able to deal, for the first time, with issues such as family unity, deportation, statelessness and human trafficking.



Delegates were met by an opening pōwhiri (ceremonial welcome), led by Parliamentary kaumatua (elder statesman), Koura Moeahu, which included haka performed by Kapa Haka o Ngati Poneke, and were greeted by hongi (the touching of foreheads and noses together) - a uniquely New Zealand moment which few visitors have a chance to experience.



The delegates at the Wellington conference, in the Grand Hall of Parliament

It had been a focus of the Chapter Council to broaden the scope of the Chapter membership to include judges and decision-makers from the Pacific Islands. It might seem an odd notion that the quiet, idyllic Pacific islands might have a need to understand and address refugee and migration issues but, in fact, both aspects of the Association's work are highly relevant there.

- First, the low-lying atolls of the South Pacific are already experiencing forced migration as a result of climate change and it is inevitable that this issue will become more acute in the years ahead.

- Second, forced migration by other man-made disasters (such as the devastation of islands for phosphate) and natural disasters (such as the recent volcanic eruptions on Ambae in Vanuatu) have a disproportionately severe effect on small, land-poor populations. Many Pacific Island nations have experienced such disasters.
- Third, it is a reality that even the Pacific Islands are starting to experience an irregular migration influx. As the larger countries in the region increasingly find ways to prevent irregular movement across borders, the Pacific Islands risk becoming a softer option and are faced with the tension between border control, the cost of sophisticated interdiction systems and the need to be relatively visa-free for tourism. And even small numbers of irregular migrants can have serious consequences for a small country. We are aware of at least one island nation currently facing potentially 100+ protection claims....

So it was a great pleasure to have with us judges and decision-makers from many Pacific Island states, including (in no particular order) Samoa, Fiji, the Federated States of Micronesia, Vanuatu and Papua New Guinea. Chief Justice Denis Yamase, from the Supreme Court of the Federated States of Micronesia and Justice Daryl Clarke, from the Supreme Court of Samoa and Justices Ajmeer, Amaratunga and Sharma from Fiji, were among the many notable dignitaries.

Those of you who were at the World Conference in Athens in 2017 will recall the very successful experiment with breakout sessions. They provided an opportunity for delegates to tackle more specialised subjects in a 'workshop' environment and also some relief from the long hours usually spent in plenary. By adopting this format at the Wellington conference, we were able to engage delegates in a number of specialised topics, such as social media in hearings, RSD in the Pacific Islands and the boundaries of being discreet as an antidote to being persecuted. It is a format which we will repeat in future and, indeed, we received suggestions in the post-conference survey that we increase the number of breakout sessions.

Preparations for the Wellington conference kept the Chapter Council fully occupied for some nine months but there were windows in which we were able to engage in some training in the region. In particular, UNHCR assisted with IARMJ representation at a symposium on refugee law at Seoul University in Korea and there was a joint UNHCR/IARMJ project to Vanuatu to train immigration officers in RSD in December.

The past 12 months have been hugely successful for the Chapter with its membership nearly doubling. It is a testament to the hard work of a dedicated Chapter Council. We are already in the throes of developing a new strategic plan for the next 24 months and we are laying the ground work for the next regional conference, which we hope to hold in Southeast Asia in late 2020.

As well as thanking the Chapter Council for its tireless efforts, I must also extend my grateful thanks to the Programme Committee for the Wellington Conference, in particular Bruce Burson, who heads the Refugee and Protection Stream of the Immigration and Protection Tribunal, for

his huge contribution to the programme, and to Jan Redmond, the Head of the Migration and Refugee Division of the Australian Administrative Appeals Tribunal for her wonderful support for the conference. Lastly, my heartfelt thanks to Tina Pope, of the New Zealand Institute of Judicial Studies, whose financial support made it possible to get so many Pacific Island judges and decision-makers to the conference.

I must end on the sombre note that New Zealand is still slowly recovering from the terrorist attacks on the mosques in Christchurch on 15 March 2019. The unconditional embrace of the wider community, which has enveloped and given solace to the deeply affected Muslim community, has been uplifting to see and experience. And, most encouragingly, there seems to be a collective will not to allow it to simply dissipate over time but to stand together against bigotry and division. We must meet that challenge with resolve.

Martin Treadwell
President, IARMJ Asia-Pacific Chapter

EUROPEAN CHAPTER

“Challenges Ahead for IARMJ-Europe: Present and Future Activities”

Dear colleagues, friends, dear judges,

In my presentation, I will combine the issue of challenges ahead for our Association with introducing myself to you all.² It is an honour to be asked to stand as the next President of the European Chapter of the IARLJ/IARMJ. Hugo Storey is a hard act to follow!

In autumn 1999, just a couple of months after I had started to work as an expert associate at the Administrative Court of Slovenia, the manager of my court came to my office and asked me whether I would be interested to attend a transnational training event on refugee law. I was surprised and I reacted with a question: “A refugee law event? Why me ... and what has refugee law to do with the Administrative Court?” Slovenia was then in a negotiation process for the accession to the EU. I hesitated, because I had no knowledge of refugee law, as was the situation of all Slovenian judges at that time.



² This speech was given by Bostjan Zalar at the IARLJ Europe Conference in September 2018 on the occasion of his election as its President.

In that period, I was also an Assistant Professor and a part time researcher at the Institute of Social Sciences of the University of Ljubljana, dealing with the so-called New Public Management in the state sector, this includes the judiciary. I specialised in human rights law and I had spent a couple of months at the Commission for Human Rights in Strasbourg as a *visiteur d'étude*. Of course, judgments of the European Court of Human Rights in the cases of Soering, Chahal and Vilvarajah were already there at that time, but I did not know those cases nor their significance in expulsion cases. So, I went on that training more as an academic who is curious about unknown subjects, especially if a particular subject is related directly or indirectly to various aspects of an individual's autonomy, social justice and humanity.

Following that training, I published the first academic article in a Slovenian journal on refugee law, entitled: "Is Asylum a Human Right?" This morning, 18 years later, I had a chance to hear that very same subject discussed in the keynote speech of the former President of the Constitutional Court of Italy - of course with great emphasis on Italian constitutional law and the EU principle of solidarity.³

After that first training in Budapest there were several other training events – always transnational. My first teachers were Roger P G Haines from New Zealand, Nicholas Blake who later became the President of the Upper Tribunal, and Paul Tiedemann, Judge of the Frankfurt Main Administrative Court. Then, I had the chance to hear and meet Allan Mackey, Katelijne Declerck, Geoffrey Care, Tony North from Australia, Hugo Storey, Judge Russel Zinn from Canada, Jacek Chlebny and Walter Stöckli, Juha Rautiainen and Sebastiaan de Groot, Eamon Cahill from Ireland, John Barnes, Harald Doerig, Lord Sedley and academics Guy Goodwin Gill, Thomas Spijkerboer, Elspeth Guild and some others.

Definitely, the turning point was the World Conference of the IARLJ in Stockholm in 2005, because there I had a chance to meet also judges from Africa, America and Asia. In Stockholm, I realised what enormous social, cultural and professional capital the global Association had developed. Now, it has around 600 members all over the world, and we all apply the same international instrument – the Geneva Convention, and also to some extent similar procedural or evidential standards derived from the UN Convention on the Rights of a Child, Convention against Torture, International Covenant on Civil and Political Rights, and UNHCR Guidelines. This is particularly true where there are regional instruments like the Common European Asylum System and the African Charter.

There are of course important national, jurisdictional and regulatory differences which our members have to respect in their daily work, basically, we all perform the same exercise: our fundamental task is to provide an effective and independent legal remedy for asylum seekers or irregular migrants challenging the decisions of executive bodies regarding international protection or removal or deportation of foreigners. Nowadays, this includes protection of their

³ Gaetano Silvestri: "The Fundamental Right to Asylum in International Protection".

human rights, while in some cases we have to balance their rights with the public interest or the rights of others.

Our global partnership continues to develop: I was delighted to read in the September 2018 Global Newsletter that the Americas Chapter after some time is active again, and that they had a Chapter Conference in early August 2018.

It is interesting to compare their programme with the programme of the European chapter. The main theme of the conference was “resilience” - resilience of protection determination systems so that protection systems are able to withstand large influxes and identify legitimate asylum seekers while at the same time maintaining the quality and integrity of the legal system, but also resilience for decision-makers and judges, who are faced with ever increasing demands and work-load. In the Washington Conference, this included discussions on assisting judges in learning to identify and understand the impact of their biases on the outcomes of legal adjudications and the problems of burnout of adjudicators.

In the recent past, I have been increasingly concerned that we should include in our Chapter and Global meetings a wider discussion on working conditions for judges, including effective court management, quality management models in the field of refugee law and judicial independence. The presentations of Mona Aldestam⁴ and Harald Doerig⁵ in Sicily reflected those concerns. They are available on the website and are well worth rereading.

Of course, I am not suggesting that the IARMJ-Europe should turn into some kind of trade union, but proper working conditions relative to supporting judicial independence can have a decisive influence on the quality of our outcomes. As Judge Richard Posner, with whom I agree, wrote in his book “How Judges Think”: judges are not moral or intellectual giants, prophets, oracles, mouthpieces or calculating machines. We are all-too-human workers, responding as other workers do to the conditions of the labour market in which we work.⁶

Recently, we sent a questionnaire to European Chapter judges asking about the utility of the judicial analyses produced by IARLJ judges in collaboration with EASO on Article 15(c) of the Qualification Directive [subsidiary protection under circumstances of generalised violence], and on the exclusion clauses. We were disappointed not to receive even a modest number of responses, probably because judges do not have time to read even materials, handbooks, guidelines that are produced (specifically) for them. This is definitely one of the future challenges in relation to our work and collaboration with EASO.

But, let me go back in our history for a couple of minutes more. The Conference in Stockholm was in April 2005 and, in May 2005, on the initiative of Hugo Storey I became a Deputy

⁴ “Practical problems of judicial protection in national case law: the example of Sweden”.

⁵ “Managing 350.000 appeals: the German experiences”.

⁶ Posner, A., Richard, 2008, How Judge Think, Harvard University Press, Cambridge, Massachusetts, p7.

Rapporteur of the Working Party of the global Association on “Country of Origin Information and Country Guidance”. I spent my first 5 years in the Association listening, observing, learning and having few presentations, but then I started to work more directly for the Association and more closely with the core members of the IARMJ.

That second period, before the famous 3-year project with EASO, was a very fruitful period. You can find on our website many documents from that period: the judicial Check-list of Criteria for Assessing Country of Origin Information, which was drafted in 2006 and revised in 2014; in 2011, we developed guidelines for judges concerning the procedure for preliminary rulings; in 2012, we contributed criteria for the credibility assessment of asylum seekers within the framework of the CREDO project; then, there are guidelines on the use of COI and due process. All these documents are still relevant and used in training services for judges, not only from the European Union Member States but all over the world.

The first 3-years contract (2015-2018) with EASO was a collective work, but it was done under the vision and leadership of Hugo and Katelijne and with sufficient understanding of all EASO experts and decision makers who have been so far involved. We produced background materials for signing a Memorandum of Understanding with the European Judicial Training Network (EJTN) and, in collaboration with the AEAJ, in December 2012 at the first strategic conference of EASO and members of Courts and Tribunals, upon the initiative of EASO we have presented a concept paper on Judicial Independence and Training of Judges in the light of the EASO Regulation.

Judicial independence should not be supported only by good practice. Collectively, we have established unique quasi-institutional arrangements attached to the EASO structure which have a constitutional significance, helping to fill the gap left by EU Regulation 439/2010 which established EASO but established no institutional support for judicial independence in relation to judicial training. With immense amounts of voluntary work by IARLJ judges, working with the EASO officers, we established a framework for the development of judicial training within this non-judicial agency of European Union, an unprecedented feature especially given the current challenges to the rule of law in Europe. The Editorial Team which was responsible for the development of these training materials, that each includes a Judicial Trainer's Guidance Note, consisted exclusively of judges. We acquired considerable influence by having authorisation to develop common Professional Development Series (PDS) for judges in Europe.⁷

In 2018, we entered into another 4-year contract with EASO and we are working to develop a judicial analysis on vulnerability in asylum seekers and its impact on procedural guarantees, the law of evidence, reception standards and qualification for international protection. Hugo is the

⁷ These are:

Introduction to Common European Asylum System for Courts and Tribunals (August 2016),
Qualification for International Protection (December 2016),
Evidence and Credibility Assessment in the Context of the Common European Asylum System (2018),
Asylum Procedures and the Principle of Non-Refoulement (2018).

head of the new 4-year contract with EASO also in terms of quality of the outcomes of this project. The support and finance from the EU budget for the aforementioned purpose will have to be balanced with public accountability.

Apart from the challenge ahead related to collaboration with EASO, we will have to nourish our good contacts and ties with other relevant networks, Associations or institutions. For that purpose I will continue to explore my engagements as a member of the Council of the European Law Institute (Vienna), as speaker/trainer of the European Law Academy (ERA), UNHCR, as a participant in various projects of academic institutions such as the European University Institute (Florence - Actiones, Rejus, Redial) and Trento University, as a contact person between EJTN and IARMJ-Europe and as an ad hoc judge of the European Court of Human Rights.

I take this opportunity publicly to express my thanks to my colleague Darinka Dekleva Marguč who is the head of the Courts Department where I have worked with her for the last 19 years. Without her understanding, and the support of both the former President of the Administrative Court, Janez Breznik, and the current President Jasna Šegan I would not be making this speech today.

It is important to cultivate the memory of our former colleagues, for an Association such as ours because, after all, the existence of any association of individuals rests on its ethical dimension. It is good to know where we come from and where the Association is probably heading. Today, I particularly want to mention Roger Errera, former member of the French Conseil d'Etat. We worked together on the first Constitution of the European Chapter. Just before the Catania conference I found a book in my library entitled "Asylum Law: First International Judicial Conference", published in 1995 by the core members of our Association, two years before the IARLJ was established in Warsaw. And the first author in this book is Roger Errera. It goes without saying that Hugo Storey also published an article in this book.

Although the European Chapter Conferences were, and will continue to be, extremely important for our existence, from 2007 onwards, thanks to our German colleagues, our annual meetings in Berlin became a driving force for consideration of many professional documents of the Association or of our individual members. I hope we will be able to keep up those meetings in the future because of their unique character. Since 2012, we have also organised tripartite round tables with CJEU, ECtHR and UNHCR every two years. This year, this traditional meeting or high-level judicial conference will take place between 22 and 23 November 2019 at the premises of the CJEU in Luxembourg and will be co-organised by EASO.

To meet our future challenges, I hope we can preserve and further develop a culture of "corporate governance" based on broad discussions between the Global Council Members (both the Executive and the Supervisory Councils), the President of the Global Association, our Secretariat, both Vice-Presidents and the head of the 4-year contract with EASO, as well as with core active members of the Association outside the Council and the Supervisory Council.

To conclude I would like to share with you also some very personal information. I have a son Anej. I have no problem with him – he is a pure joy. He is the integrative force in our family. He plays Chopin's prelude in E minor very well, but, unfortunately, this year he decided to stop having piano lessons after 6 years, for the reason, as he put it very clearly, because “he is now grown up”. He is 14! My daughter Olin is 18. Unlike Anej, she understood extremely early that life is not just a joy, but it has also its opposite counterpart. I am sure she will be a psychoanalyst... definitely, a new scientific school of psycho-analysis after Freud, Adler, Jung, Lacan... is on its way. In any case, she is an existentialist, as I am (more Eastern- than Western- oriented).

From a technical point of view, I think I am healthy, but I intend to have regular checks on my health, to keep it that way. My wife still loves me and, as a consequence, she tolerates what I do. Since the opposite is not possible, I should keep that for the future, as well. So, that is me and the European Chapter of the IARMJ in 20 minutes.

Boštjan Zalar
President, IARMJ Europe Chapter

Carolus Grütters: Introducing the Nijmegen University Newsletters

From Nijmegen University come several interesting publications for judges on EU developments in migration and asylum law: the *Newsletter on European Migration Issues* (NEMIS) deals with migration and border issues, the *Newsletter on European Asylum Issues* (NEAIS) focuses on asylum issues, and now there is a new quarterly newsletter, NEFIS, dealing with the free movement of European Union citizens and their family members. NEFIS is designed for judges and others who need to keep up to date with EU developments on EU citizenship and free movement.



NEFIS contains EU legislation and case law in relation to:

- (1) exit and entry,
- (2) residence,
- (3) equal treatment,
- (4) loss of rights,
- (5) family members, and
- (6) procedural rights.

All the latest Nijmegen University Newsletters for January 2019 are available here: <https://www.ru.nl/law/cmr/documentation/cmr-newsletters/>. Subscription to the newsletters is free.

IARMJ Events, 2019/2020

Asylum Procedures Working Party

There will be a meeting of the Asylum Procedures Working Party at the Africa Chapter Conference in August 2019. Your contributions on fast track and accelerated procedures in your country or region are very welcome, whether or not you are formally a member of the Working Party. Please send them to the Asylum Procedures Working Party Rapporteur, Judith Gleeson, at any time (uppertribunaljudge.gleeson@ejudiciary.net).

IARMJ Member News

This section of the newsletter is for news of IARMJ members: promotions, retirements, marriages, and deaths, as well as any other professional news or publications. We will try to give you news of some of the things that we judges do in our personal time as well.

Please send news for future editions at any time to the Editor, Judith Gleeson.

Annabel Clayton - Walking in the wine country, Martinborough (New Zealand)

A little over an hour's drive from Wellington, New Zealand are the Martinborough vineyards. After last November's 2018 IARMJ Asia Pacific Conference at Parliament Buildings in Wellington, New Zealand, a group of judges stepped away from the world of immigration and asylum to spend a long afternoon, walking in the vineyards at Marlborough, guided by IARMJ member Annabel Clayton, a Member of New Zealand's Immigration and Protection Tribunal. It was a great way to stretch the legs, wind down and, well, sample the wines.



Martinborough is famed for its production of internationally recognised Pinot Noir, and an intrepid posse of Conference-goers volunteered to check out how the grape of Burgundy is grown and treated in 'new world' conditions.

Annabel and her husband John have lived in Martinborough for almost all of their married life.

In 1992, they planted a bare, stony paddock with Pinot Noir and Pinot Gris grape cuttings. They now have a flourishing ten acres, much more



than a hobby but not exactly lucrative, especially with labour costs and the uncertainty of domestic and international markets.

Over the years Annabel and John have welcomed many young winemakers for vintage, both from the old world (France, Germany) and the new (principally Oregon in the United States, where the pinot noir grape is also hallowed). It has been entertaining to see the initial reactions of the traditionalists transform into an appreciation that not all wine-growing and making techniques have to be done in the way one's great grandfather did it.



Exchanges of ideas go far into the night when the newly pressed grapes require plunging every 4 hours. It is not widely known just how much beer and spirited debate it takes to make great Pinot Noir.

The 2019 vintage will be tiny, as a frost in November 2018 (late spring) savaged the fruit buds. Normally, Annabel and John would expect to process 6 or 7 tonnes but this year it may well be less than 2! And, as happened last year, they find themselves picking earlier than in the past (the first pick was on 11 March 2019) which must have something to do, they think, with the global changes in weather patterns.



Annabel Clayton, Member of the Immigration and Protection Tribunal, New Zealand's immigration and refugee status appeal body



Sicily in September –The European Chapter Conference 2018

Arriving at Catania airport with clear blue skies there were fantastic views of Etna which dominates many of the details of life in much of Sicily, from the dramatic topography through to the dark lava stones and slabs from which the buildings and streets are built, down to the highly fertile soil influencing the local agriculture and wine. But smoke and vapour were coming from the peak of Etna, reminding of the chaos and human misery that Etna has wreaked many times in



Monastero di San Niccolo l'Arena

the past, and how fragile human life and economic activity is, contingent on stability in all its dimensions. So it was appropriate to hold the conference in the stunningly beautiful Monastero di San Niccolo l'Arena, a UNESCO World Heritage site which is now part of Catania University campus.

The Monastery buildings have been shaped by the activities of Etna over the centuries, especially in 1669 when the Monastery was half buried in 12-metre lava flow, some of which remains in the monastery today, followed by a massive earthquake in 1693, which again destroyed much of the building. Nonetheless, the architects and construction experts who re-modelled and rebuilt the elegant, expanded complex⁸ worked with and around the lava, accepting the reality of the physical conditions and accommodating the lava to create a stunning space, user-friendly for decades which has always housed important institutions and activities and also naturally air-conditioned against the intense summer heat.

The conference was held in conjunction with the Scuola Superiore Delia Magistratura of Italy. Judges from all 28 EU member states were present at the conference, including from the Court of Justice of the European Union (CJEU) in Luxembourg, as were senior representatives of the UNHCR⁹ and the EU Commission.

The conference introduction starkly set out what would be a recurring theme for the conference; that migration into Europe has to be managed, otherwise we risk losing our common values; that the 2015 migration crisis had brought focus to the Mediterranean and therefore it was important to hold the conference in Catania because Italy, along with areas of southern Greece, had been at the forefront of dealing with the massive challenge which unfolded from the 2015 refugee crisis; reminders that mass influxes of people was not just a phenomenon being experienced by Europe, but a global phenomenon, citing the example of mass migration from Venezuela following economic collapse into neighbouring countries including Colombia and Brazil¹⁰ which do not have resources and capacity to cope. In a discourse which was startling when compared to the often-distorted media narrative we are forced to consume, the President of the Catania Court of Appeal opened by boldly asserting rule of law principles which were astringent for their clarity: migrants are exquisitely vulnerable; they arrive with nothing, but are rich in rights; as judges it is our duty, and indeed privilege, to protect rights, including those enshrined the Fundamental Charter of Human Rights¹¹ the Refugee Convention¹² and the European Convention on Human Rights¹³.

⁸ Major construction project 1702-1866.

⁹ United Nations High Commissioner for Refugees – the UN Refugee Agency.

¹⁰ In Brazil the refugee crisis is thought to be supporting the rise of Jair Bolsonaro, the far-right former army captain <https://www.economist.com/the-americas/2018/10/13/jair-bolsonaro-is-poised-to-win-brazils-presidency>.

¹¹ Charter of Fundamental Rights of the European Union 2012/C326/02 – especially Article 47, Justice – Right to an effective remedy and to a fair trial:

As a First Tier Tribunal Judge, I was exposed to a lot of new information at the conference regarding the CEAS, although the underlying principles were very familiar. For example, I was wholly unfamiliar with the Reception Conditions Directive¹⁴ but I was familiar with the *concept* of the need to protect certain types of vulnerable asylum seeker appellants pursuant to Art 21¹⁵ as such good practice is contained in the Tribunal’s Joint Presidential Guidance Note No 2 of 2010 “*Child, vulnerable adult and sensitive appellant guidance*”, as well as the Equal Treatment Benchbook¹⁶.



Entrance to the Monastero di San Nicolo
l'Arena

Having closely followed the news since the migration crisis in the summer of 2015, the serious issues connected to the uneven distribution of refugees throughout different Member States is an issue which seems to have contributed to our current constitutional crisis and which is driving a great deal of political disquiet throughout Europe and challenging the EU institutions at an existential level. It is also exquisitely difficult for asylum judges to discuss issues to do with refugees and migration without getting into issues of politics, but at the conference we were gently reminded that, as judges, we have to apply the law in accordance with the Bangalore principles of independence and

“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice”.

¹² Also known as the 1951 Refugee Convention: “The Convention Relating to the Status of Refugees”. A multilateral treaty that defines who is a refugee and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum.

¹³ 1950 Rome Convention.

¹⁴ Directive 2013/33/EU of the European Parliament and of the council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

¹⁵ Art 21: “Member states shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive”. This Directive was revised on 14 June 2018.

¹⁶ February 2018.

impartiality¹⁷ and repeatedly reminded of the crucial constitutional value of the separation of powers. This can be very frustrating from a personal perspective because, as judges dealing with refugee cases, we have a detailed birds-eye-view of one of the most pressing global problem of our days, and yet we cannot contribute to the discussion, even to educate, in circumstances where others who are able to communicate about the topic in the public debate do so with widely varying degrees of accuracy. But the judge's role was ever thus.

Conference High Points

Against the abovementioned complex legal background, UK Upper Tribunal Judge Hugo Storey¹⁸ emphasised the importance of Article 46 of the Asylum Procedures Directive¹⁹ which requires member states to ensure that applicants have a right to an effective remedy before a Court or Tribunal following a decision taken on an application for international protection. He questioned whether we, as member states courts and tribunals, were effective providers of remedies. He highlighted problems in applicants and appellants obtaining remedies and the unevenness in procedures, including basic problems such as lack of access to specialist lawyers and problems getting information and evidence onto Court files. He emphasised that the definition of a right to an effective remedy and fair trial are best developed at Article 47 of the Fundamental Charter of Human Rights. He also reminded us that delay in assessment of asylum cases required that the Court must examine the circumstances and evidence at the date of the hearing (not the historic position)²⁰.

Samuel Boutruche (Judicial Engagement Coordinator with the UNHCR) continued with the theme of the importance of effective remedies which could invoke Articles 8 and 13 of the UNCHR. He emphasised that the discretion that national authorities of member states are given to fulfil their obligations to assess claims cannot be exercised in such a way as to deprive applicants of minimum procedural guarantees²¹. He highlighted that Courts should be looking for, and alert to, cumulative gaps in the procedure indicative of violation and that an effective remedy can be at the expulsion stage.

Mona Aldestam, Judge of Appeal of the Administrative Court in Stockholm gave a summary of how the asylum system is



Court of Appeal Stockholm

¹⁷ The other principles of judicial conduct being integrity, propriety, equality, competence and diligence.

¹⁸ At that time, President of IARMJ (International Association of Refugee & Migration Judges) Europe.

¹⁹ Directive 2013/32/EU – on common procedures for granting and withdrawing international protection.

²⁰ *Moussa Sacko* CJEU C-348/16 and *Serin Alheto* C-585/16.

²¹ ECtHR – *De Souza Ribeiro v France* (application no 22689/07).

organised and works in Sweden against the background that statistics later provided by Prof Dr Harald Dörig show that Sweden “punches above their weight”²² in terms of the sophistication of their asylum claims system, the number of refugees granted asylum in Sweden and successful integration there.

Borbala Szigeti of the EU Commission was a particularly impressive speaker, not only in terms of her apparent youth, but also combined with her confidence and clear knowledge and expertise. Inter alia, she dispassionately appraised the 2015 migration crises saying that it revealed the shortcomings in the current system. In particular, she advocated a system in which responsibility for refugees was shared but which did not cause or encourage jurisdiction shopping by the claimant-refugee. She reported that complex issues that the Commission is grappling with include: whether *all* asylum applicants should be allocated to particular member states (for consideration of their application) or, alternatively, *only* those asylum applicants *accepted* as needing international protection (ie allocation once a successful asylum claim had been identified); enhancement of the Eurodac procedure to help document irregular migrants by allowing better access to fingerprint evidence to law-enforcement agencies; the advisability that the European Asylum Support Office should monitor operational standards; the desirability of a county guidance system (more of which below); and a more comprehensive resettlement plan, including procedural rules on how to organise the mechanics of resettlement. Ms Szigeti emphasised that, currently, there is a great divergence in relation to what amount to prospects of success on asylum application in certain member states as compared to others and that there was urgent need for conversion. Also, access to the labour market differs between member states and adjustments are required to protect against the detention of unaccompanied minors.



Elephant fountain Catania

German Judge Prof Dr Harald Dörig (Judge of the German Federal Administrative Court) described the German reaction to the high influx of refugees into Europe since 2015. He reported that in 2015 and 2016, Germany dealt with around 1.2 million asylum applications, nearly half of which were minors. He modestly pointed out that in 2016 Germany had taken the same number of asylum-seekers as France, Sweden, Italy and UK together, acknowledging that Sweden has a big work load compared to the size of its population. He said that Germany had recruited and trained 400 new full-time administrative judges as a result of the migration crisis, working in 51 courts.

In contrast, in the United Kingdom there appears to have been a significant net loss of full-timers since Government/MoJ austerity policies kicked in and incomplete retention of fee-paid judges apparently influenced, for example, by work streams in other tribunals such as the Employment

²² My choice of words.

Appeals Tribunal. There is a current competition said to be looking to appoint 41 full-timers to the IAC, with part-time working advertised as an option.

Harald Dörig said that the Germans liked the British country guidance system. In contrast to the UK country guidance system, there was no unification of factual issues in Germany. He pointed out that it was inefficient to have different judges/courts/areas “reinventing the wheel” but he said that Germany was currently developing their own country guidance system which had a lot of political support, not least because it was a way of helping the Court speed up its procedures.

In the UK, the Home Office publishes Country Policy and Information Notes which are used by UK Visas and Immigration caseworkers to make decisions on asylum and human rights application. The notes give detailed information on all sorts of subjects likely to be relevant in asylum applications, for example, the circumstances faced by single mothers or gay men in certain countries.

The Upper Tribunal makes country guidance decisions which are reported with the letters CG in their titles, dealing with the risk to specific groups and countries²³. The practice direction states that a country guidance – “CG” – case shall be treated as an authoritative finding on the country guidance issue identified in the determination – see para 12 of the Practice Directions of the Immigration and Asylum Chamber of the First Tier Tribunal and Upper Tribunal amended on 13 November 2014.

Harald Dörig also had some important points to make on integration. He said that the German experience was that people given status needed to be integrated quickly and intensely and that there had been a huge investment in this issue in Germany. Interestingly, he also said that the issue of *where* asylum seekers should be accommodated – distribution - should be considered. He pointed out that many refugees were from rural areas, and so it made no sense to keep them in cities.



Box of Catania fish at the market

On the morning of the second day, Gaetano Silvestri, President of the Italian School for the Judiciary gave a passionate call for solidarity between member states. He emphasised the importance of Articles 78 to 80 of the TFEU²⁴ and emphasised that Art 80 said that “*The policies of the Union... shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between Member States*”.

He asserted that the current procedures are cumbersome and that a lack of coordination across land and sea barriers gave rise to a lack of balance, tensions and had led, in his view, to the rise

²³ All UK country guidance cases are available on www.bailii.org by searching for the country, key words, and CG.

²⁴ Lisbon Treaty – Treaty of the Functioning of the EU.

of xenophobia which went against EU values. He soberly reminded us that the 20th century collapse of Europe was linked to xenophobia and the rise of fascism and extremism.

The President was very direct when he expressed frustration that certain member states do not play a role in fair distribution and accommodation of refugees and were “resistant” to playing a role taking refugees. Other member states, he said, “preach well, but act badly”.

Being refreshingly candid, he addressed a huge “elephant in the room” issue, namely that following a failed asylum claim, return to the home country is impossible for most member states in most cases. This meant that it was all the more important to “distribute” migrants fairly across the EU according to states duties, in a way that takes away states’ ability to “choose”. He expressed frustration that, currently, migrant allocation was not being dictated by policies, but by the phenomenon of certain states’ resistance to accepting refugees. Thus, he said, migrant relocation does not derive policy but from resistance of certain members states. He said that *“the denials of certain member states to participate must be the object of clear dialogue”* and that these states must not “use” those individuals fleeing war and disaster and who hold no responsibility. He spoke of approaches of *“national selfishness”* in some states and of the dangers of the *“cynical indifference of soulless Europe”*. He went on to advocate the need for proper reception planning, organisation and financial planning but concluded that planning was not enough and said that fixed quotas was the way forwards. He spoke of his concerns that this issue was threatening the existence and core values of the European Union.

The President then went on unflinchingly to state that a significant dimension of the migration crisis that Europe was that we were paying the price for past exploitative activities of previous European Empires in the context that today’s world is based on equality. He said that the conference was not based on issues of “law and order” but on the French constitutional ideal of fraternité. The President’s remarks struck an emotional chord with the audience who gave him the most prolonged and enthusiastic applause.

Next, Lars Bay Larsen, Danish Judge at the CJEU also spoke of the challenges of judges applying law emanating from two or three layers (international, European, national), highlighting the problems particularly with the Dublin conventions. He spoke of the problems emanating from the “unevenness” in approach as between different member states and that whilst the European legal regime for migrants has been being built, states have had to *“live in the building under construction”*. He said that it called for a political solution but that it was not for the judges in the CJEU to find solutions. He said that the Luxembourg Court has to interpret the legal instruments going back to the French revolution, but that all judges had to respect the separation of powers and resist the temptation to “invent” the instruments from scratch. He acknowledged that there is exactly the same “squeeze” on national judges.

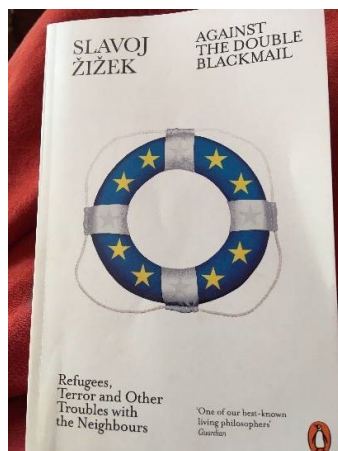
Judge Larsen then turned to consider the growing number of cases that the CJEU has had to consider since 2000. Until 2009 the CJEU considered about 4 cases a year dealing with questions

arising from the Dublin Conventions, but that this body of work has grown such that there were now about 40 cases a year.

UK Upper Tribunal Judge Nadine Finch and Joanna Petin from the University of Pau both gave their perspectives on Judicial Protection and Vulnerable migrants. Judge Finch emphasised that vulnerability is “bespoke” to the individual and said that it is *“the diminished capacity of an individual to have their rights respected, or to cope with, resist or recover from exploitation or abuse...”*. She stated that the role of the judge is to mitigate vulnerability. She captured the polemic perfectly, asserting that most asylum seekers are vulnerable in a general sense, but that there are additional factors over and above general factors of vulnerability and explained how this was catered for in the UK in Joint Presidential Guidance No 2, despite the fact that the UK had not entered into the recast directives.

Mme Petin emphasized that the notion of vulnerability “individualises” cases and that vulnerability and situation of “special needs” was a non-exhaustive list. In particular, she emphasised that sexual orientation can generate vulnerability and that gender is a socially-constructed issue. However, relating to the theme of unevenness of application of asylum law, she noted that each member state can define “special needs” for itself. A “need” is not defined in law. A special need, she said, is a very subjective notion. She went on to ask, rhetorically, how

do we objectify such special needs and vulnerabilities? She emphasised the Advocate General’s opinion of UK AG Sharpston in *A, B & C*²⁵ and subsequent decision²⁶ which stated that, whilst self-identification (as gay) was the starting point of an assessment, the assessment must take account of the individual situation and personal circumstances of the applicant. Consequently, Mme Petin emphasised that individual member states had to put in place procedures designed to protect vulnerable asylum applicants.



Light holiday reading?

Conclusions

The Catania conference was encouraging and reassuring in demonstrating that cross-border judicial collaboration is not only alive and well, but positively vibrant, against a background of fracturing politics. It is trite to observe that multiple countries’ minds are better than one in distilling best practice in a highly complex area of law with urgent political implications and that joint judicial training is replete with obvious advantages.

²⁵ Delivered 17 July 2014.

²⁶ C-148/13, C-149/13 & C-150/13.

For myself, the conference ended with a stark personal reminder of the life-protecting advantages of planning, training and implementing human protection and that we never know when we might be dependent upon “foreign” systems.

I was woken up in the early morning after the conference by my hotel receptionist banging on the door. There was a fire in the restaurant in the building’s basement. Troublingly, no fire alarms were going off, but the hotel corridors were thick with smoke. I fled through frightening conditions, understanding immediately how smoke kills most fire-victims, to the safety of the street below and then watched the Catania fire brigade break into the restaurant from which acrid smoke was bellowing and subsequently put out what appeared to be a fire emanating from faulty electrical equipment. I was very grateful for the bravery of the receptionist and evident professionalism of the fire and police officers controlling the situation.

But for me this was a small incident, a holiday adventure and things soon returned to normal. A sober reminder that life can take years and generations to settle down when individuals are forced to flee war, disasters and political upheaval and that, ultimately, we are all reliant upon the acts of strangers.

Abigail Holt
Barrister, part-time Judge, IARMJ member



WHO'S WHO IN THE IARMJ

The IARMJ World Council at Athens:

President:	Katelijne Declerck	President Africa Chapter:	Ahmed Arbee
Vice-President:	Isaac Lenaola	President Americas Chapter:	Russel W. Zinn
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IARMJ Working Parties

The IARMJ's working parties and their rapporteurs meet and report at each World Conference. The Working Parties are led by James Simeon and regular Skype discussions are held. Previous papers prepared by IARLJ/IARMJ Working Parties are available on the IARMJ website (www.iarmj.org).

Working Party Coordinator and Rapporteurs

Working Party Coordinator: James Simeon

Human Rights Nexus: Deborah Morrish, Manoj Kumar Sinha

Particular Social Group: Hilkka Becker, Nigel Holmes

Expert Evidence: Geoffrey Care, John Barnes, Rebecca MM Wallace

Extraterritorial Processing: Linda Kirk

Vulnerable Persons: Kyrie James

Asylum Procedures: Judith Gleeson, Jacek Chlebny

COI and Country Guidance: Bernard Dawson, Boštjan Zalar, Louise Moor, Manoj Kumar Sinha, Mark Symes

Exclusion Clauses: Rapporteurs sought

Statelessness: Martin Treadwell

African Asylum Systems: Rapporteurs sought

In principle, each Working Party has a lead rapporteur and an assistant rapporteur, and the membership of each Working Party for the next two years is established at the World Conference 2018. Please let James Simeon (jcsimeon@yorku.ca) know if you are interested in assisting as a rapporteur or member, and on which Working Party.

Editor's Note

This IARMJ Global Newsletter was edited by Judith Gleeson under the supervision of the IARMJ President Katelijne Declerck. We hope that the content is relevant and useful. Please send contributions for the next edition, or comments on this one, to Judith Gleeson at uppertribunaljudge.gleeson@ejudiciary.net.