EDITORIAL

In 1992, the Australian High Court in **Eddie Mabo** v **The State of Queensland** (1992) 175 CLR 1 handed down a decision which would recognise the right of Australian aboriginal people to native title in land. In so doing it inter alia relied on the principle that although the Crown had acquired sovereignty and radical title to three islands following their annexation to the Colony of Queensland, native title to those islands had survived the acquisition. Such a pronouncement by the highest court in Australia has had far reaching consequences, as evidenced by ensuing events.

In this issue of the journal, the case is discussed by Brazil in his article (page 1) and he arrives at the conclusion that by making use of existing common law principles (including international law principles which have been incorporated into domestic law), the High Court did not create new law per se but had merely restated old and existing law, contrary to the perception of many people.

The Mabo case also dealt with the issue of trusts which in recent times had been in the news in one form or other. In that case, issues of fiduciary duties, accountability and the award of compensation were dealt with (see judgment of Toohey J for example). A similar issue was raised by the aboriginal peoples in Canada against the Crown, and it was also used by Nauru in its claim for compensation against Australia for the alleged breach of the latter's duties as a trustee (see page 238).

At another level, Palau, the last remaining component of the UN Trust Territory of the Pacific voted in 1993 in its eighth referendum to end that trust and start a new relationship with the United States. This was to take the form of a compact of free association, similar to that in existence between the United States and the Federated States of Micronesia and the Marshall Islands.

Claims to independence and sovereignty will take place as long as people experience a sense of displacement because their boundaries have somehow been delineated or redefined along the historical timeline. These claims bring with them problems, inherent or otherwise. For example, in the Middle East, both the Palestinians and Israelis have continued to suffer the fallout from such redefinition following World War II, in spite of the recent brave attempts by the Chairman of the Palestinian Liberation Organisation, Arafat, and Israeli Prime Minister, Rabin, to bring peace to the region. For example, the ferocity of feelings between the two peoples in the region is reflected in incidents like the Hebron massacre and the international legal implications of this event is discussed by Welchman (see page 27).

Another example is found in the Balkans where fighting continues amongst the various players, resulting in unspeakable and mindless atrocities, including genocide, being committed against the inhabitants there. A War Crimes Tribunal was therefore established at the Hague, the result of the unanimous acceptance by the Security Council of the

recommendation of the UN Secretary-General, Boutros Boutros-Ghali with the main purpose of prosecuting war crimes and violations of human rights committed in the former Yugoslavia since 1991. The tribunal is composed of eleven judges (who do not have the power to impose the death sentence), one prosecutor, two trial chambers and an appeal chamber.

Further, at approximately the same time the Tribunal was established, the initiative to address the atrocities of armed conflict was reiterated at the International Conference on the Protection of War Victims held in Geneva. In its Final Declaration the targeting of civilians was condemned and the establishment of a permanent war crimes tribunal was also supported (see page 182; also see the case of Bosnia and Herzegovina v Yugoslavia [Serbia and Montenegro] on page 189).

Yet other examples which dealt with territorial boundaries in 1993 are the return of Hong Kong to mainland China in 1997 (see page 57) and the maritime delimitation case between Greenland and Jan Mayen (Denmark v Norway) (see page 222).

Mediation, as an alternative form of dispute resolution, is ever increasing in popularity because of the practical realisation that its informality provides the disputing parties more say, and thus more control, in the resolution of their conflicts. Moreover, the process is less time consuming and therefore cheaper to conduct. In Mills' article, he discusses mediation practices in China, a country which is trying to emerge from the medieval ages and come to grips with the introduction of a market economy. He then straddles the Pacific by providing a comparative analysis of those practices with those which exist in the United States, as an example of a developed western society (see page 31).

And finally, 1993 began momentously for a large part of Europe. On January 1, the Single European Act of 1985, which had entered into force in 1987, was implemented with the establishment of the single European market. Generally speaking, this led to the free movement of goods, services, capital and persons throughout the member states of the European Communities. A few days later, on January 6, a "new look" European Commission of 17 members was established, following the signing of the Maastricht Treaty on European Union. When Demark voted to ratify the Treaty, it was described by Jacques Delors, President of the EC Commission, as a "stimulus to the Community to leave behind a period of gloom and inaction".

The culmination of the Treaty's ratification process took place on November 1, when it entered into force. It paved the way for the implementation of "four simple ideas" ie (a) greater economic prosperity, (b) greater external ambition, (c) greater effectiveness, and (d) greater democracy. This was in spite of the fact that the exchange rate mechanism (ERM) of the European Monetary System (EMS), which had been established in 1979, collapsed in August because it "no longer (was) capable of dealing with the pressure of deregulated international currency dealings." (see [1992] Australian International Law News (4)).

Readers will notice in this issue that there is a change in the way documents have been presented. In the past, they were reproduced in their original form; in this issue, they have been re-typed so that a degree of consistency is achieved, in an effort to produce a more

professional looking product. As part of the concerted effort to improve the journal, an Editorial Committee has been established to assist me in future and I would like to welcome Patrick Keyzer as Assistant Editor and Mary Ferguson as Editorial Assistant.

I would also like to thank the various persons who have contributed to the journal either in an ongoing or ad hoc manner and would gratefully welcome further contributions. And last but not least, in particular I wish to thank Noemi Salenga and Caroline Wong for typing the manuscript, their professionalism and incredible patience with me.