



# ANZSIL Newsletter

April 2017

[www.anzsil.org.au](http://www.anzsil.org.au)

## IN THIS ISSUE

> President's  
Message

> 2017 ANZSIL  
Conference

> Recent Australian  
Practice

> Recent New  
Zealand Practice

> Sir Elihu  
Lauterpacht Obituary

> ANZSIL Interest  
Group Report

> ANZSIL Financial  
Support

> Upcoming Events  
and Calls for Papers

> ANZSIL Member  
News

## Message from the President

In this latest issue of the ANZSIL Newsletter, editors Zoe Scanlon (Attorney-General's Department) and Anna Hood (University of Auckland) have compiled yet another informative update on ANZSIL's activities and recent practice of the Australian and New Zealand governments in international law.

### > ANZSIL's Silver Jubilee Conference – 'Sustaining the International Legal Order in an Era of Rising Nationalism'

Conference registration is now open and I would encourage you to [register online soon](#) to secure a place at the conference at the 'early bird' rate. This year's conference will be ANZSIL's 25th annual conference and will take place from Thursday 29 June to Saturday 1 July 2017 at Hotel QT Canberra, 1 London Circuit, Canberra.

Under the leadership of Rain Liivoja (University of Melbourne), Amelia Telec (Attorney-General's Department) and Imogen Saunders (ANU), the Conference Organising Committee and Program Sub-Committee has been hard at work over several months and will shortly release the draft conference program.

With a record number of submissions, this year's Committee was faced with an embarrassment of riches in the paper and panel proposals they received, and the Committee has sought to accommodate as many papers as possible in the program. The large number of high quality paper submissions for ANZSIL's 25<sup>th</sup> conference is a reflection of ANZSIL's growing and engaged membership and the significant interest in the region and internationally in the conference's highly topical theme.

### > International Law Mooting Success

Over Easter, law students from Australia and New Zealand participated with great distinction in the International Rounds of the [Philip C. Jessup International Law Moot Court Competition in Washington D.C.](#)

All three Australian and New Zealand teams were at the top of the table after the gruelling preliminary rounds, with the University of Auckland ranked second, the University of Queensland fourth and the University of Sydney fifth (out of the 143 teams competing in D.C.). In the Advanced Rounds, the University of Sydney advanced all the way to the World Championship moot where they defeated Norman Manley Law School (Jamaica) for the Jessup Cup. The World Championship bench comprised International Court of Justice Judges James Crawford and Patrick Robinson and former ICJ Judge Bruno Simma. While Auckland and UQ were no doubt disappointed not to make it to the final, they won significant consolation prizes. UQ took home the award for best written submissions in the

competition, and two Auckland students were named in the top three oralists in the competition as a whole (Andrew Grant, who was first, and Michael Greenop who was third).

Australian and New Zealand students have a truly astonishing record of performance in the Jessup. The Jessup moot held its first round at Harvard in 1960, with one of the original competitors a New Zealand LLM student at Harvard. From 1968 the competition was opened to non-American teams, and since that time Australian teams have appeared in 20 championship finals in Washington D.C. and taken the Jessup Cup home to Oceania a remarkable 13 times. Only the United States comes close to this performance (even though each year there are 12 US teams competing in the international rounds, versus just two from Australia and one from New Zealand). The strong performance of our students suggests that Australian and New Zealand law schools must be doing something right in attracting the best and brightest students to the study of international law!

On behalf of ANZSIL I extend my congratulations to all of the Australian and New Zealand students involved in the Jessup competition and to their dedicated coaches and Faculty advisors.

### > ANZSIL Support for International Law Students

The Jessup success is reminder of the strong interest among Australian and New Zealand law students in international law, and also affirms the value of ANZSIL's support programs for undergraduate and postgraduate students. ANZSIL provides support across three areas of student activity.

ANZSIL provides modest financial support for Australian and New Zealand students participating in the Jessup Moot, and also offers the mooters complimentary Associate Membership of the Society.

The Society's main student support program is the [postgraduate research students workshop](#) which is held in advance of the annual conference. This allows the next generation of international law researchers an opportunity to present their work in a supportive and collegiate environment. ANZSIL provides workshop participants with some financial support towards their travel and accommodation expenses together with complimentary registration for the workshop, the main conference, and the conference dinner. The organisation of the 2017 postgraduate workshop is well-advanced, with convenors Guy Fiti Sinclair and Daniel Joyce selecting the successful applicants to present their research at the workshop and to attend the main conference.

ANZSIL also has an [internship support program](#) which is designed to assist students and recent graduates undertake internships at institutions involved in the practice of international law. The internship support program provides \$2,000 to four interns each year. ANZSIL's internship program is increasingly competitive; in 2012 there were 15 applications for the program while in 2016 there were 34. It is very pleasing to see such strong interest in the practice of international law among students and recent graduates, and ANZSIL is delighted to be able to provide some support and encouragement to interns working in a range of different institutions and organisations committed to advancing the international rule of law.

**Tim Stephens**

**President**

[tim.stephens@sydney.edu.au](mailto:tim.stephens@sydney.edu.au)

Twitter @ProfTimStephens

## 2017 ANZSIL Conference 29 June – 1 July 2017

The theme of the 2017 Conference is ‘Sustaining the International Legal Order in an Era of Rising Nationalism.’ The 2017 ANZSIL Conference will be held at [QT Canberra](#) from 29 June – 1 July 2017.

Keynote speakers at the conference will include:

- > Professor Balakrishnan Rajagopal (Massachusetts Institute of Technology)
- > Professor Natasha Affolder (University of British Columbia)
- > Professor Tim McCormack (University of Melbourne)
- > Professor Kerrie Sadiq (Queensland University of Technology)

For more information and to register, please visit: <http://anzsil.org.au/event-2443757>

---

### Recent Australian Practice in International Law (Commonwealth Attorney-General’s Department and the Department of Foreign Affairs and Trade)

#### > Participation in WTO Dispute Settlement as a Third Party

Australia actively participates as a third party in WTO disputes, which enables Australia to make submissions to dispute settlement panels and the WTO Appellate Body on the operation of trade rules in support of Australia’s commercial interests. Since December 2016, Australia has participated in the following disputes:

- > *US Tuna II - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products* ([DS381](#))

Australia submitted a third party submission, and participated in the January hearing before the compliance panel. Australia chose to participate in this compliance panel process as it concerns interpretation of the legal obligations and rights of WTO Members under the Agreement on the Technical Barriers to Trade (TBT Agreement) and the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

- > *US – Conditional Tax Incentives for Large Civil Aircraft* ([DS487](#))

Australia submitted a third party submission to the Appellate Body, and will participate in an upcoming hearing. Australia chose to participate in this process as it concerns interpretation of the legal obligations and rights of WTO Members under the Agreement on Subsidies and Countervailing Measures and the General Agreement on Tariffs and Trade (GATT).

An overview of Australia’s approach to WTO disputes, and copies of Australia’s submissions to the WTO Panel and Appellate Body for the disputes listed above, can be viewed [here](#).

The Department of Foreign Affairs and Trade also regularly conducts outreach activities with industry, government, legal and academic stakeholders on Australia’s use of the WTO dispute settlement system, as well as developments in investment law. For further information contact [trade.law@dfat.gov.au](mailto:trade.law@dfat.gov.au).

## > Recent developments with Australia's Free Trade Agreements

Further to the update in the last newsletter, Australia continues to progress the negotiation and implementation of a number of other bilateral and multilateral free trade agreements (FTAs).

During Chinese Premier Li Keqiang's visit to Australia in March, China and Australia announced the activation of several reviews under the China-Australia Free Trade Agreement (ChAFTA). The reviews of the Trade in Services Chapter and the Investment Chapter provide opportunities to advance our commercial interests and seek improved market access commitments. A review of the operation of the Investment Facilitation Arrangement MOU was also announced.

The [Joint Standing Committee on Treaties \(JSCOT\) report on the Trans-Pacific Partnership \(TPP\) Agreement of 30 November 2016](#) recommended that Australia ratify the TPP. On 30 January 2017, the United States informed TPP signatories that it did not intend to become party to the TPP, which cannot enter into force without the US. The Senate Foreign Affairs, Defence and Trade References Committee report, released on 7 February 2017, recommended the deferment of treaty action. The remaining 11 participating TPP signatories issued a Joint Statement on 15 March 2017, reiterating their commitment to free trade and the benefits of the TPP. TPP Ministers will meet in May 2017 in the margins of the APEC Ministers Responsible for Trade meetings in Hanoi.

The Agreement to Amend the Singapore-Australia Free Trade Agreement was signed in Canberra on 13 October 2016 and seeks to update the 2003 Singapore-Australia Free Trade Agreement (SAFTA). On 20 March 2017, the Agreement to Amend SAFTA was tabled in the Australian Parliament and will now be referred to JSCOT for review.

The sixth round of negotiations for the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) was hosted by Australia in Canberra from 20 to 24 February 2017, with the seventh round scheduled to take place in Indonesia in May 2017.

Australia continues to be involved in active negotiations for the Regional Comprehensive Economic Partnership Agreement (RCEP), the Pacific Agreement on Closer Economic Relations (PACER Plus) and the Trade in Services Agreement (TiSA). Australia continues to work towards the launch of the Australia-European Union Free Trade Agreement.

## > Regulation of Biodiversity Beyond National Jurisdiction (BBNJ)

Preparatory work is continuing towards developing substantive recommendations on the elements of a possible treaty on BBNJ. Australia has participated in the first, second and third sessions of the [UN Preparatory Committee](#) in New York (April 2016, August 2016 and April 2017 respectively). At these sessions States discussed broad principles and approaches, and addressed topics including marine genetic resources, area-based management tools, environmental impact assessments, capacity building, transfer of marine technology and crosscutting issues. Australia also made a submission to the Chair of the BBNJ Preparatory Committee in December 2016, which highlighted areas of potential future work for the Committee, including possible governance mechanisms. The Australian delegation continues to work actively with other States to achieve agreement to the key elements of an instrument to be negotiated at a future Diplomatic Conference.

## > Australia's Participation in the First Conciliation under the UN Convention on the Law of the Sea (UNCLOS)

Australia remains engaged in conciliation, initiated by Timor-Leste under Article 298 and Annex V of the United Nations Convention on the Law of the Sea (UNCLOS), concerning maritime boundaries in the Timor Sea. The conciliation, initiated in April 2016, is conducted by a Conciliation Commission established under UNCLOS.

The Parties have both committed to negotiate permanent maritime boundaries under the auspices of the Conciliation Commission.

As part of a package of measures designed to facilitate the conciliation, Timor-Leste terminated unilaterally the [2006 Treaty on Certain Maritime Arrangements in the Timor Sea](#) (CMATS). The CMATS Treaty was agreed to allow the development of the Greater Sunrise gas and condensate fields in the Timor Sea to proceed without prejudicing the position of either country on their maritime boundary claims. It established a moratorium on delimitation of a maritime boundary and would have shared future revenue from upstream exploitation of the fields equally between Australia and Timor-Leste. Its termination took effect on 10 April 2017.

The Parties also reached agreement on the consequences of the termination of CMATS for their maritime arrangements, including that the [2002 Timor Sea Treaty](#) and its supporting regulatory framework shall remain in force in order to provide certainty and stability for petroleum operations in the Timor Sea.

The Commission will hold a number of meetings over the course of 2017. Public statements on progress in the conciliation can be found [here](#).

## > Securing Accountability for the Downing of Malaysian Airlines Flight MH17

Securing accountability for the 298 victims of the downing of Malaysian Airlines flight MH17 on 17 July 2014 in eastern Ukraine, remains a key priority for the Australian Government. The Department of Foreign Affairs and Trade continues to lead negotiations with international partners to establish a prosecution mechanism that will ensure international criminal accountability and capture the harm done to all victims. This remains a complex task given the multiple jurisdictions involved, as well as Russia's deeply disappointing veto of a United Nations Security Council backed international tribunal in July 2015.

## > Application of International Law to Information and Communication Technologies

The Department of Foreign Affairs and Trade and the Office of International Law are providing advice to support Australia's expert, Mr Henry Fox, on the 25-member 2016-17 UN Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security. The Group's mandate, which is set out in [UN General Assembly Resolution 70/237](#) includes elaborating how international law applies to the use of Information and Communication Technologies (ICTs) by States, as well as norms, rules and principles of responsible behaviour of States. This work builds on the [report of the 2012-2013 Experts Group](#), chaired by Australia, which affirmed that the application of international law to States' use of ICTs.

## > Square Kilometre Array

Australia has participated in multilateral negotiations aimed at establishing a Square Kilometre Array (SKA) Observatory, which would be responsible for implementing the [SKA Project](#). The SKA will be the largest and most capable radio telescope ever constructed. It will be co-located in Australia and South Africa. The SKA project will enhance Australia's reputation as a global leader in radio astronomy and other sciences and lift Australia's profile as a partner for scientific research and collaboration.

## > Follow up to the 32nd International Conference of the Red Cross and Red Crescent

The Australian Government continues to promote global adherence to international humanitarian law (IHL). Following Australia's participation in the [32nd International Conference of the Red Cross and Red Crescent](#) in 2015, Australia is actively engaged in consultations between States Parties to the Geneva Conventions on strengthening compliance with IHL and the protections afforded to detainees in non-international armed conflict (NIAC). Australia continues to participate in sessions in Geneva in these two streams. Australia is advocating for the establishment of a global IHL compliance mechanism to enhance States' dialogue and cooperation on IHL issues, and is at the forefront of States' consideration of detention in NIAC.

## > Supporting the International Criminal Court

As a strong supporter of the [International Criminal Court](#) (ICC), Australia continues to work to ensure the ICC is the strongest possible institution it can be. In late 2016, a number of States Parties withdrew from the [Rome Statute](#). Subsequently however, The Gambia and South Africa made decisions to rescind their withdrawals – a move welcomed by Australia. Non-cooperation remains the single biggest challenge facing the Court. On 1 April 2016 Australia was appointed as Western Europe and Others Group (WEOG) focal point for non-cooperation. Among other things, together with the other focal points and in consultation with States Parties and the Court, Australia developed a toolkit for States Parties and other friends of the ICC to use to encourage cooperation with the Court. The toolkit can be accessed via the website of the Assembly of States Parties [here](#).

## > South China Sea

The Australian Minister for Foreign Affairs, the Hon Julie Bishop MP, has highlighted the centrality of international law in resolving South China Sea disputes. In a [speech to US government and business leaders](#) on 26 January 2017, Minister Bishop called on South China Sea claimants to resolve their disputes peacefully in accordance with international law. Highlighting concern about claimants building military installations on reefs and other features, Minister Bishop said Australia would continue to exercise its rights to freedom of navigation and overflight.

In a [press interview](#) on 7 February 2017, Minister Bishop said she had discussed with US Secretary of State Rex Tillerson the importance of maintaining adherence to the international rules-based order under which many nations, including China and other countries in the region, have been able to grow and prosper. Minister Bishop observed in a [press interview](#) on 8 February, that she had discussed the South China Sea with Chinese Foreign Minister Wang Yi during the Australia-China Foreign and Strategic Dialogue on 7 February 2016. Australia continues to advocate that the South China Sea is vital for international trade and that other States and organisations, including New Zealand, ASEAN, the East Asia Forum and the international community, can play an important supporting role. To underpin regional prosperity and security, claimant States must resolve



their disputes in accordance with international law, particularly the UN Convention on the Law of the Sea.

### > UN Oceans Conference and Sustainable Development Goal on Oceans

In June 2017, Australia will participate in the high-level [UN ‘Oceans Conference’](#). The Department of Foreign Affairs and Trade is leading Australian efforts in the context of the [Sustainable Development Goals](#) (SDGs) to ensure implementation of international law in pursuit of the global development agenda. In particular, Australia is working to ensure targets under Goal 14 — to ‘conserve and sustainably use the oceans, seas and marine resources for sustainable development’ — are met, recognising the importance of the international law of the sea in providing a legal framework for the conservation and sustainable use of oceans and their resources.

### > Continuing Efforts to Oppose Commercial and So-Called ‘Scientific’ Whaling

In 2014, the International Court of Justice [determined](#) Japan’s Southern Ocean whaling program – ‘JARPA II’ – was unlawful and not for the purposes of scientific research and ordered that it cease. Since then, Japan has resumed whaling in the Southern Ocean through a program called ‘NEWREP-A’. Japan claims this program is consistent with the Court’s decision.

The Australian government has advocated for Japan to comply with its international obligations and the principles set out in the Court’s decision. Australia’s efforts continue in the [International Whaling Commission](#) (IWC) to oppose commercial and so-called ‘scientific’ whaling; to uphold the global moratorium on commercial whaling; and to promote whale conservation. At the last meeting of the IWC in October 2016, Australia and New Zealand co-sponsored a resolution ([Resolution 2016-2](#)) to give the Commission a greater role in reviewing and scrutinising special permit whaling programs. The resolution passed with a substantial majority in the Commission. In conjunction with the adoption of the resolution, a majority of Commission members made a statement which:

- > noted with concern that Japan issued special permits before the Scientific Committee review was complete and before the Commission had considered the report of the Scientific Committee on NEWREP-A;
- > assessed that on the basis of the information before the Commission, NEWREP-A is not ‘for purposes of scientific research’ as required by Article VIII(1) of the International Convention for the Regulation of Whaling; and
- > requested that Japan cease the lethal component of NEWREP-A.

The next meeting of the International Whaling Commission will take place in Brazil in 2018.

### > Australia and Indonesia Cooperate on Maritime Issues

On 26 February 2017, Australian Minister for Foreign Affairs, the Hon Julie Bishop MP, and the Indonesian Minister for Foreign Affairs, Retno Marsudi, signed a [Joint Declaration on Maritime Cooperation](#). Australia and Indonesia are close security and economic partners. As maritime States, both recognise that lawful commerce, freedom of navigation and overflight and sustainable use of living marine resources in accordance with international law best serves their interests. Australia and Indonesia will deepen and broaden their cooperation on: managing living marine resources, combating illegal, unreported and unregulated fishing as well as crimes in the fisheries sector; promoting maritime safety and preventing environment threats; coordinating search and rescue

activities; promoting port and ship security and increasing marine scientific and research studies.

### > Promoting the Use of the UN Convention Against Transnational Organised Crime (UNTOC) to Tackle Illicit Wildlife Trade

Illegal wildlife trade is a serious and growing problem and a lucrative source of income for organised criminal groups. Australia recognises that coordinated international action is needed and continues to promote the use of [UN Convention Against Transnational Organised Crime](#) (UNTOC) as a framework for law enforcement cooperation, extradition and mutual assistance to assist global cooperation.

[UN General Assembly Resolution 69/314](#) on Tackling Illicit Trafficking in Wildlife (adopted in 2015 by consensus and co-sponsored by over 70 member States) encouraged States to use UNTOC to strengthen cooperation to address the illegal wildlife trade. Since then, recognition of the need for more coordinated action to address the illegal wildlife trade, including through using UNTOC, has been growing.

Text proposed by Australia was included in [UN General Assembly Resolution 71/257](#) on Oceans and the Law of the Sea in December 2016 recognising the usefulness of UNTOC in addressing illicit wildlife trafficking in the oceans context. Maritime routes form a critical part of the international wildlife trafficking supply chain and are often used by criminal groups as chances of detection and prosecution on the oceans are lower than on land.

Australia was also an active supporter of [the Hanoi Statement on the Illegal Wildlife Trade](#), adopted by 43 States (including Australia) in November 2016, which recognises the need to use UNTOC to address illicit wildlife trafficking. The Hanoi Statement reaffirms similar commitments made in the [London Declaration](#) and [Kasane Statement](#) and builds on previous recognition of the usefulness of UNTOC in addressing the illegal wildlife trade in [UN Environment Assembly Resolution 2/14](#) on the Illegal trade in wildlife and wildlife products (May 2016), the [Brazzaville Declaration on the illicit trade in wild flora and fauna in Africa](#) (signed by African Union countries in April 2015) and the [East Asia Summit's Declaration on Combatting Wildlife Trafficking](#) (November 2014).

### > Criminal Code Amendment (War Crimes) Act 2016

The [Criminal Code Amendment \(War Crimes\) Act 2016](#) commenced on 8 December 2016, amending Division 268 of Australia's *Criminal Code Act 1995* (Cth) to align domestic law with international law in relation to the treatment of members of organised armed groups in non-international armed conflict. Division 268 was originally enacted in 2002 to give effect to Australia's obligations under the Rome Statute of the International Criminal Court.

The amendments:

- > ensure that Division 268 expressly reflects the existing international law distinction between civilians and members of organised armed groups;
- > clarify that the war crimes offences in sections 268.70, 268.71 and 268.72, engaged by conduct which causes the death of or injury to a person not taking an active part in hostilities, do not apply where that person is a member of an organised armed group; and
- > make it clear that those war crimes offences will not apply to death or injury caused by attacks against military objectives that are consistent with the international humanitarian law principle of proportionality.

The amendments were originally announced by the Prime Minister in his [National Security Statement](#) on 1 September 2016, following a Government review of the targeting policy in



relation to members of organised armed groups. As part of the Parliamentary process, the amendments were considered by the [Parliamentary Joint Committee on Intelligence and Security](#). The Committee concluded that the amendments would provide appropriate protection for civilians, while maintaining the capacity to strike legitimate military targets.

### **> Framework Agreement between the Government of Australia and the Government of the French Republic concerning Cooperation on the Future Submarine Program (Adelaide, 20 December 2016)**

On 20 December 2016, Australia and France signed a bilateral Future Submarine Inter-Governmental Agreement in Adelaide. The Agreement is a framework treaty that will underpin and support the delivery of Australia's Future Submarine Program arising from the selection of DCNS (a French company) as Australia's Future Submarine design and mobilisation partner.

Australia and France are currently undertaking their respective domestic ratification processes and both anticipate ratifying in 2017. The Australian Government's media release is [here](#).

JSCOT has commenced its inquiry into the Agreement and public hearings were held on 8 March 2017 in Adelaide and 14 March 2017 in Canberra. More information on the JSCOT inquiry can be found [here](#).

### **> Attorney-General's Speech on the Right of Self-Defence Against an Imminent Armed Attack in International Law**

On 11 April 2017, the Commonwealth Attorney-General, Senator the Hon George Brandis QC, delivered a public lecture at the University of Queensland's TC Beirne School of Law on the right of self-defence against an imminent armed attack in international law. In that lecture, the Attorney articulated the Australian Government's position on the question of imminence, and examined the application of this concept in the modern threat environment. What does an 'imminent' threat mean when terror cells lie dormant planning an attack in one country, which will be remotely triggered from another? How does a government decide when a violent intent expressed by a terrorist organisation online has crossed from mere aspiration to 'imminent' threat? Crucially, how do we guarantee security in a modern threat environment, whilst ensuring that legitimate constraints on the use of force are not undermined? The Attorney also emphasised the responsibility of States (and their international legal advisers) to articulate their legal reasoning and publicly explain and defend their legal positions.

An audio recording of the lecture will be made available by the University of Queensland shortly and the full text of the lecture will be published in due course.

---

## **Recent New Zealand Practice in International Law** (Ministry of Foreign Affairs and Trade)

### **> World Trade Organization Panel finds in New Zealand's favour in Indonesia dispute; Indonesia appeals decision to Appellate Body**

On 22 December 2016, a World Trade Organization (WTO) Panel ruled in New Zealand's favour in respect of 18 agricultural non-tariff barriers imposed by Indonesia. The WTO Panel concluded that the measures challenged by New Zealand are inconsistent with Article XI:1 of the GATT 1994, which prohibits measures that prohibit or restrict imports of goods.

On 17 February 2017, Indonesia appealed the Panel's decision to the WTO Appellate Body. New Zealand filed its written response to Indonesia's appeal on 7 March 2017, and an oral hearing will be held in Geneva later in 2017.

The barriers challenged in this dispute continue to have a significant commercial impact on New Zealand exports. New Zealand beef exports, for instance, have fallen by over 80 percent in what was previously New Zealand's second-largest beef export market by volume, worth \$180 million in trade per year. The accumulated trade impact to New Zealand's beef sector alone is now estimated to be between \$0.5 and 1 billion. Certain New Zealand horticultural exports are also affected.

### > **New Zealand's Participation as a Third Party in WTO Disputes**

> *Canada — Measures Governing the Sale of Wine in Grocery Stores* ([WT/DS 520](#))

New Zealand is participating in the consultations phase of a WTO dispute brought by the United States challenging Canadian provincial (British Columbian) non-tariff barriers on wine imports. New Zealand's participation reflects its substantial trade interest in this measure. Canada is New Zealand's fourth largest wine export market (worth \$107 million per year) and is New Zealand's highest value-per-litre wine market.

New Zealand is also involved in several other WTO dispute settlement proceedings as a third party.

### > **Recent Developments with New Zealand's Free Trade Agreements**

The Pacific Agreement on Closer Economic Relations Plus (PACER Plus) negotiating Parties are close to concluding market access negotiations. The Agreement will then undergo legal verification and be opened for signature in the coming months. New Zealand is also currently actively involved in negotiations on the Regional Comprehensive Economic Partnership Agreement.

### > **Other Significant Treaty Actions**

On 17 February 2017, New Zealand and Australia signed the [Agreement relating to Science, Research and Innovation Cooperation](#). This Agreement sets in place conditions to achieve a trans-Tasman Innovation Ecosystem and contribute to the Single Economic Market between New Zealand and Australia. The treaty outlines areas of cooperative activity, provides for the elaboration of a science and innovation cooperation work program and establishes a regular bilateral dialogue.

---

## **Sir Elihu Lauterpacht obituary**

Sir Elihu Lauterpacht (Eli), who died on 8 February 2017 at home with his family, is mainly associated, in terms of his personal and professional life, with Cambridge, London, The Hague and Washington. In addition he had a very important Australian, indeed Antipodean, connection.

Following his major contribution to the case brought by Australia and New Zealand over French nuclear testing, Eli was appointed in 1975 by the Whitlam administration to be legal adviser to the Department of Foreign Affairs and Trade. He held this post for three years and described it as 'probably one of the best periods in [his] life'. During that time he had a major role in the Australian delegation in the negotiations on the United Nations Convention on the Law of the Sea (UNCLOS). He established an annual international law

weekend in which international lawyers in universities, private practice, DFAT and the Office of International Law in the Attorney-General's Department came together. This became a precursor to the (re)birth of ANZSIL, and a model followed in Wellington with the creation of the Beeby Colloquium. Both are very important venues for the sharing of ideas and information and are very much in keeping with Eli's sense of the practical application of international law. It was not just an optional extra at the end of a course which taught the real stuff of the law.



Sir Elihu Lauterpacht

Eli was born in Cricklewood, London, where his already well known father, Hersch Lauterpacht was teaching at London School of Economics (LSE). His father was born in Lviv, then in the Austro-Hungarian Empire, now in the Ukraine, and his mother, Rachel Steinberg, a talented pianist, was born near Jerusalem. The family moved to Cambridge in 1937 when Hersch was appointed to the Whewell Chair of International Law, earlier held by his mentor, Arnold McNair. Eli spent the years of World War Two in the United States where his father was involved, in addition to academic work, in helping the authorities there with the development of the lend-lease arrangements, particularly before the bombing of Pearl Harbor and the United States' entry into the war. All three members of the family were excellent correspondents, as appears from Eli's loving biography of his father, published in 2010.

Following graduation at Cambridge and admission to the Bar, Eli entered commercial chambers and was taken under the wing of John Megaw, later a member of the Court of Appeal. He also taught part time at LSE and Cambridge and in 1953 he became a lecturer at the latter. At the same time his litigation experience at the International Court of Justice (the Court) was getting underway with his appearance in the *Nottebohm case*. His work at the Court extended for over 60 years, ranged over many areas of law, including New Zealand's attempt to reopen its *Nuclear Test Case* in 1995, and ended just three years ago with his appearance for Timor-Leste against Australia in *The Case Concerning Questions relating to the Seizure and Detention of Certain Documents and Data*. He began with a note of great regret that the Government he had been honoured to serve had stooped so low. (My words, not his, but that is how I heard them, as he looked severely at the Australian team and seriously at the Bench). Eli's huge contribution to the work of the Court was marked at its first sitting since his death, by a splendid tribute by the current President of the Court, an honour bestowed on very few Counsel.

Eli appeared before many other tribunals, including in a boundary case between Egypt and Israel, and, to return to the Antipodes, for Japan against Australia and New Zealand in the

*Southern Bluefin Tuna case* before the International Tribunal for the Law of the Sea. Eli was also to be found on the other side of the bench, for instance as Judge ad hoc in the *Genocide Case* between Bosnia and Serbia where he wrote a notable separate opinion about the ultimate beneficiaries of all law - the human person - and the role of the Judge ad hoc. He was President of the Eritrea Ethiopia Boundary Commission and of the World Bank Administrative Tribunal.

In addition to all that practice - I have only scratched the surface - Eli published his own research, edited the hugely important International Law Reports (begun by his father), edited five volumes of his father's papers, established a publisher and set up the research centre now most appropriately known as the Lauterpacht Centre for International Law, a place where many lawyers and students from very different backgrounds and experiences gather to great mutual advantage. In all of those ways, Eli made major positive contributions to our profession and an uncountable number of friends, many of whom he helped in ways they did not know. He was a most generous colleague and, with Cathy, a fantastic host. Any faults? An addiction to chocolate is all that I can think of. He loved life and lived well, a great friend.

### **Sir Kenneth J Keith**

Professor Emeritus of Law  
Victoria University of Wellington

---

## **ANZSIL Interest Group Report**

### **> Report of the ANZSIL Oceans and International Environmental Law Interest Group on its Inaugural Event**

The ANZSIL Oceans and International Environmental Law Interest Group (OIELIG) was established in 2016 to provide a forum for discussion and collaboration between ANZSIL members in all areas of law of the sea and international environmental law. The OIELIG seeks to facilitate the exchange of information and ideas, and the development of professional networks between academics, practitioners, public policy makers and students of international law on issues relating to the law of the sea and international environmental law.

On Friday 24 February 2017, the Group held its inaugural event, a workshop on 'Law Beyond Boundaries: innovative mechanisms for the conservation and sustainable use of biodiversity beyond national jurisdiction' in association with the Australian National Centre for Ocean Resources and Security (ANCORS) at the University of Wollongong.

This workshop was convened to facilitate discussions on developments in the work of the Preparatory Committee established to develop elements of a draft text for an internationally legally binding instrument on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction under the 1982 United Nations Convention on the Law of the Sea. The workshop provided an excellent opportunity for participants from academia, government and civil society to engage in fascinating discussions on the broad range of legal and other issues associated with these developments.

The conference theme elicited a wide range of presentations on key issues underpinning ongoing discussions on a prospective international legally binding instrument. In their opening joint keynote address, Alice Revell (MFAT) and Michael Bliss (DFAT) set the scene for biodiversity governance in marine areas beyond national jurisdiction, describing the key developments leading to the UN's decision to develop an internationally legally binding instrument and the current state of play of discussions within the UN. They also

shared their insights as lead delegates for their respective countries to the UN Preparatory Committee.

The thought-provoking and engaging presentations that followed throughout the day generated interesting discussions on the complex and underlying issues involved in developing an effective governance regime, and how international law can be used in innovative ways to conserve and sustainably manage marine biological diversity in areas beyond national jurisdiction. On the first panel, which was directed to the theme of integrated oceans management, Constance Johnson (ANCORS) used a case study of the Antarctic Treaty System's approach to provide an example of an effective governance regime operating without reference to national jurisdiction. This was complemented by a presentation from Dr Piers Dunstan (CSIRO) considering the lessons to be learned from existing policy applications, which emphasised collaboration as key to the effective implementation of integrated oceans management, and showed how policy objectives set at the beginning of the process are critical to the final outcome.

Recognising the requirement that a new legally binding instrument should not undermine existing frameworks and regional bodies, the second panel considered ways in which existing regional and sectoral bodies could be leveraged to inform the conservation and sustainable management of biodiversity, and the role that the principle of competence might play in the upcoming PrepCom discussions. Zoe Scanlon (Attorney-General's Department) explored the wide range of issues in which regional fisheries management bodies have played a constructive role in improving oceans governance, while Andrew Friedman and Nichola Clark (Pew Charitable Trusts, USA) – who joined us by videoconference from Washington DC – laid out their proposal for an objective framework to determine the 'competence' of existing institutions.

The third panel traversed a range of issues concerning the potential interactions between a new implementing agreement and existing regimes. Joanna Mossop (Victoria University of Wellington) addressed the wide range of complexities likely to arise in relation to the existing continental shelf regime; Genevieve Quirk (ANCORS) discussed the lessons that can be drawn from the EU deep sea access regime, including the challenges for coherence with existing instruments and frameworks; and Penelope Ridings (New Zealand Bar) outlined her proposal to apply the principle of environmental stewardship as a framework for a *sui generis* regime to resolve the tensions between competing rights of States and uses of marine biodiversity beyond national jurisdiction.

The workshop concluded with a keynote address by Professor Robin Warner (ANCORS) on the challenges and prospects of realising biodiversity governance in marine areas beyond national jurisdiction. While recognising that such a realisation is not without its challenges, Professor Warner emphasised the historic opportunity an international legally binding instrument presents for an integrated and cross-sectoral system of oceans governance, the urgent need to achieve it due to the growing threats to, and pressures on, the marine environment, and the immense potential a new implementing agreement has to benefit humankind.



ANZSIL members at the workshop on 24 February 2017

The workshop provided an important opportunity to share perspectives among international law and policy experts working across diverse fields. It also served to strengthen the networks amongst ANZSIL members working on these issues. Sincere thanks go to the members of the OIELIG who volunteered their time to serve on the Steering Committee and organise the workshop, and to all the speakers, chairs and participants who shared their ideas and expertise, and ensured a stimulating and vibrant discussion. In recognition of the significance of this issue and the valuable contributions of the workshop's panellists to ongoing discussions on the topic, the ICES *Journal of Marine Science* will be publishing some of the papers from the workshop in a special edition on biodiversity beyond national jurisdiction.

If you would like to be more involved in future discussions on oceans and international environmental law issues, simply log in to the ANZSIL website, and update your details to include membership of the OIELIG!

**Lauren Burke and Channelle Fitzgerald**

ANZSIL Oceans and International Environmental Law Interest Group Members

---

## ANZSIL Financial Support for Events or Activities

The principal activity of ANZSIL is the convening of the annual conference. However, providing that sufficient funds are available, ANZSIL also endeavours to provide financial support for additional events and activities convened by Members of the Society, consistent with its aims. Requests for financial support from ANZSIL to convene events or activities can be made in accordance with the new [Guidelines for Applying for Financial Support from ANZSIL for Events and Activities](#), which are available on the ANZSIL website.

---

## Upcoming Events and Calls for Papers

### > 6th Biennial Conference of the Asian Society of International Law

The 6th Biennial Conference of the Asian Society of International Law will take place in Seoul, Korea, from Friday 25 to Saturday 26 August 2017. The conference will be hosted



by the Korean Chapter of the Asian Society of International Law, together with the Ministry of Foreign Affairs of the Republic of Korea.

The theme of the conference is 'Asia and International Law in Times of Uncertainty'. The conference will comprise an opening session, two plenary sessions featuring invited speakers, 25 parallel sessions (see the program of the conference) and a closing session. The biennial conference will be preceded by a half-day workshop for junior scholars on Thursday 24 August.

For more details, you may refer to <http://asiansilkoreachapter.or.kr/sub/conference.html>

### > Call for Submissions for the New Zealand Yearbook of International Law

The Editors of the New Zealand Yearbook of International Law are calling for submissions for Volume 14. They are seeking contributions on any issue of public international law and are particularly interested in receiving submissions that are relevant to New Zealand, Australasia, the Pacific, the Southern Ocean and Antarctica.

The New Zealand Yearbook of International Law accepts short notes, commentaries and longer in-depth articles for publication. Notes and commentaries should be between 3,000– 7,000 words (including footnotes). Articles may be from 8,000 to 15,000 words (including footnotes).

The closing date for submissions is 15 May 2017. Submissions should be provided in English, using MSWord-compatible word processing software, and delivered by email to the Editor at [roisin.burke@canterbury.ac.nz](mailto:roisin.burke@canterbury.ac.nz).

---

## ANZSIL Member News

### > 'A Price Too High': New ICRC E-briefing on the Human Cost of Nuclear Weapons

The ICRC has released a Law and Policy e-briefing on the human cost of nuclear weapons. Drawing on the recent issue of the International Review of the Red Cross on the same [topic](#), the e-briefing is a great resource filled with interactive graphics, audio interviews, photographs and panoramics of the immediate aftermath of the atomic bombings. In addition, the e-briefing highlights how international humanitarian law deals with nuclear weapons, and how the discussion on these weapons has been reframed from one of deterrence theory and military strategy to one focused on the profound and long-lasting humanitarian consequences that the use of nuclear weapons would have. To read the e-briefing, head to the ICRC website [here](#).

#### ANZSIL Newsletter April 2017

##### Editors:

- > **Anna Hood**  
University of Auckland
- > **Zoe Scanlon**  
Commonwealth  
Attorney-General's  
Department

##### Published by:

- > ANZSIL Secretariat  
Centre for International  
and Public Law  
ANU College of Law  
Australian National  
University  
Canberra ACT 2600
- > +61 2 6125 2906
- > [anzsil@anu.edu.au](mailto:anzsil@anu.edu.au)
- > [www.anzsil.org.au](http://www.anzsil.org.au)