

# Insight Israel

Monash Academics undertake study tour of holy lands

By Sarah Joseph

For eight days in early December, 19 Castan Centre members and colleagues undertook a study tour of Israel, learning about social, political and cultural aspects of the country, including of course human rights issues. The tour was organised by Deputy Director Melissa Castan, in conjunction with the Australia-Israel Chamber of Commerce, with the kind assistance of Mr Marcus Mandie in Australia, and Mr Paul Israel, in Israel.

The packed itinerary took in numerous talks and sites in Jerusalem, Tel Aviv and Haifa. The group was briefed by many high profile speakers, including Justice Salim Joubran (the first Arab to be appointed a permanent Judge on the Israeli Supreme Court), Colonel Ms Pnina Sharvit-Baruch (Head of International Law, Israel Defence Force); Daniel Seaman (Director of the Government Press Office); Jonathan Peled (advisor to the speaker of the Knesset); Ms Ronit Tirosh MK (head of the Israel-Australia Parliamentary Friendship Society), and journalists Khaled Abu Toameh (Palestinian Affairs correspondent, Jerusalem Post) and Ehud Ya'ari (Israel Channel 2, also CNN). Presentations were received from the Association for Civil Rights (Israel's largest human rights NGO), B'Tselem (an NGO focusing on human rights in the West Bank and Gaza), Rabbis for Human Rights, Palestinian Media Watch (a group focusing on Palestinian media portrayals of Israel), the Yitzhak Rabin Centre for Israel Studies (dedicated to following up the work of the late Prime Minister), and the Peres Center for Peace (an organisation dedicated to promoting peace and friendship between Palestinians and Israeli communities). The group also heard from Arnold Roth, father of the late Malki Roth, killed in a suicide bombing, as well as numerous academics at the Hebrew University of Jerusalem, Tel Aviv University, Bar-Ilan University (Tel Aviv), and Haifa University. It also undertook tours of the Knesset, the Supreme Court, and the ANZAC

cemetery in Jerusalem. And, unforgettably, visited the Yad-Vashem Holocaust Museum. In all the group heard from 49 speakers over 7 days, making it an intense experience.

The group appreciated an excellent sampling of Israeli cuisine and was introduced to Jewish culture with a Hannukah dinner at a private home, and a traditional shabat celebration. The Western Wall, including the tunnels underneath, the Church of the Holy Sepulchre and the Stations of the Cross were toured, under the inspired leadership of our wonderful tour guide, Zev. The Australian ambassador to Israel, Mr James Larson, kindly hosted the group for an evening. On the Sabbath, the group rested, and undertook a trip to the ruined fortifications at Massada, where a group of Jews made their last stand against the Romans (where I found out that my beloved North Melbourne Football Club was making its last stand in Melbourne) and Zev enthralled us with tales of Herod, followed by a float in the Dead Sea: this was a timely diversion from the serious complexities of issues in Israel today. The group also visited the famous Bahai gardens and the Bab (Bahai temple) in Haifa on the tour's last day.

Israel is a country facing numerous human rights issues. One would be foolish to assume that the Israel/Palestine conflict is the only major human rights issue in Israel. Other problems which were examined on the tour included (non-Palestinian) refugees, the treatment of the Bedouin minorities, freedom of the press, and assistance for homeless youth and victims of domestic violence. Other political issues which arose included Israel's relationship (for want of a better word) with Iran, the process of ongoing constitutional reform, and the role of Israel's Supreme Court. Uniquely, that Court hears petitions directly from citizens on public issues without the petitioner having to establish standing. It hears about 12,000 cases a year! (our High Court hears about 60 per year).

Of course, the Palestine/Israel issue had a tendency to over-



The study group enjoying a lighter moment at the Church of the Holy Sepulchre in Jerusalem



Group members reflect upon their day with Bessem Eid, Palestinian Human Rights Monitor Group (second from left)



Sarah Joseph at the wall

shadow other topics. The tour did not take in the West Bank or Gaza: such a tour cannot be organised because of current warnings from the Australian Department of Foreign Affairs and Trade. Some members of the group did however cross into Bethlehem for an afternoon, while others visited various sites in the West Bank (including Birzeit University in Ramallah and Al Haq, a human rights organisation based in Ramallah) after the tour, including the controversial settlements. The group heard numerous presentations from pro-Israel and anti-Israel perspectives (though such characterisations are often simplistic), including challenging presentations on unique issues such as targeted killing and the infamous Wall.

Regardless of the view each participant arrived with and the view each left with, all participants are now better informed of the dimensions and intricacies of so many of the issues under debate in the Middle East, having been briefed by high quality speakers with 'on the ground' experience. All presentations incorporated considerable question time, and the views of presenters were frequently challenged. Furthermore, all participants are more familiar with important background facets of Israel, such as its history, culture and politics, which add crucial context to the situation in Israel today. Most of all, the tour was a unique and invaluable opportunity to reinforce what it is to be an academic – that is listening to different views, sifting through them, debating them (even amongst each other), and questioning one's own assumptions. If only we always had the time and space to do that.

## Canadian Expert Speaks on Indigenous Rights

By Michael Kalenderian

Poor weather did not stop more than 100 people from attending Professor Brad Morse's public lecture at the Monash University Law Chambers in October entitled "Is the Common Law still relevant for Indigenous Australia? A Canadian perspective".

Professor Morse (pictured below, with Deputy Director Melissa Castan), from the University of Ottawa, began by noting the similarities between Canada and Australia, both being of "the common law realm", having similarly sized populations and economies and having been "settled despite an Indigenous population that were the owners of the land and again, and in large part, settled through ignoring their presence". Professor Morse then outlined why the common law was still relevant in Australia despite the existence of the *Native Title Act*. Such an issue, Professor Morse said, arose in particular circumstances.

The first issue is compensation claims in relation to events that occurred before the creation of the *Racial Discrimination Act* in 1975. In such a case, the Professor noted, governmental actions that occurred before 1975 would not enable a compensation claim to be pursued under the *Native Title Act*, so "the only avenue available would be pursuing them in the context of the common law".

The second circumstance is where the tests from the *Native Title Act* could not be fulfilled, be it due to governmental actions or from the transformation of a traditional society, making it "impossible to prove that traditional laws and customs are still functional".

A third circumstance mentioned was where non-Australians "may wish to assert interests in relation to Australian territory", such as where Papuans have sought to "assert their interests as traditional owners as a result of the Torres Strait Island regional claim".

Professor Morse's talk was a useful reminder to lawyers that developments in native title law over the last 15 years have not completely overridden the common law.

*Professor Morse's paper is available on our website.*

