

Borderlines

ISSUE 12 • SUMMER 2014 NEWSLETTER AND CALENDAR OF EVENTS

Stopping the boats at all costs?

Australia's Operation Sovereign Borders



The NEW 2014
Professional
Training
Workshop
programme

Ice Law Project

The launch of a new
IBRU research project



Australia's border protection efforts threaten its own push for regional cooperation

Six months into Australian Prime Minister Tony Abbott's 'Operation Sovereign Borders' programme, Australia has jeopardised regional cooperation efforts while endangering the lives of asylum seekers at sea and onshore. Do domestic political gains justify these developments? Dr Kate Coddington reviews Australia's border protection gamble in the Indian Ocean region.

A renewed push to 'stop the boats'

Asylum seekers arriving by boat to Australia have been a topic of domestic controversy since 2001, when then-Prime Minister John Howard refused to allow rescued asylum seekers on board the *M.V. Tampa* to disembark on Australian territory. Howard's decisive actions helped him win re-election in 2001, and ever since then policy toward asylum seekers has been a divisive yet potent issue in Australian electoral politics. After years of campaigning against Labour Party border management policies, Prime Minister Tony Abbott promptly followed up his 2013 election by launching a new initiative, 'Operation Sovereign Borders' (OSB). Implemented under the watch of Immigration and Border Protection Minister Scott Morrison, OSB is a military-led, multifaceted border protection programme aimed at stopping what Abbott termed the "national emergency" of boat arrivals through interdiction and detention strategies.

OSB builds on over a decade of tactics directed at asylum seekers in Australia, including legal excision of Australian islands and coastal territories for the purposes of making migration claims, on- and offshore detention of asylum seekers, restricted access to legal counsel, and vilification of asylum seekers in popular media and government rhetoric. The prominence of boat arrivals in Australian public policy belies their relatively small numbers. In 2012-2013, for example, Australia processed about 18,000 boat arrivals, representing only one half of one per cent of all permanent and temporary migrants to the country. Furthermore, once the asylum seekers' claims are processed most are found to have legitimate claims: between 2009 and 2012, nearly 90 per cent of all boat arrivals received refugee status and were settled in Australia.



Christmas Island Immigration Detention Centre, Christmas Island, Australia 2010. Image: Kate Coddington, Island Detention Project

Operation Sovereign Borders (OSB)

Abbott's new border management strategy intensified several tactics previously used by the Australian government to limit the numbers of boat arrivals. Whereas the interdiction of asylum seeker boats in international waters had been commonplace since 2001, under OSB interdicted vessels are being towed back to international waters

near Indonesia. Critics, including human rights organisations and the Indonesian government, have questioned the legality of this tactic in terms of Australia's obligations to the 1974 International Convention for the Safety of Life at Sea, and the United Nations High Commission for Refugees has called the practice "very concerning." In one instance, Australian Navy vessels towed an asylum seeker boat into Indonesian territorial waters. Jakarta demanded an apology and a stop to the tow backs, and Indonesia's military deployed Navy vessels and Air Force aircraft to patrol the maritime boundary. Agus Barnas, spokesperson for Indonesia's Politics Security and Law Co-ordinating Minister Djoko Suyanto, called the incident a "serious matter in bilateral relations of the two countries." Prime Minister Abbott, on the other hand, argued that the Australian Navy captain was distracted by winds, tides, and "all sorts of things" at sea, comments which further strained relations with Indonesia leaders.

The Abbott government has also continued Australia's policy of mandatory detention for asylum seekers arriving by boat, using onshore detention centres as well as offshore facilities on Christmas Island (an excised territory of Australia), Manus Island (Papua New Guinea) and Nauru. At the end of 2013, the onshore detention network and Christmas Island housed over 9,000 asylum seekers and there were an additional 2,000 housed on Manus Island and Nauru. Since the facilities were reopened in August 2012 only one of the offshore detainees has had their refugee claim processed. Conditions at these facilities are poor and access to health care and legal assistance virtually non-existent, according to Amnesty International and Australian nongovernmental organisations. In December 2013 the UNHCR condemned Australia's practice of offshore detention, noting that Australia is "failing to honour its international protection obligations." In February 2014, riots inside the Manus Island detention centre resulted in police firing shots that killed Reza Barati, an asylum seeker from Iran.

Stopping boats at what cost?

Abbott and Morrison have responded to criticism of their policies by increasing secrecy, refusing to release previously public information about specific tactics, training, incidents, voyages, and passengers. Weekly media briefings were terminated in January 2014 and specific media outlets such as Australia's ABC have been the target of government criticism for their coverage of asylum seeker issues. The Australian government, under attack from domestic human rights and media advocates, has defended its actions by likening border policing to a military campaign. On 10 January 2014, for example, Abbott noted that "if we were at war, we wouldn't be giving out information that is of use to the enemy." Abbott's tenacity in the face of criticism from human

rights campaigners and the media is likely buffeted by polls that show 60 per cent of Australians supporting *increased* severity towards asylum seekers. With the number of asylum seeker boat interdictions being down from 2012 to 2013, Abbott can also cite evidence suggesting that his efforts have been successful. Critics have countered the campaign's apparent success by suggesting that this decline may be due to monsoon weather, a drop in global asylum trends, and an increasing preference for other smuggling methods such as falsified air travel documents and covert travel within shipping containers.



Asylum seekers in Darwin's Northern Immigration Detention Centre stage rooftop protest, 24 June 2011. Image: Emma Murphy

Despite OSB's success in bolstering the Abbott government's domestic political standing, the policy jeopardizes years of collaboration on border protection in the Indian Ocean region. Australia funds a variety of long-term projects designed to improve regional border protection capacity, including the development of biometric visas, digitised passports, data exchanges, joint surveillance patrols, information technology improvements, and language acquisition in countries including Cambodia, Laos, Thailand, East Timor, Vietnam, Papua New Guinea, Vanuatu, China, Myanmar and even those as far afield as Pakistan, Afghanistan, and Sri Lanka. Since 2012, Australia has funded and jointly operated a Regional Support Office in Bangkok designed to improve regional migration management. Yet Australia's interdiction and offshore detention practices have met with increasing pushback from several regional allies, including Indonesia, where relations have been chilly with Australia since the tow back incident, and Papua New Guinea, where government officials have protested Australian pressure to resettle asylum seekers. Strained relations with important regional allies threaten the networks of cooperation designed to improve migration management throughout the region over the long term. Should short-term domestic political agendas take precedence over regional cooperation, alleged human rights abuses, and potential breaches of international law? Australia is rolling the dice.

IBRU Relaunches as Centre for Borders Research

Since its founding in 1989, the International Boundaries Research Unit has been the world's leading source for practical expertise in international boundary making and dispute resolution. IBRU has delivered training workshops for foreign policy professionals, assisted states in boundary-related judicial and arbitration proceedings, and provided cartographic and research services for a range of public and private entities on boundary-related issues. As we celebrate our 25th Anniversary, we are proud of our record and we hope to continue delivering these services long into the future.



To capitalize on the linkages between IBRU's practical work in international boundary delimitation and related Durham University expertise in political geography and international law, IBRU has been relaunched as IBRU: The Centre for Borders Research.

Past and current clients likely will not see any difference between the 'old' and 'new' IBRU (aside from our slightly changed logo). Consulting services will remain under the able direction of Professor Martin Pratt, who also will continue to play a key role in training workshops.

Increasingly, IBRU will be complementing this expertise with research that builds on its roots in international law and political geography to interrogate key concepts in the study of borders and the territories that they construct.

Putting boundary lines in context

In expanding its remit, IBRU recognises that boundary lines matter not just because of *where they are* but because of *what they do*. Boundary lines are not only negotiated and demarcated, they also are policed, crossed, and contested, and their very functions are challenged.

Some see international boundaries as threats. Others see them as opportunities



and still others perceive regions that span across boundaries as their home.

Furthermore, boundary lines do more than define the territorial borders of states. They also are used to delimit extraterritorial spaces that have *degrees* of sovereignty, from exclusive economic zones to offshore immigrant detention centres.

In short, there is an ever-evolving relationship between *where* boundary lines are drawn, *how* they are encountered, and *what* they mean. This is a relationship that lies at the intersection of international law and political geography, and it has always been at the core of IBRU's expertise.

To this end, IBRU has brought on two new staff.

Professor Phil Steinberg, Director of IBRU, is a political geographer whose expertise in regulatory institutions in the ocean and the internet inform his ongoing research on international politics in the Arctic. Postdoctoral researcher Kate Coddington studies the way in which boundary processes construct territories, and the immigrants who land or are detained there, as outside legal protections and norms of citizenship. IBRU also has launched a new research project that seeks to bring together insights from anthropology, geography, and state theory, as well as international law, to develop legal and regulatory mechanisms appropriate for regions of the world where the presence of ice challenges the assumed division of Earth's surface between land and water.

In this research, as in its consulting and training activities, IBRU brings the *Durham Difference* to border studies: blending international law and political geography; using practical experience in boundary making and dispute resolution to inform our understanding of boundaries' changing functions; and applying world class scholarship to the maintenance of peace and justice within, outside, and across the world's borders. It is a tradition that will proudly be carried on by IBRU: The Centre for Borders Research.



IBRU Announces Ice Law Project

As climate change impacts livelihoods at every corner of the globe, scholars from a range of disciplines are asking how declining ice cover will impact global climate systems and local livelihoods. In his 2010 book of the same title, geophysicist Henry Pollack provocatively asks us to imagine 'a world without ice'.

However, even as glaciers melt and sea level rises there's still going to be a lot of ice around for a long time, especially in the winter. In fact, ice is likely to become *more* important as commercial enterprises and the states that

support them become increasingly active in the Polar Regions.

Yet we live in a world whose political geography assumes a binary, permanent, and easily observable divide between land and water, with no intervening, or unstable, element in the middle. Land is understood as solid, stable, malleable, divisible, and supportive of human habitation, and forming the basis for state territory. Water is understood as liquid, mobile, indivisible, and hostile to human habitation. Its incorporation into state territory is partial and only by way of its being proximate to land.

Ice complicates this world view, as becomes readily apparent when one follows the experiences and challenges faced by indigenous residents, settlers, miners, drillers, shippers, scientists, and state officials who live in and pass through the polar regions. Ice melts and freezes; it breaks apart and moves; it has both land-like and water-like social properties; ice edges are unclear. In short, ice is as challenging for international lawyers, boundary practitioners, and political theorists



as it is for geoscientists and global environmental policymakers.

With its new Ice Law Project, IBRU seeks to ask whether international law can accommodate the realities of a world *with* ice. If so, what would a law of ice look like? And what implications would this have for the fundamental principles of territorial state sovereignty?

The project was launched 19-21 June 2014 in Durham, at the Workshop on International Law, State Sovereignty, and the Ice-Land-Water Interface, and is being initiated in collaboration with the University of the Arctic's Thematic Network on Arctic Law. Please visit <http://icelawproject.org> for more information.



Download IBRU publications for free

IBRU has made all past publications available to download for free on the IBRU website and via Google Books.

The publications, which were published between 1994 and 2002 include all the IBRU Boundary and Security Bulletins, Maritime Briefings and Boundary & Security Briefings. The full database of publications available to download can be found on the IBRU website <https://www.dur.ac.uk/ibru/publications/>



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You can keep up to date with all of IBRU's news and events in many ways:



Follow us on Twitter @ibrudurham



Follow us on Facebook

Facebook users can now receive updates on IBRU conferences, training workshops and other activities by 'liking' the IBRU Facebook page at www.facebook.com/ibru

If you're not a fan of Facebook, you can still receive announcements about IBRU's activities and events by post and/or email by signing up to IBRU's mailing list at www.durham.ac.uk/ibru/resources/mailform or by contacting IBRU directly.

In addition, current news reports are available as an RSS feed and you can subscribe via the news page on the IBRU website.

Changes of staff at IBRU

In the last 18 months, IBRU has said goodbye to two members of staff but have also welcomed two new additions to the team. Dr John Donaldson and Dr Andrew Burridge have both moved on to new challenges; however IBRU is very pleased to announce two new members of the team.

New IBRU Director

In September 2013, IBRU appointed a new director, Philip Steinberg, Professor of Political Geography at Durham University.



Phil comes to IBRU with twenty years' experience researching and writing about governance in spaces that exceed state control. His extensive work on the history of law and policy in the world-ocean (e.g. *The Social Construction of the Ocean*, 2001) has been complemented by studies of the universe of electronic communications (*Managing the Infosphere: Governance, Technology, and Cultural Practice in Motion*, 2008), cities (*What Is a City? Rethinking the Urban after Hurricane Katrina*, 2008), and the Arctic (*Contesting the Arctic: Politics and Imaginaries in the Circumpolar North*, 2014). Phil has published widely in journals and edited volumes associated with law, international relations, and communication and media studies, as well as geography, and his research has been funded by the US

National Science Foundation, the European Commission, and the International Council for Canadian Studies.

Phil holds a PhD in Geography from Clark University and, prior to coming to Durham, taught for sixteen years at Florida State University. In addition to his post at Durham, he is associate editor of *Political Geography*.

New IBRU Research Associate



IBRU has appointed Dr Kate Coddington as a Post Graduate Research Associate. Kate joined IBRU from Syracuse University in June

2014 where she completed her dissertation research on approaches to public policy dealing with migrants and postcolonial governance that influence processes of bordering, national identity, citizenship, and belonging. In her dissertation project, Kate examined the consequences of policies of enclosure for two populations in Australia's Northern Territory: asylum seekers experiencing mandatory detention and Aboriginal populations restricted under the terms of the 2007 Northern Territory Emergency Response legislation. Kate will be working closely with IBRU Director Phil Steinberg on various IBRU initiatives which include the new Ice Law Project.

Boundary-making and dispute resolution 2013-14: a round-up

The eighteen months since the last issue of Borderlines have witnessed considerable activity in the arena of third-party boundary and territorial dispute settlement, plus the conclusion of five bilateral maritime boundary agreements.

- The International Court of Justice delivered Judgments in the *Frontier Dispute* case between **Burkina Faso and Niger** (April 2013), the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), (November 2013) and the Maritime Dispute case between **Peru and Chile** (January 2014). The ICJ also saw four new territorial cases brought: *the Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)* initiated by Bolivia in April 2013; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)* initiated by Nicaragua in September 2013; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* initiated by Nicaragua in November 2013; and *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)*, initiated by Costa Rica in February 2014.*

- In January 2013, the **Philippines** instituted arbitral proceedings against the **People's Republic of China** under Annex VII to the United Nations Convention on the Law of the Sea "with respect to the dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea." The Philippines submitted its Memorial at the end of March 2014 and the arbitration tribunal has given China until 15 December 2014 to submit a Counter-Memorial. However, China rejected the Philippines' initial notification of arbitration and it seems unlikely that China will participate in the arbitration proceedings. News reports in June 2014 suggested that **Vietnam** is also considering initiating arbitration proceedings against China concerning disputes in the South China Sea.

- The award in another Annex VII arbitration, concerning the maritime boundary between **Bangladesh and India**, was announced in July 2014, and the oral hearings in the land and maritime boundary arbitration between **Croatia and Slovenia** were held at the Permanent Court of Arbitration in The Hague in June; the award in the latter case will probably be issued sometime in 2015.

- Efforts by a group of former African heads of state under the auspices of the Africa Forum to mediate a settlement in the dispute between **Malawi**

and **Tanzania** over the boundary in Lake Malawi are continuing, although lead mediator Joaquim Chissano admitted in March that the two sides were still deadlocked.

- At the bilateral level, **Denmark (Greenland) and Iceland** reached agreement on the delimitation of the continental shelf beyond 200 nautical miles in the Irminger Sea in January 2013. **Kiribati and the USA** concluded a maritime boundary agreement in September 2013 comprising three segments between the US islands of Palmyra Atoll, Kingman Reef, Jarvis Island and Baker Island and the Kiribati Line and Phoenix island groups. In April 2014 **Costa Rica and Ecuador** concluded a maritime boundary agreement between the Galapagos Islands and Cocos Island after more than thirty years of negotiations; while **Lithuania and Sweden** finalised their short 15km boundary in the Baltic Sea. Most recently, **Indonesia and the Philippines** established a boundary delimiting their overlapping exclusive economic zones in the Mindanao Sea, Celebes Sea and the Philippine Sea in May 2014.

Keep up with boundary-related news from around the world at www.durham.ac.uk/ibru/news or via twitter on @ibrudurham. Also available as a RSS feed.

2014 TRAINING WORKSHOP PROGRAMME

IBRU's unique boundary training programme has been running since 1996, attracting over 1,350 participants from 118 countries around the world.

Our workshops are led by teams of expert tutors and provide a relevant combination of background theory and practical application in an informal teaching environment. Numbers are limited to maximise interaction between tutors and participants so we advise you book early to guarantee your place. There will be three workshops held in 2014, with IBRU working with partners around the world to deliver a compelling programme.

**28-30 July
2014**

Venue:

Collingwood College,
Durham University,
UK

Price: £1920*

Including
accommodation
and meals

Geographic Information in Boundary-Making & Dispute Resolution

The effective use of evidence is the key to success in boundary negotiations and third-party adjudication. Treaties, *travaux préparatoires*, diplomatic correspondence, administrative records, maps, survey reports, diaries and ethnographic studies are just some of the many sources of evidence that can have a critical bearing on the outcome of a dispute over territorial sovereignty or maritime jurisdiction. This workshop will provide participants with practical advice on how to assemble, assess and present evidence to ensure a favourable outcome for your country.



**24-26
September
2014**

Venue:

Centre for
International Law,
Singapore

Price: £1650**

Practical Aspects of Maritime Boundary Delimitation

Clearly defined maritime boundaries are essential for good international relations and effective ocean management, yet few coastal states have agreed all their maritime boundaries with their neighbours. Part of the reason for this is that boundary delimitation requires a range of specialist legal and technical skills which are not always readily available to governments.

Combining lectures, discussions and practical exercises, IBRU's most popular workshop helps participants develop the skills needed to achieve an equitable division of maritime space and clearly defined maritime boundaries.

IBRU is delighted to be partnering once more with the Centre for International Law at the National University of Singapore.

Please note due to the popularity of this workshop and limited places available, we recommend early booking and payment to avoid disappointment. Bookings will not be confirmed until payment is received in full.



In Association with

CIL

Centre for International Law
National University of Singapore

**29-31
October
2014**

Venue:

The Hague,
Netherlands

Price: £1650**

Preparing for Third Party Settlement of Boundary and Territorial Disputes



Although it is widely recognised that boundary disputes are best settled through negotiation, there are times when recourse to third party settlement also needs to be considered as an option. This workshop is designed to help governments and their legal advisors to evaluate the benefits and disadvantages of third party adjudication, and to equip them with information and skills to ensure a successful outcome from the process.

Led by highly experienced international lawyers and boundary practitioners, the workshop will offer practical instruction on topics such as: choice of forum; assembling and assessing evidence; building and managing a team; presenting your case and rebutting your opponent's case.



The workshop will also examine options for non-binding dispute resolution mechanisms such as mediation, conciliation and Track II diplomacy.

The workshop, organised in partnership with leading international law firm Eversheds, will be of value not only to countries currently involved in boundary litigation or arbitration but also to any country seeking to achieve a peaceful boundary settlement with its neighbours.

To make an enquiry about our workshops, please contact the IBRU Events Team.

Tel: +44 191 334 1965 Email: ibru-events@durham.ac.uk or book online at www.durham.ac.uk/ibru/workshops

*** Workshop fees inclusive of VAT at 20% for ALL participants.**

**** Please note that the fees for the workshops in Singapore & The Hague do not include accommodation.**

Borderlines is the newsletter of IBRU: The Centre for Borders Research at Durham University. It is received by more than 3500 boundary scholars, practitioners and enthusiasts around the world.

Since its founding as the International Boundaries Research Unit in 1989, IBRU has been the world's leading research centre on international boundary making and dispute resolution. Today, IBRU brings together work in international boundary law with the geographic study of borders and bordering in the 21st century.



For more information about IBRU and how we can help your organisation, visit our website at www.durham.ac.uk/ibru

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