

CENTRE FOR MARITIME LAW

T.C. BEIRNE SCHOOL OF LAW



UNIVERSITY OF QUEENSLAND

ANNUAL REPORT 2002

(Period 1 January 2002 to 31 December 2002)

Introduction

The directors of the Centre for Maritime Law (CML) are pleased to present this Annual Report 2002, for the period from 1 January 2001 to 31 December 2002.

During the period since the last report the CML has enjoyed an increase in interest in the courses it offers and the seminars it has held, as is reflected by the growing number of enrolments. The directors would like to acknowledge and to thank the registrants, the guest lecturers and the staff who have supported these endeavours. Without them the CML could not operate successfully.

Below: The Directors - Dr Sarah Derrington and Dr Michael White QC.



Teaching

LAWS7877 Legal Aspects of Naval Operations

In January this year the CML ran the 'Legal Aspects of Naval Operations' course. The course covered a wide range of topics including the rules of armed conflict, UNCLOS, the MV Tampa Crisis, Border Protection as well as naval operations in East Timor. The course was well attended by masters students, CEP's and others persons, including a large number of defence personnel.

The course was presented by Professor Ivan Shearer, AM, RFD, Lieutenant Commander Cameron Moore, RAN, Lieutenant Colonel Paul Muggleton, RAN and Dr Michael White QC.

27 attendees (mostly full or part time Defence officers)
 (16 LLM, of which 6 withdrawals without academic penalty were necessary because of sudden Defence postings immediately after the course
 11 CEP registrants)

LAWS 5160/7160 Maritime Law

Maritime Law is offered to LLB and JD students at the University of Queensland in Semester 1 most years, as an elective. This course is aimed primarily at undergraduate students who have had no previous exposure to maritime law. Some post-graduate students also attended to gain background knowledge for their research.

Maritime Law provides students with a basic understanding of aspects of admiralty and maritime law and the law of the sea. It includes an overview of marine pollution conventions and laws, constitutional background, shipping law, marine insurance, carriage of goods, charter parties, UNCLOS and other related topics. LAWS7834 scholars were also associated with these lectures.

38 students
 (28 LLB, 3 JD, 4 LLM, 1 MAppLaw, 1 GradCertAppLaw, 1 GradDipAppLaw)

LAWS7865 General Maritime Law

In early May the 'General Maritime Law' course was offered by the CML for the first time. The course covered the "wet" side of shipping and was attended by masters and CEP students.

Students benefited from an impressive collection of lecturers including Hugh Ellis (AMSA), Ian Hoskison (United Salvage), Ernest Van Buuren (Blake Dawson Waldron), John Kavanagh (Queensland Transport), Steve Pelecanos (Brisbane Marine Pilots), Chris Thompson (Adsteam Harbour), Peter McDermott (TC Beirne School of Law), Margaret Stephenson (TC Beirne School of Law) and the course co-ordinator Michael White.

14 students

(1 CEP
13 assessed (12 LLM,1 MAppLaw)

International Maritime Arbitration Moot

The Third International Maritime Moot was held in Brisbane, at the University of Queensland, this year from 28 June to 3 July. Eleven universities competed in the competition, namely Griffith University, Indiana University, Jai Narain Vyas University, Kerala University, Marquette University, National Law School of India University, National Law School of India University, Queensland University of Technology, University of Queensland and University of Technology Sydney. The moot problem involved a dispute arising out of the delivery of a bulk oil cargo.

The competition was a great success with the University of Queensland, so adjudged by independent judges, winning the Norton White Prize for Best Team Mooters. Hong Kong University was the runner-up. The National University of Singapore won the General Round of the Competition as well as the prize for the Best Memorandum for the Claimant. The National Law School of India University won the prize for Best Memorandum for the Respondent. Anna Byrne (University of Queensland) won the prize for the Best Speaker in the Final Round and Tham Wei Chern (National University of Singapore) won the prize for Best Speaker in the General Rounds

The competition is a joint initiative of the Centre for Maritime Law and the Australian Institute of Foreign and Comparative Law. The 2003 competition will be hosted by the National University of Singapore in Singapore.



Above: The University of Queensland Team. Back row, from left to right Anna Byrne, Rebecca Taube, Ryan Goss (Student Coach), Siobhan McKeering (Student Coach), Raphael Touze (Student Coach), Russell Hinchy (Coach) and Ben Fox. Front row, from left to right: Kristen Hui, Vaishakhi Rajanayagam and Kate Deere.



Above: The Final of the 2002 Moot competition was held at Brisbane's Customs House. The arbitral tribunal was chaired by Mr David Martin Clarke (from England) and also consisted of the Honourable Des Derrington QC, (Adjunct Professor) and Mr Drew James (Norton White, Solicitors).

LAWS7867 The Marine Environment and Marine Pollution

This annual course was conducted from Monday 22 July to Thursday 25 July 2002. Topics covered include the delimitation of maritime zones, navigational regimes, indigenous sea rights, international conventions, as well as federal and state legislation protecting the marine environment. The marine environment is of growing importance and the course enhances skills in this important area.

The course was presented primarily by Dr Michael White QC and Mr Mike Julian, chair of the IMO MEPC.

17 students

(5 CEP

10 assessed; 6 LLM, 1 JD, 1 MAppLaw, 1 GradDipAppLaw, 1 GradCertAppLaw)

Advanced Marine Insurance Law

Professor Markho Pavliha, from University of Ljubljana, Slovenia, and Dr Sarah Derrington presented the course in Marine Insurance from 6-9 September 2002 to 15 students from diverse backgrounds including underwriters, reinsurers, claims managers and insurance law practitioners. This made for lively debate throughout the course. The Centre is grateful that Marcus John from Thomas Miller in Sydney was

able to speak to the class about P&I Insurance and, in particular, the impact of September 11 on the marine insurance market.

14 students

(1 CEP

13 assessed; 9 LLM, 1 JD, 2 MAppLaw, 1 GradDipAppLaw)

Seminars

Hosted an AMSA Seminar – ‘Oil Spill Prosecutions’

On 9 July Australian Maritime Safety Agency (AMSA) held a seminar entitled ‘Oil Spill Prosecutions’ in conjunction with the CML at the Law School. The seminar was presented by Paul Nelson (AMSA), Michael White (CML), John Leeder (Leeder Consulting), Mike Hawley (Australian Federal Police), John Kavanagh (Queensland Transport) and Gerard Breen (Abbott Tout Solicitors).

The seminar was organised by Paul Nelson, AMSA, and was very well attended. Participants primarily consisted of representatives from various Commonwealth, State and Territory agencies.

30 attendees

CML Seminar – ‘Handling Oil Spill Claims’

On 10 July the CML hosted a seminar on ‘Handling Oil Spill Claims’. The seminar was presented by Michael White (CML), Paul Nelson (AMSA), Pat Dunworth (Qld Transport), Sasha Turloff (White Young & Williams, Lawyers), Norman Lopez (Normarine Services), Frank Turner (Thynne & Macartney) and Rick White (Plumley Pearson & White). The seminar was run to follow the day after the AMSA seminar so that most of the skills required in relation to oil spills were covered over the two days.

21 attendees

World Maritime Day Workshop ‘In Search of an Australian Shipping Policy’

To mark the occasion of World Maritime Day, declared by the IMO each year, the CML held a workshop on the topic ‘In Search of an Australia Shipping Policy’. After a short introduction by Michael White papers were delivered by Lew Russell (Shipping Australia), Lachlan Payne (Australian Shipowners Association), Barry Vellnagel (National Bulk Commodities Group), Sam Bateman AM (Centre for Maritime Studies), William Robson (Queensland Alumina Ltd), Bruce Virgo (Solicitor), Stuart Ballantyne (Sea Transport Solutions) and Michael Alexander (Global Shipping Services).

A vigorous discussion was held on the need for such a policy and it became apparent that developing one was a complex matter. Michael White agreed to draft an outline for possible subject matters and the workshop would be held, with a larger circle, on

World Maritime Day in 2003 (25th September 2003) to further advance the matter. The papers given at the workshop are displayed on the CML web site.

Scholars and Visitors

Research Assistant 2002

Mr Jonathan Ketcheson was the CML Research Assistant for 2002. He was completing his B.Sc. and LLB and assisted in the preparation and organisation of courses as well as with research. He will graduate in both degrees in 2003.



Jonathan Ketcheson

PhD Candidates

There were 5 PhD candidates in 2002 who were pursuing their research. They were:

Mr Paul Willee QC, from Victoria, part-time, whose topic is *International Responses to Piracy*.

Mr Pierre-Jean Bordahandy, from France, full-time, whose topic is *The Legal Implications of Containerisation*.

Mrs Dhiana Puspitawati, from Indonesia, full-time, whose topic is *Indonesian Archipelagic Sea Lane Passage and its Implementation*. During the course of the year Ms Puspitawati upgraded from an LLM by research to a PhD.

Mr Norman Lopez, from Queensland, part-time, whose topic is *Intermodalism and Total Logistics Solutions: A Legal and Systemic Approach*.

Mr Husnu Al-Suood, from Maldives, full time, commenced his PhD in *Investigation of the Adequacy of the Legal Environment for the Protection and Preservation of the Marine Environment in Maldives in the light of International Law and Domestic Law*.

The CML receives a considerable number of inquiries from scholars looking to study for their PhD but who are unable to achieve funding.

Masters Graduates

Mr Raphael Touze, from France, completed his LLM and returned to France. Mr Anthony Heiser completed his LLM and has resigned from his firm of solicitors to seek maritime policy employment in Canberra.

Visitors to the CML

During the year a number of visitors to the CML were present for varying lengths of time. Apart from those who presented in the CML courses, mentioned above, they included:

Dr Edgar Gold CM QC, Adjunct Professor of the TC Beirne School of Law, who visited, advised and presented courses at various time during the year.

Professor Marko Pavliha, a visitor from the University of Ljubljana in Slovenia.

Ms Kyriaki Noussia, a visiting research scholar from the Institute for Maritime Law, Southampton, England.

Funding

The directors receive regular inquiries from scholars in various parts of Australia and from overseas who wish to pursue post-graduate degrees in law at the CML. Most of these scholars need a scholarship to meet the fees and living expenses incurred during their studies. The current lack of financial support for these scholars is a major impediment to raising Australian, regional and Asia-Pacific skills in maritime policy, regulation and law.

Acknowledgments

The Directors would like to thank the numerous persons from the maritime industry, government and the legal profession for their support over the year. Without that support the work of the CML could not proceed with the undoubted success that it has had during 2002. The Directors would also like to thank their colleagues and the administrative staff in the T.C. Beirne School of Law who have assisted in many ways to make the year such a success.

Dr Michael White QC
Executive Director

Dr Sarah Derrington
Director

14 February 2002

APPENDICES

- 1. Research and publications by CML directors**
- 2. Research and publications by CML scholars**
- 3. Financial report**

Annex 1

Research and Publications by CML Directors

Editorial Positions

Editor

White, M 2001 *MLAANZ Law Journal*, Journal of the Maritime Law Association of Australian and New Zealand, Annual Publication, 2002.

Member of Editorial Board

White, M 2001. *Journal of Maritime Law and Commerce*, Jefferson Law Book Co., Maryland, USA.

Honorary Correspondent

White, M 2001 *Selden Society*, London. Honorary Correspondent in Australia, Queensland (Co-correspondent with The Hon. Mr Justice McPherson, CBE, Queensland Court of Appeal).

Convenor

White, M: The Supreme Court of Queensland History Program Convenor (under the Supreme Court Library Committee). The Convenor assists the Supreme Court Library in its program on history collection, seminars and publications.

White, M: The Selden Society, Australia Branch, Queensland Chapter, for the annual meeting and paper (legal history society with Headquarters in London)

Books

White M & Rahemtula A (eds) *Sir Samuel Griffith: The Law and the Constitution*, Law Book Co, Sydney, 2002

Book Chapters

Derrington S, "The Law of Marine Insurance in Australia - Perspectives and Permutations" in D. Rhidian Thomas *The Modern Law of Marine Insurance*, Volume Two, LLP, 2002

White M, Chapter 10 "Marine Pollution from Ships: International Conventions and Australian Laws" in Lipman Z & Bates G (eds) Pollution Law in Australia, 2002, LexisNexis Butterworths, pp.382-422.

White M, Chapter 10 "QGSY Lucinda and its Significance to the Australian Constitution" in White M & Rahemtula A (eds) *Sir Samuel Griffith: the Law and the Constitution*, Law Book Co., Sydney, 2002

Conference Delegate

White M, International Law Association Conference, New Delhi, India, including participation in the discussions of the Committee on the 'Outer Continental Shelf', of which he is an Australian Representative, 2-6 April 2002.

White, M, APEC Regional Oceans Conference, Canberra, June 2002.

White, M, Submarine Institute of Australia Conference, Fremantle, June 2002.

White, M, Maritime Law Association of Australia and New Zealand, 2002 Annual Conference, Melbourne.

Conference Papers

Derrington S, *Maritime Law Update*, Norton White, Sydney, 21 February 2002

Derrington S, *The Duty of Utmost Good Faith - the Australian proposals*, Faculty of Law, University of Cambridge, 11 November 2002

Derrington S, *The Duty of Utmost Good Faith in Marine Insurance - Time for Reform?*, Panellist at Forum, The London Shipping Law Centre, 27 November 2002

White M "*MV Tampa Incident August 2001*", Australian and Canadian Ocean Research Network (ACORN), 29 May – 2 June 2002, Canberra. (Paper read by Dr Craig Forrest)

White M "*East Timor and Australia: Sea Boundary and Offshore Oil & Gas Issues*", Australian and Canadian Ocean Research Network (ACORN), 29 May – 2 June 2002, Canberra. (Paper read by Dr Craig Forrest)

White M "*International IMO; CLC & Fund Conventions*", Marine Oil Spills Claims Seminar, Centre for Maritime Law, UQ, 10 July 2002

White M "*Maritime Law Issues*", given in the 'Tampa Affair Panel', Annual Conference of the Australian and New Zealand Society of International Law, Canberra, 14-16 June 2002

White M "*Mounting an Oil Spill Prosecution*", Seminar on Marine Pollution Incident Investigations & Prosecutions, Australian Maritime Safety Authority, Brisbane, 9 July 2002

White, M "*Submarines in the Gallipoli Campaign: The Exploits of the AE2*", United Service Club, Brisbane, 13 March 2002

White M "*The AE2: Historical Importance to Australia*", Submarine Institute of Australia Conference, Fremantle WA, 7-8 June 2002

White M “*The Tampa Incident*”, Australian Institute of International Affairs, Qld Branch, Brisbane, 11 June 2002

Journal Articles and other Entries

Derrington S & White M “Australian Maritime Law Update: 2001”, (2002) 33 *Journal of Maritime Law & Commerce* 275-290 (No. 3, July 2002)

Derrington S, ‘The Marine Insurance Act 1909 (Cwlth) - One reform too many?’ [2002] *International Journal of Commercial Law*

Derrington S, ‘Marine Insurance Law in Australia - The Australian Law Reform Commission Proposals’ [2002] *Lloyd's Maritime and Commercial Law Quarterly* 214

White M "M/V Tampa and Christmas Island Incident, August 2001", *BIMCO REVIEW 2002*, Policy and Law Section, pp.116-121.

White, M. “M/V Tampa Incident and Australia’s Obligations-August 2001” (2002) 122 *Maritime Studies* 7-17.

Case and other Notes

Derrington, S, *Frost v Warner* (2002) 16 *MLAANZ Journal* 145

White, M “Appointment of Senior Counsel in Queensland 2001’, (2002) 76 *ALJ* 88

Annex 2 Research and Publications by CML Scholars

(Dissertations by Master and other Degree Scholars in the T.C. Beirne School of Law
in marine courses)

Al-Suood H, *Port State Control – with special emphasis on the Maldives.*

Baker E, *The Salvage of the ‘Iron Baron’.*

Campbell P, *MV Tampa: Keeping the Boats at Bay (or out of them).*

Collins M, *What are the key issues that confront assimilating civilians into the Australian Navy: An International perspective.*

Dickson M, *The Australian Defence Force: Domestic & International Laws of the Sea.*

Fischer M, *Historic Shipwrecks under International and US-American Law.*

Glister B, *The Impact of Electronic Commerce on the traditional Bill of Lading.*

Glister B, *Pilotage and the Application of Liability in the 21st Century.*

Heinemann F, *The Torres Strait: A Customs Perspective.*

Heiser A, *The Australian Maritime Boundary with East Timor and the Joint Petroleum Development Area.*

Heiser A, *Border Protection and the United Nations Convention on the Law of the Sea 1982.*

Heiser A, *Section 23 of the Marine Insurance Act 1909 (Cth): the duty of utmost good faith after the formation of the contract*

Jackson H, *Who is liable for Marine Pollution? An Examination of Liability for Ship Based Oil Spills in Four Australian Jurisdictions.*

Jaya K, *Comment on forthcoming Ballast Water Management Convention: Is it enough with two-tier approach?*

Jaya K, *The Development of Maritime Collision Law in Indonesia.*

Jaya K, *The Development of Pilotage Law in Indonesia.*

Jaya K, *Indonesian Marine Insurance Law: The Practice and Current Legal Issues*

Johnstone L, *Utmost Good Faith and the Duty of Disclosure in Marine Insurance Law.*

Kulasingam A, *Arrest of Ships and Arbitration Proceedings.*

Kulasingam A, *The duty of utmost good faith, material disclosure and the mind of a prudent insurer are vital factors that determine the validity of Marine Insurance Contracts. A comparative analysis of the potential problems faced by Marine Insurance Law and Practice in Australia and Malaysia.*

Lim G, *Piracy in the Straits of Malacca.*

Loder S, *The Duties, Liabilities and Rights of Police in Maritime Casualties.*

Maddern, D *Competing Interests in Formulating International Guidelines for the Provision of Places of refuge to Ships in Distress.*

Michaelsen C, *Maritime Exclusion Zones in Times of Armed Conflict at Sea; Legal Controversies Still Unresolved*

Mierendorff R, *Marine Casualties: Grounding and the salvage of the vessel MV. Bung Teratai Satu on Sudbury Reef, Queensland.*

Mierendorff R, *Marine Regulation of Shipping Operations for the Prevention of Pollution from Sewage.*

Moss D, *Leashing the Scurvy Dogs – Suppression of Piracy at Sea by Naval Forces.*

Rajadurai A, *The ISM Code - some implications for contracts of marine insurance*

Shanon D, *Stamp Duty and Policies of Marine Insurance*

Sheean J, *Does the Requirement of "Utmost Good Faith" in s.23 of the Marine Insurance Act 1909-1973 elevate the relationship of insured and insurer to a fiduciary relationship?:*

Sheean J, *What is the future of indigenous sea rights and marine Native title in Australia?*

Sheehan A, *The Right of Innocent Passage of Warships through the Territorial Sea and the validity of Coastal States claims for prior notification and/or authorisation.*

Speyer D, *Salvage, Salvors Negligence and Public Policy.*

Touze J, *Coastal State Jurisdiction over Foreign Flag Vessels threatening its Marine Environment.*

Touze J, *The Current Status of the Law of Prize.*

Touze J, *The Limitation of Liability of the Shipowner under Australian and French Law.*

Touze J, *The Ocean Shipment of Japanese Irradiative Nuclear Fuel: The Legal Issues.*

Touze J, *The "Pay to be Paid" Rule*

Wene J, *Marine Perils: A Study of General Principles and War Perils in relation to the principles of Causation and Burden of Proof*

White S, *International Law and the Navy's Enforcement Powers under the Border Protection Legislation.*

Yeh A, *The legal aspects of collisions in Australia: including references to actual collisions that have occurred along the Australian eastern seaboard.*

Yuen S, *Pilotage in Sydney Ports: The legal framework, plus responsibility and liability issues.*