ANCORS Director Professor Stuart Kaye reflects on a busy 2015 and on what 2016 has in store:

It is a little daunting to be writing about the year ahead at the end of what was certainly a very busy year for ANCORS. The year saw a number of projects on the go, with much of that work to continue into 2016. 2016 will also see a number of new projects and initiatives to add to our endeavours, meaning 2016 will be a very busy year.

A number of key projects have been significant in 2015; these are highlighted in the article Looking Back on 2015.

The new year will also see some personnel changes and promotions. These are highlighted in the Announcements and Celebrations section of this newsletter.

Most notable among these changes is the retirement of Professor Martin Tsamenyi AM at the end of 2015. There is a detailed tribute to Martin in the In Profile section.

Finally, I would like to thank the ANCORS Advisory Board, and its chair Brian Adams AO, for assistance and wise counsel throughout 2015.

I would also like to thank all ANCORS’ honorary fellows, who contributed in a variety of ways through the year, and without whose contributions, our work would not have been as successful or fulfilling.

Marine Plastic Debris—A Fragmented Problem

Scientists have reported on the impacts of plastics in the marine environment since the early 1970s, but it is only in the last two decades that the issue has gained global recognition.

A UN report published in 2014 regarded marine pollution as the largest downstream cost of plastics, adding that the USD13 billion in annual damage to marine ecosystems by plastic waste is likely to be an underestimation.

The half-life of microplastics was also estimated by the UN to be longer than any persistent organic pollutant (POP). Many of these POPs are regulated by international law.

A UN report published in 2014 regarded marine plastic debris as the largest downstream cost of plastics, adding that the USD13 billion in annual damage to marine ecosystems by plastic waste is likely to be an underestimation.

The policy response to marine plastic debris has been fragmented at international and regional levels. Marine plastic debris was first thought to originate from vessels, leading to the adoption by the IMO of the London Dumping Convention and MARPOL 73/78 Annex V. These two instruments together established a global ban on the dumping of plastic waste into the ocean by vessels. Articles 210 and 211 of the Law of the Sea Convention underpin the ban, requiring States to adopt domestic laws that are at least as effective as international rules and standards.

(Continued next page)
In contrast to the zero tolerance mandated for the discharge of plastic waste from ocean-based sources, no international agreement exists for land-based sources of marine plastic debris. The Law of the Sea Convention provides an overarching obligation for States to prevent pollution of the marine environment from land-based sources through Articles 194 and 207. These provisions are too vague to enforce. States are also only required to use “the best practicable means at their disposal and in accordance with their capabilities” when implementing these measures.

When developing domestic legislations to prevent land-based sources of marine pollution, States are also only required to take into account international rules, standards and recommended practices. The minimum standards for such regulations are therefore left to the discretion of individual States. Article 194 of the Law of the Sea Convention does place one constraint on the vague duty of States to control land-based sources of pollution: All necessary measures must be taken by States to ensure that pollution generated under their jurisdiction does not spread beyond areas where they exercise sovereign rights.

In practice, it is unlikely that plastics, particularly microplastics, can be contained to the EEZ of a State once they enter the marine environment.

The regional policy response to land-based sources of marine plastic debris has mostly involved the adoption of voluntary instruments. This is likely in recognition of the sovereignty of States to select the technologies and measures appropriate to their socio-economic situations. The right to sovereignty, however, does not necessarily infer the right to pollute at will within areas within national jurisdiction. This right must be balanced with the right of all citizens to a healthy environment.

A new binding global agreement would standardise the minimum abatement measures required to prevent marine plastic pollution originating on land. Developing such an agreement will be challenged by the range of activities to regulate, from waste management processes to the plastics industry itself. Justifying the required expenditure with a cost-benefit analysis is also unlikely in the near future.

- Ms Karen Raubenheimer is an ANCORS PhD Candidate.
Looking Back on 2015 and Forward to a Busy 2016

2015 was a busy year at ANCORS, and 2016 looks to be much the same. In this first newsletter issue since 2012, we look back on some of the major projects undertaken in 2015:

Our Pacific community fisheries project, in partnership with WorldFish and the Secretariat of the Pacific Community and funded by ACIAR, has just passed its mid-point review and is tracking well. The team - Associate Professor Quentin Hanich, Dr Aurélie Delisle and Brooke Campbell, has done some excellent work in Kiribati in the past two years. With our WorldFish honorary fellows, Professor Neil Andrew and Dr Hampus Eriksson, this project will continue into 2017.

Led by Professor Alistair McIlgorm, we successfully ran three Australian Award Fellowship short courses for the Australian Department of Foreign Affairs and Trade for participants from the Indian Ocean region, Indonesia and the Pacific. Around 50 participants spent multiple weeks at ANCORS.

At the time of writing, the new round of the AAF is just opening, so we have hopes of similar groups visiting us in the coming year.

A new MOU was signed with Australian Border Force by the Minister for Immigration and Border Protection, the Hon. Peter Dutton MP, and the Vice-Chancellor, Professor Paul Wellings CBE, in August 2015. The MOU will see cooperation with ABF in a range of education and training contexts, both in Australia and abroad.

Two activities at the Jakarta Centre for Law Enforcement Cooperation (JCLEC) in Semarang, Indonesia involve Professor Stuart Kaye and Dr Chris Rahman. The MOU is an exciting opportunity to collaborate with ABF, in a similar vein to ANCORS’ long-standing collaboration with the Royal Australian Navy and the Department of Defence.

A long-standing research project on Indian Ocean maritime jurisdiction, funded by the Australian Research Council, reached a successful conclusion in 2015. This project was led by Professor Stuart Kaye and Professor Clive Schofield, and was supported by Dr Anthony Morrison. The outcomes will feature in a book to be published by Edward Elgar in 2016.

Professor Clive Schofield acted as an advisor to the Arbitral Tribunal hearing the South China Sea Arbitration in the Hague, (see more in this issue) and wrote the University’s most downloaded contribution to the online news journal, The Conversation, with an article on the South China Sea attracting well over 100,000 reads.

Professor Robin Warner is playing a leading role in the development of a new convention dealing with the protection of ocean areas beyond national jurisdiction (ABNJ). She has joined the Australian delegation in a number of international fora in Europe and Asia. The negotiations begin in earnest in 2016, and Robin will be heavily engaged in this important work.

The development of new subjects online has stepped a gear through 2015, with the first delivery of an online version of LLB 3923 Law of the Sea within the Law School, and the filming of content for a further 6 new subjects to join the existing suite of subjects.

This flurry of activity engaged almost everyone at ANCORS at some point, and was orchestrated by our new Masters Coordinator, Ms Ruth Davis.

2016 sees the launch of our online Masters degrees. This is a very exciting development; these are the first online Masters degrees in maritime or fisheries policy in the world, and the first fully online degrees at UOW.

ANCORS and Community Fisheries in the Torres Strait

Recently ANCORS staff members, Alistair McIlgorm, Aurélie Delisle, and Stuart Kaye have been undertaking two projects for the Torres Strait Regional Authority (TSRA).

The TSRA represent the Commonwealth government’s interests in the Torres Strait, between Cape York and Papua New Guinea.

Torres Strait islanders have aspirations for 100% ownership of their fisheries. ANCORS is assisting in the development of a “Community fisheries framework” report that examines how the Maori experience in New Zealand’s fisheries may be drawn on by Torres Strait communities.

ANCORS also recently delivered a “Fisheries Management Principles” short course to Advisory Committee members to assist them when they represent their communities on Fishery Advisory Committees. Both projects conclude in early 2016.

- Professor Alistair McIlgorm is an ANCORS staff member.
Freedoms of Navigation in the South China Sea

There has been much talk recently about freedoms of navigation (FON) in the South China Sea. The United States has declared a national interest in FON in this sea with statements that ‘the United States will continue to fly, sail and operate wherever international law allows’.

That seems OK but a problem arises when the South China Sea is referred to as ‘international waters’, presumably to imply that FON there are without restriction. This is not so – restrictions do apply. The South China Sea is a semi-enclosed sea under UNCLOS Part IX comprised mostly of the EEZs or territorial seas of the bordering states, which have significant rights and duties in those waters.

To say that the South China Sea is ‘international waters’ overlooks the requirement for states exercising FON in the EEZ of another state to have ‘due regard’ to the rights and duties of that state. The

Principles for Building Confidence and Security in the Exclusive Economic Zones of the ASIA-PACIFIC, developed by the Ocean Policy Research Foundation of Japan and to which I contributed, provide principles for determining what is having ‘due regard’ and what is not.

For further reading, see the publications section of this issue.

- Professor Sam Bateman AM is an ANCORS Professorial Research Fellow.

Itu Aba, the Most Distinguished Island in the South China Sea

Itu Aba, also known as Taiping Island, is the biggest naturally-formed maritime feature in the South China Sea.

Historical and archaeological evidence indicate a history of human activity on the island: local fishermen utilised it as a base for stopover and water replenishments. Additionally, the area is an abundant repository of phosphate and marine products which has led to the establishment of both private and government bases of operations on Itu Aba for economic exploitation and harvest.

Today, Itu Aba is situated within one of the busiest shipping routes in the world. Facilities for navigational safety, such as beacons and emergency communication for humanitarian rescues are constructed and provided by the current residing authority, the Republic of China (Taiwan). Thus, Itu Aba provides an important support for human activities in this area.

Itu Aba is the subject of a recent legal dispute raised by the Republic of the Philippines against the People’s Republic of China (PRC) in the Permanent Court of Arbitration. The Philippines have challenged the island status of Itu Aba under Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS).

Under Article 121(1), an “island” enjoys full maritime entitlements, such as a full set of maritime zones rather than a single territorial sea delimitation of 12 nautical miles. However, certain conditions must be met in order for an island to be recognized as such under international law.

In this case, Itu Aba’s capacity to sustain human habitation or economic life under Article 121(3) has been brought into question. However, historical evidence supports that it satisfies both requirements; thus, Article 121(3) does not seem to apply.

This dispute is complicated by the absence of both the defendant PRC (China) and the party that has had effective control over Itu Aba for the past 70 years (i.e., Taiwan) in court proceedings.

It is curious to see what decision the Court will reach in mid-2016 with regard to this matter.

- Ms Tiff Yu-Ting Lin is an ANCORS MMS-R student.
ANCORS at the Hague

In November, 2015 ANCORS Professor Clive Schofield served as an independent expert witness and gave testimony to the Arbitration Tribunal in the case between the Republic of the Philippines and the People’s Republic of China in the Hague. The case was brought by the Philippines under the terms of Annex VII of the United Nations Convention of the Law of the Sea.

Professor Schofield said: “It was a great honour to address the Arbitration Tribunal in such a high-profile case. It was a thrill for me personally to present evidence in the Great Hall of the Peace Palace in the Hague but also more than a little daunting!”

The outcome of the case could have significant repercussions for our understanding of a number of notable law of the sea issues including the role of historic rights and waters, the regime of islands, and concerning the obligations on State Parties to the Law of the Sea Convention regarding protecting and preserving the marine environment.

On the outcome of the case, Professor Schofield said: “I sincerely hope that the case will not only lead to a clearer understanding of these issues and thus the progressive development of the law of the sea but will also serve, ultimately, to assist in reducing tensions between competing claimant States in the South China Sea.”

- Professor Clive Schofield is ANCORS’ Director of Research

ANCORS in the News

ANCORS Research Fellow Dr Aurélie Delisle talks to ABC News Pacific Beat about some of the work undertaken for the ACIAR-funded community fisheries project partnership with WorldFish and the Secretariat of the Pacific Community:

Helping fishing communities to build food security in Kiribati - Pacific Beat - ABC News (Australian Broadcasting Corporation)


UOW Global Challenges: Sustaining Niue’s Seascapes

ANCORS is an active participant in UOW’s innovative Global Challenges program. The 2015 funding round saw 5 ANCORS members secure a total of $125k for a range of interdisciplinary projects.

The seed grant Sustainable Seascapes: Integrated approaches to enhancing marine and coastal governance in Niue is one such project.

Principal investigators Dr Aurélie Delisle and Brooke Campbell join SMAH’s Dr Sarah Hamlyton, SOC’s Dr Leah Gibbs, and ANCORS’ A/P Quentin Hanich to partner with ANCORS Alumnus Dr Josie Tamate, the current Director-General of the Ministry of Natural Resources in Niue.

With support from the Government of Niue, this pilot project examines the potential of participatory mapping approaches to assist in the integrated ecosystem-based management of Niue’s coastal marine environment.

The project is newly under way and trips to Niue are planned to engage and collaborate. Return of results to communities and the government is anticipated for the end of 2016.
The Right to Fish and International Law in the South China Sea:

Publication in Profile

One of the most important disputes that exist between states surrounding the South China Sea is over fishing rights, as most of the states bordering the South China Sea assert an exclusive right to fish in parts of it.

For example, the Philippines and Vietnam claim that they have an exclusive right over fisheries resources in the waters within 200 nautical miles (M) of their respective mainland coasts.

China also declares the right to exploit fisheries resources in the South China Sea, but not only in the waters within 200 M from its mainland coast and from the Paracel Islands. By using the ‘U-shaped line’, China’s claim extends beyond any possible exclusive economic zone (EEZ) limits that can be generated by its mainland and by any islands in the South China Sea over which it claims sovereignty.

China’s fishing right claim appears to be based on both EEZ entitlement and historic claim. China argues that the features in the South China Sea are entitled to a full-fledged EEZ and continental shelf as a group, but has yet to make any official declaration of the limit of its EEZ claim from the islands. Additionally, China argues that they have a form of exclusive historic rights within the waters inside the U-shaped line but beyond the maritime zones generated from the islands. However, this unusually expansive and exclusive historic claim over such a huge body of water would unlikely be agreed to by the international community.

Whether historic title can trump the provisions of UNCLOS depends on the strength of the claim to historic title. However, this uphill battle to make a justifiable historic rights claim under international law has been severely limited by the high threshold of proof set by the ICJ. Moreover, such rights have mostly become obsolete since the advent of the EEZ and continental shelf concepts.

- Leonardo Bernard is an ANCors PhD student and author of this recent journal publication. To read more, see the article in bold in the publications section.

Selected Recent Publications


Upadhyaya, S. Multilateral Maritime Security Coopera-


For more publications or to contact an author, visit the relevant profile page at [http://ancors.uow.edu.au/index.html](http://ancors.uow.edu.au/index.html)
ANCORS Aweigh: Photos From Around the World

View from a sail-powered outrigger canoe during field work in Butaritari island, Kiribati. Photo: Brooke Campbell.

Upcoming Courses and Events

**Save the Date!**

**Short Course Dates for 2016:**

**Fisheries Management:**
11 -15 April

**Law of the Sea:**
20 -24 June

**Maritime Regulation and Enforcement:**
27 June - 1July

**International Fisheries Law:**
22 –26 August

**ANCORS Courses are now available online!**

For the first time in the world you can study ocean policy and law online at UOW. Two subjects: Law of the Sea and Maritime Regulation and Enforcement, have already been successfully delivered in an online format, with others to follow.

Starting in 2016, the Master of Maritime Policy, Master of Fisheries Policy, Master of Maritime Studies, and Graduate Certificate in Maritime Studies will all be offered in an online format for both domestic and international students.

These multidisciplinary course-work-based programs have a practical focus designed to meet the mid-career development needs of maritime professionals.

All prospective students should in the first instance contact the ANCORS Postgraduate Course-work Degree Coordinator Ms Ruth Davis for further information and advice, before applying online.
Professor Martin Tsamenyi retired from the University of Wollongong at the end of 2015 after 23 years of service as a full professor.

He joined the Faculty of Law in 1993, as one of its first professorial appointments. Martin Tsamenyi initially worked within the Law School, and was Director of ANCors and its predecessor centre from 1999 through to 2013.

Martin Tsamenyi has enjoyed a distinguished academic career. He has written 7 books, edited a further 8 books, 68 book chapters and refereed journal articles, and many conference papers and presentations. He has enjoyed tremendous success with the Australian Research Council, and numerous other research schemes within Australia and overseas. He was also the Dean of Law at the University of Tasmania immediately before his present appointment to the University.

Through his research and postgraduate teaching Martin Tsamenyi has played a key role in promoting maritime policy awareness in Australia. Under Martin’s leadership, ANCors has grown from being a small Centre with one academic staff member in addition to the Director, to being the largest ocean law and policy research institute in the world, about to graduate its fiftieth research higher degree student this year.

During his more than two decades at UOW, Martin has mentored over three dozen academics, some of whom remain at ANCors, while others can be found at universities in South East Asia, Africa, Europe and North America. As such, Martin’s influence on marine affairs goes beyond his academic writing, and will be an enduring legacy in the form of the writings and influence of his many students.

Martin’s research has seen him undertake extensive work in the Asia-Pacific region, where he was the key legal adviser to both the Forum Fisheries Agency of the South Pacific (Fisheries Law Adviser 1997-1999) and to the Western Central Pacific Fisheries Commission (Legal Counsel, 2006-2013).

He has acquired a formidable reputation in this region for the legal advice that he has provided. Indeed, he has had a considerable impact here, and is without much doubt the most sought after legal expert on fisheries matters in this region in the world.

There is recent recognition of his standing beyond the Asia-Pacific with his election as the Chair for the International Commission for the Conservation of Atlantic Tunas (ICCAT) in November 2015. Putting this latest appointment in perspective, ICCAT is generally recognised to be at the crossroads, in terms of whether it can change direction and adopt a more sustainable course. To be placed in the role of its Chair is highly significant, and demonstrates the universal respect with which Martin is held internationally, far from Australia.

Martin has also been actively engaged with the United Nations and the Commonwealth Secretariat in capacity-building programs within the region and in Africa. He was also appointed by the United Nations Secretary-General to the Advisory Group of Experts to draft the “Oceans Compact” for the Rio+20 Conference.

It is a measure of the respect and trust with which Martin is viewed by regional governments that in response to Australia’s intervention in Timor Leste in 1999, all defence cooperation with Australia ceased, with the exception of the program run by Martin Tsamenyi, delivered to the Indonesian Naval Staff College (SeskoAL) – a program which is still continuing today as Australia’s longest running Defence-cooperation programme with Indonesia.

Martin’s extraordinary service to marine affairs in Australia and beyond saw him made a Member of the Order of Australia in 2012: “For service to maritime and fisheries law in the Asia-Pacific region, through the Australian National Centre for Ocean Resources and Security, and to legal education”.

Martin Tsamenyi has made a unique and outstanding contribution to the University of Wollongong for almost a quarter of a century. The ANCors team wish Martin all the best in his retirement.
Expansion of China’s Maritime Power in the Indian Ocean - Implications for India

India’s maritime strategy dilemma stems from coping with an overwhelming and diverse range of threats with the available resources of a developing economy. India is exposed to the entire range of common non-traditional threats of the 21st century including piracy and terrorist attacks from sea such as the 26 November 2008 attacks in Mumbai, as well as threats to its territorial integrity from an emergent superpower, China, and a medium power, Pakistan.

Though India is gearing up to tackle the non-traditional threats of the region as a “net security provider” it seems to be unprepared for the impending large scale expansion of China’s maritime power and economic and political influence in the Indian Ocean.

It is true that India’s centrality in the Indian Ocean region bestows upon it immense geostrategic heft with respect to China and given the relative parity of forces along the India-China land border India’s maritime strategy seeks to leverage its geographic advantage to maintain a balance of power with China. India has also sought to hedge with the United States to counter growing Chinese influence in the region.

However, this strategy has inherent risks in the long term that include the very real possibility of a withdrawal of the United States from the Indian Ocean, hastened by declining defence budgets and changing political priorities.

It is likely that the expanding Chinese influence in the Indian Ocean could seriously challenge India’s geostrategic advantage in the near future and perhaps India can no longer take for granted its strategic location at the centre of the Indian Ocean nor the strength of its historical ties with the various regional states.

My research seeks to examine the various advances made by China in bolstering its maritime power in the Indian Ocean and to analyse the potential impact of these developments on India’s maritime power in the Indian Ocean.

Alumni Profile - Dr Yubing Shi

ANCORS alumnus Dr Yubing Shi was awarded his PhD degree in December 2014, under the supervision of Professors Robin Warner and Warwick Gullett. This degree is in complement to the Master of Transnational Crime Prevention he obtained from the then Faculty of Law at UOW in 2006.

His PhD candidature provided him with a solid foundation for his career pathway. He published three articles in leading SSCI-listed Journals before he graduated. Yubing also served as a Sessional Lecturer at the UOW School of Law, and has taught law courses with distinction. In 2014 he was granted a prestigious UOW Global Challenges PhD Scholar Award.

Dr Shi was appointed Associate Professor at the South China Sea Institute of Xiamen University in July 2015. This is the first academic institution concentrating on South China Sea issues established within a Chinese university. It was preceded by the Centre for Oceans Law established in 2002, which was also the first Centre of its kind in China.

The South China Sea Institute produces two Journals, China Oceans Law Review, and South China Sea Bulletin, and has formed a strong multidisciplinary research team comprising experts who received their PhD education from universities in Germany, France, the USA and Australia.

Early in 2015, A/P Shi was appointed as a fellow at ANCORS.
Congratulations to our 2015 Graduates

The ANCORS team congratulates our new alumni who were awarded graduate degrees by the University of Wollongong in 2015.

**Doctor of Philosophy with Examiner’s Commendation for Outstanding Thesis**
Carole Durussel
*Challenges in the Conservation of High Seas Biodiversity in the Southeast Pacific*

**Master of Maritime Policy**
Shahris Faisal Abdullah
Azrul Nezam Asri
Mahamad Nazir Darus
Duc Long Doan
Muditha Munipriya Hirimbura Gamage
Atzaullah Jehangiri
Talha Mateen
Pongsakorn Puangsuwan
Sunsearn Sadod
Philips Soria
Fajar Sumirat
Yudodi Ananta Wiguna

**Master of Maritime Studies—Research**
Lorelei Peralta
*Implications of Extended Continental Shelf Submissions in the South China Sea*

**Master of Fisheries Policy**
Felix Nwango
Kaon Tiamere
Daniel Bloom

Some of the graduating class of 2015. Photo: Ruth Davis.

ANCORS staff, students and alumni celebrate Dr Carole Durussel’s birthday, PhD graduation, and farewell all rolled into one!
Dr Chris Rahman has been promoted to Principal Fellow in the University’s annual promotion round. Congratulations Chris!

The end of 2015 marks the departure of a few ANCORS staff, students, and visitors. Former ANCORS Director Professor Martin Tsamenyi AM officially retired at the end of 2015. After working with Professor Tsamenyi on a long-term ADRAS grant in West Africa, Dr David Kirby has moved on to other professional endeavours. We wish him all the best.

Nippon Fellow Ms Fides Quintos completed her time at ANCORS in December. She is already missed!

A number of international PhD students have moved on from ANCORS, having either submitted their thesis or graduated. These include Mr Ahmad Almaududy (Dudy) Amri, Dr Carole Durussel, Ms Huey-Shian (Elly) Chung, and Ms Lorelei Peralta. Mr Shaun Lin has also recently submitted his thesis.

The second half of 2015 also welcomed new PhD students Mr Leonardo Bernard and Mr Zaki Mubarok. Welcome also to Dr Michelle Voyer, who was successfully awarded a Vice-Chancellor’s Post-Doctoral Fellowship and joins ANCORS in 2016.

Dudy also celebrates his recent marriage to Ms Maulida Hadry Sa’adillah. The wedding was held in Indonesia in early January 2016. Congratulations Dudy and Maulida!