

MINUTES OF IARLJ MEETING

Friday 20 July 2007

Present

North, Marshall and Branson JJ, FMs McInnis, Riley and Riethmuller. Also Ellen Hansen (UNHCR).

From the New Zealand RSAA: Rodger Haines, Martin Treadwell, Bridget Dingle, Andrew Molloy, Sarah Murphy, Jo Baddeley, Margaret Robins, Martha Roche.

From the RRT (Melbourne): Rea Hearn-Mackinnon, Wendy Boddison, Dom Lennon

From the RRT (Sydney): Amanda MacDonald, Susan Leal, Steve Norman, James Silva, Surseela Duvasala. Also Sue Zelinka.

Apologies: Dr Jane McAdam, Irene O'Connell, Richard Derewlany, Paul Fisher and Shahyar Roushan (a new member). Also from the Sydney-based Federal Magistrates who were collectively engaged at another meeting.

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The IARLJ President Tony North was in the chair and opened the meeting by acknowledging the strong and ongoing support of the Chief Justice of the Federal Court, with whose co-operation the meeting was taking place in Federal Courts in both Melbourne and Sydney, linked by video. Prior to the meeting, Black CJ had taken Association members – notably a contingent from the RSAA in NZ – on a tour of the courts.

The President also extended thanks to Steve Karas whose term as Principal Member of the RRT has finished. Steve had been an active member of the IARLJ, including taking on the role of rapporteur of one of the working parties, and had facilitated the involvement in the Association of other RRT members through conference attendances and videolinked meetings.

With news of the appointment of Dennis O'Brien as Principal Member of the MRT-RRT and of Mary Urquhart as Deputy Principal Member of the RRT, the meeting asked North J to convey its congratulations and its hope that both these appointees will continue the supportive and co-operative relationship with the IARLJ established by their predecessors.

North J expressed his regret that Sue Zelinka's ten-year RRT term had not been extended, but was pleased that she is continuing her work for the IARLJ at least while she remains on Council – that is, until the next international conference. He noted that Sue and Ema Aitken had worked closely together since the formation of the Regional Chapter in 2000. Ema, as noted at a previous meeting, was appointed to the bench in NZ at the beginning of 2007 and therefore left her position as Chair of the RSAA.

North J also expressed his personal thanks to Suzanne Leal who has been acting as French translator for him in his IARLJ correspondence with Francophone judges.

With the adoption of the minutes of the last meeting, that concluded the first four agenda items and the meeting moved to the President's report (Item 5).

Deployments in Africa

North J recapped on the discussions that led to this particular project. He noted that there is no argument that the IARLJ must use its collective knowledge and skills to train decision-makers around the world. However, difficulties sometimes arise with the bodies for which the IARLJ members work – the various courts and tribunals, which may not be prepared to bear the costs associated with its members acting as trainers. North J suggested that this problem could be overcome if IARLJ members were prepared to volunteer to be trainers in their own time (annual leave). He discussed this with the UNHCR and agreement was reached, whereby the trainers would not be paid but their travel and living expenses would be covered by the UNHCR. The UNHCR subsequently offered a training project in four French-speaking West African countries (Niger, Burkina Faso, Togo and Benin): this was advertised throughout the IARLJ but there was no immediate response from members in Francophone Europe or Canada. However, Suzanne Leal and Adolfo Gentile from the RRT expressed interest.

Given the arduous nature of conducting four training programs each of a week's duration, in French, in the four countries nominated, North J argued that the best way of doing this was to send two trainers (that is, Adolfo and Suzanne) in tandem, each to take two countries. He proposed that they could be briefed together before departure, prepare their training program together using combined experience (plus the established IARLJ training manual), and more importantly, could be de-briefed together, each contributing his/her experiences and thereby building up a store of expertise which would be very useful for future trainers.

Unfortunately, the UNHCR believed that it would be too costly supporting two trainers, and opted for one trainer for four weeks. Eventually, one of the Belgian IARLJ members volunteered and his deployment should commence in August.

North J expressed his appreciation to Suzanne and Adolfo: it was difficult being the "guinea pigs" for a new sort of project. They had to bear with the discussions about the merit of one trainer vs two, and the ultimate disappointment when the preferred Australian position was rejected.

Independently of UNHCR, the Refugee Appeals Board in South Africa has requested the IARLJ's assistance in training four new decision-makers who are due to commence service shortly. The RAB has been assisted in the past by several RSAA members and one RRT member, and particularly appreciated the "hands-on" style they used. They envisage that the new training exercise will involve trainers working individually with the four new decision-makers. North J said that details of the project will be circulated soon and that all IARLJ members will be invited to express interest. He stressed that it would be a transparent selection process.

Members present re-iterated their unanimous support for the concept of volunteering their time to assist new decision-makers.

The "sounding board" proposal

This idea was first mooted by Erika Feller, the Assistant High Commissioner for Refugees, and a person who has offered excellent suggestions to the IARLJ over a number of years. The concept of the 'sounding board' – whereby IARLJ members would comment on UNHCR draft guidelines on particular topics – was mentioned at item 1 (*UNHCR Policy Papers*) at our last meeting (15 May 2007). Following that meeting, several of our members volunteered to read the UNHCR draft guidelines on asylum claims by those refusing to do military service. Their comments have been forwarded by North J to the UNHCR – we await any feedback.

The IARLJ Conference in Cape Town

Although the conference is only 16 months away, the IARLJ is still awaiting the formal approval by the South African government. The submission has gone to Cabinet with the enthusiastic support of the relevant Minister – the Minister for Home Affairs. However, there have been delays, most recently a public service strike. We are hopeful that the formal endorsement will come shortly. North J noted that there was the same tense wait before the Mexican conference.

When the conference proposal has been endorsed by Cabinet, the organising committee will be established. There will be much to do, not only on the ground in Cape Town, but also work that can be done elsewhere, such as planning speakers and sessions of interest. North J proposed that we explore this latter topic later in the meeting.

Regional Chapters

1. The Africa Chapter

North J noted that the development of the Africa chapter was greatly assisted by the ongoing, full-time presence of the then Executive Director, James Simeon. Unfortunately, the Association no longer has this position and therefore other chapters will have to devote more time to assist the fledgling Africa Chapter. Earlier this year, a number of the African chapter members attended a conference in Dublin.

2. The Americas Chapter

This chapter suffered some recent serious losses when active Canadian members left, or were not reappointed to, the IRB; and earlier, when political pressure in America curtailed involvement in international organizations. However, there are indications that members of the Canadian judiciary are increasingly becoming involved in the IARLJ.

3. The European Chapter

This chapter generally works autonomously, focussing on regional concerns such as the EU 'harmonisation' directives. The program for their chapter conference, to be held in Strasbourg, has recently been published on the IARLJ website.

4. The Australasian Chapter

Given that the presidency is held by an Australian member, this chapter is well-placed to support his efforts in assisting the Africa Chapter and in organising the conference. We have a good number of members and much enthusiasm; we have also unanimously endorsed the notion of volunteering our services for training or similar projects. North J noted with pleasure the arrival in Canberra of Rick Towle as the UNHCR's representative. He is well acquainted with the IARLJ and the executives of our chapter has already taken the opportunity of meeting with him and Ellen Hansen, and setting out our willingness to engage in regional projects. These could embrace not only the few Pacific nations who are signatories to the Convention, but also some of the south-east Asian nations who are not yet signatories, but who nevertheless deal with refugees, often in large numbers.

North J suggested that there are many useful endeavours in which our chapter could be involved, but noted the difficulty of pursuing these when all the chapter members are engaged in their work as judges, magistrates and tribunal members (a sentiment endorsed by Rodger Haines, who said that hearings and decision writing always had to take precedence). North J suggested that the Australasian Chapter could benefit from the services of a dedicated officer – a person who could liaise with the members and possible project partners, who could co-ordinate the activities both planned and under way, and who could pursue the various ideas presented by members at our meetings. North J said that he had had some discussions with a possible source of funding for such a position and would be continuing these discussions in the very near future.

The meeting endorsed the idea of co-ordinator position and the efforts being made by the President to obtain funding.

Working Parties

North J said that James Simeon, who had previously been the IARLJ's Executive Director (see *Africa Chapter* above), has recently taken a tenured position at a university in Toronto, teaching refugee law. He has also agreed to co-ordinate the Working Parties. The Working Parties are one of the most important aspects of the IARLJ, bringing together the collective wisdom of international members on particular points of the Convention. North J noted that Michelle Foster's book, *International Refugee Law and Socio-economic Rights*, which he had just launched, contained many references to papers put out by the various WPs – a strong endorsement of the worthiness of the WPs.

Members give their time voluntarily to the Working Parties and hence their participation fluctuates, depending upon the workload of their regular jobs. It is

difficult to get complex papers read and revised, let alone published, under these conditions. Hence James' offer of an ongoing co-ordination role is very welcome.

General discussion

The primary topic of discussion was the content of the next conference. Rodger Haines suggested that it was timely to explore the link between human rights and refugee law – the integration of rights enshrined in other international covenants (such as ICCPR and ICESCR) and refugee law. Rodger suggested that the topic embrace a human rights understanding of being persecuted, and a knowledge of the international covenants that are relevant. He saw the need to unravel and clarify the pragmatic and political issues associated with refugee determination from actual refugee law. A number of members spoke in support of a human rights/refugee law theme, mentioning the problems of applying legislative frameworks to real-life situations. There was concern about the varying levels of knowledge among conference attendees, with a desire not to over-simplify complex arguments. The solution may lie in organising a well-tailored pre-conference training program; then proceeding to a more sophisticated level of dialogue at the conference itself.

Branson J suggested some conference discussion on the exclusion provisions of the Convention. This may be particularly timely with several countries refusing to follow the rule of law (even their own) and ignoring international pressure to do so. Others in agreement with this suggestion also noted that this topic could overlap with a human rights theme. Another noted concrete examples that could be utilised in looking at exclusion – for example, the issue of the prosecution of child soldiers. This idea also had merit because it dealt with a situation which was familiar to Africa.

Martin Treadwell suggested that as the conference should lay some stress on African themes, it may be worth looking in detail at the OAU convention, which provides guidance to all African countries. It would appear that people in hostile or difficult situations in any part of Africa feel entitled to seek asylum externally, often in South Africa, without considering whether there is a part of their own country which may be safe. This is not the view taken by western decision-makers who consider the question of 'internal relocation' as a matter of course.

In considering topics that might have resonance in Africa, it was suggested by FM McInnis that the issue of persecution on the basis of trade union membership should be explored. This was endorsed by several RRT members who noted that it was also a fairly common claim presented by both Chinese and Korean applicants.

It was also suggested that there might be a 'scene-setting' presentation at the beginning of the conference to give the delegates some overall picture of refugee status determination on the African continent, and a brief run-down of the major issues. A further suggestion was that there could be input from those with very personal knowledge of refugee problems in Africa: for example, an author - Dave Eggars - who has written specifically about a Sudanese refugee; or a report from the member who will conduct the four-country West African training program.

In short, there were a number of good ideas for conference topics, given that this was the first time that members had been asked to consider the question. If anyone wishes

to develop his/her ideas further, or has other topics in mind, or has suggestions about particularly good speakers, please email your ideas to Sue Zelinka who will collate and circulate them.

The meeting concluded at 5.45pm, with the President thanking everyone for their participation.

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Additional information

For two days prior to this meeting, the NZ members (as listed above at page 1) had been in Melbourne at a refugee law workshop convened by Michelle Foster of Melbourne University's Law School. North and Marshall JJ had also attended, as had Rea and Paul Fisher from the RRT (Melbourne). Michelle Foster spoke about the relevance to refugee law of ICESCR, while John Tobin similarly looked at the Convention on the Rights of the Child. Alison Duxbury's topic was Article 1F(A) and Guy Coffey addressed the use of medical evidence in refugee cases.

All participants spoke highly of the workshop. The importance of the workshop topics was clearly evident from the number of suggestions from workshop attendees about examining those topics further at the IARLJ Conference.

Following the workshop, North J launched Michele Foster's book, *International Refugee Law and Socio-economic Rights*.

After the IARLJ meeting, many of those present in Melbourne had dinner together at a Balinese restaurant. North J later expressed his pleasure at the opportunity provided for members to talk informally in such a relaxed and pleasant setting.