WELCOME OF DELEGATES TO 2018 BIENNIAL CONFERENCE OF THE INTERNATIONAL LAW ASSOCIATION TO RECEPTION AT THE FEDERAL COURT OF AUSTRALIA

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1 It is my great pleasure to welcome you to the Federal Court of Australia for this reception for delegates attending the 2018 Conference of the International Law Association. For those other than from Australia, I welcome you to Sydney and Australia.

2 I acknowledge the traditional custodians of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to elders, past and present.

3 The International Law Association, since its establishment in 1873, has played an important role in the development of international law. It continues to undertake that role, through its 62 branches, 4,445 members and 23 active committees working collaboratively on important issues in international law. This biennial conference is an important forum through which the Association undertakes its work.

4 The broad and varied program for this week's conference deals with many contemporary matters relevant to international law and international affairs more broadly. I congratulate the Australian Branch of the International Law Association for its hosting of the 2018 Conference. Australians have a long tradition of involvement in international law, from the contributions of Dr Evatt to the founding of the United Nations and the role of Sir William Webb of the High Court as President of the International Military Tribunal for the Far East in the 1940s; the appointments of Sir Percy Spender and Professor Crawford as judges of the International Court of Justice and Professor Hilary Charlesworth as a judge *ad hoc* of that Court; along with the appointment of Professor Ivan Shearer as a judge *ad hoc* of the International Tribunal for the Law of the Sea; and, of course, as reflected in the efforts of many Australian lawyers that have worked or are working as both scholars (such as O'Connell) and practitioners of international law both in Australia and abroad.

5 At a time of increased scepticism about the effectiveness of international institutions, a perceived weakening of the rules-based international order and concerns and debate on matters ranging from globalised trade, to nuclear non-proliferation, freedom of navigation, sovereignty and our very mechanisms for international dispute resolution, I would suggest that events such as this one that provide for considered thought and debate about matters pertaining to

international law are particularly valuable in this challenging environment. The need for an understanding of the history, values and principles of international law assumes ever greater importance in such times.

6 Due to the matters within the Court's jurisdiction, the judges of the Federal Court, together with the practitioners regularly appearing before it, have a strong appreciation of the importance of international law, both public and private.

7 The Federal Court of Australia was established in 1976. The Court's workload is organised by reference to nine National Practice Areas: Administrative and Constitutional Law and Human Rights; Admiralty and Maritime; Commercial and Corporations; Employment & Industrial Relations; Federal Crime and Related Proceedings; Intellectual Property; Native Title; Taxation; and Other Federal Jurisdiction. Almost all of these National Practice Areas require some level of engagement with international law and international instruments.

8 The Court has for many years had an international focus to its work. It has been an active participant in judicial assistance and exchange in the region with memoranda of understanding with Courts in Indonesia, Papua New Guinea, Vanuatu, Vietnam and Myanmar, and it has been and is (in consultation with New Zealand judges) responsible for the administration of Pacific Judicial training in important programs funded by the New Zealand government. The work of the Court itself is highly international. Many corporations and taxation, most intellectual property and virtually all shipping and international commercial arbitration matters involve international parties.

9 These matters suggest a place for a national court in this region's justice system. I use the expression "justice system" of the region because that is precisely what is developing – through the growth of skilled courts and arbitral institutions in the region. International and transnational courts are being established. A number have been begun in the Gulf Region, and Singapore has established its own international commercial court. The work of these institutions involves international interests, not the least of which are investor-state actions.

10 Such an international role for this Court reflects the incorporation of international instruments into much of modern Commonwealth law over which this Court has jurisdiction. For example, the Court regularly deals with matters arising under the UNCITRAL Model Laws on International Commercial Arbitration and Cross-Border Insolvency, as enacted in Commonwealth legislation. Most Admiralty matters, due to their inherent character, are

international in nature. Similarly, judges in Taxation and Intellectual Property regularly deal with taxation or IP treaties.

11 And, the migration cases that represent a large component of the Court's work involve international issues of grave importance relating to the displacement of people and the assessment of claims for protection. Such matters require an understanding of international refugee law, domestic law and, often, the conditions and circumstances in many countries from which applicants come to Australia to seek asylum.

12 For Australia to contribute significantly to the emerging "justice system" of the Asia-Pacific that I have referred to, and to maximize its contribution to a rules-based international order so significant for global growth and development, it is critical that international law, together with our understanding of it, continues to develop and mature.

13 Time can dull the collective memory.

14 The modern European recognition of the importance of a common law among nations (even over the violence of warfare) came from the mind and pen of Grotius in 1625 in *On the Law of War and Peace.* Its author lived through the first half of one of the most violent centuries in Europe's history, matched, in modern times, only by the twentieth. The end of the sixteenth and the first half of the seventeenth centuries saw an eighty year struggle between Spain and the Netherlands, and the Thirty Years War rage from 1618 to 1648. The latter, in particular, brought horror, slaughter, rape and rapine to the defenceless of Europe by wandering armies and murderous packs of mercenaries laying Europe waste, nominally in the name of religion, leaving an exhausted and slaughtered Germany and central Europe. From the crucible of these horrors came the recognition of the need for order and rules in international law – whether one viewed humankind in the very different ways as did two of the great thinkers of the age – Hobbes and Locke.

15 The twentieth century once again gave us the recognition of the need for a common interest in international law. Once again Europe almost tore itself and the rest of the world to pieces, twice. The narrow escape from almost total destruction and the salutary establishment of real and potentially effective international structures in the middle of the century should never be far from our minds.

16 I would prefer to view humankind in Lockean terms, rather than Hobbesian. International law and a rules-based order is not to control an otherwise base and brutish humankind, but to help

nations and people survive and, as far as possible, flourish. In 1953, Justice Robert Jackson, not long returned from his duties as prosecuting counsel at Nuremberg where international law was the legal basis for the execution and imprisonment of those directing the Nazi Regime, said the following in delivering the opinion of the Supreme Court of the United States in *Lauritsen v Larsen* about maritime law – a form of international private law (not private international law):[1]

> … courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality. It has the force of law, not from extraterritorial reach of national laws, nor from abdication of its sovereign powers by any nation, but from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations.
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> International or maritime law in such matters as this does not seek uniformity and does not purport to restrict any nation from making and altering its laws to govern its own shipping and territory. However, it aims at stability and order through usages which considerations of comity, reciprocity and long-range interest have developed to define the domain which each nation will claim as its own.

17 Perhaps one's heart sinks just a little if one cannot imagine the same being said today. I am prepared to hope it would be, somewhere. Conferences such as this week's make it a little more likely that it would be, somewhere.

18 The organisers of the conference are to be congratulated for the development of the wonderful program.

19 I hope you both enjoy your time in Sydney and the excellent conference.

Sydney

20 August 2018

[1] 345 US 571 (1953) at 581-582 (citations omitted).