



Australian and New Zealand  
Society of International Law

anzsil newsletter

Welcome to the May edition of the ANZSIL newsletter.

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## News in brief

\*\*\* 2010 Annual Conference - 24-26 June - Canberra \*\*\*

## From the Editors

This is the pre-conference issue of the ANZSIL Newsletter, which provides a snapshot of some of the many activities in which ANZSIL and ANZSIL members have participated since our last bulletin.

If you have any items to contribute to the next newsletter, which will be issued following the conference, please get in touch with us. We are as always especially interested in receiving contributions to the Personalia section.

We extend our particular thanks to the New Zealand and Australian governments for their major contribution to the newsletter in providing updates on recent practice in international law.

[Dr Sarah McCosker](#) and [Dr Tim Stephens](#)

## From the President

### Annual conference

Preparations for this year's conference are now well advanced, so I encourage all members to register as soon as possible and take advantage of the early bird registration rates (closing 24 May 2010). Further details about the conference appear below.

### International Economic Law Interest Group

The ANZSIL Council has endorsed the establishment of an International Economic Law Interest Group in response to a proposal put forward by a number of members with a particular interest in this area. The IEL Interest Group will have its first meeting at the ANZSIL Conference, at lunch time on 24 June 2010. Thanks to Brett Williams, Luke Nottage and Meredith Lewis for proposing this initiative.

### Joint ANZSIL-Indian Society of International Law conference

This newsletter contains a report on the successful joint meeting between the Indian Society and ANZSIL held in December 2009. Many thanks to Hilary Charlesworth for her role in organising this meeting, which we hope will be the first of a number of activities with international law colleagues in India and other societies in the region. We hope to have some of the papers available on the ANZSIL website shortly.

### Jessup mooters

Congratulations to all the teams who participated in the Australian rounds of the Jessup Competition in Canberra in February 2010, and in particular the Australian winners, the University of Western Australia, and runners up, the Australian National University. ANZSIL Vice-President Henry Burmester sat on the bench for the grand-final. In the International Rounds held in Washington, the ANU team came through the competition as overall winners, defeating a team from Columbia University Law School in the final; UWA made it to the quarter-final rounds. This continues the strong showing by Australian teams in the competition, with 9 winners and 7 runners up since 1979 (second only to the USA).

### International Law Library on WorldLII

Members may wish to (re)visit the International Law Library being developed by the World Legal Information Institute (WorldLII, [www.worldlii.org](http://www.worldlii.org) <<http://www.worldlii.org>> ). WorldLII (which developed from AUSTLII) continues to expand its databases of primary and secondary international law material, as part of an ARC-funded Linkage Infrastructure and Equipment Fund project in which a number of ANZSIL members and their law schools are participating. It is one of the few (and perhaps the only free) website where the decisions of a wide range of international courts and tribunals can be searched at the one time; a searchable League of Nations Treaty Series database will shortly be supplemented by a range of other sources of this sort. The International Law Library is at <http://www.worldlii.org/int/special/ihl/>

### **ERA exercise**

Those members working in Australian universities will be aware of the Government's Excellence in Research in Australia (ERA) exercise and the journal ranking that has been part of that process. At a very early stage (in 2008) ANZSIL expressed its concern about the ranking of journals and its implications, and indeed the ranking process and its results have given rise to serious concerns. The procedure followed in setting final rankings in late 2009/early 2010 and some of the changes made to the earlier rankings supported by the Council of Australian Law Deans and adopted in the ARC's own 2009 Humanities and Creative Arts trial, have produced quite anomalous results (including significant downgrading of the Australian Yearbook of International Law). Despite requests from a number of parties for clarification of the decisions involved, the ARC has so far been unwilling to provide any satisfactory explanation. Members may wish to consult the final list of journal rankings on the ARC website ([http://www.arc.gov.au/era/era\\_journal\\_list.htm](http://www.arc.gov.au/era/era_journal_list.htm)).

Professor Andrew Byrnes, ANZSIL President

## **2010 Annual Conference**

### **Register Now for the 18th Annual ANZSIL Conference**

[International Law in the Second Decade of the 21st Century: Back to the Future or Business as Usual?](#)

Date: Thursday 24 June - Saturday 26 June (finishing at 1.15pm)

Venue: University House, The Australian National University, Canberra

Discounted Early-bird registration rates are available until 24 May.

Recent years have seen important developments in international politics and international law: the settling into office of the Obama Administration in the United States, the Global Financial Crisis, and the challenges of reaching global agreement on how to respond to climate change. While some of these developments underline that international law often reflects rather than drives important political and social developments, others represent a return to a more positive and optimistic view towards the possibilities of international law and its importance as a guide for political action. There has been a tendency in recent years to see international law and its institutions as in crisis, or to despair at the disregard for international law displayed by leading nations, rather than focusing on the role it plays in providing frameworks for important political and economic developments and for the everyday interactions of States and their citizens.

Distinguished Guest Speakers Include:

- \* Dame Silvia Cartwright, Judge of the Trial Chamber, Extraordinary Chambers in the Courts of Cambodia for the prosecution of crimes committed during the period of democratic Kampuchea
- \* The Hon Robert McClelland MP, Commonwealth Attorney-General of Australia
- \* Dr Sanjay Chaturvedi, Coordinator, Centre for the Study of Geopolitics, Department of Political Science and Honorary Director, Centre for the Study of Mid-west and Central Asia, at Panjab University, Chandigarh
- \* Professor Don McRae, Hyman Soloway Chair in Business and Trade Law, University of Ottawa and Member International Law Commission.

[Further information about the Conference Program and how to Register.](#)

## Australian Practice

### **Australia beginning preparations for its Universal Periodic Review appearance**

Australia's first Universal Periodic Review is scheduled to be held in early 2011 in Geneva. The Universal Periodic Review is a new process undertaken by the United Nations Human Rights Council. It involves review of the human rights records of all 192 Member States once every four years. The ultimate aim of the review is to improve the human rights situation in all countries and address human rights violations wherever they occur. The Universal Periodic Review is different from existing treaty body mechanisms because it involves review of a state by other states (peer review), rather than by a committee of experts. It also covers all human rights related issues, rather than being linked to a particular international human rights treaty.

Each Member State under review must produce a 20 page National Report which is submitted to the Human Rights Council prior to the review. Member States are encouraged to prepare the report through a broad consultation process at the national level with all relevant stakeholders. The Attorney-General's Department is coordinating preparation of the Australian Government's National Report. It has already sought initial views from non-government organisations and members of the public on the issues that should be addressed in the National Report. There will also be a formal period of public consultation at a later stage, during which non-government organisations and other members of the public will be invited to provide their comments on the draft report.

### **The passage of the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Bill**

The Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act was passed by the Australian Parliament on 11 March 2010 and commenced on 14 April 2010. The Act contains two key measures. First, it amends the Commonwealth Criminal Code to enact a Commonwealth offence of torture, which will criminalise acts of torture committed both within and outside Australia. The offence will operate concurrently with existing offences in State and Territory criminal laws. Second, the Act amends the Commonwealth Death Penalty Abolition Act 1973 to extend the application of the current prohibition on the death penalty to State laws, to ensure the death penalty cannot be reintroduced anywhere in Australia. This legislation ensures that Australia complies fully with its international obligations to criminalise torture, and demonstrates its commitment to the worldwide movement to abolish the death penalty.

### **Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court**

The Eighth Session of the Assembly of States Parties (ASP) to the Rome Statute of the International Criminal Court (ICC) took place on 18-26 November 2009 in The Hague. A resumed session took place on 22-25 March 2010 in New York. During the Eighth Session, States Parties continued negotiations on the draft provisions on the crime of aggression. States Parties also considered other proposals to add further crimes to the Rome Statute, including several new war crimes (extending the Court's jurisdiction over the use of certain weapons to situations of non-international armed conflict), terrorism, a nuclear weapons offence and drug-trafficking offences.

Negotiations on the crime of aggression have continued in the ASP since the conclusion of the work of the Special Working Group on the Crime of Aggression in February 2009. Discussions at the resumed Eighth Session concentrated on the two outstanding issues of State consent to the amendments as a pre-requisite for their entry into force, and the role of the Security Council in activating the ICC's jurisdiction over the crime of aggression. States Parties continued to work towards bridging divergent views on these two issues.

Draft amendments on the crime of aggression have been referred to the inaugural Review Conference of the ICC, scheduled to take place from 31 May-11 June 2010 in Kampala, Uganda. Article 5 of the Statute foreshadows that the Court will be able to exercise jurisdiction over the crime of aggression once a provision is adopted defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to the crime. The Review Conference will be the first opportunity for States Parties to amend the Rome Statute.

In addition to the crime of aggression amendments, one other amendment proposal was referred by States for consideration at the Review Conference. This was a proposal by Belgium to extend the ICC's jurisdiction over the war crimes of using

poison or poison weapons, poisonous or asphyxiating gases and bullets which expand or flatten easily in the human body. Currently the ICC has jurisdiction over the use of such weapons in international armed conflicts but it is proposed to extend this to non-international armed conflicts. The other amendments that had been proposed ahead of the Eighth Session have been referred to an ASP Working Group to be established at the Ninth Session of the ASP for further consideration.

### **Launch of Australia's Human Rights Framework**

On 21 April 2010 the Australian Government launched Australia's Human Rights Framework. The Framework is an outline of action the Government will take to promote and protect human rights in Australia. At the launch of the framework, the Attorney-General acknowledged efforts put into producing the report of the National Human Rights Consultation Committee that was provided to the Government in September 2009. The Framework complements a number of actions the Government is already taking to encourage greater inclusion and participation in our community. Specifically, the Framework outlines a number of key commitments, including:

- investing over \$12 million in a comprehensive suite of education initiatives to promote a greater understanding of human rights across the community;
- establishing a new Parliamentary Joint Committee on Human Rights to provide greater scrutiny of legislation for compliance with our international human rights obligations;
- requiring that each new Bill introduced into Parliament is accompanied by a statement of compatibility with our international human rights obligations;
- combining federal anti-discrimination laws into a single Act to remove unnecessary regulatory overlap and make the system more user-friendly; and
- creating an annual non-government organisation Human Rights Forum to enable comprehensive engagement with non-government organisations on human rights matters.

### **Report of UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people**

As reported on in our last newsletter, Professor James Anaya, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, undertook a country visit to Australia from 17-28 August. The purpose of the visit was to make recommendations on how the human rights situation of Indigenous Australians could be improved, and to find examples of good practices that could be recommended to other countries. Professor Anaya met Indigenous leaders and communities and NGOs in Canberra, Adelaide, Perth, Alice Springs, Darwin, Groote Eylandt, Cairns and Sydney and met with Ministers, Members of Parliament and Government officials. Following the release of his preliminary report dated 24 September 2009, an advance version of the Special Rapporteur's report, which will be officially tabled at the UN Human Rights Council, was publicly released on 24 February. The report is available at:  
<http://www2.ohchr.org/english/issues/indigenous/rapporteur/>.

### **Amicus brief to the US Supreme Court in Morrison v National Australia Bank**

*... this case is Australian plaintiff, Australian defendant, shares purchased in Australia. It has "Australia" written all over it. – Justice Ginsburg, US Supreme Court, 29 March 2010*

On 26 February 2010, the Australian Government filed an amicus curiae brief with the US Supreme Court in the case of Morrison v National Australia Bank. This case was brought by Australian shareholders against the National Australia Bank (NAB) in the US District Court under the securities fraud provisions of the US Securities Exchange Act 1934, alleging that NAB made false and misleading statements about the strength of the financial position of a US-based subsidiary (Homeside Lending) involved in the mortgage market. NAB argued that the Court did not have jurisdiction because the case lacked a sufficient nexus to the United States. The US District Court and the 2nd Circuit Court of Appeals ruled against the plaintiffs. The plaintiffs sought to appeal to the Supreme Court, which accepted the case.

The Australian Government amicus brief addressed legal and regulatory policy concerns regarding the extraterritorial reach of US courts' jurisdiction over securities claims brought by non-US citizens against non-US companies, in situations with only limited connection to the United States. The brief outlined Australia's comprehensive legislative regime for securities market regulation, which provides civil remedies for

injured plaintiffs in cases where there is an appropriate nexus between the securities issuer and Australia. The brief also invited the US Supreme Court to apply international law principles of civil jurisdiction and comity, in order to avoid unnecessary conflicts of sovereignty and minimise the risk of undermining effective securities regulation in other countries. The brief addressed jurisdictional issues only, and did not take any position on the merits of the case. Amicus briefs were also filed by the US Solicitor General, the Governments of France and the United Kingdom, and other interested parties.

The Supreme Court heard oral argument in the case on 29 March 2010. A judgment is expected by the end of June 2010. The transcript of the Supreme Court hearing can be accessed at: [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/08-1191.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/08-1191.pdf).

### **Trans-Pacific Partnership Agreement (TPP) negotiations commence**

On 20 November 2008 in the margins of the APEC Ministerial Meeting in Lima, Peru, the Trade Minister, Mr Crean, announced that Australia would participate in negotiations towards a Trans-Pacific Partnership Agreement (TPP). The TPP will expand on the current Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand and Singapore, which entered into force in 2006. The United States, Peru and Vietnam will also participate in the TPP negotiations.

Australia hosted the first round of TPP negotiations in Melbourne on 15-19 March 2010 – it was a productive round which got the negotiations off to a strong start. The next round of negotiations is scheduled for the week beginning 14 June 2010 in the United States.

## **New Zealand Practice**

### **Terrorist designations**

On 10 February 2010, New Zealand Prime Minister John Key announced the designation of four international terrorist groups under the Terrorism Suppression Act 2002. The groups are Somalia-based Al Shabaab, Euskadi Ta Askatasuna (ETA) in Spain, the Kurdistan Workers Party (PKK) in Turkey, and the Fuerzas Armadas Revolucionarias de Colombia (FARC) of Colombia. These groups have not been listed by the Security Council of the United Nations, but have been designated by a number of other countries under their own national procedures. This was the first time that New Zealand has designated entities not listed by the United Nations. The designations were made in accordance with the process contained in the Terrorism Suppression Act, and reflect New Zealand's international obligations under Security Council Resolution 1373 to prevent the activities of terrorists. As a result of the designations, any assets held by the groups and found in New Zealand are frozen and it is a criminal offence to deal with their property or make property and financial services available to them.

### **New Zealand's Fifth Periodic Report under the International Covenant on Civil and Political Rights**

The Minister of Justice, Simon Power, presented New Zealand's Fifth Periodic Report under the International Covenant on Civil and Political Rights to the Human Rights Committee in New York on the 16th of March. He headed New Zealand's delegation, which included New Zealand's Permanent Representative to the United Nations, Jim McClay, as well as officials from the Ministry of Justice, the Ministry of Foreign Affairs and Trade, the Crown Law Office, the Department of Corrections, and the Department of Labour.

Mr Power made an opening statement that addressed New Zealand's recent human rights record, the challenges facing New Zealand, and some of the Government's initiatives to assist vulnerable New Zealanders. He then addressed specific questions from members of the Human Rights Committee. The Covenant is the principal international human rights treaty affirming fundamental civil and political rights. New Zealand is required to report periodically on how the Covenant obligations are being implemented domestically. New Zealand submitted its Fifth Periodic Report to the Human Rights Committee in December 2007. The presentation of that report was the culmination of an iterative reporting process, during which the committee considered the report and posed written questions. The committee has now also released its

concluding observations to New Zealand.

### **New Zealand declares its support for the United Nations Declaration on the Rights of Indigenous Peoples**

On the 20th of April New Zealand announced its support for the United Nations Declaration on the Rights of Indigenous Peoples. The Decision was conveyed in a statement delivered by the Minister of Maori Affairs, Dr Pita Sharples, to the United Nations Indigenous Forum in New York. This was followed by an announcement in Parliament by the Minister of Justice, Simon Power. The Declaration was adopted by the United Nations General Assembly on 13 September 2007 by 143 votes to four with 11 abstentions. The Declaration was the product of over 20 years of negotiations in the Working Group on Indigenous Populations established by the Commission on Human Rights.

New Zealand's statement in support of the declaration acknowledges that Maori hold a special status as tangata whenua, the indigenous people of New Zealand and have an interest in all policy and legislative matters; affirms New Zealand's commitment to the common objectives of the declaration and the Treaty of Waitangi; and reaffirms the legal and constitutional frameworks that underpin New Zealand's legal system, noting that those existing frameworks define the bounds of New Zealand's engagement with the declaration.

### **Convention on Cluster Munitions**

The Convention on Cluster Munitions which was signed in 2008 will enter into force on 1 August this year after Moldova became the 30th country to ratify the Convention. New Zealand was the 25th country to ratify the Convention in December 2009. The Convention is implemented in New Zealand through the Cluster Munitions Prohibition Act 2009 which was passed in to law on 17 December 2009. A copy of the Act is available at [www.legislation.govt.nz/act/public/2009/0068/latest/DLM2171615.html](http://www.legislation.govt.nz/act/public/2009/0068/latest/DLM2171615.html).

The Convention bans the use, development, production and stockpiling of cluster munitions. New Zealand will participate in the first meeting of States Parties to be held in Laos later this year.

### **Regional Fisheries Management Organisations**

New Zealand continues to be actively engaged in a number of regional fisheries management organisations. The sixth annual meeting of Western Central Pacific Fisheries Commission in December 2009 was focused on consolidation following the major decisions taken the previous year. A range of technical measures were agreed by the Commission, including measures regulating the transshipment of fish at sea, access to data, catch retention, the registration of carrier and bunker vessels, the role of charter vessels and the treatment of stateless vessels. New Zealand's support for Pacific Island countries tackling Illegal, Unreported and Unregulated (IUU) fishing led to settlements being reached with Tokelau and the Cook Islands to address IUU fishing incidents by the flag states of the vessels involved.

At the last meeting of the Commission for the Conservation of Southern Bluefin Tuna in October, members agreed to a 20% reduction in the global total allowable catch of Southern Bluefin Tuna. With the latest scientific advice showing that Southern Bluefin Tuna spawning stock was at a critically low level, this was a crucial decision to assist in the re-building of the stock. A package of measures was also agreed to better ensure members' compliance with their reduced catch allocations, including action plans to improve monitoring and verification of catches. A strategic plan for the management of the fishery (originally drafted by New Zealand) is now close to conclusion. New Zealand is also working with other Commission members and cooperating non-members to finalise a re-building strategy for managing the SBT stock.

The annual meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) in November last year saw the designation of the first ever high seas Marine Protected Area (MPA) in the Convention area. New Zealand has been working toward the establishment of high seas MPAs in the Convention area for many years and see this new Marine Protected Area, which was proposed by the United Kingdom around the South Orkney Islands and covers an area of approximately 94,000 square kilometres, is an encouraging step. New Zealand's initiative to introduce daily reporting for fishing vessels was also successful, which will enable the CCAMLR Secretariat to predict more accurately the forecast of the fisheries' closure dates in order to avoid over- or under-runs of the total allowable catch limits.

## **South Pacific Regional Fisheries Management Organisation**

New Zealand hosted the eighth and final round of negotiations to establish a South Pacific Regional Fisheries Management Organisation (SPRFMO), to govern the non-highly migratory high seas fisheries of the South Pacific, in November last year. The Participants in the negotiations adopted the text of a Convention (the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean) which opened for signature on 1 February this year. New Zealand is the depositary for the Convention, and will host the Secretariat of the SPRFMO once it has been established. The first session of the Preparatory Conference for the SPRFMO Commission will be held in Auckland in July. As of 27 April 2010, five countries have signed the SPRFMO Convention: Chile, Colombia, the Cook Islands, New Zealand and Peru.

## **Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**

New Zealand was one of over 150 States Parties that participated in the 15th Meeting of the Parties to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), held in Doha Qatar from 13 - 25 April. This meeting was notable for its consideration of a number of commercial marine species listing proposals for sharks, corals and Northern Atlantic Blue Fin Tuna. Had the Atlantic tuna proposal been successful it would have set a precedent for the interaction between CITES and fisheries management organisations and would have been the first time that a major commercially exploited species was listed on Appendix 1 of the Convention, effectively banning trade. Ultimately none of the marine species listing proposals was successful, and nor were other high profile proposals regarding changes to the status of polar bears and elephants under CITES. New Zealand nevertheless helped to secure a positive result on the Resolution on Shark Conservation and Management. Negotiations on Introduction from the Sea (regulating certification for marine species caught on the high seas and transported into a State Party) are ongoing and will require further intersessional work before the next Conference of the Parties in Thailand in 2013.

## **United Nations Framework Convention on Climate Change (UNFCCC)**

New Zealand associated itself with the Copenhagen Accord which was negotiated by Leaders at the United Nations Climate Change Conference held in Copenhagen Denmark in December 2009, and which was taken note of by the Conference of the Parties to the United Nations Climate Change Framework Convention. New Zealand has also submitted information on its quantified economy wide emissions target for 2020 under the Accord - a responsibility target for greenhouse gas emissions reductions of between 10 per cent and 20 per cent below 1990 levels by 2020, subject to certain conditions. New Zealand will continue its active engagement this year in the ongoing negotiations to determine arrangements for long term cooperative action under the Convention and post 2012 arrangements under the Kyoto Protocol, which include the possibility of a new climate change treaty.

## **Convention on Biological Diversity "access and benefit-sharing" negotiations**

New Zealand participated in the latest round of "access and benefit-sharing" (ABS) negotiations under the Convention on Biological Diversity held in Cali, Colombia from 22-28 March. The negotiations are aimed at establishing a set of international rules governing access to genetic resources and ensuring that the benefits from the use of genetic resources are shared equitably and fairly with the country providing the genetic resources. The result of the latest round of negotiations was a new and streamlined draft text, which provides a better basis for negotiation than the previous unwieldy 57 page document. The new text is in the form of a draft Protocol to the Convention although agreement has yet to be reached on whether or not the rules should be legally binding. The aim is to conclude negotiations this year so that the regime can be adopted at the 10th Conference of the Parties to the Convention on Biological Diversity to be held in Japan in October. New Zealand will continue its active engagement in the ongoing negotiations. New Zealand is seeking a practical and workable set of international rules that balances the interests of users and providers of genetic resources, gives appropriate recognition to the relationship between ABS activities and traditional knowledge associated with genetic resources, and provides flexibility regarding domestic implementation.

## **New Zealand- Hong Kong, China Closer Economic Partnership Agreement**

New Zealand signed the New Zealand- Hong Kong, China Closer Economic Partnership Agreement in Hong Kong on 29 March 2010. The Agreement is Hong Kong's first free trade agreement, aside from its Closer Economic Partnership Agreement with Mainland China, and will complement New Zealand's existing free trade agreement with Mainland China.

The Agreement will enter into force once New Zealand and Hong Kong, China have advised of the completion of their internal requirements necessary for its entry into force. The text of the Agreement and an accompanying National Interest Analysis were tabled in New Zealand's Parliament on 30 March 2010.

#### **New Zealand – Gulf Cooperation Council Free Trade Agreement**

Negotiations between New Zealand and the Gulf Cooperation Council (GCC) for a Free Trade Agreement were substantively concluded in October 2009 after six rounds of negotiation.

The FTA is a significant achievement for New Zealand and secures new and improved access into some of our most important Middle East markets. Our total trade with the GCC - made up of Bahrain, Oman, Kuwait, Saudi Arabia, the UAE and Qatar - has grown by 40 percent since 2000 to be over NZ\$3 billion in the year ending December 2009. As a group, this makes the GCC our 6th largest bilateral trading partner. During the same period (2000-2009) New Zealand exports to the GCC grew by 122%. Preparations are currently underway for the signing of the FTA.

#### **Malaysia - New Zealand Free Trade Agreement**

New Zealand signed the Malaysia - New Zealand Free Trade Agreement in Kuala Lumpur, Malaysia, on 26 October 2009. The Agreement will enter into force once New Zealand and Malaysia have advised of the completion of their internal requirements necessary for entry into force of the Agreement. New Zealand's implementing legislation was tabled in Parliament on 18 March 2010 and is awaiting its First Reading..

#### **Tax Information Exchange Agreements**

In the past 6 months New Zealand has signed Agreements for the Exchange of Information Relating to Taxes with Anguilla, the Bahamas, Dominica, St Kitts and Nevis, St Vincent and the Grenadines and Turks and Caicos. Once in force, these agreements will enhance the ability of tax officials in New Zealand and its partner countries to detect and prevent tax avoidance and evasion.

#### **New Zealand – Turkey Air Services Agreement**

An Agreement between the Government of New Zealand and the Government of the Republic of Turkey relating to Air Services was signed in Ankara on 4 March 2010. The main purpose of the agreement is to remove route, capacity and code-share constraints and thereby enable further expansion of services between New Zealand and Turkey.

#### **New Zealand - Japan Science and Technology Agreement**

The Agreement between the Government of New Zealand and the Government of Japan on Cooperation in Science Technology was signed in Tokyo on 28 October 2009 and entered into force on the same day. Collaboration between Japanese and New Zealand scientists has been an important feature of the bilateral relationship for a number of decades. This Agreement will broaden the scope of New Zealand's scientific and technological collaboration with Japan. It establishes a Joint Committee to exchange information on scientific and technological policy issues, and review implementation of the Agreement.

#### **WTO Dispute Settlement processes**

##### **Australia – Apples**

In September 2007, New Zealand initiated dispute settlement proceedings in the WTO concerning phytosanitary measures applied by Australia to New Zealand apples. The final Panel hearings concluded in Geneva in July 2009. The Panel is expected to make its findings in the case public by mid-2010.

##### **WTO disputes in which New Zealand is a third party**

New Zealand involves itself as a third party in WTO dispute settlement proceedings



when it has a substantial interest in the case. This includes systemic interests New Zealand has, as an export economy, in ensuring widespread compliance with the WTO Agreements. Disputes that New Zealand has recently become involved in as a Third Party are:

**o US – Tuna**

In October 2008, Mexico requested consultations regarding the United States' refusal to allow Mexican tuna to be marketed in the US using domestic "dolphin-safe" labelling. New Zealand's third party submission is due in late April 2010, with the first panel hearing scheduled for May 2010.

**o US – Mandatory Country of Origin Labelling**

In November 2009, New Zealand reserved its right to participate as a third party in the WTO dispute brought by Canada and Mexico to settle a dispute over United States' measures requiring country of origin labelling in respect of certain products, including meat products, for sale in the US.

**o EC – Poultry**

New Zealand has also reserved its right to participate as a third party in the WTO dispute brought by the US regarding EU measures requiring pathogen-reduction treatment for imported poultry.

## Recent Joint Activity Between New Zealand and Australia

### **Agreement Establishing the ASEAN – Australia-New Zealand – Free Trade Area**

The Agreement Establishing the ASEAN - Australia-New Zealand – Free Trade Area (AANZFTA) entered into force for New Zealand, Australia, Brunei, Myanmar, the Philippines, Singapore, Viet Nam and Malaysia on 1 January 2010, and for Thailand on 12 March 2010. The AANZFTA will enter into force for the remaining ASEAN member states once they have completed their domestic processes for entry into force. This Agreement is the first time that ASEAN has negotiated a comprehensive free trade agreement as part of a 'single undertaking' which, as well as Goods, Services and Investment commitments, includes areas such as Sanitary and Phytosanitary measures, Competition Policy and Intellectual Property.

### **New Zealand – Australia Double Tax Agreement**

The Convention between New Zealand and Australia for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion entered into force on 19 March 2010, replacing the previous New Zealand – Australia Double Tax Agreement of 1995. The Agreement recognises the already close business relationship between Australia and New Zealand and the update of tax arrangements between the two countries will help to further reduce barriers to trade and investment.

### **Amendment to the Agreement between New Zealand and Australia Concerning a Joint Food Standards System**

New Zealand and Australia exchanged letters to amend the Agreement Concerning a Joint Food Standards System (the "Food Treaty") in March 2010. The amendments clarify the process for undertaking modifications to joint food standards, separate standards, temporary standards, and for opting out of joint food standards. The Amendments to the Food Treaty will enter into force once New Zealand and Australia have advised each other of the completion of the necessary internal requirements.

## Internship Report - Emma Dunlop

Under its internship support program, ANZSIL provides financial support for unpaid internships with International Organizations and NGOs. Here we are delighted to provide the report from our intern Emma Dunlop, who worked at the Extraordinary Chambers of the Courts of Cambodia in Phnom Penh.

From October to December 2009 I was given the opportunity to work within the Trial Chamber of the Extraordinary Chambers of the Courts of Cambodia (the ECCC). The ECCC is responsible for prosecuting leaders of the Khmer Rouge regime, which killed more than 1.7 million Cambodians. As a Trial Chamber intern I worked primarily on the trial of Kaing Guek Eav, alias Duch, the former chief of the prison and torture centre S-

21. Duch is charged with Crimes Against Humanity and Grave Breaches of the Geneva Conventions, as well as Homicide and Torture under the Cambodian Penal Code. The judgment in the Duch case is due to be passed down in 2010.

Work within the judicial chambers was both stimulating and challenging. The greffiers were keen to introduce interns to many aspects of the Trial Chamber's work. My primary workload consisted of legal research projects underpinning the Crimes Against Humanity and Grave Breaches of the Geneva Conventions sections of the judgment. In particular I researched legal and factual issues surrounding acts of extermination, murder, enslavement, imprisonment, and torture. I was also involved in the maintenance of judicial databases that brought together all factual evidence from the case file and the hearings. This work was invaluable in teaching me how to operate key databases within international criminal tribunals, such as Case Map and Zylab.

In addition, I had the opportunity to attend judicial conferences and the closing statements of the trial. It was during the week of closing statements that I felt most keenly the ECCC's role within Cambodian society. The 600-person public gallery was full for every day of the closing statements. While foreign journalists took up many seats, the vast majority of observers were Cambodian – new groups of school students attended each day, and a contingent of nuns and monks sat in the front row throughout the week.

The Court's capacity to act as a catalyst for public debate and discussion around Cambodia's past was highlighted by the strong interest of the community in the trial. The attention given to the ECCC in local newspapers and by NGOs has been a major breakthrough in encouraging open dialogue regarding the Khmer Rouge period.

While work within the Trial Chamber was challenging, the environment of the ECCC was vibrant. The Court operates in Khmer, French, and English, and UN staff members are drawn from over 40 countries. The holistic experience of working within the ECCC gave me a deeper understanding of both the diplomatic and legal aspects of international tribunals. It also imbued me with a great admiration for judicial officers working in the area of international criminal law. To use my legal education to assist in the work of the Extraordinary Chambers has been a rare privilege. I am extremely grateful to ANZSIL for giving me the support to enable me to undertake this placement.

## Internship Report - Will Underwood

United Nations Security Council Secretariat, New York

I think what struck me most when I first arrived at UN Headquarters in New York were the contrasts. A rather dilapidated 1950s construction on prime East River real estate, the New York home of the UN Secretariat – UNHQ – continues to house some of the foremost institutions of the international legal order. Here international civil servants, as in so many other professions, ascend in lifts coffee and muffin in hand, yet their daily tasks relate not to drafting contracts or to acquiring corporations but rather to preventing civil war, halting the spread of WMDs, and ending impunity for genocide. From my small cubicle on the thirty-first floor I would hear conversations – often in French, Spanish, German or a combination of the three – such as “I'm in Beirut on Friday but call me from Liberia and I'm sure we can work something out.” It all seemed both so normal and yet so amazingly surreal.

I felt much the same sensation throughout my four-month internship with the Security Council Al-Qaida and Taliban Sanctions Committee (1267 Committee) Secretariat. As a subsidiary organ of the Security Council, the 1267 Committee is comprised of all Council members, its role being to assist in the prevention of terrorism by identifying individuals and organisations associated with Al Qaida and the Taliban. Those deemed to meet such criteria are added to the Committee's Consolidated List and thereafter subject to a number of sanctions measures including an assets freeze, arms embargo and travel ban.

My role involved a number of aspects. I regularly assisted with the receipt of diplomatic correspondence and the preparation of responses on behalf of the 1267 Committee. I was charged with updating the Secretariat's databases following the approval of requests to add or remove names from the Consolidated List. I was also asked to attend, take minutes during, and prepare the official records of, all 1267 Committee meetings. This particular task gave me the rare honour of sitting-in on 'closed' Security Council committee meetings and hearing the various countries' positions on matters of international security.

During such occasions it was particularly interesting to witness the often rather predictable stances adopted by the members of the Council. In this respect some might say that little has changed, at least since the end of the Cold War if not since 1945. The topic of Security Council reform, while little discussed at the Council itself during my time in New York, remained a significant agenda item during meetings the interns arranged with the various missions to the UN. Overall one got the impression that – at least in New York – it is the member states themselves, and in particular the P5 in the Council – that control the success or otherwise of the UN. Nevertheless, I left New York convinced that when states gave the UN their full support, the organisation could be quite effective. Despite some fears to the contrary my faith in multilateralism, though admittedly never absolute, was certainly left intact.

In order to ensure domestic government agencies have access to the latest information, the 1267 Committee Secretariat works with INTERPOL to disseminate information regarding listed individuals and entities. I therefore spent a significant amount of my time working on matters relating to Security Council-INTERPOL cooperation. Primarily this involved working to ensure all entries on both the UN's and INTERPOL's databases were consistent and up-to-date. I was also, however, lucky enough to have the opportunity to review and comment on a newly drafted agreement extending cooperation between the two organisations.

Importantly, another of my chief tasks was to assist in the ongoing review of all entries on the Consolidated List. The process, set out under Security Council resolution 1822 involved communicating with all states which had either proposed a listing, or were the current location of a listed individual or entity, in order to ascertain whether they considered the listing to remain 'appropriate'. If one or more countries did not so consider, a delisting request could be put before the 1267 Committee. For a student of human rights law, the task had a particular relevance, for those placed on the Consolidated List, have, at least until very recently, enjoyed few alternate means of review. Indeed it was this lack of due process that was most famously criticised by the European Court of Justice (ECJ) in its 2008 Kadi decision.

While I was in New York the European Court of First Instance (ECFI), the ECJ's inferior court, handed down its judgment in Othman. Largely following Kadi, the ECFI held that EU states were not automatically absolved from their European human rights duties by the existence of seemingly incompatible Security Council obligations. At UNHQ the tension was palpable. Several UN member states, faced with the catch-22 of being seen either to be in violation of human rights law or to be in breach of Security Council obligations increased pressure on the Security Council to engage in reform.

Not long after I left New York, the Security Council acted to create an ombudsman's office with the power to receive requests for review. It remains to be seen whether this new procedure will address the due process concerns of courts such as the ECJ. Nevertheless, looking back on my time at UNHQ I can't help but feel it was spent during a significant moment in the history of sanctions, as the Security Council moves progressively towards greater accountability and due process. It was a privilege to have had the opportunity to witness this first hand.

Aside from the work in which I was involved, one of the greatest highlights of my time in New York was the opportunity to meet and associate with so many interesting and influential people. UNHQ is not only a magnet for international luminaries but also often a great leveller of nationality and status. I had the opportunity to meet, amongst others, the UN Secretary-General, Ban Ki-Moon, the Chief Prosecutor of the International Criminal Court, Luis Moreno-Ocampo, former Australian Minister for Foreign Affairs, Gareth Evans, prominent human rights lawyer Geoffrey Robertson, as well as many ambassadors, mission heads, and senior UN staff. During the final week of my internship, the annual opening of the General Assembly was held and as is customary, heads of state from around the world flew in to attend. Within a few days I was lucky enough to have spotted Presidents Barack Obama, Nicolas Sarkozy, Hugo Chavez, Evo Morales and Meles Zenawi.

Overall I thoroughly enjoyed my internship experience. Not only did it give me a rare insight into the world of multilateral law and decision-making but it provided me with many fond memories I will undoubtedly treasure for the years to come.

## **Australia-India Dialogue on International Law**

ANZSIL and the Indian Society of International Law held a successful and productive joint meeting in New Delhi on 5-6 December last year. This was the first event to

engage international lawyers from the Antipodes and the sub-continent and we hope it will be repeated. Many senior Indian international lawyers have very fond memories of Julius Stone, who taught at Jawaharlal Nehru University in the 1960s and influenced a generation of jurists there.

The Dialogue was held at ISIL's impressive building in the centre of Delhi. The top floors of the building are occupied by lawyers from the Ministry of External Affairs, leading to a fruitful continuous interaction between scholars and practitioners. December in Delhi is perfect, with crisp evenings and sunny days.

Professor R.P. Anand, the doyen of Indian international lawyers, opened the conference, together with Dr Lachlan Strahan, the Deputy Australian High Commissioner. Other eminent Indian jurists participating included Professor Ved P. Nanda of Denver Law School, Dr P.S.Rao, the former Legal Advisor to the Indian Ministry of External Affairs and former President of the International Law Commission, Professor Yogesh Tyagi of JNU and Professor Manoj Kumar Sinha of WB National University of Juridical Sciences in Kolkata.. The Australian and New Zealand participants were Petra Butler (VUW), Hilary Charlesworth (ANU), Ben Clarke (Notre Dame), Kate Eastman (Sydney Bar), Anne Orford (Melbourne), Usha Natarajan (ANU/McGill), Kishan Koday (UNDP) and Udara Jayasinghe (ANU).

Panel sessions covered climate change, terrorism, human rights, humanitarian law and international trade law. Some of the papers will be available on the ANZSIL website.

We were overwhelmed by the gracious hospitality of our Indian hosts. We enjoyed some wonderful meals and many lively conversations with them and look forward to repaying some of ISIL's kindness in a future dialogue in Australia. Our particular thanks go to Professors Manoj Kumar Sinha and Vinai Singh of ISIL who did all the hard organisational work. Thanks also to Dr Lachlan Strahan who hosted a reception at the Australian High Commission during the conference.

Click on the following links to view photos from the dialogue:

[Professor R P Anand Opening the Dialogue](#)

[The Dialogue Participants](#)

## Personalia

We congratulate [Dr Andrew Serdy](#) of the University of Southampton who in 2009 was conferred his PhD at the ANU, his thesis title being "Rights and Obligations of New Entrants into the Southern Bluefin Tuna and Other International Fisheries".

Congratulations to [Megan Davis](#), Director of the Indigenous Law Centre, Faculty of Law, UNSW, who was elected by the UN Economic and Social Council to serve on the UN Permanent Forum on Indigenous Issues for a 3-year term commencing 1 January 2011.

## Journal Calls for Papers

[The New Zealand Yearbook of International Law](#) is an annual, international refereed publication.

The Editorial Board calls for both short notes and commentaries, and longer in-depth articles, for publication in the next edition of the Yearbook. Notes and commentaries should be between 1,500 to 3,000 words. Articles may be from 6,000 to 20,000 words.

The Editorial Board seeks contributions on current topics in international law. The Board is particularly interested in receiving submissions that are relevant to New Zealand, Australasia, the Pacific, the Southern Ocean and Antarctica.

The closing date for submissions is 1 June 2010.

Submissions should be provided in English, using MSWord-compatible word processing software, and delivered by email to the General Editor at [nzyil@canterbury.ac.nz](mailto:nzyil@canterbury.ac.nz)

Contributions must be original unpublished works and submission of contributions will

be held to imply this.

Manuscripts must be word-processed and in compliance with the New Zealand Law Style Guide. The Guide is available online at <http://www.lawfoundation.org.nz/style-guide/index.html>

### **Chinese (Taiwan) Yearbook of International Law and Affairs**

The Chinese (Taiwan) Yearbook of International Law and Affairs commenced publication in 1981 and is jointly published by Cameron May and the Chinese (Taiwan) Society of International Law. The Yearbook contains contributions addressing issues in international law and international relations with a focus on Taiwan, Mainland China and the Asia Pacific.

Prospective authors interested in publishing in Volume 27 of the Yearbook should submit a manuscript on any topics in the field of international law to [csil@seed.net.tw](mailto:csil@seed.net.tw) by August 1, 2010. Authors are requested to follow Guidelines for Submissions: [http://www.csil.org.tw/cpublish/yrbktableofcontents/Submission Guidelines.pdf](http://www.csil.org.tw/cpublish/yrbktableofcontents/Submission%20Guidelines.pdf) <[http://www.csil.org.tw/cpublish/yrbktableofcontents/Submission Guidelines.pdf](http://www.csil.org.tw/cpublish/yrbktableofcontents/Submission%20Guidelines.pdf)> . Previous volumes of the Yearbook are also available on Westlaw and HeinOnline. General inquiries about the Yearbook can be directed to Pasha Hsieh, Managing Editor, at [pashahsieh@smu.edu.sg](mailto:pashahsieh@smu.edu.sg) <<mailto:pashahsieh@smu.edu.sg>> .

### **Special Issue of the Leiden Journal of International Law (2011) - Foucault and International Law (Abstracts due by 12 May 2010; Complete articles by 17 September 2010)**

The Leiden Journal of International Law is now soliciting articles for a special issue exploring the relevance of Foucault's oeuvre to international law and legal theory. Apart from its merits for philosophy, political theory and sociology, the importance of Michel Foucault as a legal thinker (both as a thinker of law in his own right and as a thinker whose work can be illuminating for legal studies) is increasingly being felt. With the continuing translation and publication of Foucault's lecture courses at the Collège de France and the ongoing importance of his already published work, Foucault's work continues to provide fertile suggestions for rethinking many of our established notions of law, right(s), sovereignty and legal subjectivity. Yet to date there have been, with some notable exceptions, few sustained treatments of Foucault's relevance to international law and international legal theory. This is the subject of Issue 2 of volume 24 (2011) of the Leiden Journal of International Law (LJIL).

What is the relevance of Foucaultian methodologies (archaeology, genealogy, problematisation) to international law and international legal theory? What does a Foucaultian analytic of international law entail? How can we use it to analyse international legal subjectivity? How does that relate to, inter alia, sovereign statehood and/or human rights law? How can the Foucaultian toolbox contribute to our understanding of the devolution of international public law, its fragmentation and specialisation (e.g. as an instance of governmentality)? What about international law 'from below' (the relevance of Foucaultian models of power/resistance, anti-globalisation perspectives and critiques of neoliberalism and the global rule of law, for example). These questions are just a number of suggestions, intended as provocations for thought, within the general theme of 'Foucault and International law' we invite contributors to interrogate and critically engage with.

Contributors will be asked to prepare an article of approximately 10,000 words (including footnotes) for publication in the LJIL, consistent with its instructions for authors. Those interested in contributing are requested to respond to this Call for Papers by email to managing editor Christine Tremblay ([ljil@law.leidenuniv.nl](mailto:ljil@law.leidenuniv.nl) <<mailto:ljil@law.leidenuniv.nl>> ) by 12 May 2010, attaching a 300-word abstract of the article you propose to contribute.

The selected authors are requested to submit the full articles by 17 September 2010. All contributions will be subject to double-blind peer review in accordance with the usual procedures of the LJIL. Please contact the LJIL (guest) editors with any further questions: Tanja Aalberts ([taalberts@fsw.leidenuniv.nl](mailto:taalberts@fsw.leidenuniv.nl)) and/or Ben Golder ([b.golder@unsw.edu.au](mailto:b.golder@unsw.edu.au)).

The Leiden Journal of International Law is published with Cambridge University Press, and provides a forum for two vital areas, namely international legal theory and international dispute settlement. For further information, please visit the journal's

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## Recent Books by ANZSIL Members

Emily Crawford, *The Treatment of Combatants and Insurgents Under the Law of Armed Conflict* (Oxford University Press)

Natalie Klein, Joanna Mossop, Donald R. Rothwell (eds), *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand* (Routledge)

David Leary (ed), *Yearbook of Polar Law* (Martinus Nijhoff)

Shirley Scott, Anthony Billingsley and Christopher Michaelsen, *International Law and the Use of Force: A Documentary and Reference Guide* (Praeger Security International)

Michael White, *Australian Offshore Laws* (Federation Press)

### **ANZSIL**

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