OPENING OF THE 28TH CONFERENCE OF THE MARITIME LAW ASSOCIATION OF AUSTRALIA AND NEW ZEALAND

BY THE HONOURABLE SIR GUY GREEN AC KBE GOVERNOR OF TASMANIA MONDAY 13 OCTOBER 1997

I had the honour of addressing the Association in 1978 and then in 1987. Save for feeling seriously disconcerted by how quickly our decadal reunion has come around again it gives me a great deal of personal satisfaction to be involved once again in a meeting of the Association.

With all the modesty which I can muster - which isn't much - I think Hobart can be seen to be a rather appropriate venue for this conference.

The Derwent estuary is one of the finest deep water harbours in the world. The port of Hobart is probably unique in that whilst it is very much a working port it is also a popular recreation and tourist area which is only minutes away from the CBD of Hobart

The newly established Hobart port authority - the Hobart Ports Corporation - has an extensive area of jurisdiction controlling about two thirds of Tasmania's coastline from Cape Portland in the north to Temma Harbour in the west. The authority has roots going back nearly 140 years but the port is a thoroughly modern, fully equipped port which can offer safe all-weather access to all types of vessels and deep water berths able to accommodate the largest overseas ships. Incidentally it is also the first port authority in Australia to have a website on the internet.

A distinctive feature of the city and port of Hobart has been its close involvement for over 160 years in every aspect of maritime activity relating to the Antarctic, the subantarctic and the Southern Ocean. In 1837 the French Captain Dumont d'Urville called in to the

Port of Hobart in his ship *L 'Astrolabe* where he signed on crew, purchased provisions, fitted out his vessel and, after recovering from the generous hospitality provided by the Lieutenant Governor and the people of Hobart, embarked upon his great Antarctic voyage.

A little later Captain James Clark Ross, with the assistance of the Lieutenant-Governor Sir John Franklin, established a magnetic observatory in what are now the grounds of Government House and then set out from Hobart -which Ross called his southern home - on a voyage in search of the south magnetic pole, a voyage which Captain Robert Falcon Scott was later to call one of the most brilliant and famous voyages ever made.

Hobart was Roald Amundsen's first landfall after his expedition to the South Pole and it was from here that he cabled the news of his triumph to the world. Incidentally it was also a Hobart photographer, J. W. Beattie, who developed Amundsen's films, making him the first person in history to see a photograph of the South Pole.

And it was from Hobart that Sir Douglas Mawson embarked on his three great Antarctic voyages.

That involvement of Tasmanian scientists, suppliers of products and services, the port of Hobart, the general community and even the office of Governor in the exploration and the study of the Antarctic and subantarctic which started all those years ago has continued right down to the present day.

Indeed that is literally so in the case of Ross and Dumont d'Urville: we are still making geomagnetic observations in Tasmania and the French Antarctic research ship *L'Astrolabe* or at least son of *L 'Astrolabe* still uses the Port of Hobart.

Over the years the extent of that involvement has grown tremendously so that Tasmania today can be said to be one of the really important Antarctic, Southern Ocean and subantarctic centres in the world. Australian Antarctic research vessels and vessels from China, Japan, Italy, the United States, Norway and Russia use the port and Tasmania is widely regarded as the most important centre for the

doing of Antarctic, subantarctic and Southern Oceanic science in the world and is also making an increasingly significant contribution to research and analysis of law and policy relating to the Antarctic and the Southern Ocean. Work is also nearing completion in Hobart on what promises to be the most impressive Antarctic Exhibition Centre in the world. We now have located in Tasmania the headquarters of the Commission for the Conservation of Antarctic Marine Living Resources, the Secretariat of the Council of Managers of National Antarctic Programmed and several other international secretariats and committees relating to Antarctic activities and we are well positioned to attract even more. And linking all our Antarctic activities, we have the Tasmanian Polar Network comprising some 30 enterprising companies and organisations which provide an impressive range of specialist products, services and technology for voyagers, expeditioners, tourist operators and everyone else involved in the Antarctic or subantarctic.

That sketch of Hobart's dual role as a general port and a major Antarctic centre serves to lead into a topic of increasing interest in relation to the law of the sea.

As you know, on 16 November 1994 the 1982 ***United Nations Convention on the Law of the Sea*** came into force. Australia had ratified the convention the month before and therefore immediately became bound by it.

Amongst other things the convention defined the jurisdictional limits of states over and under the sea. I remind you that the convention defined four zones.

(1) The territorial sea over which coastal states have sovereignty subject to the right of innocent passage through it by foreign vessels. The limits of the territorial sea are no longer defined by the range of a shore based cannon but less romantically by a line connecting points 12 nautical miles from the shore or from proclaimed base lines.

(2) The continental shelf which comprises all of the seabed to a distance of 200 to 350 nautical miles from the shore or the baselines of

the territorial sea. A state does not have sovereignty over the continental shelf but does have the right to explore and exploit mineral and other resources on the sea bed.

(3) The Exclusive Economic Zone which extends 200 nautical miles from the shore or the baselines. Within this zone coastal states have jurisdiction over all resource based activities whether in the water or on the sea bed and whether living or non-living.

(4) A Contiguous Zone which extends up to 24 nautical miles from the shore or the baselines within which a coastal state may exercise jurisdiction to police customs, immigration and other domestic laws.

The Law of the Sea as embodied in the 1982 convention represents the culmination of centuries of history and decades of negotiation, drafting and re-drafting. It would be comforting if one could now breathe a sigh of relief secure in the knowledge that the issue of the limits and the nature of the jurisdiction of states over and beneath the sea has at last been settled. To a large extent it has, but significant questions still remain. A number arise out of the relationship between the Law of the Sea and the Antarctic Treaty System.

The Antarctic Treaty system is a remarkable international arrangement. Although negotiations for the Antarctic Treaty which lies at the core of the system were commenced in the unpropitious climate of the cold war, not only has it survived but the cardinal principles upon which it is based of demilitarisation, international scientific cooperation, environmental protection and the freezing of territorial claims can now be said to be fully recognised and entrenched. In a review of its operation in 1991 the Antarctic nations were indeed justified in declaring that the treaty "provided an example to the world of how nations can successfully work together to preserve a major part of this planet for the benefit of all mankind."

But the interaction between these two great developments in international law - the Antarctic Treaty System and the Law of the Sea - does give rise to some serious legal and policy issues. I won't attempt to discuss them in detail but they include:

Does the Law of the Sea apply at all and if so how does it apply to the area within 60°S covered by the Antarctic Treaty or the area which embraces virtually the whole of the Southern Ocean covered by the Convention on the Conservation of Antarctic Marine Living Resources; what is the standing of states which are not parties to the Antarctic Treaty System - are they entitled to treat these regions as being in the high seas for all purposes; given that all territorial claims in the Antarctic continent have been frozen, do any coastal states exist which are legally capable of claiming jurisdiction over the various zones defined by the Law of the Sea and if such claims can be made are the base lines to be drawn from the edge of the land or the edge of the ice shelf? Australia for one has proclaimed an Antarctic exclusive economic zone but the practical and legal effect of the claim and how vigorously Australia asserts it remain to be seen. A new dimension to the relationship between the Antarctic Treaty System and the Law of the Sea has also been introduced by the 1991 Protocol on Environmental Protection to the Antarctic Treaty known as the Madrid Protocol. This Protocol has not yet come into force but it only requires the signature of Japan which is expected to be obtained in the near future. Amongst other things, the Protocol's prohibitions on any activity relating to mineral resources other than for scientific research "implies" as one authority has put it "a contradiction of the concepts for submarine areas as embodied in the Protocol and in the Law of the Sea convention."

I appreciate that the primary area of interest of the MLAANZ lies in private law rather than public international law. But I suggest that for several reasons the matters to which I have been referring could have increasing significance for members of the Association:

They are of intrinsic general interest for anyone concerned with the sea and maritime law.

As a number of those who have addressed this conference over the years have emphasised, the extent of the interaction between public and private maritime law is increasing.

Increases in the level of tourist, fishing and general activities in the Southern Ocean and subantarctic region can be expected to generate an increase in shipping in the region.

Finally issues arising out of overlapping regimes are not confined to the Southern Ocean. With the trend towards greater international regulation especially in relation to the environment we can expect to encounter such issues more and more frequently. How they are resolved in relation to the Antarctic Treaty System and the Law of the Sea could provide guidance and possibly even inspiration for their resolution in relation to other overlapping regimes.

It has been a great pleasure once again to be involved with the work of the Association.

I congratulate the organisers of this conference on putting together such an excellent programme and attracting such high calibre speakers.

I am sure that you will find this conference rewarding and enjoyable.

I have much pleasure in declaring the 28th Conference of the Maritime Law Association of Australia and New Zealand open.