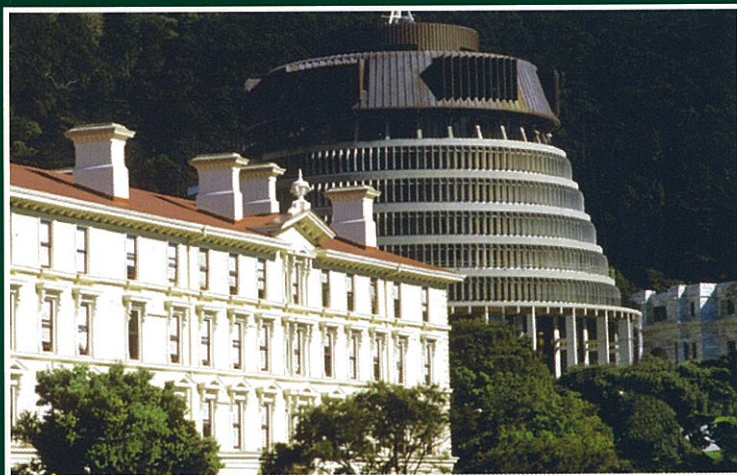


# *New Zealand Journal of Public and International Law*



VOLUME 8 • NUMBER 1 • JUNE 2010

SPECIAL CONFERENCE ISSUE  
17TH ANNUAL ANZSIL CONFERENCE: THE FUTURE OF  
MULTILATERALISM IN A PLURAL WORLD

---

THIS ISSUE INCLUDES CONTRIBUTIONS BY:

His Excellency The Honourable Sir Anand Satyanand <small>CNZM QSO</small>	Colin Keating
Andrew Byrnes	Christopher Michaelson
Andrea Durbach	Jacqueline Mowbray
Roger S Clark	Catherine Renshaw
Christopher C Joyner	

---

**Victoria**

UNIVERSITY OF WELLINGTON

*Te Whare Wānanga  
o te Ūpoko o te Ika a Māui*



FACULTY OF LAW  
*Te Kauhanganui Tātai Ture*

© New Zealand Centre for Public Law and contributors

Faculty of Law  
Victoria University of Wellington  
PO Box 600  
Wellington  
New Zealand

June 2010

The mode of citation of this journal is: (2010) 8 NZJPL (page)

The previous issue of this journal is volume 7 number 2, December 2009

ISSN 1176-3930

Printed by Geon, Brebner Print, Palmerston North

Cover photo: Robert Cross, VUW ITS Image Services

# CONTENTS

## 17TH ANNUAL AUSTRALIA AND NEW ZEALAND SOCIETY OF INTERNATIONAL LAW CONFERENCE: THE FUTURE OF MULTILATERALISM IN A PLURAL WORLD

Foreword	
<i>Joanna Mossop</i> .....	vii
Opening Address by the Governor-General of New Zealand	
<i>His Excellency The Honourable Sir Anand Satyanand GNZM QSO</i> .....	1
Prospects for the Multilateral Security System	
<i>Colin Keating</i> .....	9
The International Criminal Law System	
<i>Roger S Clark</i> .....	27
Reconciliation as Conflict Resolution	
<i>Christopher C Joyner</i> .....	39
The Security Council's Practice of Blacklisting Alleged Terrorists and Associates: Rule of Law Concerns and Prospects for Reform	
<i>Christopher Michaelsen</i> .....	71
Language in the UN and EU: Linguistic Diversity as a Challenge for Multilateralism	
<i>Jacqueline Mowbray</i> .....	91
Human Rights Protection in the Pacific: The Emerging Role of National Human Rights Institutions in the Region	
<i>Catherine Renshaw, Andrew Byrnes and Andrea Durbach</i> .....	117

The **New Zealand Journal of Public and International Law** is a fully refereed journal published by the New Zealand Centre for Public Law at the Faculty of Law, Victoria University of Wellington. The Journal was established in 2003 as a forum for public and international legal scholarship. It is available in hard copy by subscription and is also available on the HeinOnline and Westlaw electronic databases.

NZJPIL welcomes the submission of articles, short essays and comments on current issues, and book reviews. Manuscripts and books for review should be sent to the address below. Manuscripts must be typed and accompanied by an electronic version in Microsoft Word or rich text format, and should include an abstract and a short statement of the author's current affiliations and any other relevant personal details. Authors should see earlier issues of NZJPIL for indications as to style; for specific guidance, see the New Zealand Law Style Guide 2010. Submissions whose content has been or will be published elsewhere will not be considered for publication. The Journal cannot return manuscripts.

Regular submissions are subject to a double-blind peer review process. In addition, the Journal occasionally publishes addresses and essays by significant public office holders. These are subject to a less formal review process.

Contributions to NZJPIL express the views of their authors and not the views of the Editorial Committee or the New Zealand Centre for Public Law. All enquiries concerning reproduction of the Journal or its contents should be sent to the Student Editor.

Annual subscription rates are NZ\$100 (New Zealand) and NZ\$130 (overseas). Back issues are available on request. To order in North America contact:

Gaunt Inc  
Gaunt Building  
3011 Gulf Drive  
Holmes Beach  
Florida 34217-2199  
United States of America  
e-mail [info@gaunt.com](mailto:info@gaunt.com)  
ph +1 941 778 5211  
fax +1 941 778 5252

Address for all other communications:

The Student Editor  
New Zealand Journal of Public and International Law  
Faculty of Law  
Victoria University of Wellington  
PO Box 600  
Wellington  
New Zealand  
e-mail [nzjpil-editor@vuw.ac.nz](mailto:nzjpil-editor@vuw.ac.nz)  
fax +64 4 463 6365

# OPENING ADDRESS BY THE GOVERNOR-GENERAL OF NEW ZEALAND

*His Excellency The Honourable Sir Anand Satyanand GNZM QSO*

May I begin by greeting everyone in the languages of the realm of New Zealand, in English, Māori, Cook Island Māori, Niuean, Tokelauan and New Zealand Sign Language. Greetings, Kia Ora, Kia Orana, Fakalofa Lahi Atu, Taloha Ni and as it is the morning <signs in New Zealand Sign Language: good morning>.<sup>1</sup>

May I specifically greet you: Professor Campbell McLachlan QC, President of the Australian and New Zealand Society of International Law and your fellow board members; legal academics and practitioners from New Zealand, Australia and the Pacific; Emeritus Professor Tim Beaglehole, Chancellor of Victoria University of Wellington; Professor Tony Smith, Dean of the Faculty of Law; Distinguished Guests otherwise; Ladies and Gentlemen.

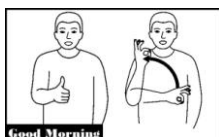
It has been with much pleasure that my wife Susan and I have accepted the invitation to attend the 17<sup>th</sup> annual conference of the Australian and New Zealand Society of International Law at the Faculty of Law at Victoria University of Wellington.

As Governor-General, it also gives me great pleasure to welcome international guests of the Society to Wellington and to New Zealand. I trust that as well as attending the conference, many of you will make the most of this opportunity to explore some more of our beautiful country.

I would like to speak to the theme of your conference – the future of multilateralism in a plural world and I will fashion what I have to say using a Polynesian mode. I will first introduce my whakapapa or connection with the group, progress to my whaikorero or main points and lastly issue a wero or challenge.

---

1



As to whakapapa, I first register myself as a continuing member, some might say recidivist member, of the legal community. During the 40 years since I graduated with a degree from the University of Auckland I have seen the law from a number of perspectives – first from 12 years as a lawyer, as a prosecutor and later as defence counsel, then a further 12 years as a Judge with a jury trial warrant and then a decade as an Ombudsman.

Although I was born in New Zealand, and although my career has been primarily focused in this country, my interests have always encompassed international affairs. In fact, since my parents were born in Fiji and my grandparents in India, if a pun can be excused, I was a child born of "international relations".

My background and interest in the rest of the world have been reflected in an international flavour attaching to some of my work as a lawyer, judge and ombudsman, and in my roles on the governance boards of the Asia New Zealand Foundation, the New Zealand Institute of International Affairs and Transparency International. I was also involved in the delivery of Litigation Skills Enhancement Programmes for Pacific lawyers and a Commonwealth Secretariat-funded programme for training newly appointed Ombudsmen. And in 2004 I joined a New Zealand Prime Ministerial delegation to India.

That perspective on international matters has widened considerably since being appointed as Governor-General in August 2006 and serving as the personal representative of the Queen of New Zealand. Unsurprisingly, I have found this aspect of the role particularly fascinating.

Within New Zealand, this involves receiving and hosting foreign Heads of State and other dignitaries, accepting the credentials of newly arrived diplomats, and maintaining an ongoing relationship with the diplomatic corps. Visiting Heads of State have come from every continent on the globe – from Uganda in Africa, to Ireland and the Netherlands in Europe, Chile and Uruguay in the Americas, Samoa and Kiribati in the Pacific, to Viet Nam, Korea, Timor-Leste and Singapore in Asia.

Beyond New Zealand, there is a requirement to travel internationally to represent New Zealand and New Zealand interests abroad. This relatively recent addition to the Governor-General's duties reflects evolution of the role in New Zealand. Thus far, those travels have included leading New Zealand delegations to the funeral of the Head of State of Samoa and the coronation of the King of Tonga, representing New Zealand at the 90<sup>th</sup> anniversary commemorations of the Battle of Passchendaele in Belgium, and receiving on behalf of the country the Franklin Delano Roosevelt International Disability Award in the United Nations (UN) Economic and Social Council chamber. I was also part of the New Zealand delegation at the Beijing Olympics.

There have also been formal State Visits to Canada, Australia, Mongolia, Samoa, India and most recently to Turkey, where I represented New Zealand on ANZAC Day at the commemorations of the Gallipoli landings. The visits to Canada, India, and Mongolia were the first ever undertaken by a New Zealand Governor-General.

As the representative of New Zealand's Head of State, I am expected to engage in events that have strong elements of protocol and ceremony, and that will also involve high-level discussions on matters on which I will be briefed by the Prime Minister or the Ministry of Foreign Affairs and Trade. It is a privilege to do so, and to have an accompanying opportunity to personally engage with people from the wide range of nations with which New Zealand has a relationship.

Hopefully this recitation of whakapapa has established for me a place to stand – as an active member of the legal community, a long-time observer of international affairs, participant in organisations that work to cement New Zealand's international links, and as the current incumbent in a role which requires me to represent New Zealand overseas and to focus on maintaining and enhancing this country's international relationships.

I would now like – in my whaikorero – to take an opportunity to focus on the theme of this conference. In particular, I wish to emphasise the continuity of the principles that underscore New Zealand's commitment to multilateralism and the challenges and opportunities ahead.

In preparing, I could not help noticing that the conference programme carries a photograph of the statue of Rt Hon Peter Fraser, New Zealand's Prime Minister from 1940 to 1949, in characteristic bent forward mode that features prominently outside this University's School of Law. If anyone can be said to symbolise New Zealand's commitment to multilateralism, it is Prime Minister Fraser.

He was part of what can be described as the fatherhood of the UN.<sup>2</sup> His work at the San Francisco Conference in 1945 helped establish the international world order that prevails today. In particular, his chairmanship of the committee that wrote the trusteeship chapters of the UN Charter accelerated the process of colonial independence.

His speech to the plenary session of the Conference, which drew considerable attention, outlined New Zealand's commitment to multilateralism. While a nation's foreign policy obviously changes with time and circumstances, what is remarkable to record about Fraser's speech 60 years on is that he outlined the key principles that have formed the foundations of New Zealand's approach to international relations since that time.

He said the League of Nations had not failed because of a defect in its machinery but because its members had failed to match deeds with words, and had placed expediency before moral principle. To emphasise these points he added:<sup>3</sup>

---

2 Michael Bassett with Michael King *Tomorrow Comes the Song: A Life of Peter Fraser* (Penguin, Auckland 2000) at 292 quoting a comment by General Carlos Romulo of the Philippines, who was President of the UN General Assembly (1949-50) and Chairman of the UN Security Council.

3 As quoted in Bassett and King, above n 2, at 292.

I am speaking for a country which, although small in area and population, has made great sacrifices in two world wars. I speak for the New Zealanders who died and are buried thousands of miles from their own land in the cause they believed to be just. I speak for the millions of New Zealanders yet to be born ... It is my deep fear that if this fleeting moment is not captured the world will again relapse into a period of disillusionment, despair and doom. This must not happen.

Although he was a strong supporter of Britain and the Commonwealth, Fraser recognised the growing power and influence of both the Soviet Union and the United States. New Zealanders had learned from the world wars, how profoundly international affairs could affect our small and isolated nation.

Fraser recognised that for small nations like New Zealand to have any influence in the new world order, they could not stand alone but needed to work collaboratively with other nations to ensure their voices were heard. Throughout the San Francisco conference he worked closely with the Australian External Affairs Minister, Dr H V Evatt.

The significance of the UN to the interests of small states has been emphasised by New Zealand Prime Ministers since that time. In 1973, Norman Kirk noted:<sup>4</sup>

I do not suggest we abandon hope in the UN as a peacekeeper. Its potential remains, if the will exists.

The world needs a marae and the UN is the closest thing we have to that marae.

Likewise, in 1995, as the UN celebrated its 50<sup>th</sup> anniversary, the commitment to multilateralism and collective security was reaffirmed by the then New Zealand Prime Minister, Jim Bolger, who told the General Assembly that the UN "brings the nations of the world together in a grand coalition to share the burden of building a better and more peaceful world".<sup>5</sup>

Fraser's speech also pinpoints two other notions – the importance of taking a principled stand and that of being prepared to back principle with action. He realised that for New Zealand's voice to not only be heard, but to be heeded, its participation had to be based on more than just self-interest. It had to be based on well reasoned principle. For evidence of this, one has only to look at New Zealand's significant involvement in the Antarctic Treaty System or the UN Convention on the Law of the Sea. As an island nation surrounded by oceans and one that former Prime Minister, the late David Lange, once referred to as a "dagger pointing at the heart of Antarctica", both agreements are of vital importance to New Zealand. Had New Zealand taken a stand that was solely about pushing its own barrow, its own interests may well have been sidelined. By taking a principled stand and working collaboratively with other like-minded nations, it was able to ensure that its interests were not ignored.

---

4 *Norman Kirk: His Life, Ideals and Achievements* (Government Whips' Office, Wellington, 1974).

5 As quoted in the foreword of John Crawford *In the Field for Peace: New Zealand's contribution to international peace-support operations: 1950-1995* (New Zealand Defence Force, Wellington, 1996) at 5.



New Zealand's consistent and principled stand on a host of international issues in organisations such as the UN, UN Educational, Scientific and Cultural Organisation and the World Trade Organization is one that other nations, both small and large, look to and respect. They may not necessarily agree with New Zealand's stand, but they frequently recognise its foundation on sound principles. Since being appointed as Governor-General, I have been reminded of this fact on a number of occasions during bilateral meetings with Heads of State. For example, during the last year leaders in both Turkey and Mongolia personally commented that New Zealand's stand on a range of issues is viewed with interest and warmly.

Principles have to be matched with action. Both New Zealand and Australia, as good international citizens, have readily offered military and police personnel to participate in UN peacekeeping missions. New Zealanders have been continuously involved in various UN operations since 1950 and indeed more than 800 are currently deployed – from Sudan in Africa to Solomon Islands in the Pacific.<sup>6</sup>

New Zealand's contribution to multilateralism has not just been in operations to support peace. New Zealanders have played prominent roles in a host of international organisations. To that end, I can point to Sir Leslie Munro, sometime Dean of the Law School at the University of Auckland, who was President of the UN General Assembly during its 12<sup>th</sup> session and President of the UN Security Council. I can also point to people such as Sir Donald McKinnon, Secretary-General of the Commonwealth, or Mike Moore, who was Director-General of the WTO. Currently, former New Zealand Prime Minister Helen Clark is Administrator of the UN Development Programme (UNDP).

A friend of this University and also of many in this room, Sir Kenneth Keith, is a member of the International Court of Justice in The Hague. Another graduate of this University, Tuiloma Neroni Slade, has been a Judge of the UN International Criminal Court, and Satya Nandan, a student at Victoria, although ultimately a graduate elsewhere, has been Secretary-General of the International Seabed Authority. New Zealanders continue to make contributions to international organisations with Colin Keating, Don Mackay and George Barton being other examples.

So what does all this mean in today's world? When Peter Fraser signed the UN Charter, he was one of only 51 signatories. Today there are 192 members.<sup>7</sup> When Peter Fraser signed, he was just one of 15 signatories from countries outside Europe or the Americas.<sup>8</sup> Today, the nations of Asia, Africa and the small states of the Pacific dominate the General Assembly. An Assembly and

---

6 As at 8 June 2009 there were 886 New Zealand Defence Force personnel deployed on 14 peacekeeping operations, UN missions and defence exercises across 10 countries: see New Zealand Defence Force "NZDF Deployments" <[www.nzdf.mil.nz](http://www.nzdf.mil.nz)>.

7 See United Nations "Growth in United Nations membership, 1945-present" <[www.un.org](http://www.un.org)>.

8 China, India, Iran, Iraq, Lebanon, Philippines, Saudi Arabia, Syria, Turkey, Egypt, Ethiopia Liberia, South Africa, Australia and New Zealand.

organisation once dominated by developed nations is now dominated – at least in number – by developing countries.

That pluralism and diversity on the world scene is equally evident within many nations. New Zealand's last census, for example, found that almost a quarter of New Zealanders were born overseas. A century ago, most foreign-born New Zealanders would have hailed from Britain or Ireland. In 2006, New Zealanders born in Britain or Ireland accounted for 23 percent of New Zealanders born overseas – exactly the same proportion as those New Zealanders born in Asia. In many ways my appointment, as a New Zealander with Pacific and Asian ancestry, symbolises that diversity and pluralism.

One of the biggest challenges to multilateralism lies in the world's current economic difficulties. At these times, there is an understandable tendency for nations, their people and their leaders to become insular. At its worst, insularity, especially if combined with other longstanding grievances, can lead to xenophobia, and the treatment of multilateral organisations with suspicion or outright hostility.

Such tendencies should be resisted and renewed efforts should be made to bolster multilateral organisations and initiatives. At such difficult times, when people in many parts of the world are suffering, those suffering the most will be those least responsible for the crisis – the poor and particularly the poor in developing nations. No one nation alone can solve these problems – they require concerted collaborative effort. As Helen Clark said, on 26 May 2009 in her first speech to the UN Development Programme Executive Board: "These global problems reflect our interdependence, and they require global solutions. That is why we need a multilateral system which reflects the realities of the 21st century."<sup>9</sup>

International law, like the rule of law in a domestic context, can act as a bulwark against the tendency to insularity. There will be some, of course, who will argue that international law, which Sir Kenneth Keith once described as "law made elsewhere,"<sup>10</sup> is just words on paper, with no requirement that any government or nation respect it.

But as a former judge, I am keenly aware that all laws and legal decisions are merely words. When tanks come rolling in, it is hardly likely they will be led by a bunch of middle-aged men and women dressed in black gowns insisting on the primacy of the rule of law. Of course, as nations

---

9 United Nations Development Programme "Helen Clark: statement at the Annual Session of the Executive Board" <<http://content.undp.org>>.

10 Treasa Dunworth "Law made elsewhere: the legacy of Sir Kenneth Keith" (paper presented at "From Professing to Advising to Judging – a Conference in honour of Sir Kenneth Keith", Victoria University of Wellington, Wellington, August 2007).

near and far have found, it will be too late if that occurs. As the American jurist Learned Hand once famously said:<sup>11</sup>

Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it ... While it lies there, it needs no constitution, no law, no courts to save it.

Such a failure represents a failure of civil society that begins long before the first shots are fired. While we often talk of a civil society in a domestic context, there is a growing sense of an international civil society forming around key human rights issues. As the well known Sydney and latterly London barrister Geoffrey Robertson QC noted soon after the 9/11 attacks: "At the beginning of the twenty-first century, the dominant motive in world affairs is the quest – almost the thirst – for justice."<sup>12</sup>

This then brings me to my wero or challenge to this audience – a gathering of academics and legal practitioners. My challenge is two-fold. The first is to continue to promote, both at home and abroad, the fundamental principles of our legal heritage: the rule of law and human and civil rights.

And just as these concepts have moved from the domestic to the international arena, might not others also follow? New Zealand, for example, has encouraged the use of mediation and restorative justice mechanisms for resolution of both civil and criminal complaints. Restorative justice has shown that the chance of a lasting resolution is greatly increased by getting people talking, and attempting to achieve agreement upon orders, rather than imposed orders. Commonsense suggests that the same principles of mediation and restorative justice might be applied more extensively, internationally, in addressing acts of aggression and other disputes between nations.

So the second part of my challenge is to not only promote fundamental human rights at home and abroad, but to look for new and novel ways of doing so, particularly drawing on the experience of legal practitioners in domestic contexts.

In conclusion, the "quest for justice" of which Geoffrey Robertson spoke continues to take a battering. For every two steps forward, there is often a step or more sideways or backwards. But small nations can and do make a difference in world affairs and are the key to multilateralism in a plural world. New Zealand has demonstrated that through its collaborative and principled contribution to multilateral organisations. Individual New Zealanders have also demonstrated that commitment. A good example is provided by Prime Minister Norman Kirk 36 years ago who when

---

11 Learned Hand *The Spirit of Liberty* (Knopf, New York, 1952) at 144.

12 Geoffrey Robertson *Crimes against Humanity: The struggle for global justice* (2nd ed, Penguin Books, London, 2002) at xxxiv.

farewelling HMNZS Otago as it left to show New Zealand's opposition to French nuclear testing said:<sup>13</sup>

Today, the Otago leaves on an honourable mission. She leaves not in anger, but as a silent accusing witness, with the power to bring alive the conscience of the world. We believe by this endeavour we shall contribute not only to our own concern, but make a contribution to the continuing quest for peace.

And on that note I will close in our country's first language Māori, by offering everyone greetings and wishing you all good health and fortitude in your endeavours. No reira, tēnā koutou, tēnā koutou, kia ora, kia kaha, tēnā koutou katoa.

---

13 As quoted in Claudia Eyley *Protest at Moruroa: First hand accounts from the New Zealand-based Flotilla* (Tandem Press, North Shore City, 1997) at 13.