

INTERNATIONAL LAW IN AUSTRALIA REVISITED

I INTRODUCTION

Congratulations to the *Adelaide Law Review* on reaching its fortieth anniversary! Reading through the issues of the *Review* since its inception takes one of us (Crawford) back to days as a Student Editor in the late 1960s, then as a Staff Editor in the 1970s; to articles on public law,¹ and to preparing the edition in honour of Chief Justice Bray.²

But the focus of this piece is on international law in Australia, as manifested inter alia in the *Review*. The very first article to be published by the *Review* was a piece on the 1958 Geneva Conference on the Law of the Sea, based on a speech given in Adelaide by the then Solicitor-General of Australia, Sir Kenneth Bailey.³ Thereafter the *Review* stuck to its vocation as a national, even local, law review, but starting with volume 16, in 1994, it branched out more frequently into matters of international law,⁴

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¹ See, eg, MC Harris and JR Crawford, 'Power and Authorities Vested in Him — The Discretionary Authority of State Governors and the Power of Dissolution' (1969) 3(3) *Adelaide Law Review* 303; James Crawford, 'Senate Casual Vacancies: Interpreting the 1977 Amendment' (1980) 7(2) *Adelaide Law Review* 224.

² A special edition of the *Adelaide Law Review* celebrated the retirement of Chief Justice Bray from the Supreme Court of South Australia in 1980 (volume 7).

³ Sir Kenneth Bailey, 'Australia and the Law of the Sea' (1960) 1(1) *Adelaide Law Review* 1. On Bailey see James Crawford, "'Dreamers of the Day": Australia and the International Court of Justice' (2013) 14(2) *Melbourne Journal of International Law* 520, 521–38 ('Dreamers of the Day').

⁴ See, eg, Stephen Donaghue, 'Balancing Sovereignty and International Law: The Domestic Impact of International Law in Australia' (1995) 17(2) *Adelaide Law Review* 213; Eibe Riedel, '*Quo Vadis Europe?* The EU Treaty Reforms, Human Rights, Rule of Law and the Fight Against Terrorism' (2010) 31(2) *Adelaide Law Review* 241; Shol Blustein, 'From the Bottom-up: Redesigning the International Legal Response to Anthropogenic Climate Change' (2011) 32(2) *Adelaide Law Review* 305; Jonathan Crowe, 'Coherence and Acceptance in International Law: Can Humanitarianism and Human Rights be Reconciled' (2014) 35(2) *Adelaide Law Review* 251; Kim Sorensen, 'Sisyphus in the Agora: How the United Nations Working Group on the Use of Mercenaries Functions as a Special Procedure of the Human Rights Council' (2017) 38(1) *Adelaide Law Review* 257.

as befitted a law school with a distinguished record of teaching and research in the field.⁵

In 1983 Crawford wrote of Australia's 'comparative isolation', which rendered Australia's full participation in international law difficult.⁶ However, as Michael Kirby has written in the *Review*, '[i]nternational law grows in harmony with the technology of international flight, shipping, trade, satellites and telecommunications'.⁷ Nowhere has that been more true than in Australia. Sixty-one international airlines flew to and from Australia in 2018, with international scheduled passenger traffic in December 2018 alone recorded at almost 4 million.⁸ The total number of passengers that travelled in and out of Australia by air in 2018 was about 40 million; in the mid-1980s, that number was approximately 5.4 million.⁹ Notwithstanding its isolated geographical position, Australia is no longer 'remote' in terms of engagement with international affairs.¹⁰

It should not be forgotten that Australia has always, despite the historical remoteness from international affairs, manifested its support for a global rules-based order. It has done so by seeking to develop international law, by proclaiming an intention to abide by it, and by engaging with international organisations. Australia was first able to take its own steps in this regard following the First World War, as it began to acquire a recognised international personality and participate in its own name in international forums.¹¹ Australia was separately represented at the Versailles Conference (albeit as part of the British Empire delegation) and gained separate membership in its own right of the League of Nations.¹² Australia was no longer a 'colony within

⁵ As witness Faculty members such as DP O'Connell, Ivan Anthony Shearer, James Crawford, Hilary Charlesworth and Judith Gardam, not to mention current members of staff with interests in the field (eg, Rebecca LaForgia, Nengye Liu, Dale Stephens, Matthew Stubbs, and Nobu Teramura).

⁶ JR Crawford, 'Teaching and Research in International Law in Australia' (1981–83) 10 *Australian Yearbook of International Law* 176, 195 ('Teaching and Research').

⁷ Michael Kirby, 'The Growing Impact of International Law on the Common Law' (2012) 33(1) *Adelaide Law Review* 7, 9–10.

⁸ Australian Department of Infrastructure, Regional Development and Cities, Bureau of Infrastructure, Transport and Regional Economics, *Aviation: International Airline Activity December 2018* (Statistical Report, December 2018) 10 <https://www.bitre.gov.au/publications/ongoing/files/International_airline_activity_1812.pdf>.

⁹ Australian Department of Infrastructure, Transport, Cities and Regional Development, 'Annual Totals — Flights, Passengers, Freight and Mail', *International Airline Activity — Time Series* (Web Page) <https://www.bitre.gov.au/publications/ongoing/international_airline_activity-time_series.aspx>.

¹⁰ Crawford, 'Teaching and Research' (n 6) 195.

¹¹ *Ibid* 179–80.

¹² *Ibid* 179.

an empire'.¹³ It accepted the compulsory jurisdiction of the Permanent Court of International Justice.¹⁴ Furthermore, it acquired full treaty-making power through the Imperial Conferences of 1926, 1930 and 1937, and set up its Department of External Affairs in 1935.¹⁵ After the end of the Second World War, Australia began setting its own foreign policy, independent of the United Kingdom.¹⁶ Australia was a founding member of the United Nations and an elected member of the United Nations Security Council in 1946.¹⁷ It assumed the Presidency of the United Nations General Assembly in 1948–49.¹⁸

Australia was thus quickly, and substantially, engaged in the post-war international legal order. In more recent years, federal governments of all political stripes have continued to advocate for an international rules-based order and have demonstrated support for international institutions which promote respect for international law.¹⁹ Australia successfully ran for a seat on the Security Council for 2014 and has announced a bid for a seat in 2029–30.²⁰ Australia also successfully ran for a seat on the Human Rights Council for 2018–20.

¹³ Hilary Charlesworth, 'Dangerous Liaisons: Globalisation and Australian Public Law' (1998) 20(1) *Adelaide Law Review* 57, 58, quoting James Crawford, 'International Law and Australian Federalism: Past, Present and Future', in Brian Operskin and Donald R Rothwell (eds), *International Law and Australian Federalism* (Melbourne University Press, 1997) 325, 327.

¹⁴ Declaration signed at Geneva on 20 September 1929, approved by the Parliament in 1930.

¹⁵ Ivan A Shearer, 'The Teaching of International Law in Australian Law Schools' (1983) 9(1) *Adelaide Law Review* 61, 69. For a detailed account of the Imperial Conferences and evolution of Australia's treaty-making power, see Alison Pert, 'The Development of Australia's International Legal Personality' (2016) 34 *Australian Yearbook of International Law* 149, 173–7.

¹⁶ Crawford, 'Teaching and Research' (n 6) 181; Crawford, 'Dreamers of the Day' (n 3) 3; See also Hilary Charlesworth et al, 'Deep Anxieties: Australia and the International Legal Order' (2003) 25(4) *Sydney Law Review* 423.

¹⁷ Australia was also an elected member of the United Nations Security Council in 1956, 1973, 1985 and 2014.

¹⁸ Crawford, 'Teaching and Research' (n 6) 181; Speech by Malcolm Turnbull, Prime Minister of Australia on 30 October 2015 on the 70th anniversary of the United Nations: Julie Bishop, 'The United Nations Security Council' (2016) 34 *Australian Yearbook of International Law* 468, 474.

¹⁹ Australian Government, *2017 Foreign Policy White Paper* (White Paper, November 2017) 24, 44, 79 ('*2017 Foreign Policy White Paper*'); Marise Payne, 'Australia's National Statement to the United Nations General Assembly' (Speech, New York, 28 September 2018): 'we will be safer and more prosperous in a world where global differences are managed, and global challenges met, by agreed rules rather than by the exercise of power alone'; Australian Department of Defence, *Defending Australia in the Asia-Pacific Century: Force 2030* (White Paper, 2009) 2.9; Australian Government, *Australia in the Asian Century* (White Paper, October 2012) 3; Australian Department of Defence, *2016 Defence White Paper* (White Paper, 2016) 1.17.

²⁰ *2017 Foreign Policy White Paper* (n 19) 82.

Australia's engagement with international law has continued in key areas such as the law of the sea and nuclear non-proliferation.²¹ As to the latter, in 2017 Australia announced its aim to strengthen the *Treaty on the Non-Proliferation of Nuclear Weapons* ('NPT'),²² notably through the 2020 and 2025 review cycles of the NPT.²³ Australia continues to support the Joint Comprehensive Plan of Action ('JCPOA'), despite the United States' withdrawal, and advocates the coming-into-force of the *Comprehensive Nuclear-Test-Ban Treaty*.²⁴ It is a proponent of a treaty banning the production of fissile material for nuclear weapons and was a member of the group of experts tasked by the General Assembly with preparing a draft text for the elaboration of an international agreement on the subject.²⁵ However, Australia has not signed the 2017 *Treaty on the Prohibition of Nuclear Weapons*²⁶ and continues to adopt an express policy of extended deterrence, dependent on the United States' maintenance of its nuclear arsenal.²⁷

In relation to the law of the sea, as Bailey identified in the first edition of this *Review*, one of Australia's major concerns as an island nation has been the openness of the seas for the benefit of Australia's 'economy, [its] safety and ... the existence of [its]

²¹ See the East Asia Summit Statement on Non-Proliferation on 8 September 2016: Yooree Lee, 'Non-Proliferation of Nuclear Weapons and Other Weapons of Mass Destruction' (2017) 35 *Australian Yearbook of International Law* 502, 502; Crawford, 'Teaching and Research' (n 6) 196; *2017 Foreign Policy White Paper* (n 19) 7, 94.

²² *Treaty on the Non-Proliferation of Nuclear Weapons*, opened for signature 1 July 1968, 729 UNTS 161 (entered into force 5 March 1970). See also *2017 Foreign Policy White Paper* (n 19).

²³ *2017 Foreign Policy White Paper* (n 19) 84. See also Australia's joint statement (with 62 other states): Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Treaty on the Non-Proliferation of Nuclear Weapons: addressing the nuclear challenge of the Democratic People's Republic of Korea*, 2nd sess, UN Doc NPT/CONF.2020/PC.II/9 (7 May 2018) para 3.

²⁴ For a draft of this treaty, see Richard Butler AM, *Adoption of the Agenda and Organization of Work Comprehensive Test-Ban Treaty*, 5th sess, Agenda Items 8 and 65, UN Doc A/RES/50/245 (26 August 1996) annex.

²⁵ *2017 Foreign Policy White Paper* (n 19) 84; In relation to the establishment of the expert preparatory committee, see United Nations General Assembly, *Resolution adopted by the General Assembly on 23 December 2016*, 71st sess, Agenda Item 98, UN Doc A/RES/71/259 (11 January 2017) and the report of the high-level fissile material cut-off treaty expert preparatory group, , United Nations General Assembly, *Resolution adopted by the General Assembly on 17 December 2018*, 73rd sess, Agenda Item 73, UN Doc A/RES/73/159 (11 January 2019); In relation to Australia's support for the treaty, see David Yardley, 'United Nations Disarmament Commission', David Yardley, *Counsellor (Political), Australian Mission to the United Nations*, 3 April 2017, 2 <<https://s3.amazonaws.com/unoda-web/wp-content/uploads/2017/04/Australia.pdf>>.

²⁶ *Treaty on the Prohibition of Nuclear Weapons*, opened for signature 20 September 2017 (not yet in force). Nor did Australia participate in the elaboration of its text.

²⁷ *2017 Foreign Policy White Paper* (n 19) 39, 84.

communications, by sea and by air, in peace and in war'.²⁸ This historical concern for the maintenance of freedom of navigation, consistent with international law,²⁹ has continued.³⁰ Australia was an early signatory of the 1958 *Geneva Conventions on the Law of the Sea*³¹ and played an active role during their elaboration, especially regarding negotiations on the territorial sea and contiguous zone.³² More recently, Australia has been supportive of the 1982 *United Nations Convention on the Law of the Sea* ('UNCLOS'), which it ratified in 1994.³³ It has made use of UNCLOS procedures, for example in relation to the proclamation of its continental shelf.³⁴ Australia was the first state — jointly with New Zealand — to initiate an Annex VII Arbitration under UNCLOS.³⁵ Australia's election to Category B of the Council of the International Maritime Organization in December 2017 confirms Australia's engagement with the regulation of maritime transport.³⁶ It has also played a role in the further development of the law of the sea,³⁷ for example advocating a new international agreement under UNCLOS on the conservation and sustainable use of marine biodiversity in the high seas.³⁸

²⁸ Bailey (n 3) 5. Australia has the world's third largest Exclusive Economic Zone.

²⁹ Ibid 14.

³⁰ *2017 Foreign Policy White Paper* (n 19) 47.

³¹ Bailey (n 3) 11.

³² Ibid 21.

³³ Australia ratified UNCLOS on 5 October 1994; Christian Wirth, 'Whose "Freedom of Navigation"? Australia, China, the United States and the Making of Order in the "Indo-Pacific"' [2018] *The Pacific Review* 1, 9.

³⁴ In 2008, the Commission on the Limits of the Continental Shelf ('CLCS') adopted recommendations in relation to Australia's 2004 submission to the Commission, recognizing the majority of Australia's claim to an extended continental shelf. Based on those recommendations, Australia proclaimed the limits of its 11 million squares kilometers of continental shelf. See Australia, 'Outer Limits of the Continental Shelf Beyond 200 Nautical Miles from the Baselines', Submission to the Commission on the Limits of the Continental Shelf, 15 November 2004 <https://www.un.org/Depts/los/clcs_new/submissions_files/submission_austr.htm>; Nicola Roxon, Bob Carr and Martin Ferguson, 'Historic Continental Shelf Proclamation' (Media Release, 25 May 2012).

³⁵ See *Southern Bluefin Tuna cases (New Zealand v Japan; Australia v Japan) (Award on Jurisdiction and Admissibility)* (International Tribunal for the Law of the Sea, Case No 3 & 4, 4 August 2000). For further discussion of the case, see Bill Campbell, 'International Dispute Resolution: Australian Perspectives and Approaches' (2018) 35 *Australian Yearbook of International Law* 1.

³⁶ Julie Bishop, 'Australia Elected to Category B of International Maritime Organization Council' (Media Release, 2 December 2017).

³⁷ Bailey noted in 1960 that Australia also played a role in the development of the law of the sea, for example with its work on the definition of 'natural' resources during the negotiations of the 1958 Geneva Conventions on the Law of the Sea, see Bailey (n 3) 10.

³⁸ *2017 Foreign Policy White Paper* (n 19) 95; Australia, Submission by Australia to the Preparatory Committee on Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, 6 December 2016 <https://www.un.org/depts/los/biodiversity/prepcom_files/rolling_comp/Australia.pdf>.

Other areas of international law which Australia is seeking to develop, rather against the tide, include the World Trade Organization ('WTO') and peaceful uses of outer space. Australia led calls within the WTO, along with Singapore and Japan, for talks on international legal measures concerning ecommerce.³⁹ It has also actively campaigned for the non-militarisation of outer space.⁴⁰ On this last aspect the University of Adelaide Law School is contributing to the debate by developing the Woomera Manual, which aims to clarify existing international law applicable to military space operations.⁴¹

II INCREASED PARTICIPATION OF AUSTRALIA IN INTERNATIONAL DISPUTE SETTLEMENT

Australia has made use of international dispute settlement in a wide array of international forums, including the International Court of Justice ('ICJ'), the Permanent Court of Arbitration ('PCA') and the WTO.

In relation to the ICJ, Australia played a significant role in its work from the beginning, by participating in the United Nations Conference on International Organization at San Francisco in 1945, nominating its nationals for the Bench (not always successfully), and by participating in certain contentious cases and advisory proceedings.⁴²

³⁹ 2017 *Foreign Policy White Paper* (n 19) 57; Australian Minister for Trade, Tourism and Investment, Joint statement (with Japanese and Singaporean counter-parts): Simon Birmingham, Hiroshige Seko and S Iswaran, 'Australia, Japan and Singapore Welcome WTO Electronic Commerce Negotiations' (Joint Media Release, 26 January 2019); World Trade Organization, 'Joint Statement on Electric Commerce' (Joint Statement, 25 January 2019): 'We confirm our intention to commence WTO negotiations on trade-related aspects of electronic commerce'; Simon Birmingham, 'Australia Leads the Move to Negotiations on Digital Trade Rules' (Media Release, 26 January 2019).

⁴⁰ 2017 *Foreign Policy White Paper* (n 19) 97. Australia is participating actively in a Group of Governmental Experts on Further Practical Measures for the Prevention of an Arms Race in Outer Space: Frances Adamson, 'Space: Bringing Order to the Final Frontier' (Speech, United Nations Association of Australia, 4 October 2018) <<https://dfat.gov.au/news/speeches/Pages/space-bringing-order-to-the-final-frontier.aspx>>; UN GAOR, 72nd sess, 26th plen mtg, UN Doc A/C.1/72/PV.26 (31 October 2017) 2; Australian Department of Defence, 2016 *Defence White Paper* (n 19) 53.

⁴¹ For more information on the Woomera Manual on the International Law of Military Space Operations, which is being developed through the University's Research Unit on Military Law and Ethics, see the University of Adelaide, 'Drafting the Woomera Manual', *The Woomera Manual* (Web Page) <<https://law.adelaide.edu.au/woomera/drafting-the-woomera-manual>>.

⁴² The first case in which Australia played a substantial role was in the *Certain Expenses* advisory opinion in 1962: Crawford, 'Dreamers of the Day' (n 3) 529. Australia made written and oral submissions in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion)* (International Court of Justice, General List No 169, 25 February 2019), *Legality of the Threat or Use of Nuclear Weapons in Armed Conflict (Advisory Opinion)* [1996] ICJ Rep 66 (request of

As Crawford has written elsewhere, the nascent relationship between Australia and the ICJ in the years following the Second World War reflects more generally Australia's foreign policy priorities, most notably a firm belief in a system for the peaceful settlement of international disputes, including the ICJ.⁴³ This demonstrates the capacity of a 'middle power' to influence the development of international law — even at the risk of being seen as one of the 'dreamers of the day'.⁴⁴ Where possible, Australia has engaged domestic as well as foreign counsel to appear before the ICJ and has consistently appointed judges ad hoc of Australian nationality.⁴⁵

Australia has been the applicant in two cases before the ICJ. The first, the *Nuclear Tests* case, involved a claim by Australia that nuclear testing by France in the Pacific violated international law.⁴⁶ In the lead-up to Australia's application to the ICJ in 1973, three Australian State Governments had commissioned legal opinions from DP O'Connell. O'Connell, having been appointed to the University of Adelaide's Law Faculty in 1953, taught international law there from 1958 to 1972⁴⁷ and served as Dean from 1962 to 1964.⁴⁸ O'Connell concluded that there was merit in bringing the case to the ICJ.⁴⁹

In response to Australia's request for provisional measures, the Court ordered inter alia that France 'should avoid nuclear tests causing the deposit of radio-active fall-out on Australian territory'.⁵⁰ However, at the merits phase the Court declined to give judgment, having found that the 'object of the claim [had] clearly disappeared',⁵¹ based on statements by the French Government which 'conveyed to the world at large, including [Australia], its intention effectively to terminate [the] tests'.⁵² The passage of the Court's judgment in relation to circumstances in which unilateral statements by states may entail legal obligations has been reiterated

the World Health Organization) and *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226 (request of the General Assembly), the latter two requests having been heard simultaneously.

⁴³ Crawford, 'Dreamers of the Day' (n 3) 521.

⁴⁴ Ibid.

⁴⁵ Campbell (n 35) 11.

⁴⁶ 'Application Instituting Proceedings', *Nuclear Tests (Australia v France)* (International Court of Justice, General List No 58, 9 May 1973) [17].

⁴⁷ Shearer (n 15) 75–6.

⁴⁸ See Editors, 'Daniel Patrick O'Connell in Memoriam' (1980–81) 7(1) *Adelaide Law Review* 167; IA Shearer, 'O'Connell, Daniel Patrick (1924–1979)', *Australian Dictionary of Biography* (Web Page) <<http://adb.anu.edu.au/biography/oconnell-daniel-patrick-11280>>.

⁴⁹ Henry Burmester, 'Sir Elihu Lauterpacht QC and the *Nuclear Tests Case*' (2017) 35 *Australian Yearbook of International Law* 41, 42.

⁵⁰ *Nuclear Tests (Australia v France) (Provisional Measures)* [1973] ICJ Rep 99, 106.

⁵¹ *Nuclear Tests (Australia v France) (Judgment)* [1974] ICJ Rep 253, 271–2 [59].

⁵² Ibid 269 [51].

since.⁵³ Chief Justice Barwick was appointed as judge ad hoc for Australia; O’Connell was among counsel for Australia, alongside the then Legal Adviser, Sir Elihu Lauterpacht.⁵⁴

The second case which Australia brought to the International Court was *Whaling in the Antarctic*. Australia alleged that Japan was breaching its obligations pursuant to the *International Convention for the Regulation of Whaling* (‘ICRW’) by pursuing a program of whaling under the auspices of Article VIII of the ICRW.⁵⁵ The case involved written⁵⁶ and oral expert evidence⁵⁷ called by both parties, and is often mentioned as one of the few cases before the ICJ in which effective cross-examination of witnesses occurred.⁵⁸ Ultimately the Court found, inter alia, that Japan’s program was not covered by Article VIII.⁵⁹ The Court consequently ordered Japan to cease the whaling program.⁶⁰ Hilary Charlesworth was appointed judge ad hoc for Australia in the proceedings. Subsequently, Japan amended its optional clause declaration, excluding from the Court’s jurisdiction any dispute concerning ‘research on, or

⁵³ Eg, *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v Chile) (Judgment)* (International Court of Justice, General List No 153, 1 October 2018) [146].

⁵⁴ On Lauterpacht’s Australian career see James Crawford, ‘International Law and the Public Service’ (2018) 35 *Australian Yearbook of International Law* 17, 17–26.

⁵⁵ ‘Application Instituting Proceedings’, *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)* (International Court of Justice, General List No 148, 31 May 2010) [2].

⁵⁶ See, eg, ‘Statement of Mr Lars Walløe (Expert Called by Japan)’, *Scientific Review of Issues Raised by the Memorial of Australia Including its Two Appendices* (International Court of Justice, 9 April 2013); ‘Statement of Mr Marc Mangel (Expert Called by Australia)’, *An Assessment of Japanese Whale Research Programs Under Special Permit in the Antarctic (JARPA, JARPA II) as Programs for Purposes of Scientific Research in the Context of Conservation and Management of Whales* (International Court of Justice, 15 April 2013) and ‘Statement of Mr Nick Gales (Expert Called by Australia)’, *Statement by Dr Nick Gales BVMS PhD* (International Court of Justice, 15 April 2013).

⁵⁷ See, eg, ‘Verbatim Record’, *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)* (International Court of Justice, CR 2013/17, 26 June 2013) 39–71 (Marc Mangel); ‘Verbatim Record’, *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)* (International Court of Justice, CR 2013/10, 27 June 2013) 14–33 (Nick Gales); ‘Verbatim Record’, *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)* (International Court of Justice, CR 2013/14, 3 July 2013) 14–59 (Lars Walløe).

⁵⁸ See for example Campbell (n 35) 12.

⁵⁹ *Whaling in the Antarctic (Australia v Japan: New Zealand intervening) (Judgment)* [2014] ICJ Rep 226, 298–9, [247(2)]–[247(6)].

⁶⁰ *Ibid* 300 [247(7)].

conservation, management or exploitation of, living resources of the sea'.⁶¹ Furthermore, Japan has given notice of withdrawal from the ICRW.⁶²

Australia has also participated before the ICJ as respondent, notably by arguing points of jurisdiction and admissibility.⁶³ In *Certain Phosphate Lands (Nauru v Australia)*, Australia raised preliminary objections relating to admissibility which led to the further development of the Court's jurisprudence on the 'Monetary Gold principle'. It argued that Nauru's Application was inadmissible because any adjudication by the Court in relation to Australia's discharge of its trusteeship obligations vis-à-vis Nauru would necessarily involve a determination of the international responsibility of two other states, namely New Zealand and the United Kingdom.⁶⁴ The Court however held that it could proceed to hear the case because 'the determination of the responsibility of New Zealand or the United Kingdom is not a prerequisite for the determination of the responsibility of Australia, the only object of Nauru's claim'.⁶⁵

Three years later, in 1995, the Court upheld a similar argument by Australia relating to admissibility in *East Timor (Portugal v Australia)*. In that case Portugal claimed inter alia that Australia had failed to observe its obligation to respect the duties and powers of Portugal as the administering power in East Timor.⁶⁶ The Court held that it could not exercise jurisdiction because, in order to settle the dispute, 'it would have to rule, as a prerequisite, on the lawfulness of Indonesia's conduct in the absence of that State's consent'.⁶⁷

⁶¹ Japan, 'Declaration Recognising the Jurisdiction of the Court as Compulsory' (Declaration, 6 October 2015) <<https://www.icj-cij.org/en/declarations/jp>>. See also Justin Gleeson, 'Australia's Increasing Enmeshment in International Law Dispute Resolution: Implications for Sovereignty' (2016) 34 *Australian Yearbook of International Law* 1, 6.

⁶² Japan, 'Statement on Government of Japan Withdrawal from the IWC', Statement to the International Whaling Commission, 14 January 2019 <<https://iwc.int/statement-on-government-of-japan-withdrawal-from-t>>.

⁶³ See Campbell (n 35) 6.

⁶⁴ 'Preliminary Objections of the Government of Australia', *Certain Phosphate Lands in Nauru (Nauru v Australia)* (International Court of Justice, December 1990) 140 [351].

⁶⁵ *Certain Phosphate Lands in Nauru (Nauru v Australia) (Preliminary Objections)* [1992] ICJ Rep 240, 261 [55].

⁶⁶ 'Application Instituting Proceedings', *East Timor (Portugal v Australia)* (International Court of Justice, General List No 84, 22 February 1991) [2].

⁶⁷ *East Timor (Portugal v Australia)* (Judgment) [1995] ICJ Rep 90, 105 [35]. Australia was also respondent in a third case, *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v Australia)*, which was settled after a decision on provisional measures: *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v Australia) (Provisional Measures)* [2014] ICJ Rep 147.

As to the PCA, Australia's most significant outing has been the Conciliation with Timor-Leste⁶⁸ and the ensuing treaty,⁶⁹ which settled a long-running dispute. According to Australia's *2017 Foreign Policy White Paper*,

[t]he agreement is a testament to the way in which international law, in particular [UNCLOS], reinforces stability and allows countries to resolve disputes peacefully without resorting to force or coercion. It is an example of the rules-based order in action.⁷⁰

As to the WTO, Australia has been a complainant in nine cases, respondent in 16 cases, and third party in 107 cases.⁷¹ The number of cases as complainant and respondent is broadly comparable to the equivalent figures for other states with similar GDPs,⁷² although some developed economies have not yet had recourse to the WTO dispute settlement mechanism as complainant.⁷³

Australia's participation in international forums of dispute settlement has therefore concerned disputes with states both within and outside its own region. But all the contentious cases have had a regional focus (as most contentious cases involving 'middling powers' do).⁷⁴ To Australia's regional focus we now turn.

III THE REGIONAL FOCUS OF INTERNATIONAL LAW FOR AUSTRALIA

Australia's *2017 Foreign Policy White Paper* expresses 'the primary importance to Australia' of the 'Indo-Pacific' region,⁷⁵ which it defines rather comprehensively as the region ranging from the eastern Indian Ocean to the Pacific Ocean connected by Southeast Asia, including India, North Asia, and the United States.⁷⁶ Australia relies on international legal agreements to formalise its relationship with other states

⁶⁸ *Conciliation Between the Democratic Republic of Timor-Leste and Australia (Report and Recommendations of the Compulsory Conciliation Commission Between Timor-Leste and Australia)* (Permanent Court of Arbitration, Case No 2016–10, 9 May 2018).

⁶⁹ *Treaty Between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea*, signed 6 March 2018, [2018] ATNIF 4 (not yet in force).

⁷⁰ *2017 Foreign Policy White Paper* (n 19) 105.

⁷¹ For example, Australia was a third party in Panel Report, *China — Domestic Support for Agricultural Producers*, WTO Doc WT/DS511/12 (29 April 2019) and in Appellate Body Report, *Brazil — Certain Measures Concerning Taxation and Charges*, WTO Doc WT/DS472/AB/R/Add.1, WT/DS497/AB/R/Add.1 (13 December 2018).

⁷² Eg, Republic of Korea: 20 as complainant, 18 as respondent; Indonesia: 11 as complainant, 14 as respondent; Mexico 25 as complainant, 15 as respondent.

⁷³ Eg, Iceland, Greece, France, United Kingdom.

⁷⁴ At least outside the multilateral trade context of the WTO.

⁷⁵ *2017 Foreign Policy White Paper* (n 19) 3.

⁷⁶ *Ibid* 1.

in the region, for example through free-trade agreements or treaties of cooperation. As consensus in broad-membership organisations has proved difficult, Australia has increased its use of bilateral agreements with other Indo-Pacific states.⁷⁷

The importance of trade, and the regulation of trade, between Australia and other states in Asia, is not new. In fact, it was in the minds of those involved in the development of the Adelaide Law School.⁷⁸ Following on from longstanding free-trade agreements, for example the *Australia-New Zealand Closer Economic Relations Trade Agreement*,⁷⁹ Australia has more recently made free-trade agreements with newer trading partners in the Indo-Pacific. On this topic, the Secretary of the Department of Foreign Affairs and Trade ('DFAT') Frances Adamson stated in a speech to the Australian National University in October 2018 that Australia 'will have to work intelligently and creatively, to support the international order that enables [it] to benefit from others' rise'.⁸⁰ Specifically, Adamson noted that Australia would be 'more prosperous in a region in which open markets facilitate the free flow of trade'.⁸¹

In 2017–18, members of the Asia-Pacific Economic Cooperation ('APEC') accounted for 73.5% of Australia's total trade.⁸² Australia's biggest two-way trading partners in 2017 were in the Indo-Pacific region: China, Japan, the United States, South Korea and India.⁸³ Australia has ratified free-trade or economic partnership agreements with the first four, and negotiations began in 2011 for a *Comprehensive Economic Cooperation Agreement* with India. Australia has also been involved, since 2012, in negotiations for a *Regional Comprehensive Economic Partnership* which aims to establish an extensive regional free-trade area between all ASEAN nations,⁸⁴ as well

⁷⁷ Ibid 59.

⁷⁸ C H Bright and Alex C Castles, 'New School of International Law' (1962) 1(3) *Adelaide Law Review* 339. Regrettably, nothing came of the initiative for a School of International Law at the University of Adelaide discussed in this article.

⁷⁹ *Australia-New Zealand Closer Economic Relations Trade Agreement*, signed 28 March 1983, [1983] ATS 2 (entered into force retrospectively 1 January 1983).

⁸⁰ Frances Adamson, 'Shaping Australia's Role in Indo-Pacific Security in the Next Decade', (Speech, Australian National University, 2 October 2018).

⁸¹ Ibid. For a discussion of the ecological implications of globalised trade, and the corresponding need for relevant international regulation, see Helen Anderson and Wayne Gumley, 'Corporate Social Responsibility: Legislative Options for Protecting the Employees and the Environment' (2008) 29(1) *Adelaide Law Review* 29, 56.

⁸² Department of Foreign Affairs and Trade, *Composition of Trade, 2017–18* (Report, January 2019) 5.

⁸³ Edmund Tang, 'Australian Trade and Investment Commission, Australia's Two-way Trade with the World Was Up 11% to \$763 Billion in 2017', *Economic Analysis* (Blog Post, 23 July 2018) <<https://www.austrade.gov.au/news/economic-analysis/australias-two-way-trade-with-the-world-was-up-11-to-763-billion-in-2017>>.

⁸⁴ Association of Southeast Asian Nations: Brunei, Cambodia, Laos, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

as Australia, China, India, Japan, South Korea and New Zealand.⁸⁵ Most recently, in March 2019, Australia signed free-trade agreements with Indonesia⁸⁶ and Hong Kong.⁸⁷ Finally, mention must be made of the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* ('CPTPP'),⁸⁸ which represents over US\$10 trillion in collective GDP between the signatories.⁸⁹ The CPTPP proceeded despite the United States' decision to withdraw, in 2017, from the original Trans-Pacific Partnership ('TPP') trade agreement, with all original participants except for the United States. Australia has stated that it sees the CPTPP as a step towards an even wider free-trade area.⁹⁰

Beyond trade, international legal instruments have been used in Australia to formalise defence alliances and 'strategic partnerships' with other states in the Indo-Pacific. While Australia remains bound by historical agreements of cooperation with the United States⁹¹ it has also committed to cooperation with other states in the region. Most recently, Australia has formed 'strategic partnerships' which cover defence and

⁸⁵ See also *2017 Foreign Policy White Paper* (n 19) 5, 101. Another recent, extensive, trade agreement is the *Pacific Agreement on Closer Economic Relations Plus*, opened for signature 14 June 2017, [2017] ATNIF 42 (not yet in force) ('PACER'). The PACER has been signed by Australia, New Zealand, Cook Islands, Kiribati, Nauru, Niue, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

⁸⁶ *Australia-Indonesia Comprehensive Economic Partnership Agreement* ('IA-CEPA'), signed 4 March 2019, [2019] ATNIF 17 (not yet in force).

⁸⁷ *Free Trade Agreement Between Australia and Hong Kong, China* ('A-HKFTA'), signed on 26 March 2019, [2019] ATNIF 20 (not yet in force).

⁸⁸ *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, signed 8 March 2018, [2018] ATS 23 (entered into force for Australia on 30 December 2018). Eleven countries have signed this treaty: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam.

⁸⁹ Frances Adamson, 'Australian Perspectives on the Indo-Pacific' (Speech, Victoria University of Wellington, 12 October 2018).

⁹⁰ *Ibid.*

⁹¹ *Australia, New Zealand, United States Security Treaty* ('ANZUS Treaty'), signed 1 September 1951, [1952] ATS 2 (entered into force 29 April 1952). See for example *2017 Foreign Policy White Paper* (n 19) 4, 7, 37, 42. Australia's turning to the United States, over the United Kingdom, might be said to date back to Curtin's speech: John Curtin, 'The Task Ahead', *Sydney Morning Herald* (Melbourne, 27 December 1941) in which he said '[w]ithout any inhibitions of any kind, I make it quite clear that Australia looks to American, free of any pangs as to our traditional links or kinship with the United Kingdom'; see also Remarks by United States' Secretary of State Michael Pompeo during the 2018 Australia-US Ministerial Consultations Conference: Michael R Pompeo, United States Department of State, 'Press Availability With Secretary of Defense James Mattis, Australian Foreign Minister Julie Bishop, and Australian Defense Minister Marise Payne' (Press Conference, 24 July 2018).

security cooperation with ASEAN,⁹² Vietnam⁹³ and Indonesia.⁹⁴ Areas of concern for Australia, which it seeks to combat through formalised regional ‘strategic partnerships’, include the threat of terrorism,⁹⁵ nuclear proliferation,⁹⁶ and transnational organised crime.⁹⁷

The regional focus of international law for Australia has other facets. Australia seeks to reinforce respect for international law in the Indo-Pacific.⁹⁸ It also attempts to steer multilateral legal institutions to focus on the Indo-Pacific region,⁹⁹ for example in relation to the international regulation of climate change.¹⁰⁰ However, for Australia to conclude regional trade and strategic agreements, encourage respect for the international rule of law overseas and exert influence within multilateral legal institutions,

⁹² *2015-2019 Plan of Action To Implement The ASEAN-Australia Strategic Partnership*, signed 5 August 2015, [1.2]; Adamson, ‘Shaping Australia’s Role in Indo-Pacific security in the next decade’ (n 79).

⁹³ *Joint Statement on the Establishment of a Strategic Partnership Between the Government of Australia and the Government of the Socialist Republic of Viet Nam*, signed 15 March 2018, [17]–[21]. See also *Memorandum of Understanding for Defence Cooperation Between the Government of Australia and the Government of the Socialist Republic of Viet Nam*, signed 11 October 2010.

⁹⁴ Indonesia and Australia, ‘Joint Declaration on a Comprehensive Strategic Partnership between Australia and the Republic of Indonesia’ (Joint Declaration, 31 August 2018): Pillar Three — Securing Our and the region’s Shared Interests. The Comprehensive Strategic Partnership states that it ‘builds on the 2006 Lombok Treaty’ (*Agreement Between the Republic of Indonesia and Australia on the Framework for Security Cooperation*, signed 13 November 2006, [2008] ATS 3 (entered into force 7 February 2008)).

⁹⁵ *2017 Foreign Policy White Paper* (n 19) 71.

⁹⁶ Mexico, Indonesia, the Republic of Korea, Turkey, Australia (‘MIKTA’) joint statement on the North Korean nuclear test: MIKTA, ‘MIKTA Foreign Ministers’ joint statement on the North Korean nuclear test’ (Joint Statement, 9 January 2016): ‘We, the Foreign Ministers of Mexico, Indonesia, the Republic of Korea, Turkey and Australia (MIKTA), deplore North Korea’s fourth nuclear test, which constitutes a clear threat to international peace and security’.

⁹⁷ *2017 Foreign Policy White Paper* (n 19) 72–3.

⁹⁸ *Ibid* 46; Adamson, ‘Shaping Australia’s Role in Indo-Pacific Security in the Next Decade’ (n 80).

⁹⁹ *2017 Foreign Policy White Paper* (n 19) 81. In 1983, Australian legal research was already focused on what could be loosely described as the Asia Pacific region: Crawford, ‘Teaching and Research’ (n 6) 186.

¹⁰⁰ Australia, ‘Australian Government National Statement’, Submission to the United Nations Climate Change Conference of Parties, High-Level segment — COP24, 12 December 2018 (re in the Pacific); Adamson, ‘Australian Perspectives on the Indo-Pacific’ (n 89); the Pacific Islands Forum, ‘Boe Declaration on regional Security’ (Joint Declaration, 3–6 September 2018). For an insightful discussion of the requirements for an effective legal framework see Blustein, (n 4) 318–20 (written prior to the signature of the Paris Agreement). See also Adamson, ‘Shaping Australia’s Role in Indo-Pacific Security in the next Decade’ (n 80).

it must rely on well-trained and well-educated international lawyers. More broadly, for Australia to engage successfully in international dispute settlement and insist on adherence to an international rules-based order, its universities must provide young Australian lawyers with a sound knowledge of the principles and processes of international law.

IV THE DEVELOPMENT OF INTERNATIONAL LAW TEACHING AND RESEARCH IN AUSTRALIAN UNIVERSITIES

Writing in the *Review* in 1983, Richard Blackburn, Dean of the Adelaide Law School from 1951 to 1957, was invited to formulate his ideal undergraduate law degree (LLB) curriculum. He did not include international law in this fictional curriculum.¹⁰¹ However, in 2019 ‘International Law’ is a compulsory unit for all undergraduate law students at the University of Adelaide. This can even be seen as something of a reversion, for when the Law School started operating, in 1883, international law was immediately included as a subject taught in its undergraduate law degree.¹⁰² Ivan Shearer, who was writing about teaching at the University of Oxford during the same period, remarked that at Oxford, international law was also a compulsory subject, although ‘International Law might be omitted by a candidate who did not “aim at a place in the first or second class”’.¹⁰³

Back at the University of Adelaide, in 1888 a proposal was made to teach two separate subjects, ‘Private International Law’ (in the fourth year of a five-year undergraduate course) and ‘Public International Law’ (in the fifth year).¹⁰⁴ Ultimately a shorter undergraduate course of four years was decided upon, with ‘International Law (Public and Private)’ to be taught in the fourth and final year.¹⁰⁵ Similar courses were being taught elsewhere in Australia. However, in 1906 international law no longer formed part of the undergraduate law course at Adelaide¹⁰⁶ and it was not until 1959

¹⁰¹ Richard Arthur Blackburn, ‘Law School Curricula in Retrospect’ (1983) 9(1) *Adelaide Law Review* 43, 47: his ‘core’ were ‘Elementary Legal History, Criminal Law, Contract, Tort, Property, Public Law, Statute Law, Jurisprudence’. Blackburn was Chief Justice of the Supreme Court of Australian Capital Territory, Bonython Professor of Law at the University of Adelaide 1950–57, and a member of the Law Faculty until 1965.

¹⁰² Victor Allen Edgeloe, ‘The Adelaide Law School 1883–1983’ (1983) 9(1) *Adelaide Law Review* 1, 4. For a concise review of the history of Adelaide Law School, see Paul Babie, ‘125 Years of Legal Education in South Australia’ (2010) 31(2) *Adelaide Law Review* 107.

¹⁰³ Shearer (n 15) 63. Shearer was writing in relation to 1872.

¹⁰⁴ Edgeloe (n 102) 15.

¹⁰⁵ *Ibid.* 16. This course was ultimately called simply ‘International Law’: *ibid.* Public International Law was also an available subject to qualify for the Master of Laws from at least 1924: at 26.

¹⁰⁶ Shearer (n 15) 69.

that it was restored to the curriculum.¹⁰⁷ By then, O'Connell, who specialised in international law, had joined the Law School. He became Professor of International Law from 1962 to 1972, before taking up the Chichele Chair of International Law at the University of Oxford.¹⁰⁸

In relation to all Australian universities, in 1983 Crawford wrote that 'international law [was] 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'.¹⁰⁹ Today, the following observations can be made in relation to the teaching in Australia of international law. In 2019 no fewer than 35 Australian universities offer an LLB and every one of them offers a unit on international law.¹¹⁰ Some of these, including the University of Adelaide, have made international law a compulsory subject for all undergraduate law students.¹¹¹ Within the 35 law schools which offer an LLB, there are specialised international law subjects offered, such as 'Interpretation in International Law' and 'Climate Change Law' at the University of Adelaide. Moreover, even the general international law unit offered by these universities covers specialised topics. For example, as part of the compulsory unit 'International Law' at the University of Adelaide, students will be taught space law and international fact-finding.¹¹² Australian law schools have also embraced the Jessup International Law Moot and it is offered in many Australian law schools, including at the University of Adelaide, as an LLB subject.¹¹³ Australia first entered the Jessup Moot Court Competition in 1975:¹¹⁴ between then and 2019, Australian law schools have won

¹⁰⁷ Editors, 'Obituary: D P O'Connell' (1977) 7 *Australian Yearbook of International Law* xxiii, xxiii. International Law had become a non-compulsory subject at the University of Melbourne by 1933 and at the University of Sydney in 1959: see Shearer (n 15) 76.

¹⁰⁸ Edgeloe (n 102) 35.

¹⁰⁹ Crawford, 'Teaching and Research' (n 6) 183.

¹¹⁰ This is based on the authors' own study of university literature and uses as a starting point the full list of universities in Australia, compiled by the Australian government: Australian Government, *List of Australian Universities* (Web Page) <<https://www.studyinaustralia.gov.au/english/australian-education/universities-and-higher-education/list-of-australian-universities>>.

¹¹¹ See, eg, the University of Southern Queensland (Public International and Human Rights Law), Australian National University (International Law), Charles Sturt University (International Public and Private Law), Macquarie University (International Law), the University of Newcastle (Public International Law), University of Technology Sydney (Public International Law).

¹¹² Michael Kirby and Rebecca LaForgia, 'Fact-Finding and Report Writing by UN Human Rights Mandate Holders' (2017) 38(1) *Adelaide Law Review* 463, 464.

¹¹³ Eg, Monash University, LaTrobe University, Griffith University, University of Southern Queensland, the Australian National University, Southern Cross University and the University of Adelaide.

¹¹⁴ Shearer (n 15) 77.

the Jessup Moot no less than 14 times.¹¹⁵ In 1979, the University of Adelaide was runner-up in the international rounds in Washington DC.

Although the picture painted above is overwhelmingly positive, there are calls for greater study of international law within Australian law degrees, particularly undergraduate degrees. A 2010 report by the Australian Learning and Teaching Council (an initiative of the Federal Department of Education) remarked that ‘the globalisation of law and legal services has meant that contemporary law students ought to be provided with opportunities to develop international and comparative perspectives on the law’.¹¹⁶ In the same vein, a 2017 report by the Law Society of New South Wales on the future of legal practice recommended that ‘[i]n a changing environment, the skills and areas of knowledge likely to be of increasing importance for the [Law] graduate of the future include ... international and cross-border law’.¹¹⁷ Finally, the Council of Australian Law Deans maintains, as one of its current projects, ‘Internationalising the Law Curriculum’.¹¹⁸ The Council recommends four ways in which a law school might internationalise the curriculum, namely (paraphrasing):

- (i) the ‘aggregation approach’, which involves offering units of study relating to international law;
- (ii) the ‘segregation approach’, by which a university can create a separate institute or centre devoted to international law;
- (iii) the ‘immersion approach’, which involves creating opportunities for students to study abroad; and
- (iv) the ‘integration approach’, by which a university seeks to incorporate aspects of international law across the entire curriculum.¹¹⁹

¹¹⁵ 1981 (Australian National University), 1988 and 1993 (both University of Melbourne), 1996 (University of Sydney), 2000 (University of Melbourne), 2003 (University of Western Australia), 2005 (University of Queensland), 2007 (University of Sydney), 2010 (Australian National University), 2011 (University of Sydney), 2014 (University of Queensland), 2015 (University of Sydney), 2017 (University of Sydney), 2018 (University of Queensland).

¹¹⁶ Australian Learning and Teaching Council, *Bachelor of Laws Academic Standards Statement* (Report, December 2010) 8. Monash University has re-structured its LLB based on the 2010 report.

¹¹⁷ Commission of Inquiry, The Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (Report, March 2017) 6.

¹¹⁸ See the website of the Council of Australian Law Deans at Council of Australian Law Deans (Web Page) <<https://cald.asn.au/itlc/>>.

¹¹⁹ Council of Australian Law Deans, ‘How a Law School Might Approach the Internationalisation of its Curriculum’, *Internationalising The Law Curriculum*, (Web Page) <<https://cald.asn.au/itlc/law-schools-approach/>>.

It is this last strategy which Justin Gleeson (former Australian Solicitor-General), speaking at the 2017 Future of Australian Legal Education Conference, appeared to espouse. Asking the question ‘Can Australian Lawyers of the Future Afford Not to Be Internationalist?’ he argued that ‘[i]nternational and comparative law perspectives should not be left as optional add-ons late in the university curriculum. Rather, they should be integrated into the teaching of virtually every subject’.¹²⁰ We agree.

We do not suggest that the study of specialised areas of international law should be mandated as part of an LLB. Australian universities already teach specialised international law subjects to undergraduate students, such as the law of the sea or international trade law, and it is desirable that such specialised subjects remain on offer as electives. The proposition, following Gleeson, is that every undergraduate law course, such as criminal law or property law, should deal with the relevant international or comparative law aspects of that unit.¹²¹ Some Australian law schools are certainly implementing this idea. The University of Notre Dame, for example, engages students with international law relevant to their unit offered in mental health law. The approach should be extended to the core units of the LLB undertaken by all students.

But there is still a need for a core course in international law, studying basic issues. As Shearer has written in the *Review*, there is a danger in the trend towards specialisation within the general field of international law that

[u]nless students taking these courses are also offered ... a thorough course in general principles of international law, specialized studies are likely to produce only superficial results. The roots of international law run deep into history and legal theory; time is needed to acquire a feel for it ... Students coming to the subject must have a genuine interest in history and current affairs, and a conception of Australia’s place in the world.¹²²

Shearer summed up this idea as follows: ‘the foundations were regarded [in the past] as of greater importance than the superstructure’.¹²³ Students cannot be expected to understand the superstructure of specialised international law units, or comparative aspects of predominantly domestic law subjects (like criminal law), unless they are concurrently exposed to the basics of international law.

Turning to research and practice in international law, in 1983 Crawford surmised that there was not yet a national tradition of international lawyering.¹²⁴ Since then, the position has been transformed. Research in international law in Australia has

¹²⁰ Justin Gleeson SC, ‘Can Australian Lawyers of the Future Afford Not to Be Internationalist?’ (Conference Paper, Future of Australian Legal Education Conference, 12 August 2017) 4.

¹²¹ *Ibid* 15.

¹²² Shearer (n 15) 78.

¹²³ *Ibid* 77.

¹²⁴ Crawford, ‘Teaching and Research’ (n 6).

been probing and dynamic. As examples within Australia, we would mention the following: Anthea Roberts' study on the way international law is taught, perceived and practised in different countries;¹²⁵ Hilary Charlesworth's feminist study of international law (with Christine Chinkin);¹²⁶ Margaret Young's work on international environmental law; and Robert McLaughlin's work on the law of armed conflict.

Lawyers seeking to practise in international law in Australia can do so within the Attorney-General's Department, the Australian Government Solicitor's office or DFAT.¹²⁷ The latter established, in 2017, a program of Visiting Legal Fellows to enhance dialogue between academia and the Department's legal advisers, in the sphere of international law.

While opportunities to practise and teach international law in Australia have grown, Australian international lawyers have an increasing presence overseas, including a large number of Australians in professional roles at the WTO¹²⁸ and the International Criminal Court.¹²⁹ Australians have also been appointed to UN fact-finding Missions related to the international rule of law, including Michael Kirby (UN Commission of Inquiry on North Korea in 2013), Christopher Sidoti (Independent International Fact-Finding Mission on Myanmar in 2017)¹³⁰ and Philip Alston (UN Special Rapporteur on extrajudicial, summary, or arbitrary executions from 2004 to 2010). They have also served in important positions in non-governmental organisations concerned with international law, such as Helen Durham, who has been the Director of International Law and Policy at the International Committee of the Red Cross since 2014.

V CONCLUSION

The strength of international law teaching and research in Australian universities will sustain the future growth of international law in Australia. It is overwhelmingly a positive picture. In 1983, Crawford wrote that there was 'the potential for increased involvement on the part of individual international lawyers in international activity

¹²⁵ Anthea Roberts, *Is International Law International?* (Oxford University Press, 2017).

¹²⁶ Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000).

¹²⁷ Attorney-General, *Legal Services Directions 2017* (29 March 2017), Appendix A — Tied areas of Commonwealth Legal Work, section 2. The Australian Government Solicitor is a group within the Attorney-General's Department.

¹²⁸ Roberts (n 125) 258–9.

¹²⁹ *Ibid* 7, 257. Australians Helen Brady and Tim McCormack are the Head of Appeals Section of the Office of the Prosecutor and Special Adviser on International Humanitarian Law to the Prosecutor, respectively. McCormack is also Professor of Law and Dean of the Faculty of Law at the University of Tasmania.

¹³⁰ Human Rights Council, *Report of the Independent International Fact-Finding Mission on Myanmar* (Report, 12 September 2018).

of a variety of kinds'.¹³¹ This prediction has largely been fulfilled. For its part, the Adelaide Law School will no doubt continue to equip local and foreign students with an education that permits them to be active participants, and leaders, in international legal matters.

¹³¹ Crawford, 'Teaching and Research' (n 6) 190.

