The essays in this collection are all revised and updated versions of papers presented to the Asia-Pacific Regional Conference, held at the University of Melbourne from 18-20 February 1999, to commemorate the centenary of the Hague Peace Conference of 1899. They explore, in the context of the Asia-Pacific region, the major issues addressed at the 1899 Conference: the peaceful settlement of disputes; international humanitarian law; and, arms control and disarmament. The 1899 Conference was the first peace conference in history designed to formulate a general legal framework for peaceful international co-existence, rather than one called to mop up the consequences of a particular war. And, for its time, it was "international" in the sense that participation was not limited to a European club and included, for example, Japan and Siam (Thailand). The Conference can be seen, then, as the predecessor of the "standing peace conferences" of the modern era, namely, the League of Nations and the United Nations.1

The essays also address the legacies of the 1899 Conference which, as Jayantha Dhanapala points out,2 include: the principle of the sovereign equality of States; the existence of permanent international institutions to encourage the peaceful settlement of disputes; and the development of humanitarian constraints limiting the use of force.

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2 Jayantha Dhanapala, "Prospects for Nuclear Disarmament", Chapter 12.
SOVEREIGNTY

The summoning of the participants to the 1899 Conference and the equality of voting power accorded them were an early manifestation of the principle of the sovereign equality of States. And sovereignty, with its emphasis on non-interference in the “internal affairs” of States, continues to be no less crucial a factor in the development of the areas of law considered in this volume of essays than in other areas of international law. A sensitivity to State sovereignty, for example, is a prerequisite to international intervention in areas of the world in crisis, often requiring the international community to distance itself from internal struggles. Such sensitivity is also necessary for the successful completion of negotiations about arms control and limitation. The concept of sovereignty also explains why developments of the law in the area of arms control and disarmament occur slowly and incrementally (and are likely to continue to do so). To argue that incremental achievements in this area are no more than a sop to the peace movement and of no benefit to the victims of the world’s ever more sophisticated weaponry, is to overlook the political reality of State sovereignty and its concerns with national security. Of course, that reality should not discourage the pursuit of more dramatic moves such as the successful completion of the Chemical Weapons Convention or the efforts to promote the zero nuclear option.

The concept of State sovereignty operates broadly to define, usually implicitly, the behaviour of States on the international stage. Sometimes, the concept becomes explicit policy, as in China’s Five Principles for Peaceful Co-Existence, which not only delimits China’s view of non-aggression and non-interference, but also provides a basis for, and explanation of, China’s successful diplomatic intervention in international conflicts (such as those in Iraq and

3 Robin Sharwood, above note 1.
5 Alexander Downer, “Asia-Pacific Approaches to Disarmament, the Peaceful Settlement of Disputes and International Humanitarian Law”, Chapter 2.
6 Hans Blix “Arms Control and Disarmament: One of the Main Themes of the Hague Peace Conference of 1899”; Jayantha Dhanapala, above note 2; Alexander Downer, above note 5.
7 Hans Blix, above note 6.
8 Deborah Stokes, “Addressing the Chemical and Biological Weapons Threat”, Chapter 14.
Kosovo). It is, however, implicit concerns for sovereignty which explain, at least in part, the low incidence of participation of States in the Asia-Pacific region in key treaty regimes – particularly those relating to international humanitarian law (and human rights law more generally) – and in recourse to the International Court of Justice. While Asia-Pacific nations have generally accepted the Hague system and the four Geneva Conventions of 1949, the Asia-Pacific region is the most under-represented geographic region in the world among State Parties to the 1977 Additional Protocols to the Geneva Conventions. Whether or not evidence of a wider Asian reluctance to commit to international norms through treaty-making, this lack of participation, specifically in relation to Additional Protocol II, means that the legal regime applicable to the most common armed conflicts – namely internal (as opposed to international) conflicts – is largely indeterminate. This indeterminacy extends to the complex demarcation between internal tension and strife on the one hand, and non-international armed conflict (to which international humanitarian law is applicable) on the other. The Indonesian experience with domestic implementation of international humanitarian obligations is eloquent testimony to the difficulties of making this distinction.

INTERNATIONAL INSTITUTIONS

Permanent international institutions, including regional institutions like ASEAN, play a central role in the provision of forums for the generation of legal principles and for the negotiation of treaties, such as CTBT and START. They also provide the formal and informal infrastructure for the settlement of disputes – as witness the roles of the Secretary-General’s Office and the
Japanese Government in Cambodia,\textsuperscript{19} and the mediation of the Secretary General in the *Rainbow Warrior* incident in New Zealand.\textsuperscript{20} In addition, they provide platforms for the airing of grievances and the allaying of concerns.\textsuperscript{21} Just as importantly, they often act as the channel to governmental and non-governmental initiatives, such as the Canberra Commission on the Elimination of Nuclear Weapons, whose 1996 report arguably represents a collective approach of Asian States.\textsuperscript{22} Indeed, the absence of relevant international institutions can often be cause for concern. For example, the absence of a strong regional organisation in the Asia-Pacific may have combined with the lack of a commonly perceived single security threat to prevent more effective arms control measures and disarmament in the region.\textsuperscript{23}

It is arguable that international legal institutions should play a greater role in the principled development of international law. For example, the International Court of Justice could become the forum for the judicial review of the acts of the United Nations, with greater emphasis on international alternative dispute resolution in the case of individual disputes between States.\textsuperscript{24} But, where the facility provided for the resolution of international disputes is judicial or quasi-judicial, it is important, in this as in all areas of international law, that the body concerned have in place procedures which allow it to dispose of disputes quickly and efficiently. An analysis of the procedures of the International Court of Justice suggests that reforms are necessary if that Court is to maintain its standing, particularly in the light of the proliferation of new international tribunals.\textsuperscript{25}

\begin{itemize}
\item \textsuperscript{19} Tony Kevin, above note 4.
\item \textsuperscript{20} Kenneth Keith, “Significance of the Hague Peace Conference in the Asia-Pacific Region: the South Pacific Including New Zealand”, Chapter 3.
\item \textsuperscript{21} Hans Bix, “Nuclear Non-proliferation in the Asia-Pacific Region”, Chapter 13.
\item \textsuperscript{22} Nugroho Wisnumurti, “Arms Control and Disarmament: The Development of Approaches in the Asia-Pacific Region”, Chapter 11.
\item \textsuperscript{23} Nugroho Wisnumurti, above note 22.
\item \textsuperscript{24} Francisco Orrego Vicuña, “A Perspective of Dispute Settlement Arrangements for the Twenty-First Century”, Chapter 4.
\item \textsuperscript{25} Gavan Griffith. “International Dispute Resolution: The Role of the International Court of Justice at the Cusp of the Millenium”, Chapter 5.
\end{itemize}
HUMANITARIAN CONSTRAINTS ON THE USE OF FORCE

In their consideration of the substance of the law relating to humanitarian restraints on the use of force, the papers draw attention to defects and gaps in existing treaty regimes. These include the failure to embrace qualitative improvement of weapons in the CTBT – one reason why some Asian countries lack enthusiasm for it;26 and the lack of explicit "grave breaches" regimes for violations of the law committed in the context of non-international armed conflicts. In the latter case, however, such violations are criminalised under Article 8 of the Rome Statute for an International Criminal Court. This may well stimulate States which are not yet parties to the Additional Protocols but which do ratify the Rome Statute to bring their treaty participation into line with their acceptance of the scope of the new Court’s jurisdiction.27

A common deficiency identified in many papers is the lack of transparent, verifiable and effective compliance regimes. Politically, the challenge is enormous: to find solutions which displace the self-interest which States have in the absence of compliance with greater self-interests in compliance.28 The function of the law is to support that challenge and facilitate its resolution. Potential legal solutions vary. One is the acceptance by States of the optional clause for compulsory jurisdiction of the International Court of Justice.29 Another is the suggestion that greater use of ADR would promote the more effective settlement of disputes.30 A third suggestion is the creation of ad hoc tribunals to deal with particular breaches of the law,31 though the likelihood of such tribunals exacerbating rather than resolving existing tensions needs to be borne in mind.32 Fourthly, the new benchmark in verification of compliance established in the Chemical Weapons Convention could be applied in arms control and disarmament agreements in the future.33 Fifthly, legal restraints

26 Nugroho Wisnumurti. above note 22.
27 Hisakazu Fujita, above note 14.
28 Jayantha Dhanapala, above note 2.
30 Francisco Orrego Vicuña, above note 24.
31 Vitit Muntarbhorn, above note 11.
32 Tony Kevin, above note 4.
33 Deborah Stokes, above note 8.
on export could assist in arms control and disarmament. Sixthly, the law could make better use of modern technology in detecting breaches.

The 1899 Conference was about the rule of law in international affairs. Yet, as the essays in this collection point out, there is an urgent need to address (particularly for the longer term) the underlying causes, rather than the symptoms, of the breakdown of peace among and within nations – such as the need for infrastructure, civil administration, criminal justice, education, training and human development generally. The lesson of the 1899 Conference is that the law must provide a framework within which these objectives can be accomplished.

The Editors