

Asian Law Centre

Law School
The University of Melbourne

ANNUAL REPORT

JANUARY - DECEMBER 1998

DIRECTOR'S REPORT - Professor Malcolm Smith

1998 was a year of consolidation of major programs and of building on our existing international linkages. It was also a year of change in the professional and personal lives of key members of the Centre.

Our teaching program continued unabated, with a new undergraduate subject "Commercial Law in Asia" debuting to 65 students. We maintained a major presence in the graduate program. Our research produced new publications at the individual level and a collaborative ARC Large Grant application which was awarded at the end of the year, to commence in 1999. We maintained our high number of postgraduate research students.

The highlight of our conference year was the very successful "Law and the Chinese outside China" which was held in Canberra with the ANU in early June. The Conference was funded by the Chiang Ching-Kuo Foundation of Taipei, the second significant grant to the Centre from that foundation. The first grant helped us establish the lectureship in Taiwanese Law held by Sean Cooney. Experts from China, Taiwan, Japan, Singapore and the United States and Canada attended. It was particularly important that these participants came from many of our partner Universities and Centres internationally. These included the Director of the Chinese Law program at UBC, Professor Pitman Potter, Professor Paul Chen of the University of Tokyo, and representatives of Beijing University, the Law and Politics University of Beijing, and National Taiwan University. The Conference continued our leadership role in Chinese legal studies.

Early in the year, Sarah Biddulph, our Associate Director (China) accepted an offer of a short term appointment from the Australian law firm Blake Dawson Waldron to assist them in establishing their new Shanghai Office. Blakes were one of the successful Australian firms to receive licences to establish offices in China. Sarah came to the Asian Law Centre from Blakes and her time with them will give her an exceptional opportunity to gain an up to date impression of current commercial activity in perhaps China's most exciting international city. Her input to the June Conference in Canberra reflected the impact of her first hand exposure to China.

Sean Cooney, Associate Director Taiwan, joined Sarah overseas in July when he took up residence at Columbia Law School to commence a JSD in the area of labour law in the Asian region. At Columbia he has the opportunity to work with Professor Randle Edwards, long a pioneer in Chinese legal studies in North America. Sean will be away until mid 1999.

The activity in the China area was maintained with our administrative and research assistant staff. Jennifer Qi, our Administrative Officer for the past four years took maternity leave in February, and her daughter was born soon afterwards. We look forward to Jennifer's return as her contribution has been immense, and her assistance to international visitors and students, especially from China, an unsung part of our operations. Susan McKeag, a final year LL.B. student who is specialising in Chinese Law took over the administrative reins and successfully saw us through the June Conference. She left late in the year to work with the Australian Embassy in China, to be replaced by Kathryn Taylor, an Honours student in Chinese. Kathryn quickly settled in to the task of running an on-shore Asian law program and an off-shore Chinese Law program.

The list of visitors is testament of the range of interests in the Centre. We became visitors ourselves, building on existing collaborations. Tim Lindsey received a commission from the World Bank and IMF to run a conference on Bankruptcy in Indonesia in April 1999. Malcolm

Smith was part of a delegation led by the Dean in November to Waseda University for a conference to mark the 40th Anniversary of the founding of the Comparative Law Centre in the Law School. In December, he was joined Veronica Taylor in presenting a keynote paper at the 5th Anniversary of the International Centre for Comparative Law and Politics at the University of Tokyo. All these contacts will bear fruit in the future, in spite of the continuing effects of the Asian Financial crisis, which had the welcome impact on our activities of increasing demand for our services and courses.

GOALS OF THE ASIAN LAW CENTRE

- To promote the teaching of Asian law in Australia at both graduate and undergraduate levels, and the teaching of Australian law in Asia.
- To improve Australia's knowledge of the commercial laws of our trading partners in the region and to research the legal framework for trade and investment.
- To develop specialised legal training programmes for Australians and Asians.
- To promote the development of Asian studies and Asian languages in other disciplines and to encourage a linkage with law studies.
- To promote exchanges of staff and students between the Law School and Asian universities and institutions.

ASIAN LAW CENTRE ADVISORY BOARD

The current Advisory Board of the Centre reflects the range of government, private and academic interest and involvement in the activities of the Centre.

- **Professor Michael Crommelin**
Dean, Law School, The University of Melbourne
- **Mr Peter Kelly**
Partner, Mallesons Stephen Jacques
- **Mr David Laidlaw**
Chairman of Partners, Maddock Lonie & Chisholm
- **Mr Stephen Spargo**
Partner, Arthur Robinson & Hedderwicks
- **Professor Alice Tay**
Director, Centre for Asia-Pacific Legal Studies, The University of Sydney

ASIAN LAW CENTRE MEMBERS

Members of the Law School associated with the Centre:

- **Professor Malcolm Smith** – Director
- **Ms Sarah Biddulph** – Associate Director, China (On leave at Blake Dawson Waldron, Shanghai)
- **Mr Sean Cooney** – Associate Director, Taiwan and Labour Relations Law
- **Dr Tim Lindsey** – Associate Director, South East Asia
- **Ms Veronica Taylor** – Associate Director, Japan

Associated Members:

- **Ms Pip Nicholson** – Vietnam

Research Assistants:

- Ms Eliza Bergin
- Ms Kerry Liu
- Ms Susan McKeag
- Adv. Andrew Schmulow
- Ms Stacey Steele
- Ms Kathryn Taylor

CONTRIBUTIONS TO THE UNIVERSITY OF MELBOURNE AND THE COMMUNITY

Ms Sarah Biddulph

- China-Australia Chamber of Commerce (Shanghai, China)
- Law Society of NSW

Dr Tim Lindsey

- Convenor, Indonesia Forum
- Member, Country Convenor's Committee
- Australia-Indonesia Institute (DFAT)
- Editorial Committee, *Australian Journal of Asian Law*
- Liaison Officer, International and Non-English Speaking Background Students

Professor Malcolm Smith

- Academic Board
- Associate Dean, Undergraduate Studies (Law)
- Board, Australian Centre for International Commercial Arbitration
- Chair of Convenors, Country Forums
- International House Council
- Vice-Chancellor's International Programs Committee
- International Trade and Business Committee, Law Council of Australia
- International Legal Services Advisory Council
- Board, Japanese Studies Centre
- Board, Leo Cussen Institute
- Board, National Korean Studies Centre
- Trinity College Council

Ms Veronica Taylor

- Member, Country Convenor's Committee
- Member, Japan Program Committee
- Member, University Staff Selection Committees: Faculty of Arts/Melbourne Institute of Asian Languages and Societies
- Member, Baillieu Library East Asian Collection Users' Committee
- Liaison Officer, International and Non-English Speaking Background Students
- Editorial Committee, *Australian Journal of Asian Law*
- Member, Japanese Studies Association of Australia

ASIAN LAW CENTRE FINANCES

The Asian Law Centre's activities in 1998 were funded from research grants. The Centre continues to receive administrative support from the Faculty, made up of a part-time administrative assistant and a small sum for office expenses. The Centre did not request any contributions from sponsors in 1998.

The main income generating activities of the Centre have been channelled into general Faculty income streams, through degree programmes, research funding, and income from training programmes in which members of the Centre participate.

MAJOR ACTIVITIES AND EVENTS 1998

- **Visit by Professor Nobuyuki Yasuda**

Professor Nobuyuki Yasuda of the Graduate School of International Development, Nagoya University, Japan, visited the Asian Law Centre on Friday 13 March, 1998, to discuss the possibility of research collaboration in his new three year project: “Regional Integration and Legal Culture in Asia-Pacific Nations”. He gave a presentation on his project in the Staff Library, followed by lunch at University House.

- **Visit by Chinese Contract Law Delegation**

On 8 April 1998, the Vice Chairman of the Legislative Affairs Commission of the Standing Committee of the National People’s Congress (NPC) of China, Mr. Hu Kangsheng, visited the Law School with a delegation of senior Chinese officials. The visit was sponsored by the Law Council of Australia, for the purpose of advancing Chinese understanding of Australian contract law. Professor Michael Tilbury, Director of the Centre for International and Comparative Law, gave the delegation an overview of remedies available for breach of contract. Professor Malcolm Smith presented the major findings of a research project into the standardisation of commercial contracts in Asia. The presentation was also attended by representatives of the law firm, Minter Ellison.

- **Visit by Mr Kapeatu Puaria**

On 4 May 1998, the Principal Legal Adviser of the Bougainville Transitional Government visited the Law School. Mr Puaria was visiting Melbourne on a Federal Government sponsored visit. A Luncheon meeting at the University of Melbourne was arranged, with a wide range of guests from the Melbourne legal community.

- **International Conference: “Law and the Chinese Outside China”**

The Asian Law Centre, together with the Faculty of Law of the Australian National University, the Centre for Southeast Asian Law at Northern Territory University and the College of Law, National Taiwan University, convened an international conference on the theme “Law and the Chinese Outside China”. The conference was held at the Australian National University in Canberra from 1 to 4 July 1998, and featured experts from countries such as Australia, China, Japan, Singapore, Taiwan, and the U.S.A. It was generously supported by the Chiang Ching-kuo Foundation.

The aim of the Conference was, for what may have been the first time in Australia, to bring international scholars together to consider the influence of the Chinese and their legal practices outside the Chinese mainland. Three aspects of the relationship between the Chinese and law in Southeast Asia and Australia were examined, including the impact of formal Chinese legislation on the laws of the region; the practice of Chinese laws and customs in the region by Chinese migrants; and the regulation of people of Chinese ethnicity by governments in the region, including matters relating to migration and social and economic activities.

A highlight of the Conference was the reception for participants held at the Residence of the Governor-General of Australia on 2 July. The Governor-General, Sir William Dean, delivered a welcoming address, extolling the value of multiculturalism and regional cooperation and

emphasising the particularly important contributions of the Chinese community in Australia. These comments formed the basis for a much longer speech delivered by him at a function in Sydney the following week, which was reported in the national media.

Many of the Conference papers will be published in the inaugural issue of the *Australian Journal of Asian Law*, a new refereed academic journal based at the University of Melbourne. It is hoped to bring these papers together in a book in the future.

VISITORS TO THE CENTRE

Chinese academics from the *China University of Politics and Law*, People's Republic of China

Delegation from *Wuhan University*, *People's Republic of China* - 23 October 1998

Nepal Justice Minister – 22 May 1998

Dr Bui, *Research Manager, Toyota Foundation, Toyota City*, Japan, who conducted research on immigration and citizenship

Chen Jialin, *Deputy Director of the Civil Law Department of the Legislative Affairs Commission*, People's Republic of China

Mr Chen Zhaokuan, *Deputy Director-General, Copyright Department, National Copyright Administration of China*, People's Republic of China

Ms Deng Yuhua, *Program Officer, International Division, National Copyright Administration of China*, People's Republic of China

Ms Fu Jianrong, *Member of the Research Department of the Legislative Affairs Commission*, People's Republic of China

Professor Furukawa, *Senshu University*, Japan

Mr Hu Kangsheng, *Vice Chairman of the Legislative Affairs Commission of the Standing Committee of the National People's Congress (NPC) of China*, People's Republic of China

Mr Stephen Lam, *Director of Administration and Development, Department of Justice*, Hong Kong

Ms Li Shuyun, *Division Director of the Office of the Legislative Affairs Commission*, People's Republic of China

Li Yattong, *Hong Kong University*, Hong Kong

Judge Okada, Japan – 18 December 1998 – February 5 1999

Mr Kapeatu Puaria, *Principal Legal Adviser, Bougainville Transitional Government*, Papua New Guinea – 4 May 1998

Mrs Song Aijuan, *Deputy Director-General, Hu Bei Copyright Bureau, People's Republic of China*

Mrs Su Rusong, *Section Chief, General Office, National Copyright Administration of China, People's Republic of China*

Mr Sun Jianhong, *Deputy Director-General, China Music Copyright Society, People's Republic of China*

Ms Tian Dongwen, *Management School, Beijing University of Aeronautics and Astronautics, People's Republic of China – September 1998 – March 1999*

Mr Wang Shengming, *Director of the Civil Law Department of the Legislative Affairs Commission of the Standing Committee of the National People's Congress (NPC) of China, People's Republic of China*

Professor Michael Waxman, *Law School, Marquette University, Milwaukee, Wisconsin, U.S.A.*

Professor Xu Zhangrun, *China University of Politics and Law, People's Republic of China*

Ms Yahong, *Faculty of Law, University of Hong Kong, Hong Kong*

Yang Minglun, *Deputy Division Director of the Civil Law Department of the Legislative Affairs Commission, People's Republic of China*

Professor Yasuda Nobuyuki, *Graduate School of International Development, Nagoya University, Japan – 13 March 1998*

Mr Zhao Gang, *Director, Copyright Division, Shangxi Copyright Bureau, People's Republic of China*

MAJOR COLLABORATIONS

International Centre for Comparative Law and Politics, Faculty of Law, University of Tokyo

Malcolm Smith and Veronica Taylor were invited speakers at a Symposium in December to mark the 5th Anniversary of the establishment of the International Centre for Comparative Law and Politics, a recognition of our involvement with that Centre since its inception.

TEACHING & EDUCATION

In 1998, members of the Centre contributed a full programme of Asian Law related subjects at both undergraduate and graduate levels.

The following Asian law subjects were offered in 1998:

Undergraduate Programmes

- Issues in Chinese Law
- Land, Race and Law in South East Asia
- Law and Labour Relations in East Asia and the Pacific Rim
- Law and Society in Japan
- Law and Society in South East Asia

Postgraduate Programmes

- Alternative Commercial Dispute Resolution in Asia
- Commercial Law in South East Asia (?)
- Harmonisation of Commercial Laws in the APEC Region
- International Marketing: Franchising, Distribution and Licensing (?)
- Introduction to the Law of Taiwan
- Korean Law
- Legal Aspects of Finance in Asia
- Resources Projects in Indonesia: Legal and Regulatory Issues

RESEARCH STUDENTS UNDER SUPERVISION OF CENTRE MEMBERS

Members of the Centre continued to offer supervision to Australian students interested in Asian law and international students studying at the Law School.

Research students under the supervision of Centre members included:

- Ms Sarah Biddulph
Ph.D. Supervisor: Malcolm Smith
“Controlling Detention for Investigation: Legal Accountability of the Chinese Public Security Organs”
- Mr John Chellew
LL.M. Supervisor: Malcolm Smith
“Derivatives: Clearly Dividing the Retail / Wholesale Markets in a Merged Futures / Securities Regime”
- Ms Alice De Jonge
SJD Supervisor: Malcolm Smith
“Media and Markets in China and Hong Kong”
- Mr Joseph Eng
Ph.D. Supervisor: Tim Lindsey
“A Critical Review of the Customary Land Rights of the Natives of Sarawak”

- Mr Peter Holland
SJD Supervisor: Tim Lindsey
“Constitutional Justice in Indonesia”
- Ms Lam Kwong Kwok
SJD Supervisor: Malcolm Smith
“Restructuring of State-owned Enterprises in China”
- Ms Kate McGregor
Ph. D. (Arts) Supervisor: Tim Lindsey
“The Military and History in Indonesia”
- Ms Pip Nicholson
Ph.D. Supervisor: Tim Lindsey
“Vietnamese Court Development Since 1945”
- Mr Benny Tabalujan
Ph.D. Supervisors: Malcolm Smith
Tim Lindsey
“The Legal Framework of Corporate Governance in the Indonesian Stock Market – Implications for Shareholders and Foreign Investors”
- Lisa Ting
LL.M. (completed) Supervisors: Malcolm Smith
“Indonesian Perspectives and Approaches to Negotiation and Dispute Resolution”
- Mr Xu Zhangrun
Ph.D. Supervisor: Malcolm Smith
“The Confucian Misgivings: Liang Shuming’s Narrative About Law”
- Ms Se Se Zhang
Ph.D. Supervisor: Malcolm Smith, Sarah Biddulph
“Tensions and Implications: Contractual Aspects of Technology Transfer to China”

GRADUATE DIPLOMA IN ASIAN LAW ADVISORY BOARD

The Graduate Diploma in Asian Law Advisory Board is comprised of the following people:

- **Mr Jim Armstrong**
Mallesons Stephen Jaques
- **Mr David Laidlaw**
Chairman of Partners, Maddock Lonie & Chisholm
- **Mr Stephen Spargo**
Partner, Arthur Robinson & Hedderwicks

RESEARCH SCHOLAR

Ms. Tian Dongwen

Ms. Tian Dongwen was a Visiting Research Scholar of the Asian Law Centre for a period of six months from August 1998. The purpose of her visit was to research Australia's commercial laws, including investment and security laws, with a view to incorporating this information into her teaching curriculum at the Management School of the Beijing University of Aeronautics and Astronautics

PUBLICATIONS

CHAPTERS IN BOOKS AND MONOGRAPHS

- Lindsey, T., "Bridging Differences: A Legal Relationship with Substance", in Sulaiman, I., Sofyan, G.H. & Smith, S.L. (eds.) (1998), *Bridging the Arafura Sea: Australia-Indonesia Relations in Prosperity & Adversity*, Asia Pacific Press, Canberra, 119-132.
- Lindsey, T., "Indonesia: Reinventing a Legal System - Too Much, Too Little, Too Late", in Tay, A. & Leung, C. (eds.) (1998), *East Asia: Nation Building, Human Rights and Trade*, Law Book Company, Sydney, 515-537.
- Nicholson, P., "Appointing High Court Judges: Need for Reform", in Lovell, D., McAllister, I., Maley, W. & Kukathas, C. (eds.) (1998), *The Australian Political System*, 2nd edition, Longman, Melbourne, pp. 172-183.
- Nicholson, P., "Vietnam", in Hassall, G. & Saunders, C. (eds.) (1998), *Asia-Pacific Constitutional Yearbook 1997*, University of Melbourne, Melbourne.
- Taylor, V., "'Asian' Contracts: An Indonesian Case Study", in Milner, A. & Quilty, M. (eds.) (1998), *Episodes: Australia in Asia*, Oxford University Press, Melbourne, 159-180.
- Taylor, V., "Legal Longitude: Australia, Japan and Contemporary Legal Scholarship" in Jain, P. (ed.) (1998), *Australasian Studies of Japan*, Central Queensland University Press, Rockhampton, 201-225.

JOURNAL ARTICLES

- Bergin, E. (1998), "Disclosure of Compliance with Environmental Obligations in the Company Law Review Act: A Case Study", *Australian Environmental Law News*, 4, 14-28.
- Cooney, S. (1998), ["When can Australian Judges Rectify the Common Law? An Analysis of the Australian High Court's Mabo Decision"] "Aodalilya Faguan Heshi Keyi Xiuzheng Putongfa? Aodaliya Zuigao Fayuan "Mabo" Panjue Fenxi", *Bijiaofa Yanjiu [Journal of Comparative Law]*, 12, 377-396.
- Lindsey, T. (1998), "The IMF and Insolvency Law Reform in Indonesia", *Bulletin of Indonesian Economic Studies*, 34 (3), 119-124.
- Lindsey, T. (1998), "Square Pegs in Round Holes: Fitting Modern Title into Traditional Societies in Indonesia", *Pacific Rim Law & Policy Journal*, 7(3), 699-719.
- Nicholson, P. (1998), "Vietnam", *Asia-Pacific Constitutional Yearbook 1996*, 373-386.
- Taylor, V. (with Haley, J. & Upham, F.) (1998), "Introduction: Mapping Land Use Regulation in the Pacific Rim", *Pacific Rim Law and Policy Journal*, 7(3), xiii-xvii.

NEWSPAPER ARTICLES

- Lindsey, T. (1998), "All in the Family" (on the Soeharto family), *Sunday Age*, 26 April.
- Lindsey, T. (1998), "The Generals' Alert" (on Wiranto & Soeharto), *Sunday Age*, 17 May.
- Lindsey, T. (1998), "The Loan Sharks" (on the IMF & World Bank), *Sunday Age*, 12 July.

WORK IN PROGRESS

- Cooney, S. & Mitchell, R., *Comparative Labour Law Theory in Application to Asian Countries*
- Lindsey, T., *Bibliography of World English Language Holdings on Asian Laws*
- Lindsey, T., *Law and Society in Indonesia* (in press)
- Taylor, V., *Contract Governance, Commercial Cultures and Change in Asia* (forthcoming)
- Taylor, V., Morris-Suzuki, T., & Mackie V., *Cultural Diversity and Citizenship in Japan* (forthcoming)
- Taylor, V. & Laster, K., *Educating Cultured Lawyers* (forthcoming)

CONFERENCE PAPERS AND SEMINARS DELIVERED BY MEMBERS OF THE CENTRE

- Lindsey, T., "Frameworks for Reforming Indonesian Bankruptcy Law", *Current Issues & Future Directions for Bankruptcy Reform in Indonesia: International & Comparative Perspectives*, Jakarta, April 1998.
- Lindsey, T., "Reformasi Hukum: Too Much, Too Little, Too Late", *Indonesia in the Post-Suharto Era*, University of Melbourne Students Conference, Melbourne, August 1998.
- Nicholson, P., Commentator, *Chinese Laws Outside China Conference*, ANU, July 1998.
- Smith, M., "Changing Regulatory Patterns in Japan - An Australian Perspective", *International Symposium on Asian and Oceanian Law: Free Market and Legal Regulation*, Tokyo Institute of Comparative Law, Waseda University, Tokyo, Japan, September 24-25, 1998.