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Introduction: seeing further over the horizon - A world of limitless possibilities

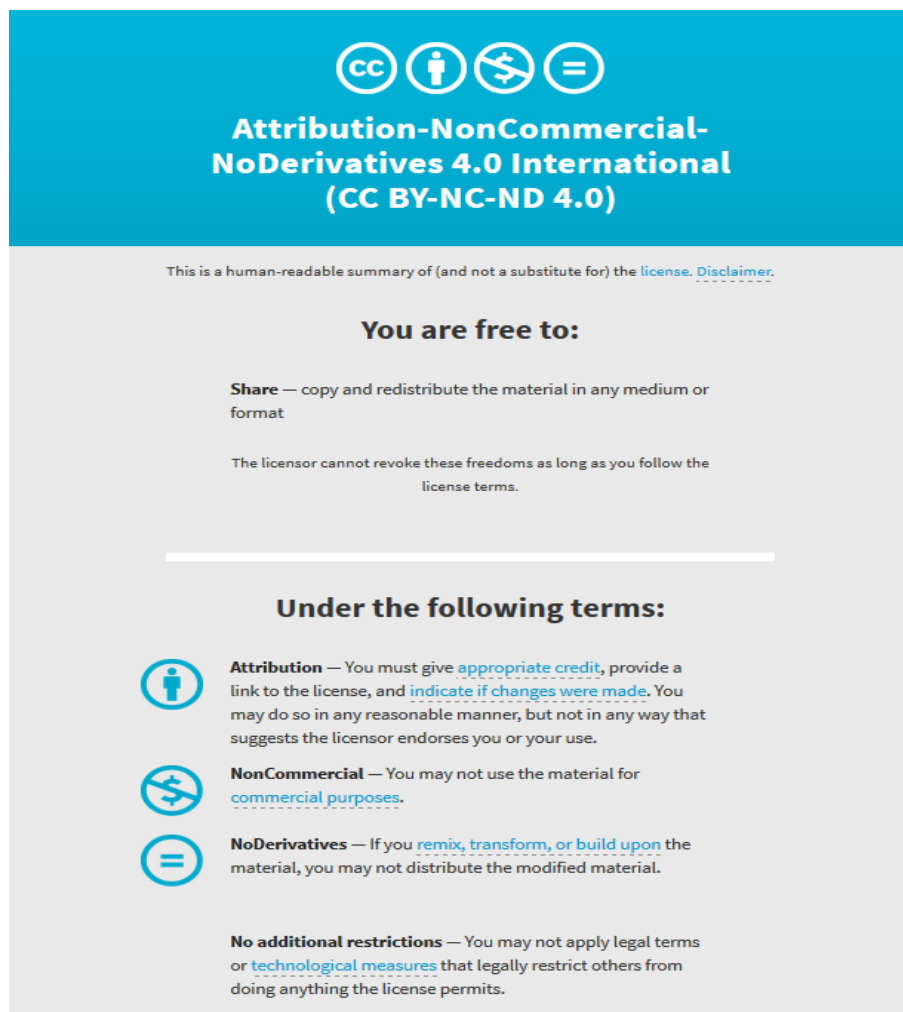
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INTRODUCTION: SEEING FURTHER OVER THE HORIZON — A WORLD OF LIMITLESS POSSIBILITIES

DALE STEPHENS AND PAUL BABIE¹

I

Judith Gardam was born in Perth, Western Australia, growing up there with her parents and sister and brother. Then, as now, Perth was a relatively isolated city and perhaps because of this, one of Judith's enduring memories as a young woman was the first space flight and orbit of the Earth by Soviet astronaut Yuri Gagarin on 12 April 1961. Asked later about the flight and his view of the Earth, Gagarin recalled:

What beauty. I saw clouds and their light shadows on the distant dear earth ... The water looked like darkish, slightly gleaming spots ... When I watched the horizon, I saw the abrupt, contrasting transition from the earth's light-colored surface to the absolutely black sky. I enjoyed the rich color spectrum of the earth. It is surrounded by a light blue aureole that gradually darkens, becoming turquoise, dark blue, violet, and finally coal black.²

1 Adelaide Law School, The University of Adelaide. This chapter is based upon an interview of Emeritus Professor Judith Gardam conducted by Dale Stephens on 5 November 2015.

2 Yuri Gagarin (Ю́рий Алексе́евич Гага́рин) Space Quotations, *Eyes Turned Skyward* <<http://www.spacequotations.com/earth.html>>.

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Gagarin had the rare privilege of being able to see further over the horizon than any other person ever had.

Gagarin's tiny Vostok spacecraft passed over Perth during the night of 12 April and this left an indelible impression on Judith. Though she relentlessly asked her father, an engineer, a flood of questions about the spaceflight, her focus was not just on the technical aspects of the event, but rather something more. The event captivated her, and she recalls that it ignited within her a deep sense of curiosity about the broader world and inspired her imagination about unlimited possibilities. For Gagarin, his view further over the horizon only came through riding that Vostok rocket into a low Earth orbit for an hour and 48 minutes on 12 April 1961. Judith, however, spent a lifetime endeavouring to see further over the horizon than anyone else through her chosen field of international law. And beyond the horizon that limits so many of us in what we can imagine for our global community, Judith saw unlimited possibilities. This volume not only tells her story, but it also tells us what she saw over the horizon.

II

Judith's ability to see limitless possibilities began to show itself from an early age. She describes herself as restless at secondary school. Her parents, particularly her mother, were her greatest fans, though they despaired at where their daughter might be headed. She played a lot of sport and did what was required to get by but without any particular drive for an ultimate goal. This is partly explicable by the social circumstances of the time. Life for a young woman in the 1960s imposed many personal and professional boundaries. She notes that, in relation to the legal profession, it was an era where the expectation was that she would marry a lawyer, not be one.

Despite this tacit societal pressure, Judith possessed a strong determination and gained admission to the University of Western Australia (UWA) Law School. She chose to undertake a law degree because, having seen first-hand the circumscribed lives of women in those times, she saw a professional qualification as a means of ensuring herself an independent future. She was one of only three women in her law class (one other notable contemporary female student being Antoinette Kennedy AO, who was later appointed the Chief Judge of the District Court in WA). Judith distinguished herself in her studies and graduated in 1966. While doing her articles of clerkship was a possible option, it was also a time when firms were distinctly unwelcoming to female graduates. Accordingly, Judith made the first of many choices throughout her life that would begin to hone her ability to see beyond what others could see: she decided to see the world for herself and thus undertook travel (by ship) to Europe to meet up with her sister Elizabeth. They then experienced the 'swinging sixties' of

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London, as well as witnessing the riots of Paris in 1968 and spending extended time in Sicily.

Judith returned to Australia in late 1968 following the death of her father and took up a position in the WA Crown Law Department as a Legal Officer. Given her impressive academic record, she was approached in 1970 to be a senior tutor at UWA Law School, where she taught constitutional and industrial law. Judith married in 1969 and resigned from UWA after the birth of her daughter, Selena, in 1971. During Selena's early years Judith took part-time tutoring positions and travelled overseas.

Returning to full-time work in 1975, Judith was appointed as a Research Fellow at the Law Reform Commission in WA. Her work there involved consideration of a wide range of references. This experience helped develop Judith's research skills and added impetus to her tendencies towards a social justice reform agenda.

In 1976, Judith's marriage ended and she left Perth for Melbourne with her daughter and her new partner, who was a tour manager for the musical promoters Evans/Gudinski. An entirely different world opened up for her — a new possibility through a new experience. She recounts this time with some fondness for its eclectic nature. She was exposed very closely to the music industry, observing that it was not unusual for her to come down to breakfast and find members of numerous Australian rock acts, including such famous bands as AC/DC and the Skyhooks, eating in the kitchen. The personal exposure to the Australian rock scene in the mid- to late 1970s added greatly to Judith's rich perspective on life. It gave her insights into the process of combining art with business and further informed the broader perspective that she was mastering.

At this time she took up a position as a Research Fellow at the Melbourne Law School, based at the University of Melbourne. She was working with Professor Michael Crommelin, who would later be appointed Dean of the Law School. Her area of professional focus in this position was natural resources law, both domestic and international, and legal aspects of the Antarctic. Life at the Melbourne Law School suited Judith. She found the academic environment stimulating and enjoyed the sense of community among the staff. She decided to undertake a higher degree and commenced an LLM degree by research, focusing on hydrocarbon pipelines, which she completed in 1981.

Her time in Melbourne was very rewarding both professionally and personally. In 1977, she met Adrian Bradbrook, who was a member of the academic staff at the University of Melbourne.³ Theirs was a relationship that developed over time and

3 See also Paul Babie, 'The Wily Quadruped Meets a Saucy Intruder: Adrian Bradbrook and the Intersection of Life and Law' in Paul Babie and Paul Leadbeter (eds), *Law as Change: Engaging with the Life and Scholarship of Adrian Bradbrook* (University of Adelaide Press, 2014) 1-21.

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eventually resulted in their marriage in 1980. The combined family now included Judith's daughter Selena and Adrian's children from a previous marriage, namely Fiona, Frances and Georgia.

Still restless and unsure of whether the life of an academic was really for her, she decided to fulfil a long-term ambition and be admitted to legal practice. Unfortunately for Judith, though, it was still an era where state parochialism had a significant role in defining the legal profession. Under Victorian Law Society rules, to be admitted to practice she needed to complete another LLB degree at a Victorian university. She opted to do this and enrolled at Monash University Law School in their LLB program, and she graduated in 1982 having won the Butterworth prize in Taxation and the Mallesons Prize in Commercial Law at the same time.

In 1983-4, a new possibility presented itself in the form of articles at Messrs Blake & Riggall solicitors in Melbourne, and Judith was admitted as a Legal Practitioner in the Supreme Court of Victoria and the High Court of Australia in 1984. While the focus of her professional practice at Blake & Riggall was commercial law, she recounts a pivotal moment in her time there. As with many life-changing events, this one occurred almost casually, but it set a particular trajectory for Judith which saw her make her most valuable contribution to legal scholarship. She recounts that on one random afternoon she found herself in the firm's library. She was attracted to a book on international law and armed conflict, which happened to be on the shelf. It revealed much about the ethos of law and its capacities to Judith and spoke of a broader universe of possibility. It sparked a deep interest in her regarding the field of international humanitarian law, especially in relation to the rights of victims of armed conflict, and prompted her to want to know more. It is supremely ironic, and somewhat fitting, that one of the world's most eminent international lawyers never actually studied the subject formally, but rather was self-taught. This acted as an advantage for Judith; there is something to be said about coming to a field from 'the outside', thus allowing for a sense of original perspective.

By then it was clear to Judith that legal practice was not her strength and that her future was in the academy, and she decided to undertake doctoral studies at Melbourne Law School. Her chosen field was the area that had taken her interest that day in the library: non-combatant immunity under international humanitarian law. She speaks of the debt of gratitude that she owes her supervisor, Professor Hilary Charlesworth, along with Adrian Bradbrook, for sharing with her their outstanding skills in the development and expression of ideas. In 1985, Judith was appointed as a senior tutor in law at Monash University and in 1987 she was appointed to a tenured lectureship in the Melbourne Law School.

Towards the end of her PhD study, in 1988, Adrian was appointed to a Chair in Law at the Adelaide Law School of The University of Adelaide. Judith joined him

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in 1989 when she accepted an offer of a tenured lectureship in the School. Given the Adelaide Law School's tradition of excellence in the field of international law, it was a perfect match for Judith's expertise. In 1991, Judith was awarded her PhD from the University of Melbourne. Completion of the PhD was a source of much personal satisfaction for Judith and she ranks it as a high point in her life.

The timing of Judith's research could not have been better. The field of international humanitarian law was developing strongly with numerous state ratifications of the Additional Protocols to the Geneva Conventions and a flood of other Conventions dealing with the means and methods of warfare being developed, along with re-statements of customary international law. The field is one that has a denseness of technical detail, but also one that invokes deep moral and social resonance with its subject matter. It was an ideal field for someone with Judith's forensic skills and contemplative nature to be grappling with and mastering. The world had also just witnessed the first Gulf War, and Judith's expertise was in strong demand. Her innovative PhD research resulted in prolific publication, as highly prestigious journals competed for her articles. Judith's arrival within the international law scene could not have been more auspicious, with the very best journals in the field all showcasing her research and ideas. In short, Judith was poised to embark on a career of showing the way towards unimagined possibilities in this burgeoning field.

In 1992 Judith was appointed as a senior lecturer at the Adelaide Law School and in 1996 was promoted to Reader. While international law was her primary interest, it was also evident that she found a rich, supportive collegial environment at Adelaide Law School, enabling her to pursue other passions in scholarship — most notably feminist legal studies, where, again, she glimpsed new possibilities. Judith's personal experiences naturally played a role in her interest in this field, as did her specialised talent of identifying with the 'other' and using that perspective to interrogate legal structures. Working with colleagues like Ngaire Naffine and Margaret Davies, Judith was at the forefront of the scholarship in this area and was quickly finding international acclaim for her ideas and writings in this field. Indeed, in the fusion of this field with international humanitarian law (IHL), Judith has been a leading voice of thinking and publishing. Her work on studying the impact of armed conflict on women and girls is of critical importance and stands as the established reference point for all of those who are interested in this field.

In 2006, Judith was promoted to the academic position of Professor at the Adelaide Law School. By this time, she had an extremely well-developed global reputation in the fields of international law and feminist legal theory. Her work in the field of IHL, in particular, was recognised with the awarding in 1998 of the Red Cross Service Award. Her stature as a highly accomplished academic was further recognised in 2010 with her election as a Fellow of the Academy of the Social Sciences in Australia.

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Judith has been the recipient of five ARC Discovery Grants in a diverse range of fields, including topics relating to women in armed conflict, the Security Council framework and legal frameworks for Antarctica. Most recently she has worked with Adrian Bradbrook on projects relating to sustainable energy and climate change, and access to energy as a human right. She has been the author or co-author of dozens of books, chapters, articles and reports, which include a highly influential 2002 United Nations commissioned *Expert Report on International Humanitarian Law and Human Rights Law Applicable to Women and Girls in Times of Armed Conflict*.⁴ She has successfully supervised many honours and higher degree students and famously instills an internal discipline in her supervisory style; this ensures not only complete success but also cements research habits and a frame of objective analysis which lasts a lifetime. Having completed your thesis under the supervision of Judith Gardam carries with it considerable bragging rights and a shared sense of achievement in having made it through a tough academic boot camp.

By any measure, Judith Gardam has accomplished much in her professional life and is rightly acknowledged by scholars throughout the world as an expert in her many fields of diverse interest. When being interviewed for this publication, she said that she possessed a 'grasshopper mentality', in that many things took her interest. We are all the better for that tendency because, despite this broad range, she nonetheless has that enviable quality of deep focus and immersion in each topic she addresses. She observes that she has 'always been able to concentrate and lose [her]self in ideas'. She does seek to make the world a better place and invests heavily in authenticity and honest accounts of the world as it is and how it can be made even better. Judith was particularly touched by a statement she recalls Professor Hilary Charlesworth once making, where Hilary observed that Judith aims to lift the bar each time she writes. It is an insightful and correct observation and an aim at which she justly succeeds in achieving.

Judith confides that she has 'always been grateful for the existence of Universities where difficult and willful people like me can thrive (less so nowadays, I fear)'. It is this dual capacity for both quiet contemplation and for driving reform that has characterised her work. She is a fiercely independent person, though one with a deep well of generosity of spirit. Her work output has been steady, but more importantly it has been fueled solely by a desire to say important things when the time and sense of personal commitment in her were right. When Judith writes, you know instinctively that it will be worth reading — usually over again and again.

⁴ Judith Gardam, *Expert Report on International Humanitarian Law and Human Rights Law Applicable to Women and Girls in Times of Armed Conflict* (Study commissioned by the Secretary-General of the United Nations in response to Security Council Resolution 1325 (October 2000)) (New York: United Nations, 2002).

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The chapters in this volume celebrate the academic life and work of Emeritus Professor Judith Gardam. They are eclectic in scope and topic, but, in so being, they represent different periods of Judith's life and work. It is a remarkable accomplishment to have been so influential in so many areas. It means that in a volume such as this a diverse range of scholars are able to draw on this work in so many different ways.

Dale Stephens's story, which he recounts here, is, we hope, representative of the impact of Judith's work on that of others:

It was as a young Naval Legal Officer that I first encountered the scholarship of Professor Judith Gardam. It was in the mid-1990s and I was undertaking a literature review relating to the manner in which international law had been applied in the first Gulf War. It brought me into immediate contact with a number of then recent articles written by Judith dealing with the use of force and international humanitarian law and published, variously, in the *Virginia Journal of International Law*, the *American Journal of International Law* and the *Michigan Journal of International Law*. The articles spoke with great intensity of purpose and revealed what I thought to be a number of uncanny observations concerning military operations and the law. I hadn't particularly noted the author's specific biographical details initially and thought at first that these were written by an 'insider', probably a military legal officer who had participated in that conflict. Upon further review, I was surprised to learn that they were, in fact, written by a professional 'outsider', an academic who had a unique eye to the events and to the way law was assimilated and tempered through that conflict. I was deeply struck by the disarming insight into military approaches to concepts that she revealed with deep resonance in her assessment. To me, this has been the hallmark of Judith's original and immersive scholarship: the capacity to present an intimate and compelling review in a manner that also offers a high level of objectivity and an informed external critique. She has been described by one anonymous reviewer of the chapters in this volume as a person who 'always works from first principles and combines rigour and technical skill with a reformer's heart, a very rare combination in the discipline' — too true. Such skills are developed over a professional lifetime, no doubt, but were nonetheless derived from a central core of perspective that was there from the beginning.

There are no doubt many other young lawyers out there, researching some pressing topic, searching for guidance. With minimal effort, they will find the work of Judith Gardam and be pointed beyond the horizon of possibilities in their own work, marking a turning point in their life. They will come to appreciate how genuine scholarship can make such a decisive impact upon perception, raising the bar a little higher in making the world a better place to live. Perhaps that will happen through finding and engaging with the essays in this book, which not only honour their

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subject, Judith Gardam, but also demonstrate the profound impact that their subject has had on the development of their own scholarship.

III

During the preparation of this publication, it became evident that Judith inspired enormous devotion from scholars and practitioners all over the world. The contributors to this volume all readily agreed to write chapters and all felt deeply influenced by Judith and her work. Given the range and depth of Judith's academic interests, it was always inevitable that the contributions themselves would be wide-ranging. This necessarily presents challenges for editing a volume of this nature. Yet the variety in style and familiarity with Judith's canon in the chapters only complements the richness of the volume. That diversity notwithstanding, three main themes emerge: energy law, international law and feminist legal theory. The contributions from the authors touch on each of these themes and the volume has been ordered accordingly. Taken together, the essays collected here cover the range of possibilities for law to which Judith has drawn our attention over the course of her career.

In Part One, Judith's partner and colleague, Adrian Bradbrook, writes on energy law, an early focus for Judith and one that she revisits from time to time in her professional life.

In Part Two, the chapters written by Mary Ellen O'Connell and Matthew Stubbs address the topic of the use of force under international law. This area of law represents her 'breakthrough moment' in galvanising international attention, and her work continues to resonate strongly in this highly contentious and critical field.

Part Three is itself divided into three sections. In the first of these, Michelle Jarvis, Ustina Dolgopol, Gina Heathcote, Hilary Charlesworth/Christine Chinkin and Jody Prescott address, in varying degrees, the issue of gender and armed conflict. This subset of IHL is one that Judith has personally shaped decisively and any serious scholar in this field benefits from her pioneering work in this area. Next, chapters written by Laura Grenfell and Ngaire Naffine deal with gender/feminist concepts advanced by Judith from perspectives of the post-conflict state in the first instance and law and religion in the second. Finally, the two remaining chapters, authored by Rebecca LaForgia and Margaret Davies respectively, address broader theoretical issues raised by Judith's work. Both authors skillfully take the 'alien' metaphor that Judith has used as a heuristic device in her scholarship to advance ideas regarding the nature and quality of law, and particularly international law.

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Hence the volume contains twelve essays from leading scholars in Judith's fields of expertise. While all twelve chapters are seemingly eclectic in their range of subjects, unmistakable common themes and threads run through them. And in every case, Judith's approach to scholarship is described in similar terms: she is a scholar who addresses the interconnectedness of subjects; she is driven by a desire to use the methodology of deconstruction and the 'other' to 'mobilise different truths' (in the words of Margaret Davies in her contributing chapter); and, while firmly resident within a strong methodological discipline, Judith is both practical and experimental with her use of methodology to advance her arguments.

While the genres of feminist theory, international law and energy law may have little to suggest obvious harmonisation, it is clearly evident that the contributing authors have found ample means to make the necessary connections. The themes of feminism in international law, of energy law and sex/gender, of international humanitarian law and sex/gender, of black letter process and methodological innovation are found throughout all pieces, all tying back to more general themes or methodological approaches adopted by Judith in her range of academic work. All authors in this volume were given full licence to draw on any part of Judith's work when drafting their own contributions. Significantly, her chapter on 'An Alien's Encounter with the Law of Armed Conflict'⁵ features prominently in almost half of the chapters, such was its indelible mark on scholarly thinking. Authors have used both the substance of this work, or its methodological apparatus, to underpin their own contributions.

Some of the submissions in the volume address themes that have been at the forefront of Judith's thinking for decades — themes such as women, constructed identities and armed conflict, women's challenges and perspectives under international law with particular reference to post-conflict reconstruction and access to justice, the interconnections between legal structure and humanity, the growing accommodation and innovations within forums of international justice, of international humanitarian law, international criminal law and international human rights law, especially in the context of crimes of sexual violence. Other contributors have taken her innovative methodology and style of approach to guide their own trajectories of analysis into questions of irreconcilable rights regarding abortion and end of life decisions, of the fluid role of academic critique and the role of international lawyers in the development of perspective and approach, and of intellectual style and manoeuvre in subjects that have been the focus of Judith's impressive career.

⁵ Judith Gardam, 'An Alien's Encounter with the Law of Armed Conflict' in Ngairé Naffine and Rosemary Owens (eds), *Sexing the Subject of Law* (LDC Information Services, 1997) 233-50.

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IV

It has been fifty-five years since astronaut Yuri Gagarin passed over Perth in his Vostok spacecraft, sparking the imagination of a young woman who at that moment felt part of something much bigger than herself. Judith deploys an idea of 'otherness' in her work, drawing upon this earliest experience to promote in law the idea of global interconnectedness, which Gagarin saw physically when he peered through the window of his tiny spacecraft. As Gagarin looked down and saw further over the horizon of the Earth than any person ever had, Judith was looking back up into that same April night sky. She saw then, and continues to see, further over the horizon of human potential than most other people. Where others see only limits in humanity, she saw, and sees, unlimited possibility.

PART I

