

EDITORIAL

It did not take long to find a theme for this editorial. It is a topic that seems to be everywhere. The theme is honesty, or lack of it, and the doing of what is right, moral, ethical. This takes me back to a book I read earlier this year on Asian legal systems.¹ In one of the chapters, there was a reference to the old adage, if you can't beat them, join them. So, what has all this to do with states and international law? A great deal.

Law comes from morality and from what we feel naturally to be right. There are certain fundamental benchmarks that the human race, and therefore, states and the international community as a whole, should not deviate from. But knowing what is right, moral or ethical has not stopped actions that are wrong, immoral or unethical, even at the international level. Sadly, bribery and corruption have hogged headlines this year. If we follow the trail, it is more than likely it would end right at the top.² The same seems to apply to other kinds of misdeeds, like the multi-billion dollar grain fraud that was exposed in China in October this year.

In some places, the practice of "greasing the palm" or "payola" has become endemic, an expectation, a culture. It subverts the level playing field and reduces the competitive edge. It distorts international trade and commerce. This year, it has resulted in global instability and hardship and it has touched each one of us. These practices have to stop and it is the responsibility of states to stop them.

The problem thus far has been exacerbated by the lack of resolve by the leadership to stamp out the practice. This is no wonder where leaders themselves may be involved. Moreover, it is ironic and scandalous that certain states, including France and Germany, consider commercial bribes still to be tax deductible. Bribery and corruption are morally reprehensible and should be made illegal.

¹ PL Tan (ed), *Asian Legal Systems: Law, Society and Pluralism in East Asia* (1997, Butterworths, Sydney).

² Walsh, "A world war on corruption" 13 July 1998 *Time* 36.

The toll from this practice has been unprecedented this year. As this editorial is being written, such stories continue to unfold before our very eyes³ and "Asian values" seem to have taken on a new meaning. The extent of the practice has changed the economic and political face of Asia. Scandals have rocked governments and triggered an economic meltdown. So much for Asian economic "tigers" and "dragons".

This has led to a massive withdrawal of foreign capital from Asian countries, including the outpouring of domestic funds, so much so that Malaysia felt compelled to impose strict and artificial currency controls. Rightly or wrongly, shortsighted or otherwise, the move at least helped to decelerate the slippery downward slide of the Malaysian economy. Asian leaders who have fallen victim to allegations of wrongful behaviour include ex-Prime Minister Bhutto of Pakistan. Other leaders who have been accused of cronyism, as well as bribery and corruption, include President Suharto of Indonesia and Prime Minister Mahathir of Malaysia. Calls for *reformasi* can be heard in their countries, including Japan where tough economic reform is so obviously necessary to deal with corrupt decision making processes. If not, the alternative is recession, a possibility that still lurks in the wings and which, if it were to happen, could bring the global economy crashing down.⁴

As for a remedy, there is only so much of rescuing that the International Monetary Fund is willing to, or can, do. The Fund is accountable to its members and has a duty to ensure that it does not throw good money after bad. Before the Fund extends itself in any rescue package, the Fund should require a guarantee from any requesting state that there will be a fundamental shift in that state's thinking and economic activities.

Is there some hope that bribery and corruption is containable? Singapore is a success story, the result of laws that are enforced, heavy penalties for the offence and a firm resolve by former Prime Minister Lee Kwan Yew to eradicate the practice. Education of the populace has also played a role. Even

³ At present, Anwar Ibrahim, recently sacked as Deputy Prime Minister, is before the High Court of Malaysia on corruption, sodomy and adultery charges; but see Skehan, "Police expose poisonous plot against Anwar" Sydney Morning Herald, 7 November 1998 at 1.

⁴ Walsh has commented that "[t]he costs of corruption have reached earth shattering proportions, prompting Herculean international efforts to clear out the muck": see note 4.

so, the Singapore system has not been entirely foolproof.⁵ But this is not a reason not to try.

The extent of the problem has caused grave concern at the international level. It has prompted discussions, initiatives and responses from various international organisations. The United Nations, the Council for Europe and the World Trade Organisation have developed codes and conventions to fight the practice and the International Chamber of Commerce has adopted Rules of Conduct known as "Extortion and Bribery in International Business Transactions".

In April 1997 heads of government, including the United States president, Bill Clinton, met at the Chile Summit of the Americas and reaffirmed their commitment to end corruption.⁶ In December 1997 a convention was signed in Paris under the auspices of the Organisation for Economic Cooperation and Development. Even if some of these initiatives are not considered to be part of international law *per se*, the fact that they exist as soft law or rules provides guidance to and establishes minimum benchmarks for those states involved.

No part of the world is immune to acts of bribery and corruption. To appreciate the extent to which this immoral or illegal behaviour can impact on the international community, one only has to consider the number and variety of international activities. Some of these activities are described in articles published in this issue of the Journal. For example, those involving arms deals have become legendary and degradation and environmental damage have resulted from financial greed in activities that range from mining to deforestation.

The articles in this issue have a depth of themes that stretches from the old to the new. It is fitting that this issue begins with an article on the law of the sea, more particularly on the new International Tribunal for the Law of the Sea.⁷ Written by the President of the Tribunal, His Excellency Dr

⁵ Allegations of bribery and corruption were the centerpiece of "the telecommunication scandal" involving a Singapore utilities official, millions of dollars, Siemens and four other companies: see Walsh note 4 at 41.

⁶ In fact, since 1977, the United States had outlawed bribes.

⁷ At 1-10.

Thomas Mensah, the article provides an excellent introduction to the Tribunal and its work. Readers might have noticed that Dr Mensah has joined the Journal's Editorial Advisory Board, wearing his other hat as a Ghanaian, to extend geographical representation on the Board.

Dr Keith Suter's article on the Antarctica reminds us of the fragility of our environment and warns us of the need to protect that heritage.⁸ He discusses the 1959 Antarctic Treaty, its strengths, weaknesses, and relationship to marine and mineral resources. He also discusses the 1991 Madrid Protocol on Environmental Protection and concludes with his observations on the future of the Antarctic regime and the role which may be played by the international community.

The next article is written by Dr Talaie Farhad who, after a number of years in Australia, will leave Australia soon for his country of birth, Iran.⁹ Dr Farhad takes us to great heights, beyond our airspace and into outer space. His article on the geostationary orbit and the radio frequency spectrum, both natural phenomena, reminds us that outer space is now the present, and no longer the next frontier. If Australians did not realise this before, the existence of satellites has made us one of the largest users of mobile phones in the world, at least in percentage terms. On the use of outer space, the article argues for the fair and equitable distribution of these natural resources by the international community.

Meteorological activities conducted in outer space reveal that El Nino has a sister, La Nina, and Hurricane Mitch is the legacy. Surreptitiously or otherwise, outer space and its commercial applications have impacted on each one of us, and/or changed our lives or life styles. The space age has arrived, and it is here to stay. But being a comparatively new activity, much work remains to be done at the international level. So far, five principal international treaties have been signed and they make up the main body of space law. They have been supplemented by five sets of Principles which were adopted by the United Nations General Assembly, to regulate activities mainly.

⁸ At 11-27.

⁹ At 28-62.

An article by Christopher Hubbard brings us back to earth.¹⁰ He discusses weapons of destruction. A timely article as we watch with bated breath the stalemate involving weapons inspections by UNSCOM, led by fellow Australian, Richard Butler, in Iraq.¹¹ Earlier this year, when members of the International Law Association were assembled in Taipei to attend the Association's 68th Biennial Conference, they woke up one morning to the news that a crisis was looming on the Indian sub-continent, the result of a dispute over nuclear weapons testing, first conducted by India, and then followed by Pakistan. The world stood by, on full alert, making it is so true that whenever world leaders play their games, helpless citizens watch, suffer and pray.

This article is followed by Christopher Ward's sound and thorough analysis of the United Nations Security Council.¹² He assesses the "fairness" of the composition of the Security Council's permanent membership and the right of veto. His conclusion that there is scope for Security Council reform is well reasoned and presents hope for that oft defiled institution. These two articles, more so than the others, bring the reader back to the central themes of morality, ethics, social justice and even international well-being and survival.

Recently, the International Trade and Business Law Committee organised a twilight seminar during which Grant David presented a paper. The paper appears in this issue as an article entitled *Dumping on Your Mates – a Trans-Tasman Experience*.¹³ The article is topical and has an underlying moral twang to it. It discusses Australian and New Zealand laws and practices in anti-dumping within the context of several issues: international trade, current trends in globalisation, lowering of trade barriers, real or

¹⁰ At 63-81.

¹¹ The difficulty faced by world leaders on questions of arsenals and weapons, including bacteriological and toxin weapons, is highlighted in this case by an allegation that the United Nations Secretary-General, Kofi Annan, is responsible for the stalemate and escalation of the weapons inspections crisis in Iraq; Riley, "UN chief blamed for weakening against Saddam" Sydney Morning Herald, 7 November 1998 at 19.

¹² At 82-133.

¹³ At 134-154.

perceived economic and social effects on the “dumped” or receiving state, and impact on the sovereignty of states. The article fits in with what was said earlier about the distortion of the level playing field and of the concept of fairness and fair competition, and of morality itself. After the article was submitted for publication, two articles appeared in *The Economist*¹⁴ which support the thrust of Grant David’s arguments.

In the year 2000, Sydney will be hosting the summer Olympic Games. Experience has shown that disputes on multifarious issues will arise and become part of the unofficial program of the meet. It will not surprise anyone if there are allegations of drug cheating by athletes in spite of education programs and publicity campaigns against the ills of this practice. Drug cheating stems from both greed and the desire for glory. Damian Sturzaker, recently back in Australia from The Hague’s Academy of International Law and armed with the Diploma of International Law,¹⁵ writes on the settlement of disputes by the panels of the Court of Arbitration for Sport.¹⁶

Bearing in mind that our readership includes legal practitioners who may not be interested in lengthy academic pieces but wish to be kept informed we have included a section of Shorter Articles for them. There are three offerings here. First, Professor David Ruzié, a retired international civil servant and professor of international law, shares some of his thoughts on the international civil service.¹⁷ Secondly, our Associate Editor, Peter Radan, writes a sequel to his article in last year’s issue on the secession of Quebec in the light of legal developments that have taken place in Canada.¹⁸ And finally, there is an article on the euro.¹⁹ The article

¹⁴ “Against anti-dumping” 7 November 1998 *The Economist* at 16; “Unfair protection” 7 November 1998 *The Economist* at 81.

¹⁵ So far, only six Australians have been awarded this prestigious award by the Academy.

¹⁶ At 155-167.

¹⁷ At 168-170.

¹⁸ At 171-176.

¹⁹ At 177-182.

introduces readers to the mechanics of the single European currency on the eve of its launch²⁰ and it also provides a helpful glossary to initiate the uninitiated in this important European development.

As usual, a number of book reviews are presented,²¹ including an edited version of the latest International Court of Justice order on counter-claims in the on-going case, *Bosnia and Hercegovina v Yugoslavia*.²²

Earlier, we alluded to the space age. A few months ago, Australia decided to enter the space race with the announcement that it would take part in the Kistler project in Woomera, South Australia. This move has made Australia a launching state. This announcement coincided with the holding of the 1998 Manfred Lachs Space Law Moot Court Competition on 1 October in the Supreme Court of Victoria in Melbourne. The competition is an annual international event for law students. The finalists this year were teams from the United States (represented by the University of North Carolina) and Finland (represented by the University of Helsinki). The teams argued before an illustrious bench of three judges from the International Court of Justice and the winner was North Carolina. The best oralist was from North Carolina also, while Helsinki won the prize for best written memorial. The presiding judge during the moot was His Excellency CG Weeramantry (Sri Lanka)²³ who is Vice President of the International Court. The other two judges were Their Excellencies AG Koroma (Sierra Leone) and HEVS Vereshchetin (Russia).

This competition is part of the program for the annual Congress of the International Astronautical Federation and the final is always argued before three judges of the International Court of Justice. The competition is organised by the Paris-based International Institute of Space Law. At present, teams from only two regional blocs, America and Europe, participate in the competition. It is hoped to extend the competition to the

²⁰ On 1 January 1999.

²¹ At 183-222.

²² At 223-228.

²³ Formerly Professor of Law at Monash University in Australia.

Asia/Pacific bloc. So far, Indonesia, Japan, Taiwan and Australia have shown an interest in competing, with the possibility that the inaugural Asia/Pacific competition be held in Sydney in April/May 2000. In September/October 1999, the Congress and the Manfred Lachs Moot Court Competition will be held in Amsterdam. For more information on the Congress and/or Moot Court Competition, readers may contact the Editor by e-mail: a.goh@uws.edu.au; telephone: 0246 203 647; facsimile: 0246 281 338.

Finally, readers will notice that the Hon Dr Peter Nygh will be stepping down as President of the Australian Branch of the International Law Association after more than four years in the office. He has been a great supporter of and contributor to the Journal. We thank him, wish him well and hope he continues his valued association with the Journal. Like Dr Thomas Mensah, Professor Cao Jianming has joined the Advisory Board, further extending our geographical representation as he hails from Shanghai, People's Republic of China. Our Vice President, Margaret Brewster, always full of ideas, has also agreed to be a Board member, as well as Professor Ivan Shearer AM, Challis Professor of International Law, University of Sydney. With the support and expertise of old and new members on the Advisory Board, the help of new student assistants on the Editorial Board, and the constantly growing subscriber list, the Journal can only continue to go from strength to strength.

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