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US ELECTION

■ New Zealand–India

■ South China Sea

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International challenges facing the Trump presidency

Stephen Hoadley reviews the likely post-election foreign policy of the United States.

International challenges facing any US president are not dissimilar to the challenges facing New Zealand's leaders, although different in nuance and scale.

International challenges may be divided into

- geo-strategic challenges and
- global or trans-national challenges.

Also domestic challenges impinge on international policies, and vice versa, so will be considered below.

Geo-strategic challenges

Geo-strategic challenges denote risks in specific regions of the world in which US interests are threatened by the actions of other governments. Global challenges denote risks not posed by a specific government and not confined to any one area of the world but which potentially affect governments and their citizens adversely everywhere.

At the risk of oversimplification, I would identify the principal geo-strategic challenges to the United States as the following:

- the rise of China and its South and East China Sea initiatives
- the assertiveness of Russia in Ukraine and eastern Europe
- inter-state and intra-state conflict in the Middle East
- political instability in Afghanistan and Pakistan–Indian tensions
- North Korea's bellicosity and its nuclear weapons and missiles development.

Each of these geographic regions, or 'theatres' to borrow a wartime phrase, is host to confrontation of armed forces and focal points for strategic planning, military force deployment and possible armed operations.

China: While there is no explicit US policy to 'contain' a rising China, the challenges that Beijing poses to US interests in the Asia–Pacific region are several. First is the growing threat to the US Seventh Fleet units posed by medium-range anti-ship cruise and DF-21D missiles, augmented by a modernising submarine fleet and air force. This threat is encapsulated in the A2/AD doctrine: Anti-Access/Area Denial. Beijing cannot prevail in main fleet warfare but can, at relatively little expense and risk, keep US ships well away from China's shores.

Stephen Hoadley is associate professor of politics and international relations at the University of Auckland and a corresponding editor of the *NZIR*. The New Zealand Institute of International Affairs has just published the second edition, updated and expanded, of his book *New Zealand United States Relations*.



US President Donald Trump

Second, China's claims to and build-up and militarisation of artificial islands in the South China Sea pose a risk to US maritime and air traffic, a risk shared by all countries in the western Pacific and South-east Asia dependent on maritime commerce and air travel. The United States takes no position on territorial claims by China and the counter-claims by Philippines and Vietnam. But deliberate US Navy 'freedom of navigation' patrols, soon to be augmented by similar initiatives by Australia and Indonesia, risk escalation of tensions and precipitation of incidents that could result in armed clashes. An associated risk is the splitting of ASEAN. Cambodia, Laos and Burma do not contest China's claims, and the new Philippine president, having been hosted by Beijing in October, appears willing to compromise. ASEAN does not speak with one voice, which complicates US policy.

East China Sea: Third, in the East China Sea China's claim to the Diaoyutai (Senkaku) islets, aggressive ship and aircraft deployments and declaration of an Air Defence Identification Zone have induced Japan to raise its defence budget and upgrade its 'self-defence force' by adding new platforms, including aircraft-carriers and longer-range submarines, and deploying marines to the islets. A clash between these historic adversaries would pose a dilemma to any US president: whether to honour the Japan–US Mutual Security Treaty (and how, exactly) or instead to give greater weight to the hitherto beneficial economic relationship with China, potentially sidelining Japan.

Readers may notice the absence of one other challenge often cited in earlier times: China's military threat to Taiwan. Beijing's claim to sovereignty is still alive, but is less audibly voiced these days, not least because the government of Taiwan has skilfully developed mutual economic interests with the mainland and Taipei has negotiated over twenty cross-strait agreements with Beijing. Activation of the Taiwan Relations Act to defend the island against Chinese military attack is unlikely, and thus less problem that President Trump will have to face.

But Candidate Trump's threat to deal firmly with Beijing, including imposition of a 45 per cent tariff on imports from China, may fuel a new challenge: China's nationalism and inclination to push back against US hegemony in the western Pacific. On the other hand, Candidate Trump's wish to reduce US commitments and costs abroad may allow China a freer hand in Asia, and avert

Newly elected US president Donald Trump faces not only geo-strategic and global challenges but also domestic economic and political challenges. Confidence in US leadership has been undermined by the divisive 2016 election campaign and polarisation of the US public. President Trump faces a choice between reaffirming the hegemonic policies of past decades or succumbing to public pressure to downscale US commitments abroad, in short, a choice between engagement and isolationism. US allies, partners and adversaries will be obliged to adapt to whichever way President Trump turns.

a confrontation in the short-to-medium term. Given lack of detail in Trump's policies, an assessment will have to wait until he clarifies and acts.

Russia: Russia's challenge to the United States is multifaceted, ranging from alleged cyber-attack to meddling in Syria, Iran, the Caucasus and Central Asia. Most visible is Russia's covert support of secessionist movements in Crimea and eastern Ukraine. These actions provoked European and American economic sanctions and precipitated NATO military exercises and deployments to reassure Poland and the three Baltic states. Putin regards these as attacks on Russia's vital interests designed to thwart Russia's rightful predominance in Eurasia. By portraying Russia as a victim of Western aggression, Putin has rallied his population and rebuilt his military despite his country's economic decline. The US and Western European defensive actions risk misperception, inadvertent or deliberate, by Moscow as attacks and could lead to military clashes that leaders under stress would find hard to contain. Europe's leaders will hope that President Trump will act firmly to reassure NATO allies Poland and the Baltic states. But Candidate Trump's devaluing of NATO and his admiration of Vladimir Putin's strong leadership style may lead the new president to give way to Russian encroachments, in effect reducing Ukraine to a Russian buffer state and raising anxiety in Europe.

Middle East: In the fractured Middle East region the United States is faced with inter-state conflict between Iran, Syria and a Hezbollah-dominated Lebanon, on the one side, versus US allies Iraq, Turkey, Jordan, Saudi Arabia and the Gulf emirates, on the other. These state-to-state conflicts are riven by inter-ethno-religious strife enveloping Shia, Sunni and Kurds, further confused by interventions by fighters from Iran, Turkey, Russia and the US-led coalition, including New Zealand, in support of Iraq and foreign fighters for ISIS. *Washington Post* analyst Liz Sly identified at least ten 'wars' now being fought in Syria.¹ President Trump, unlike President Obama, who hesitated choosing which shifting faction to support, seems inclined to work with Russia to suppress ISIS and other rebel militia, in effect cementing President Assad in power. Humanitarian tragedies, and a Russian foothold in the region, are sure to follow.

Candidate Trump's promise to cancel the nuclear deal with Iran not only ignores the interests of the other partners (the P5 plus Germany, with the good offices of the European Union) but also risks giving a green light to the ayatollahs to develop an operational nuclear weapon within a decade. Iran's President Rouhani and Foreign Minister Zarif, possibly reflecting a moderate view within Iran's leadership circles, have appealed to Trump not to cancel the deal. Further, renewed sanctions could shut Iran out of world oil markets and raise energy prices.

Af-Pak-India: Further east lies the turbulent Af-Pak-India theatre. Afghanistan is divided between the US-backed government in Kabul and the Taliban insurgents in the south-east, who are ethnically Pashtun and loosely aligned with Pashtuns in neighbouring Pakistan. The Taliban are allegedly covertly assisted by Pakistan's Inter-services Intelligence Agency (ISI), whose aim is to avoid encirclement by India, which not only occupies half of Pakistani-claimed Kashmir to the north-east but also supports the Kabul government to the west. President Obama has directed drone strikes against Taliban leaders on either side of the border, but this entailed civilian casualties, anti-US anger and covert sympathy with the Taliban. Nevertheless, President Trump is likely to continue these strikes.

Pakistan's other hedge is its deployment of nuclear weapons and

medium-range missiles to deter India. India has a counterpart nuclear armoury to deter Pakistan (and maybe China in future). The United States gives aid and sells weapons to each, and trades with both. President Trump would be stuck with a dilemma if fighting breaks out between the two.

North Korea: North Korea's stalinist Kim regime has frustrated US diplomats for decades as it alternately negotiates and takes aid to stop its nuclear weapons development, then reneges. The six-power talks to bring together the two Korean governments and those of China, Japan, Russia and the United States are suspended. North Korea has resigned its NPT membership and tested four nuclear devices so far, and launches test missiles monthly. Even China is losing patience with its rogue ally.

But leaders in neither Beijing nor Washington have a clear plan how to stop North Korea's nuclear armament drive without invasion and regime change, whose side effects would be dire in terms of armed resistance, civilian casualties and refugee surges. The prospect of US troops occupying Korea up to the Yalu River is a nightmare in Beijing, recalling General MacArthur's advance north during the Korean War, which triggered a massive counter-intervention by the People's Liberation Army (disguised as Chinese People's Volunteers). Candidate Donald Trump's policy was to encourage South Korea and Japan to build their own nuclear arsenals. This would alarm China and precipitate a nuclear arms race in North-east Asia, destabilising a heretofore peaceful region that has produced world-scale economic growth.

Geo-strategic isolationism?

Each of these geo-strategic challenges poses dilemmas for Washington, and thus for those governments that align with the United States, including New Zealand. Candidate Trump has foreshadowed downgrading of US commitments abroad and encouragement to governments in conflict to take responsibility for their own security. Some have called this a new isolationism. In the view of Council on Foreign Relations senior fellow Elliott Abrams, writing in this journal, this posture risks undermining the foundations of Western and Asian stability that the US alliance and partnership system has fostered since 1945. It risks unilateral actions by governments to secure their own interests at the cost of abandoning the pursuit of common interests in the multilateral fora built up in the post-Second World War era. And it would diminish US security correspondingly.²

However, by proposing to rebuild the armed forces and 'make America great again', Candidate Trump may be hinting at a more militarist posture, albeit a selective one. This stance has support amongst security analysts and the public.

Washington think tanks such as the Center for American Progress, the Atlantic Council and the Brookings Institution have prepared reports that recommend more robust responses to Syria's Assad and to Russia's meddling in the Middle East and eastern Europe.³ The Pew Surveys found that American public support for higher defence spending rose from 13 per cent in 2011 to 35 per cent in 2016, with Republican support surging to 61 per cent.⁴ A resurgence of US military muscularity is possible under President Trump.

Global challenges

In addition to these geo-strategic challenges the new US president faces global or trans-national challenges. These are recognised by not only top US security officials but also the US public. The

president's 2015 *National Security Strategy* identified the following global threats:⁵

- attacks on US homeland, citizens, or allies
- global economic crisis
- proliferation or use of weapons of mass destruction
- global outbreak of infectious disease
- climate change
- disruption of energy markets
- failure of states and consequent atrocities, criminality and mass migration.

The US Director of National Intelligence James Clapper in 2016 listed the following global threats to the United States:⁶

- cyber-attack
- counter-intelligence espionage
- terrorism
- weapons of mass destruction spread and their use
- space rivalry
- trans-national crime
- economic stagnation
- exhaustion of natural resources.

The US Department of Homeland Security in 2015 directed attention to economic security risks with particular attention to disruptions to the global supply chain, fraud and counterfeiting, and terrorist financing.⁷

Intertwining issues

Americans polled by Gallup in late 2015 named the following 'problems facing the United States':⁸

- terrorism and the Islamic State (ISIS)
- dissatisfaction with the government
- the economy and unemployment
- gun control
- moral decline
- crime and violence
- immigration and illegal aliens
- poverty and homelessness
- racism.

A TIME/SurveyMonkey poll in October 2016 found Americans' 'top-3 concerns' were economy and jobs 61 per cent, terrorism and national security 58 per cent, health care 38 per cent, immigration 28 per cent, budget deficit 22 per cent, gun control 21 per cent, social security 19 per cent and climate change 15 per cent.⁹

Notice that in the public mind domestic policy challenges (mainly economic) are intertwined with global challenges (mainly terrorism). It is these domestic challenges that President Trump must address if the US education and health systems, industrial base and technical leadership, not least in defence technology, are to remain strong. To address them will require compromise and co-operation at a time when the legitimacy and effectiveness of the US federal government are challenged by hyper-partisanship and popular discontent. The depth of the partisan and public disaffection that President Trump will face is illustrated by the decision of 58 million American voters to scorn politicians, elites and 'the Washington establishment' and to support Trump. President Trump, having ridden to victory on these sentiments, may find them turned against him if he fails to meet the expectations he has fostered.

Soft power

A favourable image of the United States amongst leaders and publics abroad correlates with US influence and persuasiveness, some-

times called US soft power. The negative and divisive 2016 presidential campaign has obscured the on-going achievements of the Obama administration's efforts (not always successful, this author concedes) to mitigate the global financial crisis, facilitate trade and investment and provide hegemonic stability to an otherwise factious world. Corrosive campaign rhetoric has reduced the authority of the new US presidency. Pew Surveys have found that the US president's reputation abroad had risen markedly from the Bush era (around 20 per cent approval) to the Obama era (around 80 per cent approval), but that respondents in Europe and Asia view Trump much less favourably (only 10 per cent approval).¹⁰ These figures indicate that one of President Trump's first tasks will be to dispel foreign scepticism towards himself personally, then to restore American influence amongst US allies and partners and respect amongst adversaries.

Prognosis

Therefore, the choice facing President Trump is whether to reaffirm American engagement abroad in pursuit of hegemonic stability, economic co-operation and management of the geo-strategic and global challenges outlined above, or to downscale the US military presence and curtail diplomatic and economic leadership; in short, to retreat to isolationism. Downscaling, as proposed by Candidate Trump, is superficially attractive to many Americans who voted for Trump. But this policy entails longer-term risks of unrestrained aggression and violence by unscrupulous actors, as manifested during the 1930s when the United States was in an isolationist mood, and in Korea after the US withdrawal in the late 1940s, and thus entails longer-term costs to restore a semblance of order.

International challenges will persist despite President Trump's inclination to disengage the United States from them. Acknowledging and managing them would better serve America's enduring national interests.

NOTES

1. Liz Sly, 'War on ISIS sowing the seeds for more war'. Reprinted in *NZ Herald*, 9 Sep 2016.
2. Elliott Abrams, 'US foreign policy: Obama and beyond', in *NZ International Review*, vol 40, no 6 (2015), p.10.
3. Greg Jaffe, 'Washington foreign policy elite breaks with Obama over Syrian bloodshed', *Washington Post*, 20 Oct 2016 (www.washingtonpost.com/politics/washington-foreign-policy-elites-not-sorry-to-see-obama-go/2016/10/20/bd2334a2-9228-11e6-9c52-0b10449e33c4_story.html).
4. www.people-press.org/2016/05/05/public-uncertain-divided-over-americas-place-in-the-world/.
5. www.whitehouse.gov/sites/default/files/docs/2015_national_security_strategy.pdf.
6. www.dni.gov/index.php/newsroom/testimonies/217-congressional-testimonies-2016/1313-statement-for-the-record-worldwide-threat-assessment-of-the-u-s-ic-before-the-senate-armed-services-committee-2016.
7. www.dhs.gov/topics/economic-security-overview.
8. www.gallup.com/poll/187655/americans-name-terrorism-no-problem.aspx?g_source=most%20important%20problem%20terrorism&g_medium=search&g_campaign=title.
9. *Time*, 24 Oct 2016, p.31.
10. www.pewglobal.org/2016/06/29/as-obama-years-draw-to-close-president-and-u-s-seen-favorably-in-europe-and-asia/. 

Reflections on the South China Sea arbitration rulings

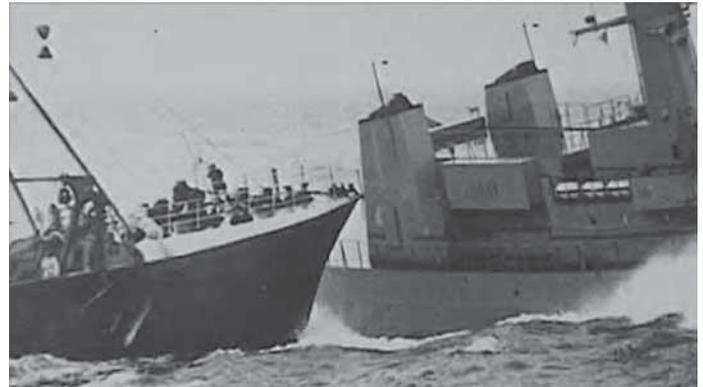
Sir Kenneth Keith comments on the international arbitral tribunal's recent awards in the case brought against China by the Philippines.

The 600-plus pages of the international arbitral tribunal's two awards have already produced many pages of commentary, mostly on the substance of the awards and a wider range of issues. The awards are also to be read with the very extensive pleadings filed by the Philippines, the reports from experts which the tribunal sought and the less formal documents prepared before and after by Chinese officials. The tribunal, as it says, in accordance with the practice of other international courts and tribunals, took account of those Chinese statements that were available to it.

I will emphasise the methods of the settlement of disputes rather than the substantive issues. To begin, I urge care not to be trapped by words. 'Settlement' suggests that the dispute — I come back to that word below — is brought to an end. But that will not necessarily be so. One outcome of a process, even of litigation, as in many Treaty of Waitangi cases, may be to create or reinforce mechanisms for the management of the relationship or the resource in issue or both. That may particularly be so in respect of issues arising between states. For instance, the International Court of Justice (ICJ), in a case between Argentina and Uruguay relating to a pulp and paper mill being built on the Uruguayan bank of the River Uruguay, highlighted the on-going obligation of the two states to co-operate with each other to achieve the object and purpose of the statute governing the use of the river. It noted that the parties had a long standing and effective tradition of co-operation and co-ordination through the Administrative Commission of the River Uruguay.

The significance of the on-going relationship is not necessarily limited to neighbouring states, as appears from the recommendation of the tribunal in the *Rainbow Warrior* case to France and New Zealand to set up a fund to promote close and friendly relations between the citizens of the two countries. That recommendation, accepted by the two governments, was intended to assist them in putting an end to 'the present unhappy affair', 'cette affaire douloureuse', in the words of the French member of that tribunal.

Consider next the word 'dispute'. How is the dispute to be defined? What might be included, or excluded? Is it sometimes



A confrontation during the Icelandic cod war in 1973

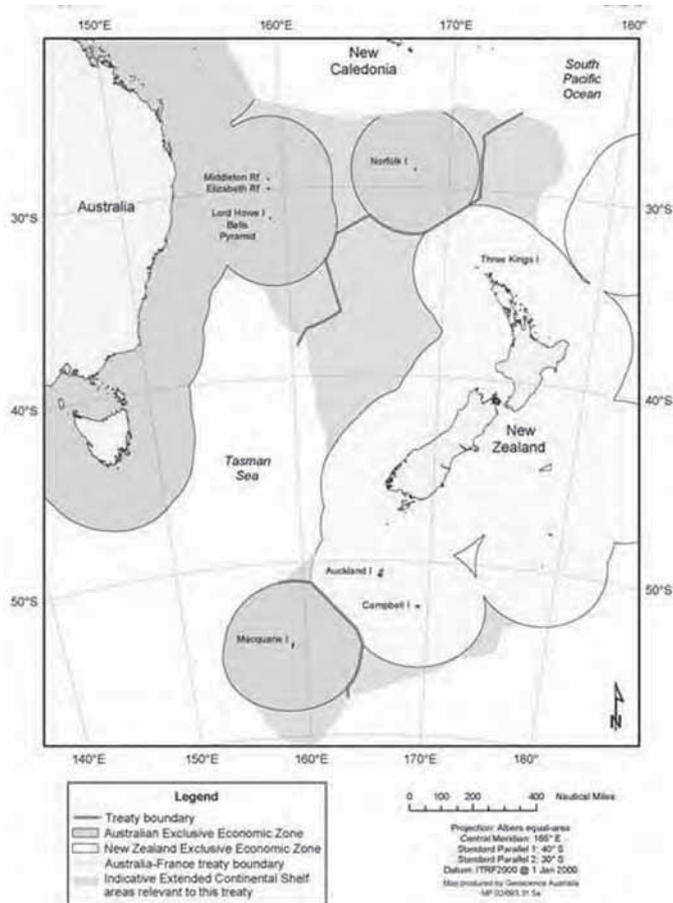
better to think of 'situations' or 'matters', words used in the UN Charter, as well as 'dispute'? The definition of the dispute or the disputes in the South China Sea arbitration was a critical matter in the proceeding. I will come back to it. A closely related matter concerns the basis on which the dispute, matter or situation is to be resolved or handled. The earlier ruling in the *Rainbow Warrior* case, the one given by the UN secretary-general, was to be on an equitable and principled basis and his ruling is essentially unreasoned. By contrast, the later arbitration was based on the relevant agreements and international law and produced a lengthy award and separate opinion extending to 70 pages.

If, to take a further step, the matter is resolved by agreement alone, the basis for the settlement may not be made explicit. To go back over 50 years, consider the Antarctic Treaty, which in terms of the definition of the dispute on the matter, puts to one side issues of sovereignty, a matter which the United Kingdom had tried to bring before the International Court of Justice some years earlier against Argentina and Chile, but they did not agree. They had not consented to the jurisdiction of the court over such matters. I will make a brief reference to that treaty and the system supporting it later.

That requirement of consent brings me to the 1982 United Nations Convention on the Law of the Sea (UNCLOS). In its preamble the state parties declare their desire to settle all issues relating to the law of the sea and note that developments since the 1958 and 1960 conferences on the law of the sea have accentuated the need for a new and generally acceptable convention. The changes in the law over just those twenty years were huge. The proposal of 1960 for a six-mile territorial sea and a six-mile fishing zone, which was narrowly rejected by just one vote, had been put in real doubt by the early 1970s, for instance in International Court of Justice proceedings brought by the United Kingdom and West Germany against Iceland's 50-mile zone.

Prof Sir Kenneth Keith, a life member of the NZIIA, is a former judge of the International Court of Justice. The article is the edited text of an address he gave to the NZIIA's Wellington branch on 1 August 2016.

In July 2016 the international arbitral tribunal made its second award in the South China Sea Arbitration, a case brought by the Philippines under the UN Convention on the Law of the Sea following a stand off in 2013. The tribunal had earlier, in October 2015, ruled that it had jurisdiction in the case. China refused to take part in the proceedings, and has refused to accept the finding of the tribunal, which was to the effect that China has 'no historical rights' based on the so-called 'nine dash line' that underpins its claim to the Spratly Islands in the South China Sea.



New Zealand–Australia maritime border

Widening claims

As early as the mid-1970s, a 200-mile exclusive economic zone was being claimed by many states, including New Zealand, and being recognised by distant fishing countries such as Japan, Korea and the Soviet Union. Much wider rights over the continental shelf and its resources were also being claimed and recognised as technology developed and regimes were being worked out for the deep sea bed, archipelagos, reefs, rocks and islands, a number of which were in issue in the current case. Those involved in preparing the text of the UNCLOS, with its much more extensive rights of coastal states and other complex features, many written in open ended terms, realised that a robust system for resolving disputes under the convention would be needed.

That had not been achieved in 1958 when all that was adopted, separate from the four substantive conventions, was an optional protocol giving the International Court of Justice jurisdiction over disputes arising under the four conventions. Only about 30 states became party to that protocol before it was effectively superseded and it was never invoked. Throughout the 1970s a central feature of the negotiation of what came to be called the Constitution for the Oceans was the critical central place of the provisions for the peaceful settlement of disputes. States moved decisively away from the freedom which they generally have in their international relations not to be subject in advance to dispute settlement processes, especially processes leading to binding outcomes. The processes in significant part were not to be optional and, in general, third-party binding decisions were to be available at the request of any party to the dispute.

Ambassador Tommy Koh, the president of the conference, at the final session in 1982 answered in the affirmative his question whether the conference had produced a comprehensive constitu-

tion for the oceans which would stand the test of time. Among his reasons was the following: the world community's interest in the peaceful settlement of disputes and the prevention of use of force in the settlement of disputes between states has been advanced by the mandatory system of dispute settlement in the convention.

Important limits

The compulsory, binding processes have important limits, several of which were very much in issue in the recent case. The convention is about sea areas, not about sovereignty over land, and the states parties could declare that they did not accept binding jurisdiction in respect of certain matters, including the delimitation of overlapping maritime zones. China has exercised that power, as have several other states with long coast lines, such as Angola, Australia, Canada, Chile, Ecuador, France, Norway and the Russian Federation. States may make choices for dispute resolution between the International Tribunal of the Law of the Sea, the International Court of Justice and an arbitral tribunal appointed in accordance with an annex to the convention. It was that last method, the default option, which the Philippines invoked.

There has been considerable confusion about which body made the ruling, a confusion to which the mainline media have contributed. The decision was not made by the Permanent Court of Arbitration. It was not made by a 'Hague Court'. It was not made by a 'UN Court'. It was not made by the International Court of Justice. It was made by a five-member tribunal assembled to decide just that one case. As it happened, the registry or secretariat was provided by the Permanent Court of Arbitration and the tribunal sat in The Hague. But like a number of other five-member UNCLOS tribunals it could have sat in Vienna, as with the recent case between the Netherlands and Russia, or in Washington, as with the Southern Blue Fin Tuna case brought by Australia and New Zealand against Japan, or in Dubai and Istanbul, as in the *Chagos* case between Mauritius and the United Kingdom. Or, to return to the *Rainbow Warrior* case, it could have had the American Arbitration Association provide the registry and have held the hearings in New York's Waldorf Astoria hotel.

China made it clear at the outset that it would not participate in the proceedings. In the words of the tribunal, it consistently rejected the Philippines' recourse to arbitration and adhered to the position of neither accepting nor participating in the proceedings. The convention, consistently with provisions in the treaties establishing other international courts and tribunals, provides that the absence of a party or a failure of a party to defend its case does not constitute a bar to the proceedings, and that the tribunal must satisfy itself both that it has jurisdiction and that the claim is well founded in fact and law before it makes an award. Also consistently with provisions in other court and tribunal statutes and with broader principle, the convention provides that the tribunal has the power to decide disputes about whether it has jurisdiction and that awards made under it are binding. That power to decide challenges to jurisdictions may be found for instance in the 1899 and 1907 conventions for the peaceful settlement of international disputes, to which China is also a party.

Three reasons

China gives three reasons for its position that the tribunal has no jurisdiction — the first is that the essence of the case is territorial sovereignty over several maritime features in the South China Sea;

the second that the two states have agreed, through a Declaration on the Conduct of Parties in the South China Sea and in other ways, to settle their disputes through negotiations; and the third that even if the case was concerned with the interpretation or application of the convention, the dispute would be about maritime delimitation, a matter which China had excluded by its declaration made in conformity with the convention. In its initial award finding that it had jurisdiction over some of the claims and that they were admissible, the tribunal also addressed certain other 'possible objections'.

China is not alone in challenging the jurisdiction of an international court or tribunal and refusing to participate in the proceedings. In the International Court of Justice, Albania in 1948 did not appear in the final, third phase of the Corfu Channel case, but it had fully participated in the two earlier phases, including the merits phase; and Iran in 1951 did not appear at the first phase of the Anglo Iranian Oil case brought by the United Kingdom, but it did at the second. With its Prime Minister Mossadeqh leading its delegation, it successfully challenged the jurisdiction of the court, a ruling supported by the judge of British nationality.

So that is just two cases, and only partial non-participation at that, in the first 23 years of the court. But in the 1970s there was a serious and very worrying rash of non-participation by five states — Iceland in the fisheries cases brought by West Germany and the United Kingdom; France in the nuclear tests cases brought by Australia and New Zealand; India in the case brought by Pakistan concerning prisoners of war after the Bangladesh War; Turkey in the case brought by Greece about the maritime delimitation of the Aegean Sea; and Iran in the Teheran hostages case. And then in the mid-1980s the United States, following the jurisdictional ruling which it condemned, did not participate in the merits stage of the case about armed activities in Nicaragua brought by that country. The judge of US nationality participated throughout, as did the French judge in the nuclear tests case. France and the United States took the further step of withdrawing their general acceptances of the court's jurisdiction and their senior officials made very strongly critical statements about the court.

Positive record

But in the last 35 years the record in the court is much more positive: France (although with a qualification in respect of 1995), India, Iran and the United States have participated fully in cases over that period, as have the Russian Federation in a case brought by Georgia following their war and China in the advisory proceedings in the Kosovo case. It is true that Colombia reacted very negatively in 2012 to a unanimous ruling on its maritime boundary with Nicaragua, but more recently it has participated in meetings relating to other cases before the court. The picture beyond the court may not, however, be quite as positive. In addition to the Chinese position, the Russian Federation has not participated in the UNCLOS case brought by the Netherlands and Croatia has withdrawn from a maritime and territorial boundary dispute brought by Slovenia (but following improper behaviour by the Slovenian agent and Slovenian arbitrator).

What of some of the possible consequences of China not par-



China's and others' territorial claims in the South China Sea

ticipating in the proceeding? The first relates to the selection of the membership of the tribunal. As I mentioned, the five members are assembled just for that one particular case. They are not members of an existing body. The two parties have the right to appoint one member each, a right which the Philippines exercised when instituting proceedings, but China, given its position, did not exercise that right. The other three members are to be appointed by agreement of the parties. If they cannot agree, a default procedure comes into operation. That default procedure also applies in the event that the respondent party does not make its initial appointment. Under that default procedure, the president of the International Tribunal of the Law of the Sea is to make the appointment. In the case of the three members, the president is to do that in consultation with the parties. At the relevant time, the ITLOS president was Shunji Yanai, a Japanese national.

I can only speculate, but what would have been the consequence of China's participation in the appointment of the three members? Would it not have questioned the fact that four of the final five were European? Or that the initially proposed president, from Sri Lanka, was married to a Filipina? Or that the replacement president was not from Asia? Might they not also have suggested that the ITLOS president might have requested a senior colleague to undertake the task, given Japan's major interests in navigation through the South China Sea? The Chinese ambassador in The Hague has been reported as saying that Judge Yanai assembled a biased arbitral tribunal, which was tilted toward the Philippines and ignored what China stands for.

No representation

My speculation continues in respect of the pleadings, written and oral. While it is the case that extensive official Chinese publications and statements were available to, and extensively used by, the tribunal, Chinese counsel were not present at the hearing and able to respond to the arguments made by the Philippines, to challenge the evidence and to call attention, no doubt gently, to positions taken by members of the tribunal which would appear

to support China's case. According to media reports, one Chinese scholar has identified such writings by two of the tribunal members. Nor was there a Chinese-appointed arbitrator on the bench to question counsel. Oral argument in my experience can be very important, even decisive. And then there is the role of a Chinese-appointed arbitrator during the deliberation in highlighting to colleagues issues which were not being adequately developed in the drafts. I do not mean by those references to the role of a nationally-appointed arbitrator to suggest that they would act simply as agents for the state which appointed them. Their role is distinct and independent. There are important instances of such arbitrators participating in decisions contrary to the claims of the party which appointed them.

I relate that speculation about the lack of oral argument from the Chinese side and the lack of a Chinese-appointed arbitrator at the hearing and in the deliberations to two matters concerning jurisdiction. Before I do, I note that in several of the cases of non-participation I mentioned above, the judge ad hoc appointed by the state and the judge of the nationality of the state continued to participate in the work of the court, including in one case in effect taking on the role of cross examining witnesses presented by the applicant.

The first jurisdictional matter relates to the definition of the dispute. The Philippines, in its pleadings, was careful to avoid the Chinese contentions that in its essence the dispute was about territorial sovereignty, not covered by the UNCLOS, and maritime demarcation, excluded by China's declaration. It is for the court or, in this case, the tribunal to define the dispute which it considers it has to resolve. New Zealand has had that experience twice in the International Court of Justice, in 1974 and 1995, in the nuclear tests cases. In the first case, it was surprised and, in the second, disappointed by the court's framing of the issue, but it recognised that the function of definition was for the court alone. It is to be assumed that that matter was the subject of careful and exhaustive deliberation in the court — in 1974, for instance, it took fully five months to reach its judgment based on that definition when it had essentially nothing else on its docket. The judge of French nationality was no doubt part of that process. I might wonder whether the judge ad hoc appointed by Australia and New Zealand, an Australian, was sufficiently alert to the differences between the Australian and New Zealand cases. What difference might a Chinese-appointed arbitrator have made to the deliberation on that matter in this case?

Chinese contention

The second jurisdictional matter concerns the Chinese contention that the parties had agreed to settle the disputes between them by negotiation. That contention is based on a convention provision that gives priority to such procedures over those available under the convention. An award of another differently constituted five-person tribunal given in 2000 rejecting jurisdiction on that ground provides support for that Chinese argument, but the current tribunal rejected that ruling and preferred the position of the one member of the earlier tribunal who dissented on that issue. That clash may indicate a frailty in a system of peaceful settlement which involves tribunals operating at the same level and consisting of different memberships. By contrast, one notable feature of the jurisprudence of the International Court of Justice, had it had the case before it, is its constancy and the court's strong reluctance to overrule earlier decisions. Again this jurisdictional matter is one

which could well have been more effectively addressed and perhaps answered in a critically different way had China participated fully in the process.

It may be thought that I have been a little harsh on the rejection by China of this arbitration process, that I have not properly understood the wider political, historical, cultural, strategic and economic context. That might well be right. Consider all the reactions about 'our beautiful motherland', 'a tribunal [that] tramples on international justice', and a ruling that is 'radical and shameful' and 'nothing but a piece of paper'.

Let me now turn to two other matters which may provide some balance. The first concerns the choice made by the Philippines to take the litigation route. I do not have the space to develop this fully, but the Antarctic analogy should be considered. In 1959 the twelve nations that had made claims of territorial sovereignty and others which had not recognised them and had real interests in that continent, as demonstrated by their activity during the International Geophysical Year of 1957–58, decided to resolve some major matters by agreement, while putting the sovereignty issues to one side, to put them on ice as the aficionados say. They agreed that Antarctica was to be used only for peaceful purposes and that they should establish a firm foundation for the continuation and development of international co-operation in scientific research.

Different definition

In terms of that purpose, the treaty system has been supplemented by other agreements and recommendations, supported by consultative meetings and a treaty secretariat. Plainly the issues, rights and interests in the South China Sea are very different, but what I am focusing on is the possibility of defining the real issues differently (partly by exclusion) and the establishing of methods for their management — consider rights of navigation and overflight, responses to piracy, safety at sea, protection of the environment, maintaining biodiversity, the conservation and exploitation of fisheries and other living resources and the exploration and exploitation of subsoil resources, notably oil and gas. Much practice shows that such matters can be handled or managed on an ongoing basis without apparently fundamental issues having to be addressed.

I recall a comment made by Prime Minister Norman Kirk to our leader, Professor Quentin Baxter, as we headed off to The Hague in 1973 to attempt to prevent French nuclear testing by court proceedings. The comment emphasised the limits of litigation. He had no faith in lawyers, said the prime minister. Why, Quentin asked. They lose half their cases, came the swift reply. And the prime minister, like several of his successors, of course, saw litigation as only one part of a much bigger range of efforts, looking for an overall win-win result in respect of nuclear weapons. That is to say litigation may not be the best way of resolving international disputes. Was the Philippines wise in putting all its eggs or so many of them in the litigation basket?

My second balancing point concerns China's more general attitudes to international law and international adjudication and arbitration. Judge Hanqin Xue, the judge of Chinese nationality on the court, earlier this year referred positively to the court's rich jurisprudence, a major product, she said, of Western civilisation. She had earlier affirmed that international law matters and must be taken seriously. It has serious consequences for how people live. The president of the Chinese Supreme Court visited the International

Court of Justice late in 2015 and some ICJ judges made a return visit in September 2016. The Chinese delegation at the United Nations has spoken in support of the court, for instance in respect of financial matters. And to move to another area, China has participated in many dispute settlement processes within the World Trade Organisation, as applicant, respondent and third party.

Slow acceptance

The willingness of particular states to subject themselves to binding international adjudication and arbitration can take time to evolve. New Zealand, for instance, in the 1920s was very concerned about the possible role of the Permanent Court of International Justice, made up mainly of foreigners it said, in respect of its immigration policy and the rights in time of war of the Royal Navy. Coming back to the present, what are we to make of the declaration of 25 June 2016 of China and Russia on the promotion of international law? This is what they said:

The Russian Federation and the People's Republic of China reaffirm the principle of peaceful settlement of disputes and express their firm conviction that States shall resolve their disputes through dispute settlement means and mechanisms that they have agreed upon, and all means of settlement of disputes should serve the goal of resolving disputes in a peaceful manner in accordance with applicable international law, thus leading to de-escalation of tensions and promotion of peaceful cooperation among disputing parties. This applies equally to all types and stages of dispute settlement, including political and diplomatic means *when they serve a pre-requisite to the use of other mechanisms of dispute settlement*. It is crucial for the maintenance of international legal order that all dispute settlement means and mechanisms are based on consent and used in good faith and in the spirit of cooperation, and their purposes shall not be undermined by abusive practices.

Two months earlier, those two states along with India had declared their commitment to maintaining a legal order for the seas and oceans as reflected notably in the UN Convention on the Law of the Sea. All related disputes, they said, should be addressed through negotiations and agreements between the parties con-

cerned. In this regard they called for full respect of all provisions of the UNCLOS as well as the Declaration on the Conduct of Parties in the South China Sea, mentioned above, and the guidelines for its implementation. The statement is to be understood in the context of the refusal of the Russian Federation to participate in the case brought under the UNCLOS by the Netherlands and, by contrast, India's experience in UNCLOS arbitrations with Bangladesh over the Bay of Bengal and with Italy over criminal proceedings relating to an incident at sea. India had in February called on all parties involved in the South China Sea dispute to learn from its successful arbitration with Bangladesh. And it is at the moment involved in the ICJ proceedings brought by the Marshall Islands about the obligation of the nuclear powers to negotiate towards nuclear disarmament.

Greater willingness

The references I have made to a number of proceedings brought by and against states from all parts of the world about a wide range of issues will, I trust, have given a sense of the much greater willingness of states to engage in such processes than when I first studied these issues more than 50 years ago. Attitudes, as I have noted, can change, as reflected as well in unanimous declarations of the UN General Assembly supporting third-party settlement in general and the ICJ in particular and the international rule of law. In the specific context of law of the sea, I conclude with what I see as very wise words of an excellent scholar and practitioner Professor Bernard Oxman.

The fact that all states that become party to the convention — now 168 — thereby consent to arbitration or adjudication of most disputes concerning its interpretation and application presents a remarkable, and abidingly important, step forward in furthering the rule of law in international affairs.

Perhaps, as some experts are suggesting, China may find a way quietly to comply with the award in part at least and to reduce the heat of the reaction. The internet censors have been at work. But cool heads are certainly required and lessons have to be learned, both by those who are thinking of launching legal proceedings and by those who may be subject to such proceedings. 



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New Zealand–India relations: a step forward

Ashok Sharma reviews John Key's recent visit to India.

Today India is the fastest growing major economy in the world. And with its growing economic, military and political influence, it has emerged as a major player in the international system. After staying on the periphery of international politics for decades, India is now attracting global attention. Having begun to realise its potential as a significant power, it is no longer a mere observer of the actions of other global players. Over the past two decades, India has taken resolute steps to look outward and engage with the world on the economic, strategic and political fronts.

Without the burden of Cold War era ideological baggage, India has sought to exploit the most flexible international context to have prevailed in the past two decades. It has adopted a deliberate policy of engaging and enhancing bilateral ties with all the key global players. In doing so, New Delhi has taken a more pragmatic approach to its foreign policy and, while retaining its strategic autonomy, has moved closer to the US-led 'Political West'. But one of the striking features of its external engagement has been increasing economic, political and strategic engagement with the Asia–Pacific region/Indo-Pacific region, a process that began in the 1990s as India's 'Look East Policy'.

Now this eastward engagement is being pursued more actively under Narendra Modi's government as an 'Act East Policy'. The Modi-led Bharatiya Janata Party came to power with a thumping majority in the 2014 general election on the promise of fixing the economy and achieving for India 'a rightful place in the world'. In pursuit of that, an economics-driven foreign policy has become the hallmark of Modi's administration. This is evident in his high-profile, well-choreographed foreign visits, which have seen him cutting trade and energy deals as well as deepening defence and security ties with likeminded countries.

However, despite Modi's numerous overseas visits and his focus on economic engagement, India–New Zealand relations have not been able to achieve any momentum. This notwithstanding the fact that both nations share many common factors, such as their Commonwealth legacy, values and principles of democracy;



John Key with Prime Minister Narendra Modi, at Hyderabad House

diffusion of liberal political and economic values; the presence of a sizeable Indian diaspora; and contributions to the global commons, such as protection of both sea lanes of communication and the rules-based international order.¹

Positive developments

Despite positive developments in the last two decades, the overall New Zealand–India bilateral relationship remains under-achieved. In recent years, mutual efforts to enhance that relationship have focused on trade, tourism, education, leveraging the Indian diaspora's potential as a bridge between the two nations and on-going free trade negotiations. However, the progress on the much talked about free trade agreement has been slow, and strikingly New Zealand has so far been missing from Modi's foreign policy radar. Modi is widely recognised as having an active foreign policy agenda, as evident in his record number of overseas visits. Notably, New Zealand was not on the itinerary during his last sortie to the region, in 2014, when he visited Australia and Fiji, clearly suggesting that strategic interests took priority over economic interests in the region. Despite missed opportunities, the two countries' prime ministers have met several times on the sidelines of international forums. Moreover, during Modi's incumbency an Indian president, Shree Pranab Mukherjee, for the first time made a state visit to New Zealand.

John Key's visit to India from 24–27 October 2016 is a positive step that will give much-needed momentum to the New Zealand–India relations. It follows his previous visit in 2011. A high-level business delegation, trade negotiators and parliamentarians accompanied him. During his meeting with Modi, Key touched on a range of issues affecting bilateral relations. Both leaders emphasised the shared values of democracy, cultural and sporting ties and peo-

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Despite positive developments in the last two decades, the New Zealand–India bilateral relationship is still under-achieved. John Key's visit to India from 24 to 27 October 2016 will give much-needed momentum to efforts to change this situation. A high-level business delegation, trade negotiators and parliamentarians accompanied him. After fruitful talks, India and New Zealand concluded several agreements on taxation issues. Foreign minister-level dialogue will be established. There were also exchanges on cyber issues. In helping move New Zealand–India relations beyond the Commonwealth, curry and cricket, Key's visit has improved New Zealand's engagement with the world's fastest growing major economy.

ple-to-people contacts that have been developing mainly because of the presence of a significant Indian diaspora in New Zealand.

After fruitful talks, India and New Zealand concluded three agreements, including one on avoidance of double taxation and another on prevention of fiscal evasion with respect to taxes on income. Foreign minister-level dialogue will be established. There were also exchanges on cyber issues.² Emphasising the strength of the relationship, the two leaders had extensive and productive discussions on all aspects of bilateral and multilateral co-operation. However, Key's visit can be seen in the context of three main issues:

- economic ties with a focus on the free trade agreement
- New Zealand's stand on India's inclusion in the Nuclear Suppliers Group (NSG)
- Indo-Pacific strategic issues and security issues, mainly terrorism, and including the issues related to the Indian diaspora in New Zealand.

Economic ties

During Key's India visit, economic issues, especially the free trade agreement with India, had top priority. Key emphasised the need for speedy progress on the agreement. Like China, India offers a huge market for New Zealand. New Zealand–India trade stands at around \$2 billion a year, just a tenth of New Zealand–China trade, which stands at \$20 billion a year. A free trade arrangement would give New Zealand exporters better access to a market of 1.25 billion people, including a middle class of around 500 million people in the coming years.

New Zealand is a world leader in dairy and meat products and agriculture, whereas India, despite being the world's largest milk producer, has a largely under-developed farming sector with a large segment of farm workers engaged in subsistence-level farming. This imbalance poses a major challenge for Indian policy-makers when considering removing tariffs and giving market access to New Zealand's sophisticated dairy and agriculture sector. However, India's sustained economic growth is fast changing the appetite and purchasing power of the rising Indian middle class. There has been an increase in the demand for milk, dairy products, and other processed food in urban areas in recent years. The demand for milk and dairy products in India is likely to grow significantly in future. Prosperity, greater interest in nutrition and health and a growing number of consumers will drive this development.

New Zealand's political leadership sees an opportunity to meet the demand of the growing Indian middle class, as New Zealand's dairy and agriculture sector has already done in China. Moreover, New Zealand expects that middle-class Indians' changing dietary habits will create increasing demand for milk for a population that is essentially vegetarian; it recognises that milk constitutes an important product in the Hindu way of life. Apart from milk and agricultural products, a varied range of goods, services, skill development and technology with the branding of 'value added' and 'high-end' in a wide variety of sectors ranging from education and film to the aviation industry offer New Zealand businesses a huge opportunity to tap into India's market.

In 2011 the free trade agreement negotiations began amid high hopes of an early deal. New Zealand expectations mirrored those before the conclusion of the New Zealand–China free trade agreement. Five years on, and after ten rounds of negotiations, no deal has materialised. But New Zealand is not the only country on the waiting list for a free trade deal with India. Australia, too, has

been waiting for a couple of years. Despite slow progress on free trade, the New Zealand–India economic relationship has grown significantly in the past five years, with two-way trade increasing by a third. This economic bonhomie will increase further, for the prime ministers agreed to enhance economic ties by streamlining business rules through a high quality, comprehensive bilateral free trade agreement, and have pledged to continue to play constructive roles in the Regional Comprehensive Economic Partnership talks. Overall, the free trade agreement has moved beyond rhetoric and has moved a step forward.

Blocked entry

Another major issue that figured during Key's visit was New Zealand's stance on India's inclusion in the Nuclear Suppliers Group, which Modi has been pursuing very strongly. At the plenary session in South Korea in June 2016, despite strong US backing, China took the lead in blocking India's entry on the ground that India is not a signatory of the Nuclear Non-Proliferation Treaty (NPT). While considering India's bid to join the elite group that regulates nuclear material commerce at the last NSG plenary, New Zealand along with China, South Africa, Austria and Turkey took the view that no exception should be made for a non-NPT country. But Key's government has definitely moved closer to understanding India's claim to membership than any previous New Zealand administration. Key himself conceded this when interviewed by a local ethnic newspaper prior to his visit: 'Well, certainly there is a degree of truth to it as we are trying to work constructively with India, the US and other like-minded countries to allow India to get into the nuclear supplier group.'³

China's stance on the NSG has been seen in India mainly as part of a Chinese policy of containing India's rise. Despite their growing economic ties and measures taken at summit level, India and China are locked in a competitive relationship, which in recent years has often been reflected in military standoffs on the Indo-China border. India is concerned about China's all-weather friendship with Pakistan, and their deepening defence and nuclear nexus. India's balancing response to China's India containment policy has been a robust and comprehensive strategic partnership with the United States and a growing defence and strategic partnership with Japan, Australia and other China-wary countries in the Indo-Pacific region. However, at the recent BRICS Summit in India, the Indian and Chinese leadership discussed the NSG matter, and China indicated that it will reassess its opposition. In the wake of the Chinese opposition to India's NSG membership and its veto of India's UN resolution declaring Pakistan-based Islamic extremist movements as terrorist organisations, India had restricted Chinese exports to India. This resulted in a massive boycott of Chinese products in India this festive season.

On India's NSG membership, Key assured Modi that New Zealand will take a constructive approach and is committed to working with NSG members to reach a decision as soon as possible.⁴ This is important for the New Zealand–India relationship on all fronts, since the nuclear issue has been a trust factor for India in its relationships with many countries, including the United States and New Zealand's trans-Tasman neighbour Australia.

During the meeting, the Indian leadership highlighted India's impeccable record and commitment to the nuclear non-proliferation regime and its credentials to become an NSG member. India, along with New Zealand and Ireland, is one of a few countries that have demanded complete nuclear disarmament from the

outset. India has been advocating global nuclear disarmament, despite refusing to sign the NPT on the ground that it supports an unfair global nuclear order that allows the 'Permanent Five' (United States, United Kingdom, China, France and Russia) to keep nuclear arsenals while denying others the right to do so. Also, in India's perception the NPT undermines its security in the face of nuclear China and nuclear Pakistan and their 'all-weather friendship'.⁵

Strict regime

Despite its non-NPT status, India has followed not only a strict export control regime of nuclear material and technology but also international norms in opposing nuclear proliferation. India first detonated a nuclear weapon entirely for scientific purposes in 1974, but it gave up its self-imposed moratorium on nuclear tests for military purposes in 1998. India's nuclear tests were aimed at addressing the long-term security challenge posed by its two nuclear neighbours, Pakistan and China. In the aftermath of India's 1998 nuclear tests, the United States and other countries imposed heavy sanctions on it as punishment for its nuclear defiance. However, Washington soon lifted sanctions after engaging India in a strategic dialogue that helped clear up misperceptions about India's nuclear posture and tests. Finally, a nuclear exception was made for India, which resulted in a US–India civilian nuclear deal in 2008.

This deal was primarily aimed at addressing India's looming energy crisis. It also recognised India's growing economic profile, its energy needs and its strategic importance in Asia's balance of power. The nuclear pact ensured the separation of India's civilian- and military-purpose nuclear reactors. India's atomic reactors were brought under global safeguard measures and opened to International Atomic Energy Agency inspection.

The nuclear issue had been a longstanding irritant in the India–US relationship. Similarly, the India–New Zealand relationship has also been affected by India's non-NPT status, especially in the wake of India's 1998 nuclear test. However, New Zealand supported the 2008 US nuclear exception for India, voting with the United States in the Nuclear Suppliers Group to help India overcome its energy security challenges. Heavily dependent on hydrocarbons for energy, India is looking to increase the share of nuclear energy in its total energy mix from the present 3 per cent to 25 per cent.⁶ Nuclear energy will not only help India to address its energy security problem but also help India meet its commitment in the Paris agreement on climate change to reduce its carbon emissions. Key's assurance of both New Zealand's support for India's energy security concerns and a constructive stance on India's NSG membership bid is a positive development in New Zealand–India ties.

During the meeting, Modi and Key agreed on promoting co-operation and dialogue between the two countries on cyber issues. Both sides called for the early adoption of the Comprehensive Convention on International Terrorism, which would contribute to the further strengthening of the international counter-terrorism legal framework. They also called for eliminating terrorist safe havens and infrastructure, disrupting terrorist networks and their financing, and stopping cross-border terrorism.⁷

Security challenges

Terrorism and Islamic radicalisation have become one of the significant security challenges in the world. Today, no nation is im-

mune from this menace. Terrorism continues to be a big security problem for India, which has been one of the worst sufferers from Islamic attacks. Islamic State and al-Qaeda-affiliated, Pakistani-based terrorist organisations such as Lashkar-e-Taiba and Jaish-e-Mohammad pose a significant security threat. Indians are alarmed by Pakistan's continued arrogance and refusal to act against such movements within their country and China's recent aggressive posture and support for Pakistan on all fronts, including refusing to ban some of the dreaded Pakistan-based terrorist outfits in the UN Security Council.

Consequently, Modi has been very vocal and conspicuous on the issue of global efforts to curb Islamic terrorism. At every international forum his government has emphatically pushed the agenda of tackling jihadist terrorism, and it has been one of the main issues in India's bilateral talks recently. Modi has been highlighting the issue of terrorism with all the major powers, including the major Muslim nations in the Middle East. India has urged the world to unite on this front and isolate the nations exporting terrorism. At the recent 8th BRICS summit in the Indian city of Goa, terrorism was one of the main points, along with the NSG membership. Although New Zealand has not faced a terrorist attack on its soil, it is not immune to jihadists' radicalisation. In recent years, there have been reports of radicalisation of youths by the Islamic State and jihadists in New Zealand. New Zealand has not shied away from participating in and supporting global efforts to promote counter-terrorism co-operation. It was part of the US-led coalition in the War on Terror in the wake of the 9/11 terror attacks.

Indian diaspora

The potential of the Indian diaspora in bridging the link between their adopted land and India has long been recognised. Indian Americans have, for example, played a significant role in changing perceptions of India in the United States and their lobbying efforts have helped transform the US–India relationship.⁸ Engaging with the India diaspora has become one of the major foreign policy priorities of the Modi government. No previous Indian administration has been able to harness the potential of Indian populations abroad to the extent that Modi's has done.

New Zealand's Indian population has been growing, mainly through the arrival of skilled migrants and students. After completing their education, some of the latter choose to stay in New Zealand and are able to get permanent residency. As a result, education has become a standout component of New Zealand's relationship with India. However, there have been cases in recent years where education-related matters have not been dealt with appropriately. Cases of cheating by education providers in New Zealand have been reported, and students have complained that their expectations have not been met.⁹ These issues have the potential to affect commercial relations too. After all, India is very interested in its diaspora population, as well as being one of the largest contributors of students to many of the Anglosphere countries, such as the United States, the United Kingdom, Australia and New Zealand. In New Zealand's case, it is an important opportunity for New Zealand, which has the potential to tap the market. Modi has given top priority to up-skilling India's young population. At present, there are not sufficient quality educational institutions to cater for India's demand for skilled education. The New Zealand government needs to ensure that there is no discrimination against or particular targeting of the Indian students.

New Zealand must deal with both student visa fraud issues and the exponential growth of migrant numbers. Many of the institutes that have mushroomed in New Zealand are providing very basic education. There are also cases of employers — in many cases of Indian descent — exploiting students. Students returning to India after completing their education with a bad experience will not be healthy for New Zealand–India relations. After all, New Zealand is regarded as the world’s least corrupt country and is best known for its commitment to fair practice. We have seen student issues, especially fraudulent practice and excessive student intakes, create a problem in Australia–India relations in 2009.

Significant player

With the United States’ receding hegemonic power and China’s aggressive posture, India, with its growing economic and military profile, has emerged as a significant player in the balance of power in the Indo-Pacific region. New Zealand’s traditional security partner, the United States, has moved closer to India on strategic and defence issues. Today, India conducts many military exercises with the United States, while Australia and India have also moved towards closer defence co-operation. This suggests that India and New Zealand will probably move towards closer security ties as well. The joint statement issued after the Modi–Key talks briefly touched on this issue, noting that India and New Zealand were both maritime nations with a keen interest in the stability and prosperity of the Asia–Pacific and Indo-Pacific regions. Accordingly, the two leaders agreed to further strengthen the political, defence and security relationship between their two countries.¹⁰

With India ready to do business and expand its interests strategically, the prospects for New Zealand and India are immense. This could be seen in Modi’s tweet when he tapped into cricket fever during the Black Caps’ tour of India: ‘We have moved from fielding at Long Off to taking fresh guard. Defensive play has become aggressive batting.’ John Key’s invitation to Modi to visit New Zealand, which Modi has accepted, will strengthen the relationship between the two democracies. Key’s timely visit to India is a step in the direction of moving New Zealand–India relations beyond the Commonwealth, curry and cricket, and engaging the world’s fastest growing major economy and one of the certain global players of the 21st century.

NOTES

1. For details on the convergence of interests between New Zealand and India in the Indo-Pacific, see Mark Rolls, ‘Opposites Attract? India–New Zealand Relations in the Indo-Pacific Region’, *Political Science*, vol 68, no 1 (2016), pp.78–95; Ashok Sharma, ‘India’s Expanding Foreign Policy in the Asia–Pacific Region: Implications and Prospects for the India–New Zealand Relationship’, *Maritime Affairs*, vol 10, no 4 (2014), pp.54–74. For historical perspectives, see Shekhar Bandyopadhyay, ‘India–New Zealand Relations in the New Century: A Historical Narrative of Changing Perceptions and Shifting Priorities’, *India Quarterly*, vol 69, no 4 (2013), pp.317–33.
2. ‘Modi–Key Talks: New Zealand assures “constructive” approach on India’s NSG bid’, *Times of India*, 26 Oct 2016 (timesofindia.indiatimes.com/india/Modi-Key-talks-New-Zealand-assures-constructive-approach-on-Indias-NSG-bid/articleshow/55069177.cms).
3. Sandeep Singh, ‘NZ Keen to discuss FTA and NSG with India: PM John Key’, *Indian Weekender*, 21 Oct 2016 (www.

indianweekender.co.nz/Pages/ArticleDetails/7/7016/New-Zealand/NZ-keen-to-discuss-FTA-and-NSG-with-India-PM-John-Key).

4. ‘Modi–Key Talks...’
5. Ashok Sharma, ‘Australia and India’s Nuclear Deal: A New Beginning in the India–Australia Relationship’, *SAIS Review of International Affairs*, 22 Oct 2014 (www.saisreview.org/2014/10/22/australia-and-indias-nuclear-deal-a-new-beginning-in-the-india-australia-relationship/).
6. Ashok Sharma, ‘India and Energy Security’, *Asian Affairs*, vol 38, no 2 (2007), pp.158–72.
7. ‘India, New Zealand to enhance defence and security cooperation’, *Shillong Times*, 27 Oct 2016 (www.theshillongtimes.com/2016/10/27/india-new-zealand-to-enhance-security-defence-cooperation/#V5xmAc3JBO71sT1s.99).
8. Ashok Sharma, *Indian Lobbying and its Influence in US Decision Making: Post-Cold War* (New Delhi, 2017).
9. Jo Moir, ‘John Key heads to India as students face deportation from NZ over Visa Fraud’, *Stuff*, 21 Oct 2016 (www.stuff.co.nz/national/education/85554245/John-Key-heads-to-India-as-Indian-students-face-deportation-from-NZ-over-visa-fraud).
10. Ministry of External Affairs, Government of India, ‘India–New Zealand Joint Statement during visit of Prime Minister of New Zealand to India’, 26 Oct 2016 (www.mea.gov.in/bilateral-documents.htm?dtl/27535/India_New_Zealand_Joint_Statement_during_visit_of_Prime_Minister_of_New_Zealand_to_India).

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Colombia's path to peace

Juliana Bustamante-Reyes looks into the system of justice provided in the recently achieved peace agreement.

In 1964 the Colombian Revolutionary Armed Forces (FARC) emerged as a guerrilla movement fighting against political exclusionism and social and economic inequality in Colombia, starting the longest internal armed conflict in the region.

For over 30 years, as acknowledged recently by President Juan Manuel Santos, successive governments have attempted to achieve a peace agreement in Colombia. Although some of those efforts resulted in some factions' demobilisation, it was not until 2012 that FARC committed to seriously pursue a peace accord with the government. This development owed much to the fact that the previous government, led by President Álvaro Uribe, had followed a policy of military victory against FARC, which, though unsuccessful in absolute terms, diminished its military power. This contributed to its willingness to enter negotiations.

President Santos's government, which took office in 2010, embarked on negotiations with the FARC in 2012. In August of that year the parties formally announced their agreement to begin negotiations covering the following topics:

- rural reform, since land, land rights and ownership were, perhaps, the original cause of the conflict;
- a framework for political participation by the FARC-EP in the country's politics;
- a ceasefire and decommissioning of weaponry;
- an agreement on solving the illegal drug-trafficking problem;
- a framework for post-war justice with victims as the central concern; and,
- implementation, verification and endorsement of those accords.

The negotiations began in November 2012 in Havana, Cuba. On 24 August 2016, the parties to the negotiation publicly announced that they had reached agreement on all items on the agenda. As a result of the 'Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace',¹ a definitive ceasefire for both parties came into effect at 00:00 on 29 August, bringing the near six-decade-long conflict to an end. On 26 September 2016 in a pompous, yet moving ceremony in Cartagena, both parties formalised the peace agreement. Several heads of state and international public figures, including UN Secretary-General Ban Ki Moon, witnessed this historic event.

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FARC guerrillas on parade

Despite this, the final decision to implement the accords lay with the Colombian people. Indeed, as the president announced at the beginning of the talks, the final agreement was to be subject to a referendum in which Colombians would decide to accept it or not. During September 2016 a political campaign on the accords took place, with serious contention within the country. While the world rejoiced over the news of peace in Colombia, the country itself was divided between those who were in favour (the 'YES' campaign) and those against it (the 'NO' campaign). Former President Uribe called for a 'NO' vote in the referendum, contributing to polarisation of the country. In the end, on 2 October 2016, the 'NO' campaign triumphed. A slight majority (less than 1 per cent) rejected the implementation of the accords as negotiated.² This outcome put the pressure on the government to hear the arguments of the 'NO' campaigners, go back to the negotiating table with FARC and produce a prompt solution to the inevitable crisis.

The political issues that arose from the campaign and the uncertainty that its outcome caused are enormous. However, given the fact that several arguments against the accords related to the issue of post-conflict justice, this article will focus on this most controversial and innovative aspect of the agreement, in particular the 'Special Jurisdiction For Peace' it creates under a transitional justice framework.

Transitional justice

Transitional justice 'describes a distinctive conception of law and justice in the context of political transformation'.³ It is a set of several mechanisms — trials, truth commissions, reparations programmes, amnesties, among others — designed to deal with

On 24 August 2016, after four years of negotiations, the Colombian government and the Colombian Revolutionary Armed Forces (FARC) finally brought a near six-decade-long conflict to an end. Although narrowly rejected by the Colombian people in a subsequent referendum, the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace provides the basis for a lasting peace. Further negotiation is demanded on post-conflict justice. The Special Jurisdiction for Peace, the most controversial and innovative element of the agreement, focuses on ending impunity and guaranteeing reparation to the victims using a restorative approach and considering peace as a human right.

the effects of gross human rights violations, either by former oppressive regimes or in armed conflicts, with the aim of promoting the rule of law and justice in times of transition. It has a forward-looking approach aimed at the restoration of relationships, and considers, primarily, the victims' needs.

The holistic nature of transitional justice gives meaning to its many elements. Without a comprehensive interaction of all of them, they will not be able to bring reconciliation or lasting peace to a society. This is what Colombia's peace agreement and particularly the comprehensive system of justice attempts to do.

Crucial role

A distinctive feature of this negotiation process was (and still is as the re-negotiation of the agreement unfolds) the crucial role of the conflict's victims. The Victims' Law enacted on 11 June 2011 was a clear transitional justice instrument that laid the ground for a negotiation in which victims were meant to be the main concern. The law consists of several mechanisms to provide reparation to victims of the conflict. A particular section on land restitution has the same aim. Before the agreement was concluded, at least five delegations of victims attended the peace talks in Havana to share their concerns, needs and proposals. Currently, several victims have been heard again regarding the possibility of making adjustments to the final agreement. They insist on the need to maintain the type of justice established by the original agreement.

The results of these consultations are reflected in this chapter of the peace agreement. Being victim-oriented, it aims to develop a 'Comprehensive System of Truth, Justice, Reparation and Non-Repitition', the main purpose of which is to strengthen peace and to guarantee victims' rights. Accordingly, the focus changes from the traditional *retributive* justice to a *restorative* justice approach, tied to the actual collaboration with truth and reparations of perpetrators. It is a rights-oriented perspective that favours reconciliation over punishment, under truth and accountability premises. Accordingly, justice is understood as a means towards restitution and reparation of the damage wrought on victims as much as possible. This approach, which has caused much controversy, appears to be misunderstood by most Colombians.

Different components

The comprehensive system comprises a number of different components, none of which prevails over another. They are a set of measures that together contribute to peace. The first mechanism of the comprehensive system for addressing victims' rights in post-conflict Colombia is the Truth, Coexistence and Non-Repitition Commission. An impartial, independent and extra-judicial organ, it will not administer justice. Its eleven commissioners will instead aim to elucidate what happened during the conflict, to help with recognition of responsibility and to promote peaceful coexistence



Alvaro Uribe



Juan Manuel Santos

in the territories through the facilitation of an inclusive dialogue. The information collected will not have criminal effect, nor will it constitute evidence for criminal investigations. As a temporary mechanism, its duration will be three years, after which the commission must present a report with recommendations that will have a specific follow-up mechanism.

Another mechanism of the agreement is the Unit for the Search of Persons Deemed as Missing. An independent, temporary, high-level entity, its humanitarian and extra-judicial mandate is to undertake all actions and measures aimed at searching, identifying, locating and delivering the missing persons and/or their remains. It will give a substantial role to the victims, will take into account the recommendations of the Truth, Coexistence and Non-Repitition Commission and will complement the system without interfering with any of its components.

The section of the agreement covering comprehensive reparation measures for peace-building refers to all individual and collective actions that need to be undertaken in order to bring satisfaction to the conflict's victims. In that regard, it has already started to be implemented through the victims' law and includes early acts of recognition of responsibility, measures of land restitution, specific contributions to reparations, collective reparations at the end of the conflict, memorialisation through symbolic measures, individual measures of material reparations to victims, actions towards the return of those displaced to their hometowns, psychosocial rehabilitation, among others in accordance with the agreement and the victims' law.

The non-repetition guarantees will be the result of the full and co-ordinated implementation of the comprehensive system and of the peace agreement as a whole, as it is considered to serve the purposes of addressing the root causes of the conflict while promoting a transition towards a more inclusive and democratic society.

Special jurisdiction

The comprehensive system designed by the parties includes an innovative feature: a Special Jurisdiction for Peace. The judicial component of the system, this consists of a separate jurisdiction created exclusively to deal with crimes related to the armed conflict. It focuses both on ending impunity and guaranteeing reparation to the victims using a restorative approach and on considering peace as a human right. This particular understanding supports the special treatment that the system gives to perpetrators with the supreme goal of peace as a guideline. The special jurisdiction will consist of chambers of justice and a tribunal for peace,⁴ mainly integrated by prominent Colombians but with some international component.

The special jurisdiction will 'prosecute and impose sanctions on those responsible for serious crimes committed during the armed conflict, particularly the most serious and representative, ensuring non-repetition'.⁵ This means that the special jurisdiction will have jurisdiction over *all* those agents who have directly or indirectly participated in the conflict, including, but not limited to, the FARC-EP guerrilla members and state officials for crimes arising from the conflict. Having a different standing within the conflict, guerrilla members and state officials may be treated differently, but equitably and with balance. The agreement leaves a deliberately open door for using the special jurisdiction to prosecute members of other guerrilla groups as well as paramilitaries involved in the conflict. Furthermore, it includes the possibility

of prosecuting civilians who might have participated directly or indirectly, actively or passively, in it. This provision concerns land owners and private parties that somehow financed groups to defend or protect themselves from the guerrillas, as the agreement expressly includes these cases as criminal behaviours unless it is proven that they were the result of coercion.

In accordance with international humanitarian law, particularly Article 6(5) of Protocol II of the Geneva Conventions (1977), the agreement provides that the Colombian government will grant the broadest possible amnesty for political and associated crimes. An amnesty law will establish the specifics. According to the Colombian Constitution, only Congress can enact such a law. Amnesty will not apply for the most serious crimes under international law and will be granted after consideration of the beneficiaries' actual surrender of weapons and their contribution to truth and reparations.

According to the above provisions, the Special Jurisdiction for Peace will prosecute crimes against humanity, genocide and serious war crimes, including hostage-taking or severe deprivation of liberty, torture, extrajudicial killings, forced displacement, forced disappearances, sexual violence, and children's abductions and recruitment. Consequently, crimes under the special jurisdiction are essentially those specified in major human rights and humanitarian treaties, including the Rome Statute of the International Criminal Court to which Colombia is a party and whose prosecutor recently supported the agreement's achievements in this area.⁶

The Special Jurisdiction for Peace will deal with two types of procedures, depending on the level of collaboration with justice for those on trial. On the one hand, there is the procedure for those who recognise truth and responsibility. For them, the sentence will be based on the admitted criminal behaviour, rather than on-going criminal investigations, as well as other sanctions that might have been previously imposed, including judicial rulings that may already exist and information provided by victims' and human rights' organisations. The second type of procedure will be for those who either admit truth and responsibility late, that is, within the criminal trial before the ruling, or who do not admit anything at all.

The issue of sanctions is the most controversial. Their purpose, according to the agreement, is to satisfy the rights of victims and to consolidate peace. They should accordingly have the highest restorative and reparative function possible.

In general terms, the penalty imposed on those who contribute to truth and acknowledge responsibility will consist of some form of restriction on freedoms and rights with the aim of complying with restorative and reparative penalties by performing different jobs and/or activities towards a true satisfaction of victims' rights. The penalties for serious crimes will range between five and eight years of restriction of freedoms and restorative actions. Those making a belated recognition of their crimes, before the ruling, will face prison for a period of between five to eight years only if they agree to contribute to their social rehabilitation through work, training or study for as long as he/she is deprived of liberty. Lastly, those who refuse to contribute to truth or to acknowledge responsibility for such crimes and are found guilty will be sentenced to imprisonment for a minimum of fifteen years and a maximum of twenty years.

The nature of the sanctions for perpetrators condemned under the Special Jurisdiction for Peace will depend on the level of truth provided, the nature of the criminal behaviour under considera-



Colombian President Juan Manuel Santos (left) shakes hands with Timoleon Jimenez, the FARC commander, after signing the peace agreement in September, with Cuban President Raoul Castro at centre

tion, the level of participation and responsibility in the wrongdoing and the person's commitment to victims' reparations and guarantees of non-repetition. Sanctions will always imply a restriction of rights and liberties and restorative and reparative activities, such as clearance and eradication of war explosives, unexploded ammunition, anti-personnel landmines and makeshift explosive artifacts; contribution to illicit crops' eradication; and working in rural and urban infrastructure, environmental, technological and water sanitation projects, among other, similar, activities.

A critical issue of the agreement lies in the fact that those subjected to the Special Jurisdiction for Peace will not lose their political rights, either actively or passively. Constitutional reforms will need to support this agreement as, in principle, convicted criminals usually lose their political participation rights.

Benefits from these dispositions depend on both providing truth and recognising responsibility. The special treatment under the Special Jurisdiction for Peace requires full disclosure, reparation to the victims and guarantees of non-repetition.

Particularly important is the FARC's obligation to surrender its weapons, beginning no later than 60 days after the final accord, if they want to benefit from the system established by the agreement.

When determining which transitional mechanisms to employ in ending a conflict or repressive situation, the demands of justice usually conflict with the demands of peace. As Sergio Jaramillo, Colombian government plenipotentiary to the peace talks, said: 'If we do not achieve a balance between legal security and satisfaction of the victims and society, this peace would not be a just one, and therefore it would not be legitimate or sustainable.'⁷

The comprehensive system promoted by the peace agreement appears to embrace the *holistic* approach that transitional justice seeks, encompassing several mechanisms to grant justice to victims and promote sustainable peace. The agreement reached within the framework of victims' rights to truth, justice, reparation and non-repetition seems to achieve that balance, through not only the various mechanisms it creates but also the robust system to respect and protect the rights of the victims that appears throughout the agreement. The detailed procedure before the Special Jurisdiction for Peace and its thorough supervision serve as guarantees of a successful transition.

The system results from the study of previous experiences that combines the benefits of different mechanisms without favouring one, and simultaneously acknowledges current requirements

of international law. The constant support that negotiations had from the international community over the last four years is also a true guarantee of a thoroughly designed system for transition towards peace. Naturally, as part of a negotiation process, both parties made concessions and waivers that are far from perfect from their respective perspectives. In the quest for reconciliation and peace, and having the victims at the centre of the process, they have agreed upon a system that, besides truth (through the Truth, Coexistence and Non-Repetition Commission), also privileges accountability through trials and reparations. Although there is amnesty, as with all peace agreements, this is limited to political and related crimes. This is a clear advance on the South African experience, where amnesty was allowed for any and all crimes in exchange for truth, adversely affecting the rights of victims to justice and reparation. It is remarkable, then, that this Colombian agreement has given truth and accountability such a determinant role in the transition as part of the peace-building efforts, making sense of the dichotomy between *knowledge* (truth) and *acknowledge* (accountability) in the name of reconciliation.

Sceptics consider the Special Jurisdiction for Peace sanctions a façade for impunity and a violation of international standards, as they do not imply serving prison time for those providing truth and acknowledging responsibility for serious human rights and humanitarian law violations. These critiques are understandable but have no real support under international law. A reasonable review of the main international human rights treaties, as well as the Rome Statute of the International Criminal Court (Article 80), demonstrates that international law does not mandate prison as the only acceptable sanction for these violations. It demands justice, accountability and avoidance of impunity; it does not, however, require prison. Also, the opponents of these measures fail to see the wider picture of such a formula: an opportunity to use criminal prosecution in a constructive way through a restorative approach and due reparation to victims, these being required to receive the benefits of the Special Jurisdiction for Peace.

The main issue that arises from the internal debates around the agreement's provisions on justice is not the actual administration of justice or its disregard, but the *type* of justice that is pursued with the agreement. Indeed, the classical retributory justice that favours punishment through prison conflicts with a system that is aimed to use criminal accountability as an opportunity to demand from the perpetrator *actual acts of reparation* to the victims. Restorative justice addresses victims', communities' and perpetrators' needs in order to obtain a broad sense of justice. While victims are at the centre of restorative justice, vengeance is central to retributory justice. This issue poses a deeper, human, question that was recently well presented by philosopher Martha Nussbaum in a letter about Colombia's peace process:

the spirit of revenge and retribution is poisonous for any human relationship, whether personal or political. Retaliation does not correct harms that have already happened, and generally only accumulates more bitterness for the future.⁸

It is quite concerning that Colombians — a slight majority of them, at least — still struggle to come to terms with these concepts. The referendum's result shows a division that appears to go against the country itself. Immediate fears, lack of understanding, resentment and political agendas drove citizens towards a decision that left only uncertainty for the country and blocked the people from seeing wider prospects. One can only hope that the current government actions, in listening to the opposition, will only be a

passing phase that will not hinder the possibility of actually terminating the longest armed conflict in the Americas. Colombia needs to address many issues to move forward, but would more likely be able to do so if war was out of the picture.

NOTES

1. *Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, 24 Aug 2016 (www.mesadeconversaciones.com.co/sites/default/files/acuerdo-final473286288.pdf). The information presented in this article is essentially based on this document. There is no consolidated version of the agreement in English; accordingly, parts of it have been translated by the author and/or can be found in several internet resources.
2. The NO vote won with a 50.2 per cent against the YES vote that reached 49.7 per cent of the votes. However, it is worth noting that only 37.3 per cent of the people registered actually voted. (www.eltiempo.com/politica/proceso-de-paz/resultados-pleiscito-2016/16716558).
3. Ruti G. Teitel, *Transitional Justice* (Oxford, 2000), p.4.
4. The different chambers will be in charge of the various aspects of a criminal trial under the Special Jurisdiction of Peace: one for truth and responsibility recognition and establishment of facts; another for amnesties and/or pardons; another for defining juridical status; and yet another for investigation and accusation. After these phases have been exhausted, the Tribunal of Peace will study and adjudicate the case. There will be the right to appeal the decisions of the tribunal.
5. Joint Communiqué #60 on the Agreement for the Creation of a Special Jurisdiction for Peace, item 3 (wp.presidencia.gov.co/Noticias/2015/Septiembre/Paginas/20150923_03-Comunicado-conjunto-N-60-sobre-el-Acuerdo-de-creacion-de-una-Jurisdicion-Especial-para-la-Paz.aspx).
6. In a statement released in early September, the ICC's prosecutor said: 'I note, with satisfaction, that the final text of the peace agreement excludes amnesties and pardons for crimes against humanity and war crimes under the Rome Statute. The peace agreement acknowledges the central place of victims in the process and their legitimate aspirations for justice. These aspirations must be fully addressed, including by ensuring that the perpetrators of serious crimes are genuinely brought to justice. The *Special Jurisdiction for Peace* to be established in Colombia is expected to perform this role and to focus on those most responsible for the most serious crimes committed during the armed conflict.' Statement of ICC Prosecutor Fatou Bensouda on the conclusion of the peace negotiations between the Government of Colombia and the Revolutionary Armed Forces of Colombia — People's Army, Sep 2016 (www.haguejusticeportal.net/index.php?id=13596).
7. Sergio Jaramillo, 'Intervention on the Forum on Truth Commissions and Peace Processes: International Experience and Challenges for Colombia', Kofi Annan-ICTJ Foundation, Bogotá, 25 Feb 2015 (www.eltiempo.com/politica/proceso-de-paz/alto-comisionado-de-paz-sergio-jaramillo-habla-sobre-el-proceso-de-paz-/15322595).
8. Martha C. Nussbaum, 'A Letter to the Colombian People'. (in Spanish), University of Antioquia, 25 Aug 2016 (www.revistaarcadia.com/noticias/articulo/martha-nussbaum-colombia-proceso-de-paz-posconflicto-historia-debate-dialogo/53617). 

Unaccompanied asylum-seeking minors: an urgent European problem

Caitlin Daugherty-Kelly discusses the European Union's approach to the influx of many youthful migrants.

The migration of unaccompanied asylum-seeking minors to Europe is hardly a new phenomenon. However, the number of these minors, and the speed with which they are moving, certainly is. In 2007, the European Migration Network found that minors lodged a total of 8030 asylum applications across 22 European Union member states.¹ In 2015, nearly 90,000 lodged asylum applications in the European Union, almost quadrupling the region's 2014 figure of 23,000.² And these numbers, which tell only a small part of the story,³ look set to increase. As North Africa and the Middle East continue to be beset by political instability, oppression and violence, the total number of asylum-seekers fleeing for Europe's shores is growing, while the routes they are taking become ever more dangerous.

In response to this, the European Union has attempted to supplement pre-existing international treaties and legislation with the development, modification and harmonisation of national and regional laws. In a landmark move in 2008, the European Union completely reformed the Common European Asylum System (CEAS), which underpins regional asylum law. Made up of five components, the new system establishes and clarifies the rights and entitlements that all asylum-seekers, including unaccompanied minors, should be able to enjoy throughout the asylum process. It attempts, in short, to guarantee the fair and consistent treatment of asylum applicants, especially children, irrespective of which member state they are in. Although the new measures, and other similar efforts, symbolise a step in the right direction, they are still in their infancy, and have frequently failed to translate into improved, or more cohesive, national practices among member states.

The way that unaccompanied minors are handled, from arrival at the border through to final decisions on their applications, differs enormously from state to state — with potentially life-threatening consequences. Unaccompanied minors may suffer neglect, face abuse or be unlawfully repatriated, simply because of where in the European Union they were processed. While this cannot — and should not — be justified or excused, it can be explained by five factors:

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Refugees and migrant children queue for food at a makeshift camp along the Greek–Macedonian border

- the number of asylum-seekers entering the European Union;
- the European Union's historical treatment of minors;
- the European Union's power over immigration law;
- member states' different financial capacities; and, finally,
- the unequal distribution of unaccompanied minors across the region.

Significant increase

The total number of asylum-seekers presently entering the European Union is significantly greater than at any time since the Second World War, and has thoroughly overwhelmed the region's asylum systems. Thus, accommodating the specific needs of unaccompanied minors has presented an enormous challenge to member states, both practically and legislatively. As Eleanor Drywood has noted, 'even the most skilled and experienced of children's rights advocates' would struggle to provide 'a focused and coherent agenda in relation to young immigrants and asylum-seekers', given the 'sheer scale of the task confronting [them]'.⁴ This is especially the case when we consider the second factor.

Historically, the European Union and its institutions have rarely intervened in the lives of young people. While the body of work looking at the effects of EU provisions on young immigrants and asylum-seekers, including unaccompanied minors, is growing, it is still in its early stages. It was not until the 1997 Resolution on Unaccompanied Minors (a voluntary commitment among member states to create common standards), for instance, that children from outside the European Union were even mentioned at the EU level. Furthermore, the majority of legislation concerning child migrants has been produced by the Common European Asylum System,⁵ which is, in itself, a work in progress.⁶ Thus both nationally and regionally, member states

The total number of asylum-seekers presently entering the European Union is significantly greater than at any time since the Second World War, and has thoroughly overwhelmed the region's asylum systems. A sub-set of this influx comprise unaccompanied minors. More than 90,000 lodged applications in 2015, four times the previous year's figure. With the number expected to continue to increase in future, urgent action is demanded not only to ensure the well-being of these minors but also to share equitably amongst member states the burden, financial and otherwise, of dealing with them. A failure to act may threaten the union itself.

have a limited knowledge base to draw upon when formulating law pertaining to unaccompanied minors.⁷ This is compounded by the European Union's tendency to avoid engaging with non-governmental organisations, charities and other international organisations, and routine failure to include the voices of young people in asylum and immigration decision-making processes.⁸ The result of this has been the creation of a patchwork of often poorly designed laws, which, as the third factor will show, may or may not even be applied.

The European Union's power over asylum and immigration matters is growing as member states cede national authority to the organisation. However, member states remain the principal actors involved in developing and implementing asylum laws. This means that the European Union's ability to create provisions on unaccompanied minors is limited to treaty-prescribed areas; moreover, when the European Union successfully creates provisions, it must navigate domestic legislation to implement them, which can be a difficult task. The relationships between national and regional bodies are often conflicting, with different bodies pushing their own agendas. As such, many regional — not to mention international — pieces of legislation entitling unaccompanied minors to various forms of protection are not adequately integrated into member states' domestic laws and processes.⁹ Furthermore, since 9/11 the link between crime and immigration has taken root in media and political discourses. This has prompted the securitisation of asylum systems around the world, and made it extremely difficult to embed a culture of children's rights throughout the asylum process. Even if this culture was to be fully embedded, however, it is likely that the treatment of unaccompanied minors would still differ across member states. This is because of the fourth factor: member states' different capacities.

Inadequate funding

While the European Union has launched a number of financial programmes in attempts to help member states establish and carry out harmonised asylum procedures, the funding that these programmes deliver is often very low when compared to the amount that states would need to spend. This is particularly the case in countries like Greece and Malta, where the majority of asylum-seekers currently first arrive. In 2013, for instance, Greece spent €63 million in attempts to prevent illegal migrants from entering the country. Of this, only €3 million was provided by Frontex (an EU border management agency) — less than 5 per cent of the total financial cost.¹⁰ And the costs are not just financial. The following year, while in the midst of its own economic crises, Greece was forced to provide housing, schooling, healthcare and supervision, which they did not have, to more than 2000 unaccompanied minors. While Greece is not the only country struggling with the financial and technical demands brought about by increasing numbers of unaccompanied minors, it is literally 'on the front line' of the crisis,¹¹ which brings us to the final factor.

The number of unaccompanied minors in each member state is different, as are the reasons for their presence in a particular state. While Greece, Hungary and Malta, for instance, are some of the main 'entry points' that African and Middle Eastern unaccompanied minors use to get into Europe, few such minors actually apply for asylum in these countries. Rather, they travel through them to get to other 'destination' member states. Figures for 2013 and 2014 show, for instance, that Sweden, Germany, Italy, Austria and the United Kingdom together received more



A young boy is brought ashore from a migrant boat at the island of Lesbos

than 70 per cent of the total number of unaccompanied minors' asylum applications lodged in the European Union over the two-year period.¹² The unequal distribution of unaccompanied minors across the European Union puts varying kinds and levels of pressure on member states.

Disproportionate share

Despite the recent implementation of the 'hotspot' approach (which aims to enhance collaboration between national and regional organisations on asylum processes), 'entry point' member states still bear a disproportionate amount of the costly short-term burden of receiving unaccompanied minors. This includes processing the minors and providing them with basic necessities. 'Destination' member states, on the other hand, tend to be tasked with the long-term implications of caring for unaccompanied minors, and must, for instance, develop and implement comprehensive integration programmes for them.¹³ Some member states, such as Estonia, Latvia and Lithuania, are essentially absolved of both short- and long-term responsibilities, as there were, at most, 150 unaccompanied minors across the three countries in 2014.¹⁴

What then, are the implications of this for the European Union? Until more is done internationally to mitigate and prevent the factors motivating unaccompanied minors' migration from North Africa and the Middle East to the European Union, the number of minors arriving at the European Union's borders will continue to swell. If the organisation is genuinely committed to ensuring the fair and consistent treatment of unaccompanied minors across the region — irrespective of which member state they are in — it must take urgent action. It must firstly enforce and harmonise data collection methods, so that the true breadth and depth of the crisis can be accurately understood and monitored. It must, secondly, co-ordinate national laws and implement regional laws that prioritise the well-being of unaccompanied minors. Lastly, it must further develop and implement frameworks so that the costs, financial and otherwise, of caring for unaccompanied minors are shared equitably amongst member states. If the European Union fails to act, it risks jeopardising not only the fate of countless more children but also the very fabric of the union itself.

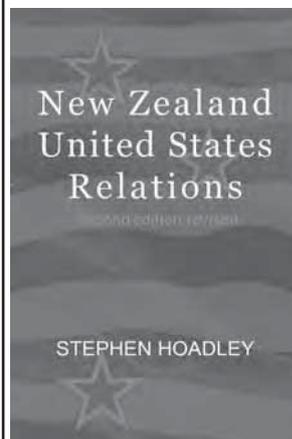
NOTES

1. European Migration Network, 'Policies, Practices and Data on Unaccompanied Minors in the EU Member States and Norway — Synthesis Report: May 2015', and 'Member States and Norway — Synthesis Report: May 2015', *European Migration Network* (2015), pp.5, 9.

2. 'Press Release', *EuroState* (2016).
3. Few member states keep data on unaccompanied minors who, for whatever reason, are not seeking asylum. Thus, ascertaining accurate data on the total number of unaccompanied minors in the European Union is practically impossible.
4. Eleanor Drywood, 'Challenging Concepts of the "Child" in Asylum and Immigration Law: the Example of the EU', *Journal of Social Welfare and Family Law*, vol 32, no 2 (2010), p.312.
5. Ibid.
6. European Commission, *A Common European Asylum System* (Luxembourg, 2014), p.3.
7. Drywood, p.321.
8. Eleanor Drywood, "'Child-Proofing" EU Law and Policy: Interrogating the Law-Making Processes Behind European Asylum and Immigration Provision', *International Journal of Children's Rights*, vol 19 (2011), pp.419–20.
9. European Council on Refugees and Exiles, 'Refugees in the EU' (www.ecre.org/refugees/refugees/refugees-in-the-eu.html) (acc 13 Jan 2016).
10. Theresa Papademetriou, 'European Union: Status of Unaccompanied Children Arriving at the EU Borders', *The Law Library of Congress* (2014), p.16.
11. OECD, 'Migration Policy Debates', *OECD* (2015), p.9.
12. European Migration Network, 'Synthesis', pp.5, 9.
13. OECD, 'Debates', p.13.
14. European Migration Network, 'Synthesis', p.10.



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Ships of the Royal Navy's Grand Fleet heading towards Jutland

Jutland — so what?

Scott Thomson notes the importance of the major sea battle that took place in the North Sea a century ago and calls on New Zealanders to redevelop a sea-sense.

Shortly after 6 pm on the 31 May 1916, the combined force of Germany's High Seas Fleet blundered into the encircling arc of Britain's Grand Fleet. During the following ten minutes all that Admiral Scheer could see was 130 degrees of the hazy horizon, ringed with flashing gun-fire. Scheer ordered *Ge- fechtskehrtwendung*. This was a 'battle-turn-around' — a dodgy manoeuvre. The alternative was destruction. Scheer returned to harbour and advised the Kaiser that 'not even the most successful outcome of a fleet action will force England to make peace'. Germany turned to unrestricted U-boat warfare, which soon had the momentous consequence of bringing a new and dangerous enemy into the forces arrayed against it.

The United States had been ambivalent about the war. It possessed decisive industrial power, but little will to become involved, feeling itself safe. Many Americans — German, Irish and Jewish refugees from Russia — had no love for the Allies. Britain's blockade deprived the Central Powers of war materials and food. It also deprived Americans of the ability to trade where they wished.

Both combatants trod carefully in dealings with America — until after Jutland. Unrestricted submarine warfare attempted to blockade the blockader. It did not quite succeed. A few American citizens got drowned. It moved American opinion to consider Germany, not Britain, as the bad guy. Extremely

Wairarapa branch chair Scott Thomson, a life member of the NZIIA, has a long-standing family interest in the Battle of Jutland.

rash German diplomatic moves completed the U-turn. Thus America's decisive entry into the First World War began on 31 May 1916, when Scheer turned away at Jutland.

The centennial of the Battle of Jutland — *Skagerrakschlacht* in German — passed largely unremarked in New Zealand. Some Jutland memorabilia were loaned to the Royal Navy with due ceremony. In this country, sailor's descendents, together with serving Royal New Zealand Navy members, gathered for a small ceremony at Devonport, Auckland. Compare that with the commemorations and exhibitions focused on the land war, and Gallipoli in particular. What does this say about our perceptions of the past and posture for the future?

Taxpayers throughout the British Empire had invested heavily in the Royal Navy. From August 1914 they awaited a second, and decisive, Trafalgar. But Jutland looked more like a defeat. Fourteen ships were lost, compared with eleven German ones: over 6000 dead, as against around 2500. The Germans got back to port first and won the debrief easily, trumpeting their 'victory'. The British PR was appallingly bad. But once the German euphoria died down, the result brought no pleasure to those in the know. An American journalist summed up the result most accurately: 'The German navy has assaulted its jailer. It is still in jail.'

Fluctuating fortunes

Part of the Jutland controversy lies in the wildly fluctuating fortunes of the battle's three phases. Phase one on paper was a straight fight between ten of Britain's powerful but poorly protected battlecruisers and Germany's five. Four British ships had been replaced by 'super dreadnoughts' of the 5th Battle Squadron — all later serving with great distinction in the Second World War. Failure to open fire first, and failure to keep 5th Battle Squadron in close support of the battlecruisers, resulted

The confusing and controversial Battle of Jutland was tactically indecisive. Although a disappointment to the British public, it nevertheless set in train a series of decisions that led to United States entry into the First World War and the defeat of the Central Powers. A century later, lingering perceptions of Jutland continue to influence and obstruct British reactions to naval matters. Likewise, New Zealand disregards Jutland, despite being represented there by a capital ship — HMS *New Zealand*. Later events contribute to a lukewarm attitude to blue-water naval policy, which is unhelpful in view of the current Defence white paper's emphasis on maritime issues.

in a British disaster. Two battlecruisers were sunk.

Phase two proved decisive. Admiral David Beatty's battlecruiser force withdrew towards the main British fleet under Admiral John Jellicoe. Jellicoe was starved of information, but as funnel smoke thickened the gathering afternoon haze he deduced enough to pull off a perfect trap. Admiral Scheer turned away, ready to sacrifice his own battlecruisers. (Stout construction saved four of them.) Casualties among the older British scouting cruisers were heavy, but Jellicoe's big ships, firing almost unseen, inflicted crippling damage on the leading German units.

Phase three developed as Jellicoe refrained from the confusion of close pursuit and a general night action. The Germans got away, but in hectic random close-encounters British light forces sank more ships than they lost.

Jutland left a deep and confused impression on the British public. In the year of Kut, the retreat from Gallipoli, Verdun and the Somme, war weary people asked who had 'lost' it? Many suspected there had been bungling. Indeed, there had, particularly with assessment of wireless intercepts, and in tactics during the first phase of the battle. Beatty, stronger on inspiration than preparation, was a maverick in a service where many did not appreciate his flamboyant life style. But earlier clashes with the enemy, which Beatty himself occasionally played down, established him as a hero in the public eye.

Methodical commander

Jellicoe, the methodical commander-in-chief, was a sailor's sailor and no media darling. A section of the press alleged that Jellicoe had let Beatty down. 'Jellicoe was late on the scene



Admiral Sir John Jellicoe



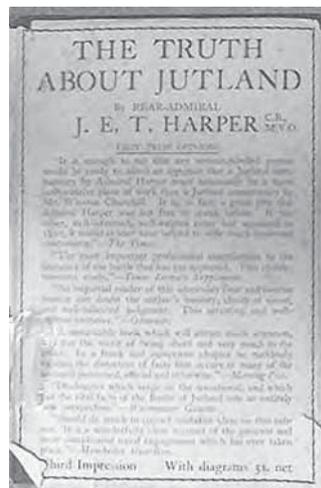
Admiral Sir David Beatty

and let the enemy escape.' It was daring, dashing David Beatty who did the fighting. Politicians watched their own backs. To their credit, Jellicoe and Beatty retained a mutually loyal and respectful relationship. Successive enquiries and 'revelations' swung violently, blaming Jellicoe or Beatty. It was not till 1934 that journalist Langhorne Gibson and retired Admiral J.E.T. Harper published *The Riddle of Jutland*, bringing perspective and historical proportion before the general public.

Personality clashes and personal followings had plagued the Royal Navy well before Jutland. The 'Silent Service' found the Jellicoe/Beatty debate bruising and undesirable. In the late 1930s it was decided not to name the next battleships after the two Jutland admirals. To this day British warships no longer carry the names of individual sailor heroes, quite unlike other major navies. Did this contribute to a fading of pride and understanding of naval matters in the public mind? A younger service in sky blue uniforms caught the public imagination.

The Armistice of 1918 was quickly followed by a revulsion against war, against costly armaments and particularly against the big ships, which were popularly supposed to have done nothing to shorten the conflict. If Jutland can now be seen as the turning point of Britain's war, hindsight still owes little to popular journalism. On 31 May 2016 the British press commemorated Jutland in full battle order. The *Telegraph* trumpeted the Royal Navy's 'obsession with big ships which leaves it unable to protect our coast' from migrants. *The Times* declared that 'big ships are still sinking the Royal Navy', making reference to the lives lost at Jutland.

J.E.T. Harper's book *The Truth about Jutland*



New dimensions

Jutland also confuses because it took place amid a revolution in naval affairs. The three dimensional possibilities of sub-surface and air were much in Jellicoe's mind, but it was essentially an old-fashioned two dimensional gun-fight. Aircraft and submarines are merely footnotes.

Underwater damage could have upset the superiority of the larger British fleet. Sus-

picion that the Germans would drop mines after turning away was ill-founded, and the possibility of them leading the British over a submarine trap was fanciful, but the danger from ship-launched torpedoes was real, vindicating Jellicoe's prudent tactics. Indeed, British torpedoes did more damage than the German ones.

Traditional signalling by flag and light proved inadequate. Wireless communication and intelligence were unevenly understood. Above all, the top downwards tradition of command, which had served both sides well in set-piece fighting, was not flexible enough to encourage subordinate commanders to act independently during the complexities of a general action. Or to keep passing the intelligence they were there to gain. Do not speak until you are spoken to.

New Zealand was represented at Jutland, not only by individual sailors but also in grand style by HMS *New Zealand*. In 1908, worried by reports that Germany was about to overtake the British Empire in dreadnoughts, Prime Minister Sir Joseph Ward had pledged the Dominion to contribute 'a first class Battleship of the latest type' to the Royal Navy. Ward had not consulted Parliament, but the decision — somewhat equivalent to pledging a Trident submarine today — was generally popular. In 1913 free rail travel brought hundreds of school children from remoter schools to be billeted at major ports where the ship called.

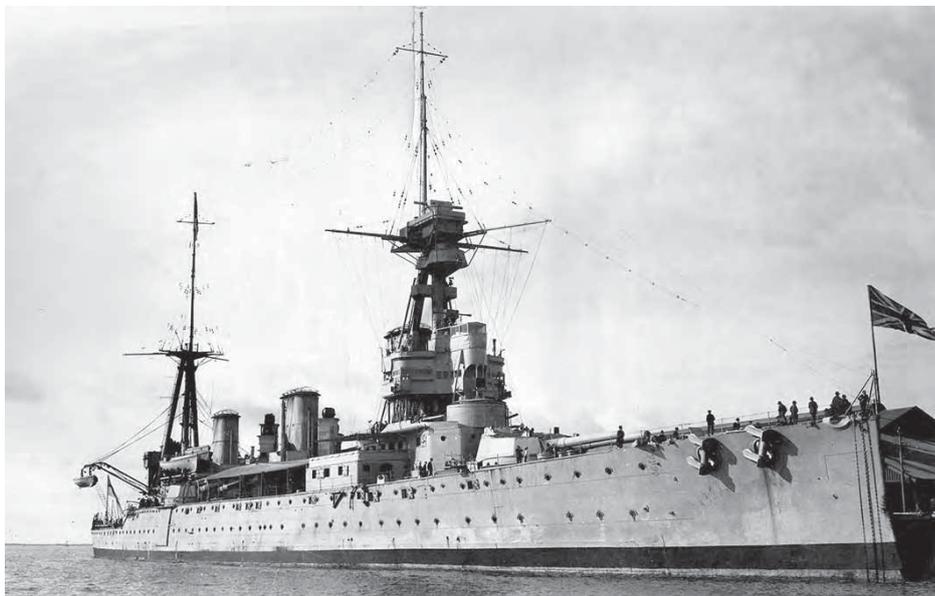


Sir Joseph Ward

New Zealand was in fact a battlecruiser, sacrificing protection for speed and gun-power. Battlecruisers were specialised weapons: the sort of thing only super-powers can indulge in. They performed well against weaker ships, but their own limited protection doomed them when against big guns.

New Zealand was lucky. In the thick of three North Sea actions, her preservation was popularly attributed to her ceremonial piu piu and tiki, which had been given to her captain during a visit to New Zealand in 1913. At Dogger Bank in January 1915 she took over when Beatty's flagship was put out of action, pouring fire on the disabled German battlecruiser *Blücher*, though the remaining German ships escaped. In 1916 she collided with HMAS *Australia* in fog, putting her sister-ship out of Jutland. She herself came through the big battle without casualties. A lucky ship indeed.

Although financed and named for independent Dominions, these veteran battlecruisers were included in the British quota disposed of as a result of the 1922 naval conference in Washington. *Australia* was scuttled with ceremony off Sydney harbour. *New Zealand* was broken up for scrap. For another six years, the New Zealand government allocated £140,000, paying off the initial



HMS *New Zealand* at Adelaide

cost. Hardly a boost to further big ticket defence spending.

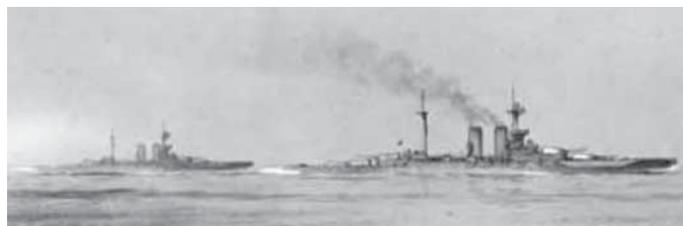
Trans-Tasman paradox

A trans-Tasman paradox seems to exist today. The last deployment for *New Zealand* was to convey Admiral Jellicoe — no less — on an Empire-wide tour to advise on Pacific defence in 1919. To counter growing Japanese naval capacity, he proposed the creation of a Pacific fleet based on British and Dominion fleet units, but this idea proved still-born. Basing most of the existing Royal Navy in the Pacific was not viable, so plans were developed for the fleet, normally based in European and Mediterranean waters, to move east in an emergency in the Pacific — the 'main fleet to Singapore' strategy. *New Zealand* contributed financially to the Singapore Naval Base, essential to the sustenance of the main fleet in the Pacific theatre. More modestly, Australia improved its navy, while *New Zealand* (until 1941) developed a division of the Royal Navy, the forerunner of the RNZN.

Australians are generally supportive of their fleet, though it suffered heavy losses in the Second World War. The RNZN has never had a major sinking, but Kiwis are more inclined to the generalisation that warships are a waste of money and that, anyway, they are easy to sink. Would New Zealanders' attitude to naval defence be different if 'our battlecruiser' had been one of the unlucky ones? Does sacrifice perversely create a sense of ownership? Reflection on land casualties contributed to public revulsion against war, but there has always been a strong opinion that sending men overseas — for Empire, ANZUS or the United Nations — is somehow part of our national ethos.

Heavy on Gallipoli, *New Zealand* pays no dues to Jutland today. The 2016 Defence white paper makes a modest re-pivot towards our marine environment. Perhaps the time has come to begin a recovery of sea-sense. 

HMS *Warspite* and HMS *Malaya*



Australia's Great War

Ian McGibbon reviews the recently completed centenary history of Australia's effort in the First World War.

On both sides of the Tasman the centenary of the Great War of 1914–18 has been a time for commemoration, reflection and revision. Many have attended events to mark particular battles or campaigns, embarked on pilgrimages to the sites of action, often to pay homage to a fallen relative, or familiarised themselves with long ago events in distant lands. Taking their cue from populist histories, their leaders have highlighted the importance of the struggle in the birth of their respective nations. At all levels of society, the centenary has sparked renewed interest in the experience of ordinary Australians and New Zealanders in their brutal encounter with industrialised warfare.

Like New Zealand, Australia made a tremendous contribution, relatively, to the British Empire's war effort. It too raised two expeditionary forces in 1914, one to capture German territory near at hand, the other to join the fight in the main theatre. Australia's first campaign was on its doorstep, in New Guinea. New Zealand's capture of Samoa was similar, except that the Germans in New Guinea resisted and there were several clashes. The main Australian force, the Australian Imperial Force (AIF), was similar to New Zealand's but much larger, as befitted a state five times larger in population. It headed for Europe in October in a joint convoy with the New Zealand Expeditionary Force. Both would fight at Gallipoli before heading to the Western Front. Elements of both would be left in Egypt, and would take part in the campaign to drive the Ottoman Empire's forces out of the Sinai and Palestine. Australian airmen and seamen were to be found throughout the world in imperial units. In all, about 343,000 Australians took part in the war, and nearly 60,000 made the ultimate sacrifice. Those at home worried about loved ones, adjusted to restrictions on their freedom of movement (in the case of nationals of enemy states) or interaction, reacted to political upheavals and tried to get on with their lives. A more mature Australia emerged from its impressive national effort, but 'that development came at a heavy human and social cost'.

Modern-day perceptions of the conflict differ markedly. For some, Australia's involvement derived inevitably from an assessment, by both government and the majority of the people, of the importance to Australia's national interest of ensuring an imperial victory. Australia's security, both economic and physical, was bound up in the outcome of the war. Australia's fate depended on that of the British Empire. Others take the view (held by a minority at the time) that Australia was, as Robert Stevenson writes, 'an unwitting victim of a war from which Australia could have and should have stood clear'. From this perspective Australian lives were sacrificed to imperial ends well removed from Australia's interests or needs. There is also another strand of Australian histori-

Dr Ian McGibbon, the *NZIR's* managing editor and former general editor (war history) in the Ministry for Culture and Heritage, is the author of the recently published *New Zealand's Western Front Campaign* in the New Zealand centennial history series.

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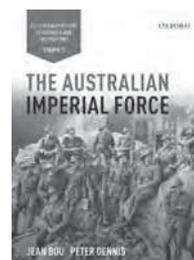
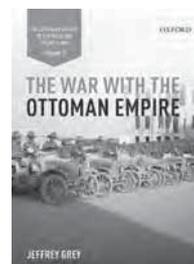
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ography — 'a third, populist block', Stevenson suggests, that 'is satisfied to recount tales of Australian derring-do in various forms of "diggerography"' and in which 'a good story matters more than the dry facts of why and how'.

This latter approach, designed more for bolstering book sales than for academic enquiry, draws some of its inspiration from the official history produced in the two decades after the Armistice, the twelve-volume *The History of Australia in the War of 1914–1918*. The great achievement of Charles Bean, who had been a war correspondent with the AIF, this groundbreaking history provided Australians with an account of their effort that played to a nationalist agenda, emphasising the distinctiveness of the Australian digger, imbued with the ethos of the bush, and the 'Anzac legend'. In focusing on the achievements of the ordinary soldier, and presenting him as a natural soldier, Bean provided history from the bottom up, 'a new democratic history', in direct contrast to the top-down official histories produced elsewhere. It has been enormously influential in shaping Australian attitudes to the war.

New history

The populist approach, with its focus on tactical action, does not lend itself to a productive assessment of Australia's role. What is needed today, Stevenson suggests, is a discussion of 'why Australians responded in the way that they did, why they willingly joined the fray and why they expended so much in seeing the war through to its conclusion'. This is the tenor of *The Centenary*



History of Australia and the Great War, published by Oxford University Press under the guidance of general editor Jeffrey Grey, a professor in the Australian Defence Force Academy and one of Australia's most accomplished military historians. Grey's vision — 'to approach well-known issues with fresh questions and perspectives in mind' — differed markedly from that of Bean in the official history. In this new project, the focus would be not on the experience of the ordinary soldier but rather on a higher level, on how the country entered and contributed to the war, how the war was fought and how the participants endeavoured to meet the 'tactical, operational, technological and doctrinal challenges' that confronted them on Great War battlefields. In short, analysis would take precedence over narrative. The result is a series of succinct volumes, five in all, covering the main aspects of Australia's effort. Three deal with operational aspects, one covers the AIF as an organisation and the other the war at home. Grey gathered an impressive stable of both young and established scholars to author the works, some of them jointly.

Perhaps the only possible quibble is the absence of a volume on the naval war. The Royal Australian Navy certainly features in several of the volumes, but another volume drawing together the quite diverse elements of the Australian contribution to the naval conflict would have been valuable. Such a volume could also have brought home the importance of seapower in the Allied victory. The contributions Australia (and New Zealand) made to the imperial war effort in European and Middle East theatres could not have been made without it, after all. There were German warships operating in the Pacific in 1914 and 1917.

Grey's conception is exemplified in the volume that he himself wrote. Recoiling from the idea of yet another book on Gallipoli, a much overdone element in Australia's military historiography — privileged and bordering on 'ancestor worship', he suggests — he took a more expansive approach. *Australia's War with the Ottoman Empire* covers Australian operations, inevitably within a British imperial context, in both Gallipoli and Sinai–Palestine. This has the advantage of placing the Gallipoli campaign in a wider context, and highlighting the importance of the Sinai–Palestine operations, which 'have receded to a point of unknowingness' among Australians while Gallipoli 'dominates and distorts everything else'.

In focusing on the big picture of the eastern Mediterranean, he explains how the various campaigns fitted together and their impact on the overall war effort. Grey expertly outlines Australian contributions to the imperial effort in these campaigns while addressing aspects that have proved controversial. He debunks myths that have taken hold under the smokescreen of the Anzac legend. In addition, he seeks to understand the Ottoman perspective, recognising the Ottoman Empire's importance in its own right and not just as a German surrogate. The Ottoman war experience, of which, Grey notes, Australians 'remain largely ignorant', involved more than 2.5 million deaths.

Successful campaign

The biggest benefit of Grey's book is the attention it gives to the ultimately successful campaign to drive the Ottomans out of Palestine. He puts the operations in a wider context, outlines the practical realities of fighting in this theatre, always regarded in London as secondary to the struggle in France and Belgium, and places Australia's effort firmly within the imperial framework. Judicious, challenging, authoritative, balanced — this is a master work.

In *The War with Germany* Robert Stevenson takes a similar approach. He covers Australia's response to this conflict in all its facets, which means covering more than just Australian involvement on the Western Front in France and Belgium. The first clash between Germans and Australians, in 1914, took place much nearer to home, in New Guinea. On the face of it this combination is, as Stevenson admits, an 'odd couple' — one a minor operation that could have no impact on the outcome of the war, the other a titanic and ultimately decisive struggle that took the lives of more Australians than any other campaign. But the combination highlights the wider context of Australia's war effort against the Empire's main opponent, and in particular the threat Germany posed to Australia, both locally and more generally.

Stevenson, emphasising the need to address Australia's response in terms of Australians' attitudes at the time, their worldview, fears and perceptions of the national interest, notes the pro-British sentiment in 1914, and the fact that defence ties with Britain were 'never stronger'. Arguing that being nationalist and supporting the empire were not mutually exclusive, he suggests that Australian leaders 'Pearce, Hughes and Fisher were not blinded by imperial loyalty; they were pragmatists who put Australia's interests first, although they saw them through the prism of Empire'. And the volunteers who flocked to the colours in 1914 did so 'because they saw Britain's war as their own, and in 1914 it was on their doorstep' in the form of German colonial possessions in the South Pacific.

Two campaigns

Stevenson provides a useful account of the formation, dispatch and operations of the 1500-strong Australian Naval and Military Expeditionary Force in taking New Guinea, 'Australia's most successful campaign of the Great War.' With few casualties, it could not have been more different from the other facet of Australia's war with Germany in Europe. 'Never before nor since have Australian troops had to fight a war of such intensity.' In all, Australia contributed five infantry divisions to the British Expeditionary Force in France and Belgium, the 'only time in Australia's history when the nation's armed forces played a significant role in defeating the main army of the main enemy'. Its 'small but tangible' contribution to the ultimate victory came at great cost. Even though Gallipoli has dominated Australian perception of the First World War, the Western Front was much more important. Stevenson makes the telling point that 'in excess of 85 per cent of Australia's war losses were incurred fighting the German Second Reich'. But his book is 'less about the pity of war and more about the practice of it'. Like Grey, he seeks to understand the nature of Australia's effort by re-examining the 'key questions: what did the Australian forces achieve in the war effort against Germany, and what were the strengths and weaknesses of those forces?' Distortions in understanding deriving from the Anzac legend are ruthlessly dissected and debunked.

Not the least of the merits of Stevenson's volume is his balanced approach to the British context of Australia's effort on the Western Front. There was a much greater dependence on the British than is generally recognised today in Australia, where the tendency towards parochialism distorts perception. With too much focus on Australian exceptionalism and adherence to the Beanish 'incorrigibly civilian fighter', the scale of British or French involvement is often overlooked, in Stevenson's opinion. He suggests that an objective consideration of all the elements of

military organisation clearly indicate that the AIF was not unique, and ‘its relationship with the British Army was far closer than often acknowledged’. He traces the AIF’s response to the challenges presented by the Western Front battlefields, portraying it as a ‘living organization that learned and adapted to changing conditions on the battlefield’. Stevenson has much of value about how Australians adjusted to the Western Front milieu, how they learned to operate and how they approached such issues as discipline, including the vexed question of capital punishment. He provides a balanced view of the fighting in 1916, challenging the idea that it was ‘wanton murder’. New Zealand readers will find much that is familiar in Stevenson’s account, for the New Zealand Expeditionary Force faced similar challenges and issues. But he is off the mark when he states that the New Zealand Division was the strongest on the Western Front, a myth begun in 1919 and perpetuated by historians ever since (in fact both Canada’s and the United States’ divisions were stronger).

The other operational volume in the new series, *Australia and the War in the Air*, covers operations against both the Ottomans and the Germans. Michael Molkentin recounts Australia’s efforts to make a viable contribution to this new form of warfare, despite having meagre resources to do so. About 600 Australians joined the Royal Flying Corps and Royal Naval Air Service (later amalgamated as the Royal Air Force), and, like a similar number of New Zealanders, served in all the various theatres as members of British squadrons. Molkentin’s focus is, however, on units that Australia formed and sent forward as part of the newly created Australian Flying Corps. This comprised four squadrons, one of which played a useful role in the Sinai–Palestine campaign. A half flight also served in Mesopotamia. The AFC’s other three squadrons took part in the struggle for air superiority on the Western Front. As with the AIF, Australian airmen served in a British context. Molkentin lucidly describes their activities and places their efforts in the context of the development of aviation in Australia.

Efficient force

Jean Bou and senior academic Professor Peter Dennis (a close colleague of Jeffrey Grey) combined to write a valuable account of Australia’s main contribution to the imperial effort, the Australian Imperial Force. Their focus is not on the battles fought by the AIF but rather on how the AIF ‘came to function as an efficient fighting force’, an area that is also covered from a different angle in Stevenson’s volume. The provision, training and deployment of this force, which grew from an initial 20,000 in 1914 to 330,000 in 1918, was ‘an enormous undertaking’ and a ‘remarkable achievement’. The authors concede that much of the material they provide has already appeared in previous accounts, though in disparate places, but their volume breaks new ground with the use of information from the AIF database in describing the composition of the force, including the ethnic dimension. They address the question of the scale of Australia’s effort that is pertinent to New Zealand’s effort as well — did it do too much? — and the problem of sustaining the force without conscription. There are useful comparisons with Canada’s similarly sized effort and much of interest on prosaic issues such as pay, leave, discipline, death penalty (121 Australians were sentenced to death though none were executed), medical care, as well as administration, training, supply, education and repatriation. An appendix by Paul Dalglish describes the keeping of the AIF’s personnel records, essential for administration but today a rich source for historians.

Sustaining the AIF depended on the willingness of Australians to step forward to fill the ranks depleted by casualties. The difficulties of finding enough men brought to the fore the question of conscription. Unlike New Zealand, which was able to introduce it by legislative action, Australia held two referenda on the issue, both of which failed to endorse its introduction. A political upheaval followed the first, when the Labor Party split on the issue. As John Connor notes in his contribution to *The War at Home*, the war ‘made politics more bitter at that time, and for decades thereafter’.

Despite the distraction of divisive politics, Australians had to come to terms with the impact of the war on their lives. The effects were many and varied. Livings had to be made in an economy that suffered ‘a major negative shock’ when the advent of war precipitated a sharp fall in both exports and imports. The war left the economy ‘anaemic and vulnerable’, according to Peter Yule, one of three co-authors of this volume. Ordinary life was affected by the curtailment of activities and freedoms. Some faced internment; all were restricted by censorship; and many fretted about relatives in harm’s way overseas. But as Peter Stanley, who wrote the section on culture, cautions, ‘Ordinary life continued...’ Stanley is ambivalent about the overall impact of the war. ‘It arguably ended the optimistic, unified, progressive Australia that the world had so admired before it’, he suggests, but he notes also the need for more study of various aspects of wartime cultural life. *The War at Home*, with its focus on ordinary Australians’ experience, provides a valuable supplement to the more policy-oriented official history published in 1938 as part of Bean’s series.

Best traditions

The Centenary History of Australia and the Great War is an excellent addition to Australia’s war historiography. The coherence of the coverage, the uniformity of treatment and the objective approach are to be commended. It adheres to the very best traditions of historical scholarship, and will be read by anyone interested in learning more about how and why Australia made such an immense contribution to the Allied effort in the Great War. It puts to shame New Zealand’s inchoate effort to produce a centenary history. A partnership between four agencies, our series reflects the fact that it is a cobbled together effort, lacks coherence with volumes added willy-nilly, has some authors struggling to meet impossibly short deadlines and, above all, lacks a general editor who, like Grey with the Australian series, might have shaped a more uniform series.

Sadly, shortly after the final volume of *The Centenary History of Australia and the Great War* was published, Jeffrey Grey passed away. His untimely death, aged 57, in August was a shocking blow to the Australian (and New Zealand) military history fraternity. His exemplary scholarship, firm and authoritative judgment and collegial approach — all apparent in this series — will be greatly missed on both sides of the Tasman. The centenary history is, however, a fitting memorial to his outstanding career, one that demonstrates how much we have lost in terms of scholarship by his passing.



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THE NEW RUSSIA

Author: Mikhail Gorbachev

Published by: Polity Press, Cambridge and Malden, 2016, 464pp, US\$35.

With Russia in the spotlight of international politics today, amidst its worst confrontation with the West since the Cold War, last Soviet President Mikhail Gorbachev's new work is very timely. It represents the summation of his thinking on the course that Russia has taken since 1991 and offers insightful analysis beyond internal politics to address wider problems in the world.

Gorbachev recounts his vision of *perestroika* as a process of renewing socialism. He is neither a radical liberal who repudiated socialist ideals nor an unregenerate communist who has learned nothing during the years of *perestroika*. The former Soviet president articulates his loyalty to Lenin and asserts that Lenin's role in social transformation, 'his pragmatism and flexibility', have not been fully appreciated. Those who accuse Gorbachev to this day of not implementing the reform of the economic system in parallel with the political transformation do not realise that resistance by conservative forces in the government and economic bureaucracy was too great and required political liberalisation. The author acknowledges, however, that in hindsight the pace of his reform was too fast for a society in which 'radicalism exists side-by-side with traditions of conservative thinking and communal culture, of pinning hopes on a "good tsar", and limited ability to organize things independently'. This comment seems very relevant today as some in the West struggle to understand Vladimir Putin's unflinching domestic popularity.

Gorbachev gets emotional and somewhat inconsistent when referring to Boris Yeltsin and the break-up of the Soviet Union, which is also perceived by him as primarily Yeltsin's fault. It is the 'undemocratic' nature of Yeltsin's actions that is responsible, in Gorbachev's opinion, for failures and problems that persist to this day, such as social polarisation, corruption and dominance of the bureaucracy. That seems to be excessive in terms of attributing these long-time Russian social ills to one leader's rule.

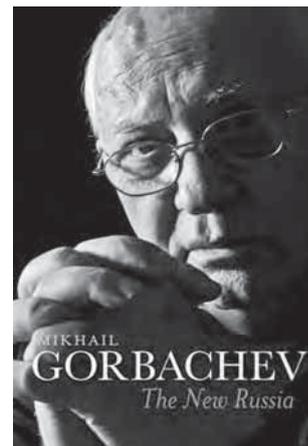
Not surprisingly, therefore, Gorbachev views the main cause of the Ukrainian crisis as the disruption of *perestroika* and the 'mindless, reckless disbanding of the USSR', for which the primary responsibility lies with Russia's then leadership, namely Yeltsin, who exacerbated centrifugal processes in the union. The assessment of the Ukrainian events also reveals Gorbachev's significant disappointment with the West and the way it has been treating

Russia after the break-up of the Soviet Union. Gorbachev mentions three episodes in post-Cold War Russia–West relations when the West's actions were particularly harmful: the expansion of NATO (seen as provocative and challenging Russia's security and its traditional ties with neighbouring former Soviet states), NATO's intervention in Kosovo (in violation of international law) as well as the United States' reluctance (seen as arrogance and a double standard) to fully embrace newly elected President Putin's offer of counter-terrorist collaboration after 9/11.

Gorbachev's foreign policy thinking reveals his continued Euro- and US-centrism. He acknowledges Asia's rise but has only few words to describe Russia's role in the Asia–Pacific region. Interestingly and quite revealingly, the author is very careful, trying not to upset Chinese leadership, when discussing his first and last visit to China in 1989. While he emphasises the transformative impact of his visit on Soviet–Chinese inter-state relations, he omits Chinese student protests at Tiananmen Square, which were taking place at the time of his visit and were in part inspired by his domestic reforms. Perhaps the reason Gorbachev never went to China again was the Chinese leadership's resentment of his democratic reforms and its claim that attempts to reform China in a similar fashion would be catastrophic for the territorial integrity of the country. Gorbachev briefly mentions the impasse in Russo-Japanese relations over the disputed Kuril Islands/Northern Territories and urges the two countries to work first on building trust and mutual co-operation, and perhaps when co-operation covers the Far East, Siberia and European regions of Russia this dispute may no longer be so bitter and Russia and Japan will be able to find a mutually satisfactory solution. If Gorbachev were more familiar with the Asia–Pacific region, he would have perhaps placed this dispute in the wider context of regional geopolitics and on-going maritime territorial disputes.

The most candid and striking part of Gorbachev's analysis is his undisguised and harsh criticism of the current political regime in Russia. He argues that Putin has significantly diminished the achievement of *perestroika* and is part of an over-centralised system that presents a precarious future for Russia. Gorbachev advocates a radical reform of politics and a new fostering of pluralism and social democracy. Those responsible for the current situation in Russia are incapable of initiating real change for the fear it would undermine their own power. Gorbachev appeals to Putin to understand how important it is to step down at the right time and make way for new faces. Russia's leader is, however, unlikely to heed Gorbachev's well-intended advice.

Those readers who are prepared to listen to Gorbachev with an open mind and without prejudice may be confused and challenged by some of the author's contradictory ideas and arguments. Gorbachev's loyalty to Leninist 'pragmatism and flexibility' does not comport with his principled stand on political pluralism. It is hard to reconcile Gorbachev's objections to Western geopolitical



Notes on reviewers

Prof Rouben Azizian is the director of Massey University's Centre for Defence and Security Studies.

Dr Anthony Smith is in the Department of Prime Minister and Cabinet. The views expressed here are those of the author alone and do not represent the DPMC or the New Zealand government.

Stuart McMillan and Dr Roderic Alley are both senior fellows in the Centre for Strategic Studies at Victoria University of Wellington, and life members of the NZIIA.

dominance with his implicit discomfort over the independence from Moscow of former Soviet republics, such as Ukraine and Georgia. Gorbachev likes Putin's foreign policy and dislikes his domestic rule, ignoring the fact that Putin's foreign policy is very much driven by his authoritarian impulses and fear.

Despite those inconsistencies and shortcomings, the book is a very useful source of information and analysis of Russia's volatile post-Soviet transition and the dramatic challenges the country faces today.

ROUBEN AZIZIAN

BLOOD YEAR: Islamic State and the Failures of the War on Terror

Author: David Kilcullen

Published by: Black Inc, Carlton, 2016, 288pp, A\$29.99.

David Kilcullen will be familiar to many readers as one of the key individuals behind the successful 'Surge Strategy' in Iraq; he was an Australian army officer who became a key part of General Petraeus's staff. His book on that experience, *The Accidental Guerrilla* (2009), received wide acclaim and established Kilcullen's bona fides on counter-insurgency as both a practitioner and an intellectual. That book was a clarion call for a smart military strategy that involved careful cultivation of societal and political elements.

On that basis Kilcullen's take on the war against Da'esh (ISIS) is going to be met with wide interest. Two (potentially jaded) questions emerge from the outset. Why do we need yet another book on Da'esh and the strategic failure of the Iraq War? And what is the Blood Year referred to in the attention seeking title? On the latter, this is a reference to Da'esh's lightning capture of large parts of Iraq in mid-2014 and the violence that ensued. In fact, 2013 was also a bad year in Iraq, just like every year since 2011 in neighbouring Syria. This does play into a contemporary perception, though, that the international scene is getting progressively more violent (it is not), when unfortunately just about every year of recorded human history might in some way be a 'blood year'. Still, the point is well made that 2014 ended Pollyanish views that violent Sunni extremism was on the ropes.

To the question of what Kilcullen is offering here, this book is the view of someone who has been a long-term analyst of counter-insurgency and counter-terrorism. There are touches in this book that only someone with his front row seat of history could explain. His outline of the targeted sectarian killings in the mid-2000s by al-Qaeda in Iraq (Da'esh's precursor group) is made vivid by personal observation. A heart-breaking description of a 12-year-old child who is tortured and killed with a power drill turns out to be the real story of the younger brother of his translator in Iraq. It is also a reminder that Da'esh has been a cult of death (and extreme levels of torture) for a long time. Importantly, Kilcullen reminds us that Da'esh has for more than a decade done all it could to polarise Iraqi society so that it could subsequently recruit disenfranchised Sunnis — extreme violence was about goading Baghdad into an over-reaction.

Much of the rest of the book is a very useful description of how the post-9/11 foreign policy decisions of the Bush administration,

and to some extent the Obama administration, were shortsighted and lacked long-term strategic horizons. Kilcullen accuses Bush of the greatest strategic disaster since Hitler's decision to invade Russia; Bush created a two-front war that he could not win, compounded by heroic assumptions about the troops and the where-withal needed to stabilise both Afghanistan and Iraq. For anyone who has not read into events since the invasion of Iraq in 2003 through to the rise of the Islamic State 'Caliphate', this is as good an overview as any. Yet much of the analysis and critique has been made in more detail elsewhere.

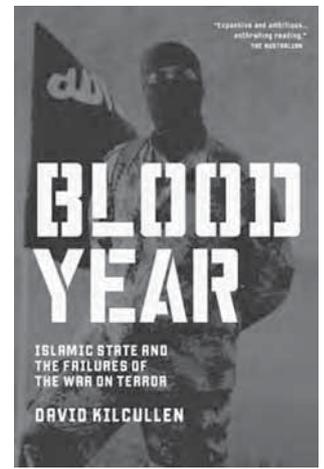
One frustration of the book is that, while it readily identifies mistakes from the past, it is unable to offer a coherent set of policy prescriptions for current and future options; in fact, between the time of publication and reading it already looks behind the curve. (The sub-title of the US edition of the book is actually 'The Unraveling of Western Counter-Terrorism' — a sure indication that Kilcullen thinks the West continues to get it wrong.)

He is quick to identify the 'twin pathologies' of immediate reaction (the Bush administration's first term) and policy paralysis (the Obama administration), but it is not clear what that means in practice. Kilcullen finds Washington wanting in what he sees as Obama's failures to face down crises in Egypt and Libya, an unwillingness to support democracy in Syria and Iran (when Kilcullen has already told us he predicted early on that Syria's Arab Spring was not going to work), and an over-reliance on remote technologies to fight the war on terrorism. This has, Kilcullen argues, signalled weakness to Iran and Russia and 'midwived' the re-birth of Da'esh. The one foreign policy consideration he briefly examines is options for how the United States might handle Russia, which are to:

- yield the floor;
- go into open competition; and
- find grounds for co-operation.

He rejects the first two options, and thinks there might be possibilities for the third, however difficult that might be. He does emphasise that the Assad regime is highly problematic on account of massive human rights abuses, but, amazingly for a counter-insurgency guru, he gives no consideration to what co-operation (with either Russia and/or Damascus) would mean for the extremist narrative against the West. His prescription for Iraq — strong air and materiel support to Iraqi forces without a massive troop intervention — seems remarkably like what the Obama administration is already doing. And as for failure on Syria, Kilcullen demurs on what a better set of options would be. Having criticised the Western approach to Syria, he needs to nail his colours to the mast and say what should have been done instead, and, more importantly, what could be done now.

In summary, while Kilcullen is calling for a 'complete rethink' of the fight against Sunni extremism, this book offers little or nothing that would assist that process. While readers can applaud his powerful debunking of past failures and perhaps be inspired by his exhortation to refocus on an ever-changing threat environment, it remains a missed opportunity that Kilcullen has not



taken the opportunity to avail us of his past claims of prescience and offer a way out of the current Middle East morass. One might draw the conclusion that the author's unrivalled (country specific) counter-insurgency insights do not so easily translate into the extremely messy world of international relations and heavily bounded foreign policy options.

ANTHONY SMITH

MY JOURNEY AT THE NUCLEAR BRINK

Author: William J. Perry

Published by: Stanford University Press, Stanford, 2015, 234pp, \$US24.95.

At first pondering a paradox lies at the heart of this book. William Perry, secretary of defense in Bill Clinton's presidency, was always a defence and security insider. His work within private industry was funded by the defence budget and at other times he worked within the Defense Department. He was sometimes described as one of the Cold Warriors. He would thus seem an unlikely advocate for the abolition of nuclear weaponry among all nations. Nevertheless, that is what he is and his book puts the case for a world without nuclear weapons in plain but forceful words.

The very fact that he has been secretary of defense, and an under-secretary of defense, and been intimately involved with nuclear weapons has, however, given him a vantage point to know that their use could bring about a world catastrophe. It has given his book an immediacy and authenticity that is rare to the extent of being almost unparalleled.

Perry's 'journey' did not involve a sudden point of conversion to a different outlook but was consistent throughout his career. As a young soldier he saw the devastation brought about in Japan from the one atomic bomb dropped on Hiroshima and the other on Nagasaki, and that experience and knowledge stayed with him. He trained in mathematics and technology, a background that took him into a defence firm, then into one of his own founding. He became a high-level security adviser to the United States government, served as under-secretary of defense for research and engineering during the Carter administration and as secretary of defense from 1994 to 1997.

He formed the view that there was no real defence against nuclear weapons, and that nuclear weaponry had the potential to destroy all of civilisation. Even when he was secretary of defense, and thereby charged with the responsibility of maintaining the United States' nuclear arsenal, he oversaw the development of equipment, including the stealth bomber, intended to avoid the use of nuclear weapons. In 2007 Perry signed an op-ed article to the *Wall Street Journal* with two former secretaries of state, George Shultz and Henry Kissinger, and a United States senator with an impressive defence background, Sam Nunn, arguing for the abolition of nuclear weapons world-wide. Perry and Nunn are Democrats. Shultz, whose name is well-known to New Zealanders because he was secretary of state during the nuclear row between their country and the United States, and Henry Kissinger are Republicans. The political balance was sought deliberately.

The book is valuable for at least four reasons: the accounts of Perry's experiences; the stories from arms control negotiations;

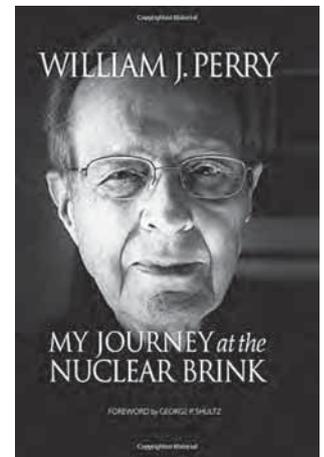
Perry's views on the present nuclear arms threats; and his approach to achieving nuclear disarmament.

Perry describes some personal dilemmas. He worried about a loss of privacy, leading him initially to turn down the job of being defense secretary. But he does not dwell on these personal issues. Nor is the book an effort to justify decisions he made. He travelled extensively as defense secretary and believed in establishing trust with officials and politicians from other countries. All this gave him considerable experience in diplomacy. He cites several examples of nuclear alerts, including one when he was asleep one night and received a call from the watch officer of NORAD, the North American Aerospace Defense Command, who reported seeing 200 missiles on his monitor heading towards the United States. The watch officer did not believe it was really happening, and he and Perry determined several days later that a training video had been left on the machine by accident.

Perry is good on arms talks. The closest any negotiations came to abolishing nuclear weapons occurred at Reykjavik between President Reagan and President Gorbachev. They failed because Reagan was intent on preserving his Strategic Defense Initiative ('Star Wars') programme and Gorbachev made a link between defensive and offensive weapons systems. The fact that they came so close to doing away with nuclear weapons aroused considerable criticism in the United States and elsewhere. Margaret Thatcher, prime minister of Britain, was incensed and travelled to the United States to upbraid George Shultz and Ronald Reagan in varying degrees of ferocity. Some of the acronyms of the Cold War years — MIRVs (multiple independently-targetable re-entry vehicles), SALT (strategic arms limitation talks) and BMD (ballistic missile defence) — have almost dropped out of public consciousness but their existence and the issues they raise continue. Perry throws light on them all without unnecessary technical detail. He writes that after George W. Bush pulled out of the Anti-Ballistic Missile Treaty, grave tensions with Russia built up.

Perry believes that the possibility of a nuclear catastrophe is greater now than it was during the Cold War and that most people are not aware of that fact. He worries that nuclear war concerns have dropped out of public consciousness. He is concerned that Russia has dropped a 'no first use' policy and fears that it is developing weapons at such a rate that it will soon leave the Comprehensive Test Ban Treaty. He blames a major deterioration in relations with Russia on the North Atlantic Treaty Organisation's readiness to admit a number of former Soviet satellite states. The book begins with a scenario he imagines about a nuclear weapon being smuggled by terrorists into Washington and being detonated. He fears that there might be a regional war between India and Pakistan in which nuclear weapons are used.

Perry's approach to nuclear disarmament is incremental. He has sympathy for but does not believe that an approach based on a broad international agreement will work. Since leaving government service, he has devoted much time to Track II negotiations. He and others are working through an organisation called the Nuclear Threat Initiative, and this compelling and readable mem-



oir is part of his attempt to raise consciousness of a continuing nuclear threat.

STUART McMILLAN

DETAINEE ABUSE DURING OP TELIC: 'A Few Rotten Apples'?

Author: Timothy Wood

Published by: Palgrave Pivot, Houndmills, 2016, 120pp, US\$54.99.

OP TELIC was the operational name assumed by British forces in Iraq following its invasion in 2003. The 'few rotten apples' refers to controversial claims that those British personnel committing abuses against detained Iraqis during this operation comprised no more than a small, misguided minority. With the advantages of his military service in both Iraq and Afghanistan, and the Royal Air Force Directorate of Legal Services and Service Prosecuting Authority, Timothy Wood is well positioned to unpick these claims in this short, but highly informed assessment. Recently the controversy has sustained its salience with the decision of the British government — like Turkey, France and Ukraine — to opt out, or derogate, from European Human Rights Convention provisions applicable during situations of conflict. Prime Minister May has said that she hopes this will end what she has termed 'an industry of vexatious claims' against British forces.

Raised in this study are the Al Sweady and Baha Mousa detainee abuse enquiries conducted by British authorities and, of more recent occurrence, the joint communication submitted to the Office of Prosecutor at the International Criminal Court (ICC) by the European Centre for Constitutional and Human Rights and Public Interest Lawyers group (ECCHR/PIL). This 2014 submission alleged hundreds of abuse violations across time, technique and location, indicating that United Kingdom authorities sustained a policy of abuse against local detainees, this to soften them up prior to interrogation. This request to open an investigation was declined by ICC Chief Prosecutor Ocampo, and on grounds of insufficient evidence indicating any plan or policy of war crimes of wilful killing and inhuman treatment. While that conclusion remained open subject to new evidence, Ocampo rightly indicated that effectively functioning national legal systems comprised the most appropriate forum for addressing allegations of this nature.

For a short study, the detail and analysis provided is impressive. Three salient themes of importance are discernible. The first to emerge is a general shoddiness in standards evident among those British forces responsible for the detention and interrogation of Iraqi suspects. Previous failures effectively to resource, train and lead such personnel were magnified when placed under the stress that was fully evident during the British deployment to Basra. A culture of dehumanisation and moral impotence was allowed to flourish, while detainees were subject to beatings, sexual abuse, including exposure to pornography, sensory deprivation, humiliation and threats of violence or death.

Second, relatedly, and of pointed concern to the author, is the conduct of the British Joint Forward Intelligence Team (JFIT), a twilight operation comprising military and MI5 interrogators

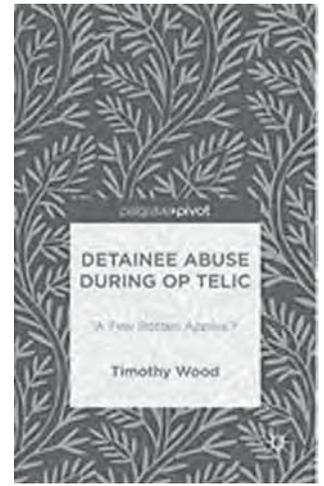
drawn from different services. Its procedures are described as unsatisfactory and unprofessional. With its conduct still subject to investigation, the author declines full disclosure of its operations, but does provide information gained from viewing footage of its interrogations. Most claims of detainee abuse contained in the ECCHR/PIL submission to the ICC comprised alleged violations by the JFIT.

Regarding the screening and selection of JFIT personnel, the author presumes that the British Ministry of Defence would not risk choosing, and then deploying, any deemed psychologically unsuitable. If so, the aberrant conduct concerned resulted less from any latent sadism by individuals than from wider situational pressures, particularly superiors demanding tangible results. The ends began to justify the means, although the intelligence gained was as much confirmation of intra-tribal differences and conflicts as information assuming wider military relevance.

Third is a useful discussion of relevant international humanitarian and human rights law. While the applicability of detainee rights and protections is clear under the Geneva Conventions under conditions of international armed conflict, it is less so where such conflict is deemed non-international. British legal rulings, it is stated here, are divided over any right to detain in an internationalised non-international armed conflict (for example, Afghanistan). Those detained can look to the minimum standard protections available under Common Article 3 of the Geneva Conventions, Additional Protocol I to the Conventions (Article 75) and the non-derogable provision of the United Nations Convention outlawing Torture. But imparting respect for these requirements to British detention personnel operating in Iraq was haphazard at best.

Here some slipperiness was evident in British claims noted in this study asserting that obligations to prevent torture under this convention were only applicable in territory under British jurisdiction. Hence it was argued that detainees taken into custody in Basra remained subject to Iraqi jurisdiction. This was appropriately disputed by Westminster's Parliamentary Joint Committee on Human Rights, asserting that the British should expressly accept the torture convention's rights and obligations in foreign territory obviously under their control. This was something patently necessary, given the shambles that followed the collapse of Iraqi authority following the 2003 invasion.

At the outset, the book needed to explain more fully what was entailed in the Al Sweady (abuse of detainees) and Baha Mousa (death of a civilian in British custody) enquiries, indicate the cost of on-going enquiries and compensation paid by the British government and give an indication of how the issue of detainee abuse was publicly reported and reacted to in the United Kingdom. An overall conclusion, however, is clear and emphatic: while evidence is lacking of a deliberate, systematic policy of detainee abuse by its forces in Iraq, enough is now known to indicate that such violations were more prevalent than the British government is prepared to admit.



RODERIC ALLEY

Bruce MacDonald Brown QSO

24 January 1930 – 2 October 2016

The New Zealand Institute of International Affairs lost one of its most illustrious members with the passing of Bruce Brown on 2 October. Having been variously director (twice), vice president, honorary vice president, chair of the research committee, member of the Standing Committee, member of the *New Zealand International Review* committee and finally life member, he gave unequalled service to the institute over six decades.

Bruce's contribution to the NZIIA was, however, just one facet in his impressive career. Born in Wellington but brought up in New Plymouth, he attended New Plymouth Boy's High School before entering Wellington's Victoria University College in 1949. Apart from proving an able student — he graduated with an MA (Hons) degree in 1955 — he excelled in debating. He won the Plunket Medal for Oratory in 1954 and toured Australia with a New Zealand Universities debating team in the same year. He was a member of the Socialist Club and also active in sports, earning a university blue for boxing. Throughout his life Bruce would take an active interest in sport, especially rugby. Late in his university studies, Bruce married Irene Raynor; they would have three children.

Bruce majored in history, and would retain his love of the subject. Indeed, he became an accomplished historian in his own right. His first book, *The Rise of New Zealand Labour 1916–40* (1962), based on his masters' thesis, remains the standard work on the early Labour Party more than half a century later. He would produce valuable historical works later in life on New Zealand trade policy and political history, as well as contributing entries to both the *Encyclopedia of New Zealand* and the *Dictionary of New Zealand Biography*.

Bruce aspired to a political career. 'I even nurtured the thought that I might become Prime Minister', he would write in 2000. His sister was secretary-typist for Labour politician Walter Nash, the Leader of the Opposition, and this connection led to his becoming a messenger on Nash's staff in 1952 (in reality an assistant private secretary). To Bruce, who later described his politics at this time as 'Bevanite Labour', perhaps the main advantage of the position was the useful access it gave him to Parliament's library resources — as well as some income as a fulltime student. But he also recognised that the contacts would help him launch a political career.

With his foot in the door, Bruce was well-placed to become Nash's private secretary when the position became vacant in December 1954. He recalled later that he was Nash's 'sole private secretary, research officer and speechwriter' until Nash became prime minister late in 1957; thereafter he was one of five private secretaries 'but I was the sole research officer and speechwriter'.



'I worked my guts out' in this position, he later recounted, especially in the run up to the 1957 general election. He was also active in Labour politics, holding offices in the Island Bay electorate.

In later life Bruce would often recount anecdotes from his time with 'Walter'. It was Nash who suggested to him that he join the NZIIA (of which Nash was a founding member). Bruce attended his first meeting at the time of the 1956 Suez Crisis, recalling later that it was held in the university's staff common room with twelve present.

In Nash's office, Bruce had frequent contact with the head of the Prime Minister's Department and secretary of external affairs, Alister McIntosh. He also got a taste

of international affairs in preparing foreign policy speeches for Nash. When he accompanied the prime minister to a meeting in Seattle in 1958, Bruce began to consider a diplomatic career, a reappraisal that was also rooted in growing recognition that an Opposition or backbench MP's role had little to commend it. When he enquired about the possibility of joining the Department of External Affairs, McIntosh proved very encouraging. In August 1959 Bruce moved into the department. Even so, he continued to look over his shoulder to a possible career in politics; as late as 1970 the possibility of the general secretaryship of the Labour Party led to 'some agonising'. The Island Bay parliamentary seat was another temptation. With his debating skills, attention to detail and congenial personality, Bruce would likely have risen high in the Labour Party had he taken the political route.

Late in 1960 Bruce and Irene with children headed off to Kuala Lumpur for his first overseas posting. Their departure had been delayed because Nash wanted Bruce in Wellington until after the general election in November. As second (later first) secretary in the New Zealand High Commission, he had a hectic time adjusting to the life of a posted diplomat, made more difficult by the fact that both he and Irene had aged parents back in New Zealand. But Bruce assured McIntosh, when the latter picked up false hints of possible career wavering, that he was 'thoroughly enjoying' the work. It was during this posting, which ended late in 1962, that Bruce revised his master's thesis for publication; he had earlier produced a series of encyclopedia entries on Labour politicians.

In 1963 Bruce went to New York — 'seduced by the prospects of... U.N. work', he told McIntosh — where he served as counsellor (later deputy permanent representative) in the New Zealand mission to the world body. By this time Bruce's skills were well-recognised among the department's hierarchy, as reflected in Permanent Representative Frank Corner's comment to McIntosh in August 1963 shortly before Bruce's arrival that he would be a 'real asset, & I'm most grateful' (to McIntosh for pro-

viding him). During Bruce's time in New York, which included New Zealand's second, one-year, spell on the Security Council in 1966, Corner lauded the quality of the team he led.

Back in Wellington, Bruce headed the department's Administrative Division before, in 1969, becoming the NZIIA's first fulltime director. This development had its origins in a generous \$100,000 grant made by the Ford Foundation in 1968. The funds provided for three staff, accommodation, research, publications and travel over a three-year period. Bruce later recounted his response to the advertisement of the new position: 'I applied because the prospects of the job — setting up a research and publication programme and conducting an extensive travel and speaking programme on foreign policy — appealed to me.' Family reasons also made an extended period in Wellington attractive. Alive to the outreach advantages for the department that the NZIIA provided, Secretary of Foreign Affairs George Laking agreed to Bruce taking leave from the ministry for three years.

Having a fulltime director put the NZIIA on a much higher level of activity. With many highly placed and supportive members at this time, the NZIIA enjoyed a mini golden age. Bruce helped lift its profile in New Zealand — and abroad. He not only participated in a major conference in Canberra in early 1970 but also edited the proceedings, published as *Asia and the Pacific in the 1970s* (1971). Bruce also greatly expanded the publication of pamphlets.

During 1970 Bruce headed to New York with Treasurer Don Trow to present a required mid-term report to the Ford Foundation. After outlining the programme now in place, he requested additional assistance. The foundation then made a second grant of \$65,000, which allowed for the appointment of a part-time director (Ken Keith) when Bruce completed his term in 1971. From 1976 this position would be sustained by an annual grant from the Ministry of Foreign Affairs, the value of an effective NZIIA having been demonstrated to the ministry's hierarchy by Bruce's and his successor's efforts.

After returning to the ministry, Bruce was soon overseas again on the first of a series of important postings — deputy high commissioner in Canberra (1972–74), the first New Zealand ambassador in Tehran, with accreditation to Pakistan as well (1975–78) and deputy high commissioner in London (1981–85). Towards the end of his time in London he had to contend with what writer Dennis Welch called the 'the diplomatic ducking and diving' that arose from David Lange's acceptance of an invitation to take part in an Oxford Union debate. Bruce's efforts to prevent Lange upsetting the British government by criticising British nuclear policy on their own soil were strenuous — at one stage Lange's speechwriter and future wife, Margaret Pope, stamped her foot in exasperation at Bruce's proposed changes to Lange's speech notes. But his efforts were unavailing, because during the debate Lange ad libbed criticisms anyway.

In 1985 Bruce headed to Bangkok for a three-year posting as ambassador. He ended his diplomatic career in Ottawa, where he was high commissioner from 1988 to 1992. An anecdote he liked to tell about his time in Ottawa also involved David Lange. Bruce had a dinner all prepared for the prime minister's late evening arrival in April 1989, but as soon as Lange entered

the residence a phone call from Acting Prime Minister Geoffrey Palmer in Wellington intruded. Lange had come to Ottawa after making the speech at Yale University in which he stated that the ANZUS alliance was dead. It would be an hour before Lange emerged, ashen-faced, after being told no doubt that his Cabinet colleagues repudiated his comments.

Numerous cross-accreditations extended the range of Bruce's activities. While in Bangkok, for example, his responsibilities included Vietnam, Laos and Burma. As high commissioner in Ottawa, he also represented New Zealand in five Caribbean states, including Jamaica. Bruce's extended overseas service was broken only by a successful assistant secretaryship in Wellington from 1978 to 1981. 'Bruce is remembered for the way he put his scholarly mind and drafting skills to work in the Ministry', former colleague John McArthur noted shortly after his death. 'He was well known for his mentoring of junior staff.' In 1998, his service to New Zealand was recognised with his appointment as a companion of the Queen's Service Order.

During Bruce's high commissionership in Ottawa, Irene sadly succumbed to illness. He later met and married François Rousseau, but she too would fall victim to cancer in 1995. In 2006 he married Josephine Stening; she passed away just 21 days after Bruce.

Following his retirement from the diplomatic service Bruce became director of the NZIIA for the second time in 1993. As in his first stint, he was very active in the role, speaking widely and organising numerous conferences. As ever, he placed much emphasis on the published record, and double-hatted as chair of the NZIIA's Research and Publications Committee. Although he stepped down from the directorship in 1997, he continued the chairmanship until 2004. Apart from overseeing numerous publications, he edited the third volume of the NZIIA's *New Zealand in World Affairs*, covering the period 1972–90, which appeared in 1999. Bruce had long been an honorary vice president, but in 2004 he was elected vice president, a role he performed until 2009. A very strong supporter of the *New Zealand International Review*, he became a member of the editorial committee when he ceased to be director and remained involved until 2011. By this time his immense contribution to the NZIIA had been recognised, in 2009, with his election as a life member.

In retirement Bruce also played an active role in the historical community. He contributed informative and well-received papers to numerous symposia on New Zealand's post-1945 political affairs and foreign policy. He oversaw the Ministry of Foreign Affairs and Trade's 50th anniversary oral history programme, in which he put on tape the recollections of three former heads of the ministry.

Bruce was a man of many talents, which he exercised to the fullest until illness intervened about five years ago. Regrettably this prevented him from writing his memoirs, which would have thrown much valuable light on New Zealand's political and diplomatic history in the last seven decades. Bruce's knowledge of politics, diplomacy and history, his enthusiasm and drive and his charm left their mark on all who knew him. He will be remembered with much affection and admiration.

Ian McGibbon

INSTITUTE NOTES

National Office and branch activities.

On 15 August retired US ambassador Derek Shearer, who is the Stuart Chevalier professor of diplomacy and world affairs at Occidental College and heads the McKinnon Center for Global Affairs, gave an address at VUW on 'Foreign Policy and the US Presidential Election, What Implications for the World and New Zealand'.

Jeffrey Feltman, the United Nations under-secretary-general for political affairs, also spoke at VUW on 'The United Nations' Political Work in a Turbulent World: Diplomacy, Prevention, Action' on 6 September.

On 21 November, in association with the NZIIA, Dr Rouzbeh Parsi (Lund University, Sweden) addressed a meeting at Parliament, held in association with the NZIIA, on 'The Iranian Nuclear File and EU Foreign Policy One Year On'.

On 29 November a conference was held at the Michael Fowler Centre on 'The Global Future: Challenges to Security, Stability and Sustainability'. Among the speakers were Lt-Gen Tim Keating MNZM (chief of defence force), Prof Michael Cox (professor of international relations at the London School of Economics, head of programme for Transatlantic Relations, co-director of IDEAS LSE, associate research fellow, Chatham House), HE Bernard Savage (ambassador in the Delegation of the European Union to New Zealand), Adrian van Hest (partner and cyber practice lead, PwC), Andrea Vance (political reporter, One News), Sam McIvor (chief executive, Beef + Lamb New Zealand), Terence O'Brien (senior fellow, Centre for Strategic Studies, former ambassador to the United Nations, European Union and WTO-GATT), Hon Dr Wayne Mapp QSO (law commissioner and former minister of defence), Prof Crawford Falconer (professor of international trade at Lincoln University, former OECD trade leader and ambassador to the WTO), Abbie Reynolds (executive director, Sustainable Business Council), Jeannette Menzies (director, Knowledge Management and Engagement, Polar Knowledge Canada), Josie Pagani (director, Council for International Development), Olivier Weber (award-winning French writer, novelist and reporter and war correspondent in Africa and the Middle East) and Associate Prof Alberto Costi (Victoria University Law School).

The NZIIA's National Office shifted premises in December. It is now located in Rutherford House.

Wellington

The following meetings were held:

- 1 Aug Sir Kenneth Keith (former judge of the International Court of Justice and NZIIA life member), 'Settlement of Disputes about the Law of the Sea: Reflections Following the South China Sea Award'. (An edited version of this address is to be found elsewhere in this issue.)
- 27 Sep HE Tarek Elwassimy (ambassador of the Arab Republic of Egypt to New Zealand), 'Egypt's Role in Countering and Combatting Terrorism'.
- 17 Oct Anson Chan (chief secretary for administration of the Hong Kong Special Administrative Region government) and Martin Lee (founding chairman of Hong Kong's Democratic Party), 'Hong Kong in 2016'.



Derek Shearer (centre) with Simon Murdoch and Roberto Rabel before his address to the NZIIA

Auckland

The following meetings were held:

- 1 Sep David Seymour (member of Parliament and leader of the ACT Party), 'A View of Foreign Policy from the ACT Party'.
- 5 Sep Prof Bates Gill (Sir Howard Kippenberger chair, Victoria University of Wellington), 'Strength Versus Influence: China's Hard and Soft Power Challenges'.
- 29 Sep Brian Lynch (chair of the NZIIA's Wellington branch and former NZIIA executive director), 'New Zealand's Asia-Pacific Destiny'.
- 5 Oct Peeni Henare (Labour Party MP for Tamaki Makarau), 'Navigating Global Issues As Indigenous People'.

Waikato

The following meetings were held:

- 24 Aug Dr Gill Bates (professor of Asia-Pacific strategic studies, Strategic and Defence Studies Centre, Coral Bell School of Asia Pacific Affairs, Australian National University), 'The Enduring Paradox of US-China Relations: Admirability, Ambivalence, Antagonism'.
- 26 Sep Dr Anthony Smith (Department of the Prime Minister and Cabinet), 'The Role of the New Zealand Intelligence Community in Foreign Policy Formation'.
- 12 Oct Matthew Spake (Waikato University law and politics undergraduate), 'Can the European Union Survive?'
- 2 Nov Dr Reuben Steff and Francesca Dodd-Parr, 'Balanced Between the Dragon and the Eagle: New Zealand's Relations with America and China'.

Wairarapa

The following meetings were held:

- 15 Sep Rt Hon Sir Anand Satyanand (chairman of the Commonwealth Foundation and former governor-general of New Zealand), 'What Relevance Can the Commonwealth Have for New Zealand in the Next 50 Years?'
- 9 Nov Cmdr James Barnes RNZN (staff officer, maritime plans (global), NZDF) and Wing Cmdr Stuart Oliver RNZAF (HQ Joint Forces, NZDF), 'New Zealand: A Maritime Nation'.

AN INVITATION

If you are interested in international affairs and you are not already a subscriber to the *New Zealand International Review*, consider the advantage of receiving this magazine on a regular basis. *New Zealand International Review* completed its fortieth consecutive year of publication in 2015. It continues to be the only national magazine exclusively devoted to national issues as they affect New Zealand.

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