Teaching and Research in International Law in Australia

By J.R. Crawford
Challis Professor of International Law, University of Sydney

Historical background

(i) The British acquisition of Australia and its implications

In terms of the history of mankind, Australia has been settled for a considerable period of time: estimates of the length of time the Aboriginal peoples of Australia have been living there vary, and the date has tended to be pushed back by recent discoveries and the use of advanced dating techniques. At present the estimate is of the order of 40–50,000 years, though some parts of Australia were settled much more recently than that. Unfortunately this aspect of Australia's history went virtually unrecorded: there were undoubtedly contacts between Northern Australian groups and people from what is now Indonesia and Papua New Guinea, and perhaps with Portugese sailors and traders also. Aboriginal groups undoubtedly had frequent contacts with other groups. Some of these were hostile but others involved trade, exchange, intermarriage and alliance.[1]

In terms of recorded history, the first event of significance both to the Aborigines and to the intending British settlers of Australia was an international legal event, or at least an event with international legal implications: the so-called "discovery" of Eastern Australia and the claim to British sovereignty over the whole of Eastern Australia made by Captain Cook in 1770, and followed up by the settlement of Sydney Cove and the Proclamation of Eastern Australia as the colony of New South Wales in 1788. This event had implications both externally, so far as the competing claims to territory of other countries (by this stage principally the French) were concerned, and internally, so far as the Aborigines were concerned. The British annexation of Australia proceeded on the basis that the whole continent was legally terra nullius, and no treaty or other arrangement (similar for example, to the Treaty of Waitangi in the North Island of New Zealand) was concluded.[2] Australian courts have always regarded the process by which Australia was acquired in international law, and even (so far) the appropriate classification of that process, as a matter which is not justiciable by virtue of the Act of State doctrine.[3] However, the consequences of acquisition remain justiciable, and there was very active debate, commencing at the early stages of settlement after 1788 but which has, remarkably enough, continued to the present day, about the impact of settlement on the status and allegiance of the

1. See Maddock, K, *The Australian Aborigines* (2nd edn, 1982); G. Blainey, *Triumph of the Nomads* (Sun Books, rev. edn, 1983).
2. For a comparison see Evatt, E, "The Acquisition of Territory in Australia and New Zealand", in Alexandowicz, H, (ed), Grotius Society Papers 1968, *Studies in the History of the Law of Nations* (1970) 16.
3. *Cooper* v *Stuart* (1889) 14 App Cas 286, 291; *Milirrpum* v *Nabalco Pty Ltd* (1971) 17 FLR 141 (Blackburn J); *Coe* v *Commonwealth of Australia* (1979) 24 ALR 118.

Aboriginal peoples. The argument that, receiving no protection from British Laws, the Aborigines owed no allegiance to them, was made and rejected in 1836,[4] but it has continued to arise, in various forms, since. Indeed, a Parliamentary Resolution moved by the Commonwealth's Minister for Aboriginal Affairs in 1983, would have declared that:

(a) the people whose descendants are now known as the Aboriginal and Torres Strait Islander people of Australia were the prior occupiers and original owners of Australia and had occupied the territory of Australia for many thousands of years in accordance with an Aboriginal system of laws which determined the relationship of Aboriginal responsibility for and to the land to which they belonged;

(b) from the time of arrival of representatives of King George III of England, and the subsequent conquest of the land and the subjugation of the Aboriginal people, no settlement was concluded between those representatives and the Aboriginal and Torres Strait Islander people;

(c) as a result of the colonization of the lands by Great Britain the rights of the original owners and prior occupiers were totally disregarded . . .[5]

Again however, the debate relates to the consequences of the situation, not its factual or legal effectiveness. And these consequences are now bound up, inseparably, in a range of concerns about the present position of Aboriginal people, concerns which are reflected in a developing interest (in western countries at least) as to the international law relating to minority and indigenous rights.[6]

(ii) The colonial period (1788–1920)

The first lawyers in the new Australian colonies were of course British trained, and most of them were officials. Conditions in the colonies in the early years were exceptional, and often very difficult, but the emphasis in terms of change was towards rather than away from British models. Trial by jury was introduced, in as near as possible its English form, and many other peculiarities of English institutions, including the separation of law and equity, were adopted as part of the general following of English models.[7] The treatment of Australia as a settled colony entailed the general application of English common law, which was adjudged suitable to the condition of each colony with only minor exceptions, and of statutory law as at the date of reception (which was either the date of initial colonisation or some later date fixed by statute).[8] At this time, international law issues were of comparatively minor significance, such matters being dealt with by the Imperial authorities in Whitehall.

4. *R* v *Jack Congo Murrell* (1836) 1 Legge 72. See Castles, AC, *An Australian Legal History* (1982) 526–31.
5. House of Representatives, *Parl Debs* (8 December 1983) 3485. The resolution has not been further proceeded with. See also Commonwealth of Australia, Senate Standing Committee on Constitutional and Legal Affairs, *Two Hundred Years Later . . . The Feasibility of a Compact or 'Makarrata' between the Commonwealth and Aboriginal People* (1983) esp 35–48. For a somewhat different view see Hookey, "Settlement and sovereignty" in Hanks, P, Keon-Cohen, B, (eds) *Aborigines and the Law* (1984) 1.
6. See eg the Australian works cited below, n 48.
7. Castles, 97–8, 111–12, 132–9, 178–9; cp *Dugan* v *Mirror Newspapers Ltd* (1978) 22 ALR 439.
8. Castles, chs 1,15,17.

On the other hand, when Australian universities started to be established in the latter half of the 19th century (e.g. Sydney (1850), Melbourne (1852), Adelaide (1874)), it was envisaged that Law would be one of the degrees offered, although the realisation of these plans took considerably longer to achieve.[9] To quote Professor Shearer:

> "As in England, the first courses in Law in Australian universities were given in the faculties of Arts and were associated with the teaching of history. Hearn, in Melbourne, for example, arrived in 1855 to teach in the areas of History, Political Economy and Law, and did not assume the title of Professor of Law until the establishment of separate Faculty of Law in 1873. In Sydney there was no regular curriculum in law until the establishment of a School of Law, and the appointment of Pitt Cobbett as its first professor in 1890. The same year saw the establishment of the first chair of law in the University of Adelaide, with Dr. F.W. Pennefather as its incumbent, although the School of Law itself had been formally created in 1883."[10]

The early Australian law schools were small institutions, with a handful of students each year, and with the teaching shared between one full-time member of staff, the Professor of Law, together with part-time teachers drawn from the local legal profession. Indeed this remained the pattern for legal education until the 1950s, when the modern professional law schools, with a preponderance of full-time staff and a significant number of students, began to be established. Moreover, students studied legal subjects in conjunction, in most cases, with work as articled law clerks in the local legal firms. Nonetheless, partly because of the tendency to adopt English models (so far as legal education is concerned, comparatively recent models) of university education as with other things, and partly perhaps because the demand for "practical experience" and attention to the minutiae of legal practice was substantially met by the dose of experience law students had as articled clerks, the actual curricula of the early Australian Law Schools were remarkably broad and general in character, including both classical languages, some arts subjects, and general law subjects with an emphasis upon public law, both constitutional law (most of it *English* constitutional law) and international law. International law was a compulsory subject in all the early Australian law courses, though it did not always remain so.[11] It is probable that the subject International Law was taken to encompass both a fairly broad range of Public International Law (both the laws of war and of peace, which were then much more nearly co-equal in terms of emphasis in the subject than they are now) and aspects of private international law. This is no longer the case: all Australian law schools offer their own separate courses in conflicts of law or private international law, for the most part taught by persons who do not profess to be public international lawyers. The irony is that the links between private international law and public international law are in some respects closer now than they ever were, with the elaboration of considerable numbers of uniform

9. Here as elsewhere in this Paper I rely heavily on Shearer, "The Teaching of International Law in Australian Law Schools" (1983) 9 Adelaide LR 61.
10. Id, 63.
11. Id, 65,69–70.

conventions on private international law (e.g. under the auspices of the Hague Conference on Private International Law and similar bodies[12]), and through the adoption of uniform conventions on substantive private law matters, especially in the area of international trade. These developments present special problems of private international law and of legal interpretation to which international lawyers have a contribution to make.[13]

Whatever the reason for the early emphasis on public and international law issues in Australian law courses, the fact is that the first Australian law professors tended to be public lawyers, and a number of them made a name for themselves as international lawyers. Pitt Cobbett, whose only major work *Leading Cases and Opinions in International Law* was first published in 1885, was born in Adelaide, and after an education in England was appointed to the first Challis Chair of Law at Sydney University in 1890. He advised the Commonwealth Government during the First World War on international law matters. His book, which went to six editions, was frequently cited by other writers in the first half of the century, and was the first book produced by an Australian to have any impact in the field of international law.[14] Indeed, it was probably the first book produced by an Australian on any international law topic. By contrast, other early law professors, though they often taught international law, had primary areas of interest elsewhere, for example in constitutional law (Hearn and Harrison Moore), legal history (Jenks), or jurisprudence (Salmond and Jethro Brown).

It has to be remembered that, despite the federation of the six Australian colonies in 1900 to form the Commonwealth of Australia, Australia remained, both legally and attitudinally, very much a British colony until the First World War. There was no significant international involvement on the part of Australia in terms of international conferences or other diplomatic activities, although there grew up practices of consultation and involvement of the colonies in imperial treaty making, a process recorded in detail by Professor O'Connell.[15] The impact of the First World War, the first general war in which Australia was involved, began to change both the attitudes and the law. Australia was separately represented, though as part of an Imperial delegation, at the Versailles Conference, and became a separate signatory to the Treaty of Versailles.[16] It was a separate party to the League of Nations. These were the first significant steps

12. Australia is a party to both the Statute of the Hague Conference on Private International Law, 1955: Aust TS 1973 No 29, and the Statute of the International Institute for the Unification of Private Law, 1940 (as amended): Aust TS 1973 No 10. There is useful discussion of developments in these and related fields at the International Trade Law Seminars convened annually by the Commonwealth Attorney-General's Department: see eg *Tenth International Trade Law Seminar* (Canberra, 18–19 June 1983) (1983).
13. See eg Crawford and Edeson, "International Law and Australian Law" in Ryan, KW, (ed) *International Law in Australia* 2nd edn (1984) 71.
14. See Shearer, 66–7 for details of Pitt Cobbett's career.
15. O'Connell, DP, *State Succession in Municipal Law and International* (1967) I, 16–47; O'Connell, "The Evolution of Australia's International Personality", in O'Connell, DP, (ed) *International Law in Australia* (1966).
16. See Crawford, J, *The Creation of States in International Law* (1979) 238–46.

towards the acquisition by Australia of a recognised international personality, and towards its separate involvement in international relations.[17]

(iii) The period of growing involvement in international relations: 1920–1945

It might have been expected that this development would lead to an increased interest in the study of international law in Australian Law schools. Paradoxically the reverse seems to have been the case. As Professor Shearer has recorded,[18] international law was not taught at all at Adelaide, or as a separate subject at Melbourne, in the period 1918–1932 — the crucial period of the evolution of Australia's separate personality, and an even more crucial period in modern international relations. The exception was Sydney, where a Challis Chair of International Law and Jurisprudence was established in 1920, to which A.H. Charteris was elected. Both Charteris and Coleman Phillipson of Adelaide (Professor of Law, 1920–1925) produced a considerable amount of writing on international law matters,[19] and K.H. Bailey (later Sir Kenneth Bailey), appointed professor at Melbourne in 1927, and professor of public law in 1930, was also to achieve a considerable international reputation as a government lawyer and diplomat.[20] But as Professor Shearer points out, their individual reputations do not seem to have coincided with any general increase of interest in the subject in Australia.[21] Although there are exceptions, the general outlook of the Australian legal profession at this time, and for several more decades, remained remarkably insular, with little concern for or knowledge of even North American developments, let alone developments elsewhere in the world outside the British Empire. The growth of expertise in international law was largely limited to the new Department of Foreign Affairs, and even then, as Professor Shearer suggests, the growth of specialisation was inhibited by the substantial influence of Kenneth Bailey as Commonwealth Solicitor General (1946–1964).[22] Authoritative advice on international law matters was thus readily available, and although the Department of Foreign Affairs had its own Legal Adviser, Bailey's was the dominant voice.

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17. Ibid; O'Connell, "The Evolution of Australia's International Personality" (above n 15); O'Connell and Crawford, "The Evolution of Australia's International Personality", in Ryan, KW, (ed) *International Law in Australia* (1984) 1; Kidwai "International Personality and the British Dominions: Evolution and Accomplishment" (1976) 9 UQLJ 76.
18. Shearer, 69–70.
19. Id, 70.
20. See id, 71–2, 75 for Bailey's career. After the 1930s he did not write much; but see eg Bailey, "Australia and the Geneva Conventions on the Law of the Sea" in O'Connell, DP, (ed) *International Law in Australia* (1966) 228. Bailey's important role in the Geneva Conference on the Law of the Sea in 1958 was repeated by Ambassador K.G. Brennan in the drafting of the Montego Bay Convention: see Brennan, "Australia and the Law of the Sea — The International Sea-bed" in Ryan, KW, (ed) *International Law in Australia* 2nd edn (1984) 419.
21. Shearer, 72–3. An Australian and New Zealand Society of International Law was established in 1933, but produced only one volume of *Proceedings* before disappearing: see (1935) 1 Proceedings of the Australian and New Zealand Society of International Law.
22. Shearer, 75.

The slow growth of international law specialisation in the universities: 1945 to the present

Although Australia played a significant role in international relations in the immediate post-war period (including some role in the drafting of the United Nations Charter, and the presidency, held by Dr Evatt in 1948–9, of the United Nations General Assembly[23]) this seems to have had no direct impact on international law research or teaching 'at home'. However, the period from 1945 to the early 1960s saw the beginnings of a very substantial change in legal education in Australia, and closely associated with it a growth of increased professionalisation and specialisation in international law studies, teaching and research. The two senior Australian international lawyers who have had a major impact on the literature of international law were establishing themselves during this period. Julius Stone was appointed Challis Professor of International Law and Jurisprudence, in succession to Charteris, in 1942: he was to hold that Chair for thirty years.[24] D.P. O'Connell was appointed to a readership in law at the University of Adelaide, his first academic job, in 1953, after completing a doctorate at Cambridge and spending a short time in legal practice in New Zealand.[25] He was to hold that chair for nearly twenty years, before being appointed to the Chichele Chair of International Law in the University of Oxford in 1972.[26] It is worth noting that both Stone and O'Connell were born and educated outside Australia, Stone in the U.K., O'Connell in New Zealand and the U.K. Both came to Australia to take up senior university positions. Other non-Australian international law teachers and scholars spent shorter periods in Australia during the 1950s and 1960s, before going elsewhere: these included Wolfgang Friedman,[27] and also C.H. Alexander (Alexandrowicz).[28] But Stone and O'Connell, who stayed in Australia for long periods of time and whose work, though never in any sense parochial or merely local in focus, acquired an Australian connotation, can be regarded as the first Australian international legal scholars, since Pitt Cobbett, to achieve an international reputation. It is fair to say that the ''trade'' was not all one way: Australian-trained lawyers who went

23. H.V. Evatt (1894–1965) was, at different times, a judge of the High Court of Australia, Attorney-General and Minister for Foreign Affairs, and Federal Opposition Leader. See Tennant, K. *Evatt, Politics and Justice* (1970). For his writings on international law and relations see eg Evatt, HV, *The United Nations* (1948); *The Task of Nations* (1972, reprint of 1949 edn).
24. For a survey of Stone's career see Shearer, 76; and see also Blackshield, AR, (ed), *Legal Change. Essays in Honour of Julius Stone* (1983). Stone's successor in the Challis Chair was Professor DHN Johnson, formerly Professor of International Law and Air Law in the University of London. For his views on some of the issues dealt with here see ''Lecture on the Study of International Law'' (1980) 3 Soochow LR 1.
25. Shearer, 76–7.
26. He died (in part from overwork) in 1979: see Shearer, ''Obituary: Professor D.P. O'Connell'' (1981) 7 Aust YBIL xxiii. For review of his international law work see Crawford, ''The Contribution of Professor D.P. O'Connell to the Discipline of International Law'' (1980) 51 BYBIL 1.
27. Shearer (1983) 75.
28. Alexandrowicz was an Associate Professor in International Organisations at Sydney University from 1961 to 1968: see e.g. Alexandrowicz, CH, *The Law-Making Functions of the Specialised Agencies of the United Nations* (1973); and Alexandrowicz, ''Australia and GATT'', in O'Connell, DP, (ed) *International Law in Australia* (1966) 87.

on to make their mark on international law in North America included Edward McWhinney[29] and L.F.E. Goldie.[30] At this time also, Australian-born international lawyers whose subsequent careers were essentially Australian included J.G. Starke[31] and Kevin Ryan.[32]

During the 1960s Australian legal education changed rapidly and decisively. Whereas until the 1950s, law schools had consisted of a very small number of full-time teachers assisted by substantial amounts of part-time teaching from members of the legal profession, during the 1960s with the very substantial increase in the number of students seeking a legal education, and the increasing specialisation of Australian law, the structure and (to a lesser extent) the aims of Australian law schools changed significantly. Many new members of staff were recruited, new law schools were established, and the bulk of teaching came to be carried out by full-time university teachers. This process has continued, though with some consolidation in the face of economic stringency in the past decade.[33] Accompanying these changes has been an increase in the range of subjects offered for the law degree, an increase in choice for students amongst those subjects, and a concomitant increase in specialisation in teaching particular subjects. This situation has carried with its both difficulties and challenges for international law as a discipline, which I will refer to later in this paper. It has certainly led to a substantial increase in the number of Australian legal scholars professing some substantial interest in international law or particular aspects of it. There has also been an expansion of postgraduate teaching in international law, most of it as part of coursework postgraduate Diplomas or Masters degrees, though this has tended to be confined to a few universities, including Sydney University and Monash University, but especially the Australian National University, which is the only Australian university with a specialist postgraduate course in international law (leading to a Diploma in International Law or a Masters in International Law).[34]

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29. see eg McWhinney, "On the Vocation of our Age for Lawmaking: Constitutional and International Codification in an Era of Transition and Rapid Change" in Blackshield, AR, (ed) *Legal Change. Essays in Honour of Julius Stone* (1983) 241. McWhinney was a Sydney graduate whose subsequent career has been entirely North American.
30. See eg Goldie, "International 'Confidentiality'. State Sovereignty and The Problem of Consent" in Blackshield, AR, (ed) *Legal Change. Essays in Honour of Julius Stone* (1983) 316. Goldie, a graduate of the University of Western Australia, worked in government and at the ANU until 1959; since then he has taught at various United States Law Schools.
31. See Shearer (1983) 75–6, and see esp. Starke, JG, *An Introduction to International Law* 8th edn (1977); Starke, JG, *Studies in International Law* (1965); Starke, "Australia and the International Protection of Human Rights" in Ryan, KW, (ed) *International Law in Australia* (1984) 136. Starke is Editor of the Australian Law Journal, maintaining in that Journal a monthly segment "International Legal Notes".
32. K.W. Ryan was Garrick Professor of Law in the University of Queensland until his appointment to the Queensland Supreme Court in 1984. His wide-ranging interests included both public international law and international trade law. See e.g. Ryan, "Australia and International Trade Law" in Ryan, KW, (ed) *International Law in Australia* (1984) 277.
33. See generally Australasian Universities Law Schools Association, Report No. 2, *Legal Education in Australian Universities* (Butterworths, 1977).
34. For details see Appendix 1. The new courses are one of a number of innovations brought about by Professor D.W. Greig, Professor of Law at ANU since 1974. See e.g. Greig, DW, *International Law* (2nd edn, Butterworths, 1976) and the works cited below. Monash University has a specialist Diploma in International and Comparative Law: for details see Appendix 1.

The present situation

At present, international law is offered in some form in each of the ten university law schools in Australia, as well as at the New South Wales Institute of Technology Law School. It is also offered in one of the two other Australian universities which has a Legal Studies course, rather than a professional law course (La Trobe; the other Legal Studies course, at the University of Newcastle, does not include international law, having a predominantly commercial orientation). Details of the courses offered by the twelve institutions are set out as Appendix 1 to this paper. (It should be noted that courses in international trade law (with an emphasis on private and commercial relations), civil rights (with an emphasis on Australian as distinct from international human rights law) and conflicts of law are excluded from the list in Appendix 1.) It is noteworthy that these twelve institutions between them offer no fewer than 48 distinct courses, again reflecting the trend towards specialisation and diversification of curricula which has been a feature of Australian legal education in the last 15 years. But this phenomenon has other reasons, amongst them the enormous growth of the scope and content of international law since 1945, and the consequent difficulty of dealing with it in any comprehensive way in a single course. The courses listed in Appendix 1 may be classified as follows:

Classification	*Number of courses*	*Comments*
General International Law Courses	12	Offered by all institutions as a full or part-year subject.
Advanced International Law Courses	3	Adelaide; ANU; Sydney (extended undergraduate course, in fact concerned with international humanitarian law)
International organisations	5	ANU; Macquarie; (Monash (2); Queensland
Human Rights/Humanitarian Law	8	Human Rights offered by Adelaide; ANU; La Trobe; Monash; NSWIT; NSW; Tasmania. International Humanitarian Law offered by NSW, and see comment re Sydney Advanced International Law Course.
Law of the Sea	4	ANU (2); Melbourne; Monash
Air and Space Law — International Transport Law	5	ANU (2); Monash; NSWIT; Sydney
International Economic Law	7	ANU (3); Monash (2); NSWIT; Sydney

Classification	*Number of courses*	*Comments*
Other International Law	3	ANU (''Enforcement of International Law''); La Trobe (''International & Comparative Environmental Law and Policy''); Monash (''Law of Treaties'')
Other non-law	2	ANU (2) (''Principles of International Economics'' and ''International Politics'', both required for Grad.Dip.Int.L./ M.Int.L.)

To some extent these classifications are misleading. Sydney's advanced international law course at the undergraduate level is essentially a course in humanitarian law. Queensland general international law course has a very substantial law of the sea component, equivalent to some of the separate semester courses in other institutions. The two non-law courses listed as part of the Australian National University's postgraduate requirements are included because they are a prerequisite for those specialist international law degrees. In all Universities it would be possible for students with an interest in international relations to take equivalent subjects in other Faculties, and a number do so as part of Law/Arts, or Law/Economics degrees.

Nonetheless the figures are remarkable, and very different from what would have been shown by a similar survey undertaken, say, in 1960, which would have revealed only 7 Australian law schools (one in each State, and the Australian National University), and only one general international law course in each. The change is apparently even more striking when the numbers of undergraduate and postgraduate courses are compared; of the courses listed in Appendix 1, 29 are specifically undergraduate courses, as many as 15 are specifically postgraduate courses (as part of the ANU Diploma or Masters courses, the Monash Diploma course, or subject Masters degrees in other universities), and 4 (all at the ANU) are available both to undergraduate and postgraduate students. In 1960, there were no postgraduate coursework degrees in law in Australian universities.[35]

In another respect these statistics are also somewhat misleading. There is no denying the increased range of choice in international law and related courses now open to Australian students. But a number of the courses are not offered in any particular year (5 of the 33 undergraduate courses in 1984) and of those that are offered, a number have very small enrolments. Outside the major centres of Sydney, Melbourne and Canberra, only relatively small numbers of students undertake postgraduate coursework degrees. Moreover many of the undergradu-

35. For analogous developments in Canada see Macdonald, ''An Historical Introduction to the Teaching of International Law in Canada Part III'' (1976) 14 Can YBIL 224, 253–6.

ate courses are offered over less than the full academic year (which consists, depending on the particular university, of two semesters or three terms). In 1960, almost all law school courses would have been full year courses. The overall picture is one of diversification and increase in choice, but with the risk of fragmentation, leading to the loss of coherence that a full year international law course can achieve.

As I have suggested, one reason for the diversification of courses is the growth of specialisation in international law itself; this is especially evident in areas such as human rights, international economic law and to a lesser extent, the law of the sea and international organisations. But another major reason for the diversification has been the general trend in the development of legal education. The increased range of general law subjects, and the pressure on students to do subjects which are perceived to be particularly useful for professional purposes (especially the commercial law and taxation subjects) has been one factor leading to the offering of smaller elective courses which students can afford to take. Developments in areas of local interest but with international law implications have also led to the offering of subjects in which students do aspects of international law rather than general international law: the proliferation of human rights and humanitarian law courses is the best example of this. It is not normally a prerequisite to the study of these subjects that the students have done the general international law course.

In addition to the postgraduate coursework degrees, all Australian universities offer the opportunity to students to undertake Masters or Doctoral degrees by thesis, taking from two to five years.[36] A number of international law theses have been done this way, although Australian law graduates wishing to undertake postgraduate work, especially thesis work, will often attempt to do so overseas, either in the United Kingdom or North America or (less commonly) Western Europe.

Obviously, each Australian law school which offers one or more international law courses has to provide appropriate teachers for those courses, and in fact each of the institutions listed in Appendix 1 has on its staff between 1 and 5 persons professing some level of specialisation in international law. Although such classifications are necessarily imprecise, it is possible to count slightly more than 30 persons in this category, though not all of these would class themselves as primarily international law specialists. Nonetheless a survey of persons currently teaching international law and related courses in Australian universities is of some interest. Of those who would regard themselves as primarily international lawyers, there are four professors, two of whom (D.H.N. Johnson of Sydney, D.W. Greig of the Australian National University) were English trained but are now naturalised Australians, two of whom did their undergraduate degrees at Adelaide, and went on to do postgraduate work in England or North America (the present writer, at Adelaide; I.A. Shearer of University of N.S.W.).[37] This comparative diversity of origins is also reflected in a survey of

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36. See Appendix 1, n 3.
37. See Crawford (above n 16): Shearer, IA, *Extradition in International Law* (1971). Other Australian law professors with some interest in international law include R.D. Lumb (Queensland), A.C. Castles (Adelaide) C.G. Weeramantry (Monash).

the larger group of international law teachers in Australian Universities, which includes lawyers trained in New Zealand, England, Western Europe, Ceylon, India and possibly elsewhere.

On the other hand, there is very little international law teaching or international law-related research carried out outside the Law Departments in Australia, a situation which contrasts markedly with that in many other countries in the region (e.g. India, Japan, Republic of Korea). Only a few non-lawyers have made a significant contribution to the field in Australia: J.R.V. Prescott, a political geographer from Melbourne University, is one of the exceptions.[38]

Key emphases in teaching and major trends in research

(i) General observations

This outline of the development of international law teaching in Australia already says a good deal about the key emphases in teaching. So far as research is concerned, the basic emphasis of the "Australian" international lawyers, and this is as true of those lawyers trained in Australia as of those (such as Stone and O'Connell) who came to Australia after their legal education was completed, and with some at least with the basic groundwork done, has been on making a general contribution to the literature of international law, for the most part without specifically or identifiably Australian elements or even emphases. This has certainly been the case with the older generation of international lawyers such as Stone (whose fields of interest where primarily international dispute settlement, the use of force between states, and the status of Palestine and Israel), O'Connell (who was a general international lawyer but whose specific interests included state succession, the law of the sea, and problems of maritime zones in federal states) and J.G. Starke. It is, I believe, equally true of the present generation of Australian international lawyers, whose work will be referred to as appropriate in the rest of this Paper.

(ii) Themes of special interest to Australia

Nonetheless, there has, especially in more recent times, been a degree of focussing of interests and research on subjects of particular concern to Australia or to what is loosely described as the Australian and Asian-Pacific "region". Thus important work has been done on a range of topics such as:

- Questions of statehood and state succession, including issues relating to the emergence of Australia as a state.[39]
- The status of Antarctica, and of Australian claims to Antarctica.[40]

38. See eg Prescott, JRV, *Map of Mainland Asia by Treaty* (1975). There are also a number of international lawyers not directly involved either in University work or in the Foreign Affairs or Attorney-General's Departments: e.g. Dr RP Schaffer, Dr K Suter.
39. See the works cited above, nn 16–17.
40. See especially Auburn, FM, *Antarctic Law and Politics* (1982). Cp. also Castles, "The International Status of the Australian Antarctic Territory" in O'Connell, DP, (ed) *International Law in Australia* (1966) 341.

- The law of the sea (with some emphasis upon maritime resources zones and fisheries.[41]
- International Law and federalism in its various aspects (constitutional power, treaty making and treaty implementation, and maritime zones).[42]
- Decolonization, in particular as it related to Australia's former colonial territories.[43]
- Nuclear non-proliferation, which has been a particularly active subject of debate in Australia in the last decade.[44]
- Extra-territoriality, in particular in the context of extensive United States claims for extra-territorial jurisdiction in anti-trust matters.[45]
- Human rights, especially the debate over Australia's ratification of the International Covenant on Civil and Political Rights of 1966, and over the domestic implementation of the Covenant.[46]
- The law of foreign state or sovereign immunity, both at common law and with a view to possible Australian legislation on the topic.[47]

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41. See esp O'Connell, DP, *The International Law of the Sea* (ed Shearer, IA) vol 1 (1982) vol 2 (1984)). See also O'Connell, "The Juridical Nature of the Territorial Sea" (1971) 45 BYBIL 303. On issues of immediate concern to Australia see Brennan (above n 20); Lumb, "Australian Coastal Jurisdiction" in Ryan, KW, (ed) *International Law in Australia* 2nd edn (1984) 370; Landale and Burmester, "Australia and the Law of the Sea — Off Shore Jurisdiction" in Ryan, KW, (ed) *International Law in Australia* 2nd edn (1984) 390; Burmester, "Australia and the Law of the Sea — The Protection and Preservation of the Marine Environment" in Ryan, KW, (ed) *International Law in Australia* 2nd edn (1984) 439; Ryan and White, "The Torres Strait Treaty" (1981) 7 Aust YBIL 87; Burmester, "The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement" (1982) 76 AJIL 321.
42. On the Australian constitutional implications see Sawer, "Australian Constitutional Law in Relation to International Relations and International Law" in Ryan, KW, (ed) *International Law in Australia* 2nd edn (1984) 35; Connell, "International Agreements and the Australian Treaty Power" (1968–69) 4 Aust YBIL 83; Zines, L, *The High Court and the Constitution* (1981) ch 13. On the role of the States see Burmester, "The Australian States and Participation in the Foreign Policy Process" (1978) 9 FLR 257.
43. See Castles, "International Law and Australia's Overseas Territories" in O'Connell, DP, (ed) *International Law in Australia* (Law Book Co., Sydney, 1966) 292; Commonwealth of Australia, Senate Standing Committee on Foreign Affairs and Defence, *United Nations Involvement with Australian Territories* (AGPS, 1975); Crawford (above n.16) chs 13–14.
44. E.g. D.W. Greig, 'The interpretation of treaties and Article IV.2 of the Nuclear Non-Proliferation Treaty' (1978) 6 *Aust. YBIL* 77. See also Commonwealth of Australia, Ranger Uranium Environmental Inquiry, *First Report* (AGPS, 1976) chs 12–13.
45. e.g. M. Sornarajah, 'The Extraterritorial Enforcement of U.S. Antitrust Laws: Conflict and Compromise' (1982) 31 ICLQ 127.
46. See e.g. G.D. Evans, 'An Australian Bill of Rights' (1973) 45 *Aust.Q* 4. G. Triggs, 'Australia's Ratification of the International Covenant on Civil and Political Rights: Endorsement or Repudiation?' (1982) 31 ICLQ 278. For a recent statement of Commonwealth policy see G. Evans, 'Human Rights and International Law' (1984) *Aust. ILNews* 133.
47. G. Triggs, 'Restrictive Sovereign Immunity: The State as International Trader' (1979) 53 *ALJ* 296; D.H.N. Johnson, 'The puzzle of sovereign immunity' (1978) 6 *Aust. YBIL* 1; P. Sutherland, 'Recent Statutory Developments in the Law of Foreign Sovereign Immunity' (1981) 7 Aust. *YBIL* 27; J.R. Crawford, 'Execution of Judgments and Foreign Sovereign Immunity' (1981) 75 *AJIL* 820; J.R. Crawford, 'A Foreign State Immunities Act for Australia?' (1983) 8 *Aust. YBIL* 71; J.R. Crawford, 'International Law and Foreign Sovereigns: Distinguishing Immune Transactions' (1983) 54 *BYIL* 75; M. Sornarajah, 'Problems in Applying the Restrictive Theory of Sovereign Immunity' (1982) 31 *ICLQ* 66; G. Triggs, 'An International Convention on Sovereign Immunity? Some Problems in Application of the Restrictive Rule' (1982) 9 *Monash ULR* 74; Australian Law Reform Commission, Report 24, *Foreign State Immunity* (1984).

- The question of indigenous or minority rights in international law, in particular having regard to Aboriginal demands for change.[48]
- The relationship between Australian law and international law, both general international law and treaties.[49]
- The status and treatment of refugees.[50]

However, it would be wrong to suggest that the research and writing detailed under each of these heads (and the list is not exhaustive) reflects any single Australian position or perception on these issues. Certainly, the work can be identified as being broadly within the "Western" tradition of international law scholarship, though the techniques and, in theory at least, the material of international law are common to the discipline and are not, or should not be, particular to specific national, regional or cultural traditions. The basic point remains that the writings listed above are on the whole Australian only in the focus of their concerns, and then only partly so. For example, there has been both support for, and opposition to, the validity of Australian claims to Antarctica, as well as some informed scepticism.[51] A range of views has been taken on the relevance of international law to indigenous people such as the Aborigines.[52] Australian and international lawyers have both supported and criticised the broad interpretation of the external affairs power in the context of implementation of treaties,[53] recently adopted by the High Court of Australia.[54] There has been support both for an international convention on foreign state immunity (presumably based on the work of the International Law Commission),

48. See E.G. Whitlam, 'Australia's International Obligations on Aborigines' (1981) 53 *Aust. Q* 433; G. Nettheim, 'Justice and Indigenous Minorities: A New Province for International and National Law', in A.R. Blackshield (ed) *Legal Change, Essays in Honour of Julius Stone* (Butterworths, Sydney, 1983) 251; G. Nettheim, 'The relevance of international law' in P. Hanks & B. Keon-Cohen (eds) *Aborigines and the Law* (George Allen & Unwin, Sydney, 1984) 50; Australian Law Reform Commission, Aboriginal Customary Law Research Paper 10, 'Separate Institutions and Rules for Aboriginal Peoples — International Prescriptions and Proscriptions' (1982) and see the works cited above n.5.
49. For general survey see Crawford & Edeson (above n.13). See also D.P. O'Connell, 'The Relationship between International Law and Municipal Law' (1960) 48 *Georgetown LJ* 431; I. Tammelo, 'Relations between the International Legal Order and the Municipal Legal Orders — A "Perspectivist" View' (1967) 3 *Aust. YBIL* 211; J. Crawford, 'The International Law Standard in the Statutes of Australia and the United Kingdom' (1979) 73 *AJIL* 628; J. Crawford, 'General International Law and the Common Law' (1982) 76 *PASIL*; W.R. Edeson, 'Conclusive Executive Certificates in Australian Law' (1981) 7 *Aust. YBIL* 1. cf. also R.P. Schaffer, 'The Inter-Relationship between Public International Law and the Law of South Africa: An Overview" (1983) 32 ICLQ 177.
50. e.g. Johnson, "Refugees, Departees and Illegal Immigrants' (1980) 9 Sydney LR 11; Schaffer, "South-East Asian Refugees — the Australian Experience" (1981) 7 Aust YBIL 200; Greig, "The Protection of Refugees and Customary International Law" (1983) 8 Aust YBIL 108; Fonteyne, "Burden-Sharing: an Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees" (1983) 8 Aust YBIL 162; Coles, "Temporary Refuge and the Large Scale Influx of Refugees" (1983) 8 Aust YBIL 189.
51. See the works cited above n 40.
52. See the works cited above n 48.
53. Constitution s 51(xxix). See the works cited above n 42.
54. *Koowarta* v *Bjelke-Petersen* (1982) 39 ALR 417; *Commonwealth* v *Tasmania* (1983) 46 ALR 625. On the international law implications of the latter case see also Sornarajah, "International Law and the *South West Dam Case*" in Sornarajah, M (ed) *The South West Dam dispute: The legal and political issues* (1983) 23.

for further common law development, and for Australian legislation.[55] Similar disagreements or divergences of approach could be pointed to in other areas.

In short, it is doubtful whether there are "trends" in international law research in Australia, if this is intended to mean the emergence of a consensus of opinion on a range of issues, as distinct from a tendency to focus on a range of issues. And, given the wide-ranging interests of different international lawyers in Australia, and the tendency towards specialisation in international law teaching already described, even the notion of a focus of interest in international law research in Australian might seem an overstatement.

Responses to new challenges

(i) Various challenges, various responses

As this conclusion would suggest, it is not the function, and it certainly has not been the practice, of international law teachers in Australian universities to respond collectively to new challenges facing Australia as a society, internally or in international relations. Of course, responses there must be, but they have been mostly mediated through the individual research and other work of particular scholars, as is practically inevitable in an individualistic system such as exists in Australia. Even where there has been some uniformity in response, as Appendix 1 suggests there has been in the area of curriculum development and the provision of courses, this has been more by way of a similar response to similar conditions and pressures facing universities than the result of any ordered or collective decision.

On the other hand there can be no doubt that Australia as a society is responding in a variety of ways to perceived developments and pressures at the international level, as well as employing international developments in various ways for reasons of its own. This is true, for example, in areas such as human rights protection,[56] law reform,[57] and treaty making.[58] Moreover there has been a considerable increase in the level of Australian participation in international relations in a variety of forums, both general and regional, as an expression of Australian concerns on particular issues and for the peace and stability of the region and the world. This can be seen in the increased Australian involvement in the acceptance of refugees, especially from South-East Asia but also from elsewhere.[59] It can be seen in Australian involvement in the nuclear non-proliferation debate, a matter of particular concern given the export of some of

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55. See above n 47.
56. See below nn 61–65.
57. The Law Reform Commission Act 1973 (Cth) s 7 requires the Commission in its work to have regard to the terms of the International Covenant on Civil and Political Rights 1966. A number of the Commission's projects also have international implications outside the human rights field: e.g. foreign state immunity (see above n 47), admiralty jurisdiction.
58. On Australian treaty practice see Campbell, "Australian Treaty Practice and Procedure" in Ryan, KW (ed) *International Law in Australia* 2nd edn (1984) 53. The volume of Australian treaty-making has substantially increased in the last 15 years, as attested by the Cumulative Supplement to the Australian Treaty List (Aust TS 1971 No 1): mimeo, Dept. of Foreign Affairs, Canberra, 1983.
59. See above n 50.

Australia's very large reserves of uranium.[60] One area in which this response has been most marked has been that of human rights: in the past ten years there have been two major pieces of Federal legislation, based on international conventions, for the protection of human rights. These are the Racial Discrimination Act 1975, based upon the International Convention for the Elimination of all Forms of Racial Discrimination of 1965,[61] and the Sex Discrimination Act 1983, based in part upon the Stockholm Convention for the Elimination of All Forms of Discrimination against Women of 1979.[62] Moreover there has been a continuing debate about the proposal for an Australian Bill of Rights based (for constitutional reasons) upon the International Covenant on Civil and Political Rights of 1966. The Australian Labor Party, which was in Government at the Federal level between 1972 and 1975, and has been again since 1983, has supported the introduction of an enforceable Bill of Rights in some form. Earlier versions of such a Bill of Rights were rejected by the Senate, the upper house of the Australian Parliament, in 1973 and 1975,[63] and somewhat different proposals for a Bill of Rights are again under consideration. On the other hand the Liberal-National Country Party Coalition which has been in Government in Australia for most of the last thirty years, has historically opposed an enforceable Bill of Rights on a variety of grounds.[64] Their alternative was a Human Rights Commission, with power to investigate and report upon alleged violations of human rights as enunciated in the International Covenant on Civil and Political Rights and other instruments, but with no enforcement powers.[65] The debate is a continuing one, but on any view the impact of international law in the area of protection of human rights in Australia has been significant. This is only one among a number of areas in which international developments are increasingly likely to affect Australian law, and to be at the centre of debates about policy and public affairs. Plainly enough, in informing and educating the public, and in other ways, the role of international lawyers in Australia in these areas is an important one. It is perhaps the principal "new challenge", though the response, so far at least, remains decentralised and diffuse.

(ii) Participation in international law activities

In parallel with the Commonwealth Government's increased involvement, in the last 15 years, in international affairs, is the potential for increased involvement on the part of individual international lawyers in international activity of a variety of kinds. The record of individual involvement, through participation and election, is a good one, though so far it falls short of the highest aspirations. These has been only one Australian judge on the International Court of Justice,

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60. See above n 44.
61. Aust TS 1975 No 40. The constitutionality of the Act was upheld by the High Court in *Koowarta* v *Bjelke-Petersen* (1982) 39 ALR 417 under the Convention in conjunction with the external affairs power (s 51(xxix)).
62. Aust TS 1983 No 9. The Act is based in part upon the external affairs power and the Convention, in part on other powers.
63. For example, Human Rights Bill 1975 (Cth). See above n 46.
64. For a lucid expression of this view see Menzies, RG, *Central Power in the Australian Commonwealth* (1967) 49–55.
65. Human Rights Commission Act 1981 (Cth).

Sir Percy Spender, a former Cabinet Minister and Minister for Foreign Affairs, who as President of the International Court in the *South West Africa Cases (Second Phase)*[66] cast the fateful casting vote which resulted in the Court declaring the applications in that case inadmissible. The reasoning of the "majority" decision was more the product of Judge Fitzmaurice's merciless analysis than it was of President Spender's vote, but President Spender's vote it was that carried the day. The decision has been criticised, and much of the substance of what was denied by the Court in 1966 was regained, over Judge Fitzmaurice' strident dissent, in the *Namibia Opinion* in 1971.[67] The bitter reaction on the part of some third world countries against the Court's decision has been said to be one factor for Sir Kenneth Bailey not achieving election to the International Court in succession to Sir Percy Spender.

Australia has had no representative on the International Law Commission, and no very distinguished record of elected experts to United Nations expert committees. Australia has engaged in international litigation on a few occasions, most notably before the International Court of Justice in the *Nuclear Tests case* against France, the jurisdictional strategy for which was devised by Professor O'Connell,[68] but the result of which, from an Australian perspective, was perhaps only a draw. On the other hand at the individual and private level the record is considerably better. Perhaps the most significant is the impact individual scholars have had through their writing and other professional work. No younger international lawyer has yet achieved the distinction of Professors Stone and O'Connell in the field, but there have been significant contributions in particular areas, and the general texts by O'Connell, Starke and Greig have been widely used. There have been only three Australians elected to the *Institut de Droit International,* Bailey, Stone and O'Connell; with Stone's resignation from the Institut, there is now no Australian member. Two Australian international lawyers have received the Certificate of Merit of the American Society of International Law for particular works (Stone, 1956; Crawford, 1981).[69] A number of Australians have been honoured by invitations to deliver lectures on particular topics at the Hague Academy of International Law,[70] and Australian lawyers have been prominent in the sessions conducted by the San Remo International Institute of Humanitarian Law.[71] At the local level the *Australian Year Book of International Law* is now well established: it was first edited by J.G. Starke, and is now edited from Canberra by Professor D.W. Greig.[72] Most

66. ICJ Rep 1966 p 6.
67. ICJ Rep 1971 p 15. See Crawford (above n 16) ch 13.
68. ICJ Rep 1974 p 253.
69. For, respectively, *Legal Controls of International Conflict* (1954) and *The Creation of States in International Law* (1979).
70. Stone, "Problems Confronting Sociological Inquiries Concerning International Law" (1956) 84 HR 61; Alexandrowicz "The Afro-Asian world and the law of nations (historical aspects)" (1968) 123 HR 117; O'Connell, "Recent Problems of State Succession in relation to New States" (1970) 130 HR 95; Dunbar, "Controversial aspects of sovereign immunity in the case of some States" (1970) 130 HR 197.
71. For comments on the Institute from an Australian perspective see Starke, (1982) 56 ALJ 374; (1983) 57 ALJ 185; (1984) 58 ALJ 469.
72. Vol 9, containing the papers delivered at a Red Cross Conference on International Humanitarian Law in February 1983, appeared at the end of 1984.

Australian international lawyers are also members of the International Law Association, the Australian branch of which (founded in 1959) is the second largest of the branches of that Association. Until relatively recently, the principal activity in which the Branch was involved was the biennial meetings of the Association, and work on committees on particular projects in relation to those meetings. However, the Australian Branch has broadened the scope of its activities in recent years, both through holding seminars on particular topics, through the publication of a series of short monographs entitled *Martin Place Papers,*[73] and through the publication of a newsletter entitled *Australian International Law News,* which apart from local news of interest in the international law field, carries recent documents and other information of interest to members of the association. Finally, in recent years students from Australian law schools have been actively engaged in the Jessup International Law Moot, with considerable success. Eight Australian teams have now travelled to the United States to participate in the final round of the Jessup Moot (Adelaide (4), Melbourne (2), ANU and NSW one each). These teams have competed with considerable success, and two of them have reached the grand final of the competition, Adelaide losing in 1979, and the Australian National University winning in 1981.[74] Participation in the Jessup Competition has proved a splendid opportunity for Australian law students, with teams from a majority of Australian law schools now involved on a regular basis.[75]

Problems of the profession

In an important sense, Australian international lawyers do not form part of a single "profession". Some of them, of course, are civil servants working within the Department of Foreign Affairs or the Attorney-General's Department as career diplomats or departmental officials. Others are law teachers in universities or similar institutions. A few work for Government agencies or as members of

73. The Papers so far published are: Flint, DF, *Foreign Investment and the New International Economic Order* (Martin Place Paper No 1, Sydney, 1983) (reprinted in Hossain, K, and Chowdhury, R, (eds) *Permanent Sovereignty over Natural Resources in International Law* (1984) 144); Shearer, IA, (ed) *Prospects for a New Law of the Sea* (Martin Place Paper No 2, Sydney, 1983).
74. See (1981) 5 ASILS ILJ 145.
75. Overall the Australian record has been as follows:

Year	*Subject*	*Winner of Australian Regional Rounds*	*Place in international Division*
1977	Nuclear Energy	Adelaide	3rd
1978	Secession	Adelaide	2nd
1979	Transfer of Technology	Adelaide	1st, and runner up in Jessup Cup.
1980	Air and Outer Space	Melbourne	2nd
1981	Maritime boundaries	ANU	1st, and Winner of Jessup Cup.
1982	Human rights	Melbourne	4th
1983	Transnational pollution	University of N.S.W.	9th
1984	Expropriation of foreign property	Adelaide	4th

private legal firms. In each case, and irrespective of the orientation of the individual lawyer towards international law, it can be argued that the profession to which he or she belongs is at least broader if not different. Some officials in the Department of Foreign Affairs have both training and a considerable interest in international law: indeed, apart from their contribution to the work of the Department of Foreign Affairs through attendance at diplomatic conferences etc., a number have made valuable contributions to the literature of international law.[76] But the Australian Department of Foreign Affairs (and in this respect it may well be no different than any of its counterparts in other countries) regards its primary function as representing Australia's interests in the international arena, as these are perceived or determined from time to time. Moreover, promotion within the Department requires officers to engage in a variety of functions, including ordinary diplomatic work, the administration of sections or divisions, and so on. The emphasis upon a range of generalist skills and experience is inimical to specialisation. Conflicting demands and loyalties also exist for other members of the international law "profession". For example, university teachers, though they may regard international law as their primary specialisation, nonetheless work in Departments of Law in which the teaching and administrative demands are great, and which cover a very wide range of subjects. There is considerable pressure upon international law teachers to teach other areas of law in addition, and (except at the most senior levels) these pressures are supported by natural desires for promotion within the Department and University. Indeed there are few international lawyers in Australia who do not spend significant amounts of their time teaching other subjects (quite often other public law subjects, such as constitutional and administrative law, but quite often subjects which may be entirely diverse, such as commercial law, the law of torts etc.). At senior levels of the law teaching profession, there may be a greater facility to specialise, but there are also greater demands in terms of university and departmental administration. Most law schools have only two or three professors of law: in such situations, the "other" responsibilities are likely to be great, and the teacher's own sense of responsibility may require the teaching of large compulsory subjects, notwithstanding a personal preference for international law teaching and research.

There is, therefore, probably not in any clear or obvious way an international law "profession" in Australia. But this does not mean that international lawyers have no community of interest, or that their concerns and problems cannot be addressed in some collective way. In fact there is a considerable collegiality amongst international lawyers, especially in the universities, in Australia, which is supported by annual meetings at the time of the Australian final of the Jessup Moot Competition (regularly held in Canberra in February), through meetings of

76. See eg Widdows, "What is an Agreement in International Law?" (1979) 50 BYBIL 117; Widdows, "The Form and Distinctive Nature of International Agreements" (1981) 7 Aust YBIL 114; Widdows, "The Unilateral Denunciation of Treaties Containing No Denunciation Clause" (1982) 53 BYIL 83; de Stoop, "Australia and International Criminal Law", in Ryan, KW, (ed) *International Law in Australia* 2nd edn (1984) 155; Coles (above n 50). P. Brazil of the Attorney-General's Department (now Secretary of that Department) has also made a contribution in a number of areas; see eg Brazil, "Some Reflections on the Vienna Convention on the Law of Treaties" (1975) 6 FLR 223.

an international law interest group at annual meetings of the Australasian Universities Law Schools Association in August, and in other ways.

There are, I think, three main problems facing international lawyers in Australia, at least those who are also law teachers, which present obstacles to the achievement of the highest professional standards, and the highest professional goals, in the field. These are, first, the comparative absence of international legal work outside governmental circles in Australia; secondly, the remoteness of Australia and consequent difficulties of access to materials; and thirdly, the problems of specialisation in the university environment.[77] I shall say something briefly about each of these.

Australia is a relatively remote and very large country of only 15 million people. Although it engages in a substantial amount of international trade, it is not itself, at least yet, a centre for international banking, finance or other international activity. There is only one international organisation based in Australia, an offshoot of the Antarctic Treaty concerned with the marine environment.[78] Australia is not a place at which international conferences are regularly held, or which is regularly visited by Heads of State, Ministers of Foreign Affairs or other senior personnel of other countries from outside the region. As a consequence, there is relatively little work directly in the international law area in Australia compared with the situation, for example, in Western Europe or North America. Most of the work that is done is done by governments or government agencies. It is therefore difficult for international lawyers in the universities to accumulate much experience in the day to day issues of international law, or to acquire a feeling for the practice of international law. This problem is made worse by the fact that traditionally the Department of Foreign Affairs has been, for whatever reason, resistant to involving international lawyers from outside the Department in its work. It is perhaps significant that, as far as the present writer is aware, neither Julius Stone nor D.P. O'Connell were substantially used as advisers by the Department of Foreign Affairs, during what were otherwise very successful international law careers. (The principal exception, in O'Connell's case, was his involvement as counsel in the *Nuclear Tests Case,* although it appears that the initiative for that case came from outside the Department.) There has in the past been no tradition of Department of Foreign Affairs support for leading Australian international law scholars, in the context of membership of bodies such as the International Law Commission, a situation which contrasts markedly with the British record in this respect. On the other hand, it may well be that this situation — which is perhaps more a matter of inertia than of any deliberate or considered policy — is undergoing change. There have certainly been movements from Government Legal Service to the universities and vice versa: the present Legal Adviser to the Department of Foreign Affairs is a former university law teacher,[79] and there is now a facility for

77. Some of the problems of specialisation for Government lawyers are referred to above.
78. The Commission for the Conservation of Antarctic Marine Living Resources, established by the Convention on the Conservation of Antarctic Marine Living Resources 1980 (Aust TS 1982 No 9) with its base in Hobart, Tasmania (Art XIII).
79. GA Brennan. See e.g. Holder, WE, and Brennan, GA, *The International Legal System. Cases and Materials with Emphasis on the Australian Perspective* (1972). His co-author, WE Holder, is now a legal adviser with the IBRD in Washington.

selected academics to spend a year in residence within the Department (a facility not limited to international lawyers but certainly available to them). Moreover the barriers which used to exist between the Commonwealth Public Service and the universities or private enterprise are themselves becoming less formidable. A university professor was, for example, recently appointed as Secretary (that is, permanent head) of the Department of Foreign Affairs, and similar outside appointments have been made to some other Commonwealth Departments. Moreover, there are good personal relations between members of the Legal and Consular Division of the Department of Foreign Affairs and international lawyers in the universities, and these relations have been strengthened and supported by invitations to university teachers to lecture to the Department's Foreign Service Training Course, and by jointly organised seminars held from time to time.

A second difficulty, which adds considerably to the problems of remoteness outlined in the previous paragraph, is simply the product of Australia's geopolitical position. Notwithstanding modern methods of communication, Australia remains remote, and it can be difficult to obtain the full range of information, on an up-to-date basis, as to what is happening in international affairs. Moreover, much helpful information is obtained not through formal sources but through contact and discussion with colleagues. In Australia this is difficult enough even between individual universities, and more difficult still on an international basis. Books and periodicals, unless the extra expense of airmail is incurred, take three to four months to arrive. Attendance at seminars or conferences overseas is expensive, and since the timing of these conferences is frequently planned to fit in with the northern academic year (September/October to June) rather than the southern academic year (March to November) it can also clash with university commitments. Again, however, it is important not to overstate these difficulties. Compared with the difficulties which existed, for example, in 1942 or 1953, they seem slight. Most Australian law schools have good law libraries and a number have good international law collections (the informal ranking of international law collections at present appears to be, first, Adelaide (the D.P. O'Connell collection), second, the Australian National University, and third, the University of N.S.W. (which includes the Jenks collection)). Moreover, there are at least some facilities and funds for Australian legal scholars to travel on both short and longer visits overseas, and there is an increasing flow of overseas visitors to Australia. The problems caused by comparative isolation have not disappeared but they have been substantially reduced.[80]

The third problem has already been referred to: the problem of maintaining an international law specialisation against the demands of university law schools for teaching a range of subjects, for involvement in administration, and so on. The problem is all the greater for the character of modern international law, an entire legal system which in the last thirty years has grown at a phenomenal rate, and the literature and materials of which, taken alone, are probably greater than those

80. Australian practice on international law is also now more readily available through the section on 'Australian Practice', prepared by Mr Jonathan Brown of the Department of Foreing Affairs: see eg (1983) 8 Aust YBIL 255–458.

of any single municipal legal system, including even the common law systems. There is in Australia only one Chair of Law specifically devoted to international law: the Challis Chair at Sydney.[81] Elsewhere university promotion tends to depend upon being good at more than a single subject, no matter how large or important it may be.

Despite these continuing difficulties, the fact remains that good work is being done by Australian international lawyers, both within government agencies and in the universities. If ultimately the "top jobs" in international law from the point of view of scholarship or research would require resettlement in North America or Western Europe, perhaps this is only a reflection of the economic and political realities. And the demands and needs of Australia, as an increasingly multicultural society in its part of the world, demand their own attention and analysis, attention and analysis which they are increasingly receiving.

Agenda for the future

For reasons which should have already become clear, there is I think no agreed agenda, and probably could not be. Australian international legal scholars would agree on the need for a continuing general contribution to the literature of international law, a contribution which has, as the bibliography for this paper demonstrates, already been a considerable one. One might suggest that there will be emphases over the next ten years on particular areas, such as those already outlined in this paper. One might predict these emphases to occur in three broad fields: in ascending order of importance, the relationships between international law and municipal law (in this case Australian law), issues of international economic and resources law, and questions of international peace and security (including in particular nuclear non-proliferation and disarmament). But it is a function of a divided but interdependent world that these three questions could fairly be regarded as (or ought to be) the top of the world's agenda for itself. Lacking a distinctive national tradition, it is the opportunity of Australian international lawyers to contribute to these general, and crucial, issues.

81. See above nn 14,24.

APPENDIX 1

INTERNATIONAL LAW AND RELATED COURSES OFFERED AT AUSTRALIAN UNIVERSITIES

University	*Course(s)*[1]	*Undergraduate*[2] *Postgraduate*[3]	*Duration*[4]	*Approx. enrol-ment 1984*	*Comments*
Adelaide University	International Law I	u/g	2 terms	30	General course.
	International Law II	u/g	1 term	*	Advanced course, emphasising sources of international law.
	Human Rights	u/g	1 term	6	International and domestic human rights law.
Australian National University	Principles of International Law	u/g	1 semester	20	General course.
	Law of International Organisations	u/g	1 semester	10 u/g	Offered with increased assessment requirement as DipIntL/M IntL elective.
	Law of the Sea	u/g	1 semester	12 u/g	Offered with increased assessment requirement as DipIntL/M IntL elective.
	International Air & Space Law	u/g	1 semester	8	In substance also offered as DipIntL/M IntL elective under name of International Transportation and Communications Law.
	International Law of Human Rights	u/g	1 semester	20 u/g	Offered with increased assessment requirement as DipIntL/M IntL elective.
	Enforcement of International Law	u/g	1 semester	*	

University	*Course(s)*[1]	*Undergraduate*[2] *Postgraduate*[3]	*Duration*[4]	*Approx. enrol-ment 1984*	*Comments*
	International Law of Natural Resources	u/g	1 semester	6	Ditto
	Graduate Diplomat in Int'l Law/Masters in Int'l Law[5]				Total enrolment 55 (intake 30 pa).
	Compulsory Courses				
	International Law	p/g	full year		Advanced course in general international law.
	Principles of International Economics	p/g	1 semester		
	International Politics	p/g	1 semester		
	Electives (4 required)				
	Law of International Organisations	p/g	1 semester		Content as for undergraduate subject.
	Law of the Sea I	p/g	1 semester		Ditto
	Law of the Sea II	p/g	1 semester		
	International Transportation & Communications Law	p/g	1 semester		In substance also offered for undergraduate students as International Air & Space Law.
	International Law of Human Rights	p/g	1 semester		Content as for undergraduate subject.
	International Law of Natural Resources	p/g	1 semester		Ditto
	Legal Aspects of the International Trading System I	p/g	1 semester		

	Legal Aspects of the International Trading System II	p/g	1 semester		
La Trobe University (Department of Legal Studies)	International Legal Order	u/g	full year	10	General course
	Human Rights	u/g	1 semester	25	
	International and Comparative Environmental Law & Policy	u/g	1 semester	13	
Macquarie University	Transnational Law	u/g	1 semester	30	General course, but includes transnational corporations, freedom of movement, human rights.
	Law of International Organisations	u/g	1 semester	*	Offered every second year.
Melbourne University	International Law	u/g	full year	98	General course.
	Law of the Sea	p/g	1 semester	5	As part of course-work LL.M.
Monash University	International Law	u/g	1 semester	30	General course.
	International Organisations	u/g	1 semester	12	
	Human Rights B	u/g	1 semester	15	International and regional human rights.
	Diploma of International & Comparative Law				Candidates are required to take 8 courses from a range of options: only public international law-related courses are listed here.
	Law of the Sea	p/g			Available also for course-work LLM.
	International Air Law	p/g			
	International Economic Law & Organisations	p/g			

University	*Course(s)*[1]	*Undergraduate*[2] *Postgraduate*[3]	*Duration*[4]	*Approx. enrolment 1984*	*Comments*
	Law of International Political Organisations	p/g			
	Government Regulation of International Trade	p/g			
	Law of Treaties	p/g			
New South Wales Institute of Technology	Public International Law	u/g	1 semester	20	Offered twice-yearly.
	Air Law	u/g	1 semester	12	
	Human Rights	u/g	1 semester	15–20	
	International Economic Law	u/g	1 semester	15	
Queensland University	International Law	u/g	1 semester	30	Emphasis on Law of the Sea.
	International Organisations	p/g	1 semester	*	
Sydney University	Public International Law	u/g	full year		
	Basic course		2 hrs p.w.	74	General course.
	Extended course		3 hrs p.w.	30	Addition of International Humanitarian Law.
	International Economic Law	p/g	full year		Seminar course for course-work LLM.
	International Transport Law	p/g	full year		Seminar course for course-work LLM.
University of New South Wales	Public International Law	u/g	1 semester	36	4 hours per week.
	International Humanitarian Law	u/g	1 semester	20	2 hours per week.
	Human Rights Law	u/g	1 semester	35	4 hours per week.

University of Tasmania	Public International Law	u/g	full year	*	General course.
	Human Rights Law	u/g	half year	*	
University of Western Australia	International Law	u/g	full year	50	General course.

Notes:

* Indicates not offered in 1984.

1. Courses on Conflicts of Laws (Private International Law) and International Trade Law are offered in most Australian law courses, but are not listed here.
2. All undergraduate courses listed are 'optional' rather than 'compulsory' subjects for law students, although in some States international law ranks among a restricted list of subjects at least one of which must be taken to qualify the student for admission as a barrister and/or solicitor.
3. All Universities offer postgraduate degrees by thesis only at both Masters (LLM) and Doctorate (PhD) level. International law-related theses are not uncommon, but in general the level of postgraduate thesis work is low. In 1984 Sydney (6 students) and the ANU (1 student) had postgraduate students actively working on international law topics.
4. In general, the Australian University year is divided either into 3 terms of 8 or 9 weeks each or 2 semesters of 14 or 15 weeks each.
5. Candidates for the MIntL, in addition to subject work, are required to complete a thesis of approx. 15–20,000 words.

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