Dispute Resolution in the Pacific Region

On 6 September 1988, the Chief Justice, Sir Laurence Street, speaking at the Trustee Companies Association National Council Dinner, predicted that Australia would play an important role in establishing arbitral mechanisms to resolve commercial disputes in the Pacific region.

I have chosen as the subject of this address the role of Australia in providing a dispute resolution facility to service the requirements of international commerce in the Pacific region.

On 11 December 1985 the United Nations General Assembly in Plenary Session passed a resolution recommending that:

> " All states give due consideration to the Model Law on International CommercialArbitration in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice."

The Model Law referred to in that resolution was the product of a United Nations Working Group established in 1982 by the United Nations Commission on International Trade Law (UNCITRAL). All the major trading nations of the world contributed to the deliberations of the Working Group. The model arbitration law that it produced for UNCITRAL has been described as:

> "a compilation of global philosophies workable above the differences of economic, social and legal systems on how the most ideal law of international commercial arbitration should be. It may become a candle light towards which everyone concerned could move forward, perhaps step by step, to attain the eventual unification of national laws on a global scale." 1

It is highly gratifying that the Australian Government has responded constructively and promptly to the General Assembly resolution. In the very near future the UNCITRAL Model Law will be enacted as part of the law of this country, precisely in the terms recommended. The passing of that Act, together with the recent redrawing of guidelines in New South Wales allowing foreign lawyers to render professional services in this State to overseas clients, are essential pre-requisites to our nation becoming a significant legal service base able to meet the dispute resolution requirements of the flow of commerce throughout the whole Pacific region.

For too long we in Australia have been content to leave the international field of commercial law to be serviced through mechanisms that have their homes in Europe. The Pacific nations, albeit of widely divergent character, occupy an identifiable geographic part of the world.

We share trading relations that bind us all together as commerce ebbs and flows around its rim and transversely across its midst. The whole Pacific region is pulsating with a new found vitality and a sense of geographic self-identity. Australia is uniquely placed to play a major part in this region by servicing its requirement for dispute resolution facilities.

Our nation has the enormous advantages of political and economic stability and of soundly based, well established financial and legal capacity. We are not aggressive or acquisitive on the international stage. We present no political or military threat. We enjoy the trust and confidence of our sister nations in the Pacific, from the super powers down to the tiniest of the island states.

In short, Australia's statute within the Pacific places us well to fulfil both the geographic and the substantive role of a reliable honest broker in servicing the flow of commerce within this large region of the world.

The Pacific nations cannot, of course, be identified as an economic group comparable to the European Economic Community. They do not occupy a single land mass. The international spectrum of power differs, as do the inherent natures of the nations going to make up the Pacific. There is no common ideological threat operating to unite them. At the same time there is a growing recognition that pursuit of common economic goals throughout the region can bring great benefits, political as well as economic, to the Pacific nations.

There is a challenge to us in this part of the world in the example of Europe having selected 1992 as the target date for the achievement of far-reaching progress towards integration. The goal in Europe is conformity in social, fiscal and professional areas coupled with enhancement of the role of the European Court. Inevitably this will flow on to benefit and strengthen the European arbitral mechanisms that service commerce both within the EEC and beyond.

I have no expert status to expound the political and financial advantages of the Pacific being stimulated by the European example to progress towards widening recognition of the interdependence of the nations going to make up the Pacific region. I do, however, have some understanding of the need for the legal mechanisms that are an indispensable part of the service substrata of the free flow of international commerce. I have, moreover, a sense of idealism in relation to the part that Australia can play in providing a home for, and in furnishing a significant mechanism in aid of, the legal service requirements of commerce throughout the Pacific.

The mechanism to which I refer is not that of a conventional court system. It is the service of an established national body providing alternative dispute resolution procedures. Principal amongst these is arbitration. Indeed, arbitration has been until very recent years the sole procedure for dispute resolution in disputes between commercial entities of different nations.

1 Professor Sono, ICCA Congress Series No. 2, 1984, p 28

We in the law have something for which to reproach ourselves in that, certainly in the common law countries, we have allowed arbitration to become cumbersome and over-legalistic. The great advantages that arbitration has in contrast to conventional court hearings were submerged by this growing legalism. International legal practice has been slow to recognise and adapt its mechanisms to this growing disenchantment on the part of its users.

In the field of domestic commercial disputation there have in the last couple of decades been enormous advances in evolving new alternative procedures. Structured mediation, formalised conciliation and the procedure of a mini trial have all been evolved in parallel with a rejuvenation of the longer-standing processes of valuation, appraisal and assessment as alternative means of resolving commercial disputes.

These, together with conventional arbitration, present a wide range of alternatives from which to choose, either singly, or perhaps in sequence or combination, those which will best meet the particular requirements of the dispute in hand.

We already have such facilities available in Australia for domestic disputes. Once the UNCITRAL Model Law is in place, we must marshall our resources and actively project into the Pacific region a single Australian based organisation providing this service to those engaged in international commerce.

I quoted at the outset the United Nations resolution recommending the enactment by nations of the Model Law. The mere passing in the near future of the legislation in Canberra will not be the end of the road. Rather it will be the beginning. A distinguished international lawyer has pointed out that:

> "adoption of legislation based on the Model Law provides only the statutory part of the necessary hospitable environment. It should be, and in practice often is, accompanied by any needed organisational measures improving the infrastructure and by programmes of training and information which should help arbitrators, lawyers, judges and, in particular, businessmen to better understand and appreciate the arbitral process." 2

These words have particular relevance for Australia. Our geographic location, our stability and our neutrality place us in a clearly favourable position in comparison with other Pacific nations that already are moving into this field.

We must join those other nations as at least co-equal participants. To do so we must capitalise on the interest that will be generated by the enactment of the Model Law. We must examine our existing infrastructure in the field of alternative dispute resolution. The object will be to make whatever administrative and organisational adjustments that are necessary to enable Australia to make a significant impact in marketing our capacity to service the dispute resolving requirement of international commerce in the Pacific.

At the same time we must enlist the vigorous support of our own commercial community in both promoting and using the mechanisms in this country for the resolution - better still the prevention at an early stage - of both domestic and international commercial disputes.

This is the exciting challenge and prospect that presently lies ahead - a challenge to take up the advantage that we have over other nations, and a prospect of our being able to fulfil in the Pacific region the role of a trusted and neutral provider of this service to international commerce.

With the support of Australian commercial interests, lawyers and arbitrators we should be able to establish a major presence in this particular aspect of the flow of Pacific commerce. Achievement of this goal will play a significant part in projecting our Australian nation into a pivotal place in international commerce in the Pacific. ❑

2 Professor G. Herrmann "Overcoming Regional Differences", a paper delivered at the ICCA Tokyo Conference, June 1988, p 13

Classifieds: