

## PRESIDENT'S REPORT

Hon Dr Peter Nygh

This will be my last report as President of the Australian Branch of the International Law Association. When I was elected to this office in May 1994, I accepted on condition that I would serve for four years. I have actually exceeded that period by some seven months, due to the fact that our Annual General Meetings are always held at the end of the calendar year. I consider it important that the office of President rotate and that the members of the Branch have the benefit of the enthusiasm and imagination that a newly elected President always brings with him or her.

It has been a great pleasure to be able to serve as the President of the Branch. My association as an office bearer of the Branch goes back to 1972 when I became its Secretary. When Mr Philip Sutherland took over that position, I chaired the Planning Committee for the 1990 Queensland Conference. I then retired into ordinary membership, only to be recalled to office in 1994. During my period of office, I had the privilege of leading the Australian delegation to three Conferences of the Association: in 1994 to Buenos Aires, in 1996 to Helsinki and this year to Taiwan. As always, the Australian delegation played an important part in these Conferences.

Other highlights of my term of office were the East Timor Seminar held in 1995 and the function held, by courtesy of our Patron, Sir Gerald Brennan, in May 1996, at the High Court to commemorate the first 50 years of the International Court of Justice. All this has been made possible through the enthusiasm and hard work of the office bearers and members of the Committee of Management. I will, of course, not be departing from the scene. I will replace Sir Laurence Street as Immediate Past President and, subject to other commitments, continue to be involved in the work of the Committee of Management. Hence, I would not like you to think of this as a Farewell Address.

The Branch has been very active this year. It started with our last Annual General Meeting when Her Excellency Dame Rosalyn Higgins of the

International Court of Justice was our Guest of Honour. It was a great privilege to hear her speak at a function co-hosted by the Australian Institute of International Affairs at the Glover Cottages. This year we will finish in similar fashion at the Glover Cottages with Mr Paul Kelly, International Editor of *The Australian*, as our invited speaker who will address us on international trade law issues.

I will briefly discuss the most prominent events of the past year now.

### **CONSTITUTIONAL AMENDMENTS**

At the last Annual General Meeting, I spoke about the problems which a falling Australian dollar had caused us in meeting our obligations to the Association, especially when the ordinary member subscription had been raised to £25 stg. Since then, the position of the Australian dollar has worsened. At the last Annual General Meeting, the Constitution of the Branch was amended to increase the Branch membership fee to AUD85, out of which the Association membership has to be paid. At that time, this appeared to be sufficient, but the falling dollar means that once again we will be left with less than AUD10 per member to meet local needs. I propose that for 1999-2000, the Committee of Management fix a basic charge to which will be added the local equivalent of £25 stg, as at a certain date in May, together with a 5% margin to account for fluctuations.

Following the amendment of the Constitution at the last Annual General Meeting, the sum of AUD90,000 was set aside by the Committee of Management to serve as reserves. In accordance with the constitutional amendment, the capital amount can only be spent by resolution of the members at the Annual or Special General Meeting.

On 19 June 1998, a Special General Meeting was held to rationalize membership provisions. In the first place, the Meeting deleted the last vestiges of Australian imperialism by removing the reference to New Zealand as a "deemed" part of Australia. This provision had become otiose on the formation of the New Zealand Branch last year which has been duly joined by all of our former members resident there. As from now, only Australian residents and/or citizens are eligible to be members of the Branch in accordance with the Constitution of the Association as a whole.

The Meeting also deleted the references to “associate members” and “honorary members” which had never been used. It retained the categories of “ordinary member”, “corporate member”, “student member” and “honorary life member”. The new provisions make it clear that members in each of those categories are members of the Association in conformity with the Constitution of the world body. The fee for corporate members was fixed at AUD150. A corporate member will only have one vote in the affairs of the Branch, but may nominate two persons to participate in the activities of the Branch.

The fee for international student membership was fixed at AUD40. This will entitle the student member to be part of both the Branch and be a student member of the Association in accordance with its Constitution. For those who want to participate in the local activities of the Branch, but are not seeking membership of the Association as a whole, the amendments introduced two new categories: “associates” and “student associates”. Persons admitted in these categories may participate in the activities of the Branch and will receive notices of functions and the Bulletin of the Branch, but will not be entitled to vote or hold office in the Branch. I have received advice from Headquarters in London that the existence of these categories will not infringe the Constitution of the Association, and hence, not affect the status of the Branch. The fees for associates has been fixed at AUD30 and for student associates at AUD15.

I want to make it clear, however, that we will continue to encourage full membership. Only members of the Association can partake in the international activities, most notably, the work of the international committees which are the lifeblood of the Association. For the purposes of our representation at the Executive Council and our entitlement to places on international committees, only full membership is relevant. Therefore, we must view the new categories as “stepping stones” which allow younger persons especially to “sample” our Branch with a view eventually to joining the Association.

An important aspect of the work of the Association is through its Committees. The Australian Branch has a very good record in participating in the work of those committees. Because of its membership numbers, the Branch is entitled to two nominations per committee. At the same time, concern has been expressed by the Director of Studies that Branches have at times too readily nominated members to international committees.

Frequently, after nomination and acceptance by the Committee Chairman and the Executive Council, nothing further has been heard from those persons for whom the glory of being a member was obviously its own reward. To encourage greater transparency, the Branch has set up a Nominations Committee chaired by myself, with Professors David Flint AM and Ivan Shearer as members, to receive indications from Branch members interested in joining an international committee. The Committee will satisfy itself as to the qualifications of the nominees and their preparedness to participate in the work of the committee concerned, before recommending to the Branch that the persons in question be nominated by the Branch. The next Bulletin will include a list of international committees (now approximately 26) and any Australian representation thereon.

## **MEMBERSHIP**

We are pleased that Sir Gerard Brennan, following his retirement as Chief Justice of Australia, continues as the Patron of the Branch. It is a privilege to have as our Patron such an eminent lawyer with a well known interest in international law and its impact on Australian law.

We have noted with regret the premature death of Mr Ross Vincent, a long standing member of the Branch. The Committee of Management also accepted with regret the resignations from that Committee of Dr Gavan Griffith QC and Ms Kate Eastman. In their terms of office, both have made enormous contributions to the Branch for which we are very grateful.

The membership of the Branch has continued to grow in the past year. While we are far removed from the halcyon days in the 1970s when we counted almost 400 members, we have begun a conscious process of rejuvenation not only in the general membership but also among the office bearers and members of the Committee of Management. I must make mention, especially of Queensland, where the increase in membership has been marked, due, no doubt, to the enthusiasm of the Queensland Chapter.

## **TAIWAN CONFERENCE**

The highlight of this year's activities for the Association as a whole was undoubtedly the 68th Conference of the Association held in Taipei, Taiwan, Republic of China. It was attended by approximately 250 delegates among whom were 20 who "call Australia home". Together with

spouses and partners, more than 400 persons participated. I must take this opportunity to express the thanks of the Branch to the President and Government of the Republic of China for their unbounded hospitality and friendliness. Never have I attended a Conference where we were treated to two banquets per day! Of particular note was the day excursion to I-lan County on the Taiwanese Pacific Coast with dragon boat races, Peking Opera, and dragon dancers.

In accordance with tradition, a dinner was held on 14 May to farewell the Australian delegation. The guests of honour were Dr Po-Lun Liu, Head of the Taipei Economic and Cultural Office in Canberra, and Ms Maggie Taiching Tien, Director-General of that Office in Sydney. Dr Liu delivered a brief address and many toasts were drunk to the success of the Conference.

Academically, the Conference was also a success. Out of the 26 international Committees of the Association, reports were delivered by 22. Those who did not report were, in the main, recently established and some of them held informal meetings. The papers delivered were of an excellent standard and will be published shortly in the Conference Report which is being edited by Dr Michael Byers of the British Branch and Mr Christopher Ward, our Treasurer. Special Workshops were held on the following topics: Current International Law Issues in East Asia with special references to the Law of the Sea; the Financial Crisis; Trade Related Aspects of International Property Protection; and the Teaching of International Law. Some of the Australian delegates also attended the Annual Meeting of the Chinese Society of International Law.

The 69th Conference of the Association will be held in London in August 2000. The British Branch is making great efforts to have a Conference which will suit the occasion of the new Millennium and the start of the third century in the Association's existence. Australians will be able to attend without missing the Sydney Olympics in September. In July 1999, there will be a regional Association Conference in Sao Paulo, Brazil.

#### **ACTIVITIES OF THE BRANCH**

As in past years the Branch has presented a number of seminars. Most of these are conducted as twilight seminars in the early evening with the Staff Common Room of the University of Sydney Law School as the venue.

This is obviously a very convenient location and, on behalf of the Branch, I want to thank the Law School for making the venue available to us at no charge and its staff members for putting up with the deprivation of their common room. Of course, they are welcome to attend!

The Branch has also in the past year conducted a number of functions in conjunction with the Australian Institute of International Affairs at its premises, the Glover Cottages, in Kent Street. I want to place on record the excellent cooperation we have enjoyed from the immediate past president, Dr Philippe Cussinet, and his successor, Mr John Melhuish. Not only is the setting outstanding, but, since our membership is relatively small, and those attending even smaller, cooperation with a larger organization has its distinct advantages.

Most of our functions, as in the past, were held in Sydney. However, Brisbane comes a close second. We have an active group in Canberra and we have engaged in joint activities in Melbourne. We consider ourselves to be a national organization and do not confine our activities to Sydney, although in places where our membership is very small, activities are difficult to organize. Nevertheless, I would like to hear from members in Hobart, Perth, Adelaide and Darwin who have proposals for seminars there. The Committee of Management will support such activities and the President or one of the Vice-Presidents will make a special effort to attend.

The year commenced on 25 February with an address by Dr Andreas Ziegler, lecturer at the University of St Gallen, Switzerland, on Domestic Prosecution and International Cooperation with regard to Violations of International Law: the Case of Switzerland. This seminar was held under the auspices of the Human Rights Committee of the Branch. Dr Ziegler dealt specifically with Switzerland's obligation to adjudicate allegations of crimes against humanity in Swiss municipal courts, to extradite persons accused of such misdeeds, and to cooperate with international tribunals such as those set up in relation to former Yugoslavia and Rwanda.

On 16 April 1998, I addressed a very small, but very select, group at a twilight seminar giving a progress report on the negotiations presently conducted in The Hague for a world-wide Convention on Jurisdiction and Recognition of Judgments in Civil and Commercial Matters. I delivered a similar address on 20 May 1998 to the Queensland Chapter which was very well attended and produced a lot of discussion.

On 11 June 1998, the International Trade and Business Law Committee held a very successful seminar at which Professor David Flint AM spoke on "Implications of the High Court's Decision in the Project Blue Sky Case". Sincere thanks are extended to Allen Allen & Hemsley for hosting the seminar, and to Andrew Percival for organizing it.

On 19 June 1998, Justice Michael Kirby AC, KMG delivered a brilliant address on "International Law – Can it Cope with the Genome and the Internet?" to a combined audience of our members and the Australian Institute of International Affairs at the Glover Cottages. As usual, Justice Kirby managed to interact with the audience and to hold its attention throughout. His Honour was kind enough to repeat that performance for the members of the Queensland Chapter at a Breakfast Meeting in Brisbane on 25 June 1998. Once again I want to express our thanks to one of our most eminent members for his constant readiness to speak to our members.

On 30 July 1998, the Human Rights Committee presented a very well attended twilight seminar at which Dr Michael van Langenberg spoke on "After Suharto: Prospects for Human Rights in Indonesia". The talk led to very lively discussion which was continued during the dinner that followed.

On 1 October 1998, the Indigenous Rights Committee held a very well attended twilight seminar at which Mr Mick Dodson, Director of the Indigenous Law Centre at the University of New South Wales, spoke on: "International Standards for Indigenous Rights: does Australia measure up?" In the chair was Professor Garth Nettheim, who is also the Chair of the Committee. It was good to note the interest shown in this important topic by Dean Jeremy Webber of the Sydney University Law School and by Justice Fitzgerald of the Supreme Court of NSW, formerly President of the Queensland Court of Appeal.

On 22 October 1998, the International Trade and Business Law Committee held a twilight seminar at the premises of Freehill, Hollingdale and Page on the topic of "Dumping on Your Mates: a Trans-Tasman Experience". The seminar was held with the Chairman of the Committee, Mr Keith Steele, presiding. The speaker was Mr Grant David, senior partner with the New Zealand law firm Chapman Tripp. Mr Andrew Percival of KPMG Legal was the commentator. It was a great success and the Branch has expressed its thanks to Freehill, Hollingdale and Page for their hospitality.

On 23 November 1998, the Committee held a second twilight seminar in the KPMG Auditorium on "Environmental and Trade Law Issues: WTO Dispute Resolution Procedures and the Canadian Salmon Case". Speakers included Greg Rose, formerly of the Department of Foreign Affairs and Trade and our Hon Secretary, Martijn Wilder. It was a great success.

Finally, the Annual General Meeting will be held once again at the Glover Cottages, courtesy of the Australian Institute of International Affairs on Monday 7 December 1998. It will be followed by an address by Paul Kelly, International Editor of *The Australian*, who will speak on "Issues in International Trade". The commentator will be Mr Mack Williams, former Ambassador to the Republic of Korea and to the Philippines.

## ACTIVITIES OF CHAPTERS

### *Queensland Chapter*

On 22 April 1998, there was a joint Association/Law Council of Australia meeting on the "Multilateral Agreement on Investment" presented by Professors Jan McDonald and Mary Hiscock. The meeting was a twilight seminar and provoked many interesting questions for which the speakers gave penetrating and well-educated answers. The status of the treaty negotiations was discussed as well as its effect on Australia's national interests. The types of exceptions and reservations to the treaty were traversed, together with the possible impact on Australia's environmental, labour and foreign investment laws. Professor Jan McDonald noted that 51 of the world's 100 largest economies are transnational corporations and posed the question: "who benefits most from the MAI?" In addition, the dispute resolution procedures were profiled and an illustration of the expropriation provision was also given.

As mentioned earlier, I presented a twilight address to the Chapter on 20 May 1998 on the topic of "Towards Global Enforcement of Judgments: An Update on the Hague Judgments Convention". The meeting was well attended as it remains an area in which Queensland members retain a significant interest.

Also mentioned earlier was the address on 25 June 1998 by the Hon Justice Michael Kirby AC, KMG. The address was given at a well attended breakfast meeting of the Chapter on the topic of "International Law – Can

it Cope with the Genome and the Internet?". It was followed by a short briefing by Dr Michael White QC on the events at the Taiwan Conference in May.

The Queensland Chapter is chaired by the Hon Dr Kevin Ryan. Its Hon Secretary is Mr Ian Bloemendal, c/- Clayton Utz, GPO Box 55, Brisbane, Queensland 4001; telephone (07) 3292 7217; facsimile (07) 3292 7950. Ian may also be contacted on email: [ibloemendal@claytonutz.com.au](mailto:ibloemendal@claytonutz.com.au). The Branch is very grateful to Ian and the members of the Chapter for their hard work and enthusiasm.

#### *Victorian Chapter*

This Chapter is co-chaired by Mr Peter Willis of Mallesons Stephen Jaques and Professor Gillian Triggs of the University of Melbourne. With the Law Council of Australia, they held a very successful seminar on 21 September 1998 at which Professor Christine Chinkin, Professor of International Law, University of London, spoke on "International Dispute Resolution: New Processes under the World Bank and Environmental Treaties.

The Chapter will hold a seminar next year at which I will speak on the latest developments in the Hague Judgments Convention negotiations following the Special Commission's meeting in The Hague in November 1998. The Chapter will also participate in February 1999 in the seminar to be held to celebrate the Centenary of the 1899 Hague Peace Conference.

#### *Canberra Chapter*

This Chapter meets under the chairmanship of Professor Don Greig, assisted by our Hon Treasurer, Christopher Ward. It held a function in June on Australian Oceans Policy which was well attended. It is planning a further meeting on the Law on Wrecks around the Australian Coast.

### **COMMITTEES OF THE BRANCH**

#### *Human Rights Committee*

This Committee operates under the chairmanship of Dr Keith Suter, very ably assisted by Ms Tara Gutman. It has conducted several seminars this year as described above.

*International Trade and Business Law Committee*

This Committee operates under the chairmanship of Mr Keith Steele with Mr Andrew Percival and Associate Professor Katrin Cutbush-Sabine as the co-conveners. It organized a series of seminars this year, as described above. In addition, the Committee has organized a Website for the Branch at [www.ila.org.au](http://www.ila.org.au). A home page for that Website is being prepared. It will contain a description of the aims of the Association and the Branch, the names and addresses of its officers and its committees and chapters, and announcements of future functions. It will also contain an e-mail address.

*Indigenous Rights Committee*

Its Chairman is Professor Garth Nettheim with Messrs Greg Marks and Alexis Barlow from Canberra as co-conveners. As mentioned, it held a seminar in Sydney on 1 October 1998. Future seminars in Sydney and Canberra are being planned.

*Law of the Sea Committee*

This Committee has Associate Professor Don Rothwell as convener. It held a seminar in Wollongong in conjunction with the Marine Law and Policy Institute of the University of Wollongong on 27 November 1998.

*Military Law Committee*

Its chair is Commander Robin Warner, RAN. It is actively planning seminars to be held in Canberra and Sydney next year, on a range of interesting and topical issues.

**PUBLICATIONS**

The 1997 issue of the Australian International Law was published and distributed early in 1998. It has received great interest internationally and we are exploring means of improving its marketing overseas. The 1998 issue has "gone to bed" and will be out shortly. The Journal has received considerable attention overseas. One of the subscribers is the Library of the International Court of Justice in The Hague.

The Bulletin appeared in April and October. As usual, it was both challenging and informative and much appreciated by the membership.

Plans to go on the Internet with a Website will not affect the future of the Bulletin (at least not until our entire membership is on the Internet), since the proposed Website will be a small one giving details about the Branch and its management and of any functions planned.

No Martin Place Papers were published this year. It is not intended that any be published each year, the cost of printing and distribution would be prohibitive. A copy of the Martin Place Paper on the East Timor Seminar of 1995 was sent to the Secretary General of the United Nations to assist his efforts in arriving at a solution. It was graciously acknowledged.

### **1998 JESSUP MOOT**

The 1998 Australian finals of the Jessup International Law Moot competition was held at the Australian National University from 19-21 February. The topic this year was international criminal law, including the validity of the *ad hoc* war crimes tribunals, their relationship to national law and the law of extradition. As usual, the President of the Branch presided over one of the Benches at the semi-finals.

The winning team was the University of Sydney with the Australian National University coming in second place. In the international finals held in Washington DC in late March 1998, the Australian National University team also finished in second place. Congratulations on a fine performance which keeps up the Australian tradition of always being in the top ten of the competing teams! The President and Vice-Presidents were invited by the Australian National University Law School to attend a thank-you dinner in Canberra. Their gesture is greatly appreciated.

The Australian moot final was held at the High Court of Australia. The Bench consisted of Justice Hayne, Mr Henry Burmester and Ms Kate Eastman. At the awards dinner, the President of the Branch handed awards from the Harold Snelling Fund to each of the two winning teams and the Harold Snelling Prize for the Best Memorial to the University of Western Australia team. The Branch has supplemented the capital of the Fund which had become depleted as the result of lower interest rates, to ensure that prizes can continue to be awarded out of the income of the Fund in the future.

## CONCLUDING REMARKS

It has been a great pleasure and a privilege to have served as your president in the past 4 years. I thank you for the confidence you have shown in me and I hope it has not been misplaced. I also want to thank the present and past members of the Management Committee who have so ably assisted me in what has been at all times a team effort.

In particular, I want to thank the Senior Vice-President, Margaret Brewster, who has been throughout a driving force in the organization and has ensured that a lot of plans actually took shape. She has done this, I know, at great personal sacrifice coming to many meetings in Sydney, sometimes at very short notice.

I also want to thank the other Vice-President, Professor Ivan Shearer, for his wise counsel and ready availability to assist. The Hon Secretary, Martijn Wilder, has managed to conduct an often thankless task despite his very great responsibilities elsewhere and the Hon Treasurer, Christopher Ward, has managed to maintain the course on even keel set by his predecessor, Eugene Khoo, and all the while preserving the hard won gains of the first Treasurer in my period of office, Greg Pearce.

I also thank our *de facto* sole Director of Studies, Dr Keith Suter, who has organized many of our functions and Professor David Flint AM, who despite not holding any formal office, has continued his efforts to find interesting speakers for us. I would like to single out for special mention Ms Tara Gutman who has organized many of our functions.

Thanks are due to the Editor in Chief of the Australian International Law Journal, Associate Professor Alexis Goh, which is published under the auspices of the Branch by the Faculty of Law at the University of Western Sydney Macarthur. Under her editorship, it has developed into a learned journal of international stature. I also want to express my gratitude to Mrs Lesley-Gaye Wong, who virtually single handedly with the assistance of her son, has produced the Bulletin of the Branch which keeps our members together and informs them.

Finally, I want to thank Allen Allen & Hemsley. They have supported us during the past few years not only by supplying us with meeting rooms and allowing their associates to work for us as secretaries and treasurers, but in

supplying the necessary infrastructure as well. Additionally, we are very appreciative of the consistent support we have received over the years from Freehill, Hollingdale and Page. The support of, and participation by, the profession are very important to us.

November 1998

**INTERNATIONAL LAW ASSOCIATION**  
(Founded 1873)  
**AUSTRALIAN BRANCH**

**Patron**

The Hon Sir Gerard Brennan AC KBE

**Office Bearers**

*(as on 16 November 1998)*

***President***

Hon Dr Peter Nygh

***Co-Vice Presidents***

Miss Margaret Brewster  
Professor Ivan Shearer AM

***Co-Directors of Studies***

Dr Keith Suter

*(vacant)*

***Hon Secretary***

Mr Martijn Wilder

***Hon Treasurer***

Mr Christopher Ward

***Immediate Past President***

The Hon Sir Laurence Street AC, KCMG, QC *(ex officio)*

***Committee of Management***

Associate Professor Katrin Cutbush Sabine  
Professor David Flint AM  
Associate Professor Alexis Goh  
Professor Don Greig  
Ms Tara Gutman  
Professor G Nettheim  
The Hon Mr Justice RNJ Purvis  
Mrs Lesley-Gaye Wong