EDITORIAL

1996 has been an eventful year. It was dominated by the celebrations to mark the United Nations' golden anniversary. In New York, there was a special session of the General Assembly which witnessed an impressive gathering of world leaders. In Australia, there were celebrations as well, and to mark the occasion, a Colloquium was held in Canberra on the 1995 East Timor decision of the International Court of Justice.[1] Meanwhile, the struggle for independence and self-government in East Timor continued. That cause was greatly aided when the world witnessed the Nobel Peace Prize being awarded to Bishop Carlos Belo and Jose Ramos Horta in October, leaders in that struggle.

The International Court's Advisory Opinion on the legality of the threat or use of nuclear weapons was another significant event in 1996.[2] *Inter alia,* the Court held that the threat or use of nuclear weapons would generally be contrary to the international law rules applicable in armed conflict. It unanimously held that if there was a threat or use of nuclear weapons, it should be compatible with the requirements of the international law of armed conflict, including international humanitarian law and other obligations which specifically deal with nuclear weapons. It also unanimously held that there was an obligation on states to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control (see below). However, on the important question of whether the threat or use of nuclear weapons would be lawful or unlawful, by seven votes to seven,[3] the Court was unable to conclude definitively what the correct position would be in an extreme circumstance of self-defence where the very survival of a state was at stake. [page 169 *et seq*]

The committed position taken by Australia in the nuclear debate resulted in another cause for celebration in 1996. In September, it successfully promoted the Comprehensive Nuclear Test Ban Treaty in the United Nations. The signing of the treaty was seen as a big step forward and the

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1 [1994-1995] Australian International Law Journal 166.

2 See ibid at 178 et seq for Australia's oral submission in the case.

3 The vote was carried by Bedjaoui P's casting vote.

signatories included the five "big" nuclear powers, namely, China, France, Russia, United Kingdom and United States of America.

Another case which came before the International Court in 1996 involved Cameroon and Nigeria on their land and maritime boundary. In an Order indicating provisional measures, the Court *inter alia* ordered the two states to cease military and other action against one another, action which might aggravate or extend the dispute or prejudice the right of the other regarding the judgment which the Court might render in the case. Cameroon had alleged that Nigeria had breached international law by militarily occupying its territory in the Bakassi Peninsula. It also alleged that Nigeria had breached international law by occupying parcels of Cameroonian territory in the Lake Chad area. As a result, it requested the Court to adjudge and declare that Nigeria should immediately and unconditionally withdraw its troops from Cameroonian territory. It also requested the Court to specify definitively the frontier between the two states from Lake Chad to the sea. For the alleged breaches that had taken place, including the material and non-material damage inflicted, Cameroon had sought reparation from Nigeria which was to be determined by the Court. [page 158 *et seq*]

Submission to the compulsory or *ad hoc* jurisdiction of the International Court is required before it can hear a dispute between states under Article 36 of its Statute. If there is a challenge to such jurisdiction, the matter has to be determined by the Court in the jurisdictional phase of proceedings. This is now happening in proceedings between Spain and Canada in the *Fisheries Jurisdiction Case*. By an Order which was handed down on 8 May 1996, the Court held that it was sufficiently informed, at that stage, of the contentions of fact and law on which the parties have relied with respect to the Court's jurisdiction in the case. As a result, it did not require other written pleadings from them. The written proceedings having thus come to an end, the Court held that the subsequent procedure was reserved for further decision. This is where the case currently rests.

It is indeed very encouraging that states are willing to submit to the International Court's jurisdiction to settle their disputes. In relation to another disagreement over boundaries and territorial sovereignty, it was recently announced by Malaysia and Indonesia that they would submit their competing claims to the Court. Their dispute concerns jurisdiction over Sipadan and Ligitan Islands off the coast of Borneo. Both states have based

their claims on the treaty of 29 June 1891 signed between the United Kingdom and The Netherlands. After several negotiation sessions by their special representatives, the leaders of both states, President Soeharto of Indonesia and Prime Minister Dr Mahathir of Malaysia, concluded an Agreement on 7 October 1996 in Kuala Lumpur to submit their dispute to the *ad hoc* jurisdiction of the Court.

Not everything was roses in 1996 for Australia. What must have been a low in its international relations was the October announcement that two European nations had won seats in the Security Council for the next two years to represent the Western Europe and Others bloc.[4] Australia, after having lobbied long and hard for one of those seats, had been unsuccessful in its bid, losing out to Portugal.[5] This resulted in great speculation on the reasons. One suggestion was perhaps France had lobbied against Australia's admission to the Security Council, as "payback" for Australia's steadfast stand against French nuclear testing in the Pacific,[6] a suggestion strongly denied by France. Another suggested that Europe decided to vote as a bloc for the bloc.[7] A more credible suggestion is that Australia had been on the Security Council on more occasions than Portugal and therefore the latter should be given the next chance.[8] Be that as it may, all five successful states

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4 According to Article 23 United Nations Charter, membership of non-permanent members in the Security Council rotate on a two-yearly basis. Owing to the staggering of elections, they are held annually, with five seats becoming vacant each time.

5 The other states which were elected were Sweden, Japan, Costa Rica and Kenya. General Assembly Resolution 1991 (XVII) A, para (3) inter alia provides for election according to equitable geographical distribution, as required by Article 23(1) United Nations Charter: (a) five from African and Asian states; (b) one from Eastern European states; (c) two from Latin American states; and (d) two from Western Europe and other states.

6 Also, see the request by New Zealand to the International Court of Justice for an Examination of the Situation in accordance with Paragraph 63 of the Court's 1974 judgment in the Nuclear Tests Case: [1994-1995] Australian International Law Journal 166.

7 However, this suggestion does not explain why Portugal attracted Afro Asian votes as well, including the reputed vote of Papua New Guinea, nor why some European powers were reputed to have voted for Australia.

8 There had been a premature announcement by Australia that its appointment was a "shoo in". This reminded those with long memories of the premature indication by Australian government sources that the Australian candidate would be elected Secretary General of the Commonwealth.

should be congratulated on their election to the Security Council, their terms beginning on 1 January 1997.

Other dark sides were also reflected in 1996. The evidence being produced at the International Criminal Tribunal for Yugoslavia at the Hague, where Sir Ninian Stephen from Australia is a sitting member, has been horrific in nature. A number of persons who allegedly committed atrocities in the former Yugoslavia have been indicted and some have appeared before the Tribunal. The Tribunal continues to sit today, its task undoubtedly an onerous one.

In this issue of the journal, the case in the International Court on the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Preliminary Objections) between Bosnia and Herzegovina on the one hand, and Yugoslavia (Serbia and Montenegro) on the other hand, is presented. In June, the Court held that it had jurisdiction to deal with the case on the basis of Article IX of the 1948 Genocide Convention, in spite of the seven objections raised by Yugoslavia (Serbia and Montenegro). [page 197 *et seq*] As for peace in the region, the world waits in hope. The latest initiative in this direction is the announcement that on 14 November 1996, the foreign ministers of the states involved in Bosnia will meet in Paris to discuss a peace consolidation program.

It has also been announced that following the Yugoslav Tribunal, a similar tribunal to consider the atrocities committed in Rwanda will be convened. Again, Sir Ninian has been appointed a member of this Tribunal. The continuing conflicts on the African continent have seen war crimes being committed and humanitarian law has been breached many times over. The displacement of population and the influx of refugees into Zaire appear as daily statistics in the press and humanitarian efforts have been stretched to their maximum. For example, recent reports have stated that up to a million Hutu refugees from Rwanda and Burundi were in eastern Zaire. About 46,000 refugees recently fled camps near Zaire's border with Burundi after fighting between Zairean soldiers and Tutsi rebels. Zaireans also had to flee their homes because their villages were torched by the combatants in the raging battles.[9] Unless aid is immediately forthcoming, the refugees are in

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[9] The problems in the region are the result of conflict on four fronts. First, the Rwanda war had resulted in hundreds of thousands of Hutu refugees, with many of them

grave danger of starvation and diseases like cholera have begun to threaten life. The extent of the world's refugee problems has therefore placed extreme pressure on the 1951 Convention Relating to the Status of Refugees. This has resulted in the relevance of the Convention being questioned on a number of occasions. In his article, Mr Pierre-Michel Fontaine answers the critics of the Convention, and on whether this instrument has been outlived in the 1990s. [page 69 *et seq*]

Battles leave scars, including the lingering effects caused by land mines. Dr Keith Suter presents the legal position on land mines and calls for more effective controls. Statistics are quoted which justify the outlawing of their use under more stringent rules of humanitarian law. He analyses the 1981 Inhumane Weapons Convention in the context of the 1995-1996 Review Conference and argues that there is still a great deal of work to be done before a total ban can be achieved. [page 99 *et seq*]

Therefore, where does one begin when addressing the various ills of humanity? Justice Michael Kirby, *inter alia*, sees the solution in the form of human rights protection, beginning with education and awareness. In this context, the right to development is highlighted and considered a basic human right. He shares with the reader the work he recently performed in Cambodia as Special Representative of the United Nations Secretary-General for Human Rights. He suggests that lawyers have a role and a positive duty to ensure that human rights are respected and the rule of law maintained. [page 1 *et seq*] Regarding economic development, it is worth noting that on 13 November 1996, the World Trade Organisation will open a conference of ministers from the world's 48 poorest states. The aim of the conference, which will be held in Geneva, is to show how trade opportunities can help those states.

Other human rights are discussed by His Excellency Dr LM Singhvi, *inter alia,* and he draws upon the events that occurred in three cities in 1992-1993. The conferences held in those cities form the basis for the three

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fleeing into Zaire. Secondly, the Burundi war, which had become greatly intensified since the coup, overlapped the Rwanda war. Thirdly, there is the local war in Zaire between Zairean troops and Hutu extremists from the camps on the one hand, and local Tutsis on the other hand. And fourthly, there is the potential fight in Zaire itself, with several groups within and without Zaire, waiting in the wings to succeed President Mabutu Sese Seko, who is reputed to be in ill health.

themes chosen for his article because they are symbolic of global concerns and aspirations. In the first theme, he stresses the crucial significance of the Rio Earth Summit held in June 1992, with emphasis on sustainable development. The second theme relates to the 1993 Vienna Conference on Human Rights and once again, economic development as a basic human right is emphasised. In the third theme, he uses the 1993 Chicago Conference on the World's Religions to emphasise the importance of its role in inter-faith dialogue and harmony. He draws the themes together to result in one fundamental postulate, namely, if peoples do not work together in the way the three conferences and their ensuing instruments envisage, there will be no World left. [page 15 *et seq*] On this point, it is also worth noting that the forthcoming United Nations World Food Summit, which will be held in Rome and attended by delegates from more than 100 states, will start on the same day as the WTO World Trade Conference (see above).

To ensure that international awareness in its multifarious facets is maintained, Professor Sam Blay argues that modern legal education in Australia should incorporate international and comparative law in the curriculum. He sees their incorporation in legal education as a matter of necessity. Various reasons are forwarded, including the Asianisation and internationalisation of Australian trade and commerce which have required the Australian lawyer to be well versed in other legal systems and understand the international legal infrastructure within which those activities take place. [page 80 *et seq*]

For example, the People's Republic of China has become one of Australia's largest trading partners. As part of the framework of its socialist market economy, China has discovered the importance of international commercial arbitration in more ways than one. [pages 111-112] Mr Ian Menzies analyses how this has been achieved in China by analysing arbitral awards under the 1958 New York Convention, non-Convention arbitral awards, and domestic awards. [page 111 *et seq*]

Australia's role in the developing law on cultural heritage has been very visible. In his article, Dr Patrick O'Keefe discusses the groundbreaking work in this comparatively new area of international law and the various international instruments that govern it. *Inter alia*, he notes the expertise on the subject that Australia possesses and canvasses the role that Australia can play in the evolution of this area of the law. He highlights Australia's special

position with regard to the 1972 World Heritage Convention and quotes that it now has eleven sites on the World Heritage List, all of them natural sites. [page 36 *et seq*]

The final article in this issue is presented within the context of another golden anniversary. This is the insightful article by Professor Dr Michael Milde which reviews the International Civil Aviation Organisation after 50 years. What is ominous is his prediction that if the organisation does not reconsider its position in modern international aviation, it may find itself permanently relegated to the history books. [page 60 *et seq*]

In conclusion, I would like to thank and pay tribute to Professor David Flint on the eve of his departure as Dean of the Law Faculty, University of Technology, Sydney, after a maximum of two allowable terms. Professor Flint is a distinguished lawyer who wears several hats, one of them in international law. He has been visibly involved in and committed to international law and the rule of law over a long period of time, and is the Consulting Editor of this journal. For many years he was Editor of its predecessor, the Australian International Law News, which he co-founded with Professor James Crawford. He is also Co-Director of Studies of the Australian Branch of the International Law Association and is the Australian representative on the International Committee on Legal Aspects of Sustainable Development and the International Monetary Law Committee. In recognition of his work and contributions, he was made a Member of the Order of Australia in 1995 and was awarded the World Outstanding Legal Scholarship by the World Jurists Association in 1991. We wish you all the best for the future, David.