



ANZSIL Newsletter

December 2021

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Message from the President

Tēnā koutou ANZSIL Members,

It has been another challenging but productive year for ANZSIL members. The optimism at the end of 2020 that life in 2021 would be back to ‘normal’ proved to be misplaced, with border closures continuing, and parts of Australia (notably, Melbourne and Sydney) and New Zealand (Auckland) under lockdown for many months. So, 2021, like 2020, was characterised by ‘virtual’ ANZSIL activities. These were, however, many, varied and highly successful in connecting, informing and entertaining ANZSIL members. I would particularly like to thank the 2021 ANZSIL conference organising committee for their hard working in running the annual conference online this year, and all the coordinators of the [five ANZSIL interest groups](#) for their organisation of multiple seminars, discussion groups, hallway conversations and many other virtual events. The ANZSIL interest groups are very much becoming the engine of ANZSIL: connecting members and supporting scholarship in our region. We also connect regularly with members through our communications and [publications](#), and I would like to acknowledge and thank the members of the [ANZSIL Perspective](#) Editorial Committee and the editors of the [ANZSIL newsletter](#) for their hard work this year. While on the subject of gratitude, I would also like to sincerely thank the [ANZSIL Council](#) for their support and hard work over the last 12 months, as well as Ashley Rogge of the ANU, who has provided exceptional administrative support for ANZSIL this year.

Notwithstanding the emergence of the Omicron variant (if nothing else, COVID is teaching us the Greek alphabet), there is cautious optimism for some return to ‘normality’ in 2022. What ‘normal’ or, perhaps ‘neo-normal’ (on the basis that ‘normal’ has undergone a paradigm and potentially permanent shift) will look like can only be speculated on at this stage. We are however, optimistically planning for a hybrid (in-person and virtual) [29th annual conference](#) from 30 June – 2 July 2022, which appropriately is focusing on the theme of *international law and global inter-connectedness*. The [closing date for abstracts and panel submissions](#) is the 21 February and we hope to see many of you there in-person or online. The 2022 ANZSIL [postgraduate student workshop](#) will similarly be held as a hybrid event on the 29th June. We know that many of you are planning events next year and would like to highlight that we have a little funding to support a limited number of small events. The guidelines and application for support are available [here](#).

I would like to thank An Hertogen and Tess Kluckow for producing yet another terrific ANZSIL newsletter and to all the contributors for providing helpful updates on government and member activities. I would particularly like to congratulate ANZSIL members Professor Hilary Charlesworth and Dr Penelope Ridings for their election to the ICJ and the ILC respectively.

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Finally, I wish all ANZSIL members and friends a safe and restful summer and a very happy New Year!

Merry Christmas/ hari Kirihimete!

Ngā manaakitanga,

Karen Scott

President

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2022 Annual Conference and Postgraduate Workshop

The **29th ANZSIL annual conference**, on the theme of **International Law and Global Interconnectedness**, will be held as a hybrid event from 30 June - 2 July 2022. The in-person conference will be held on the ANU campus in Canberra, Australia. Individuals will also be able to participate virtually if they are unable to travel to Canberra.

The 2022 Conference Organising Committee invites conference participants to re-evaluate the role of international law as a force in different forms of social, political and even biological connections including, for example, physical processes that tie us together, emerging regionalisms, border crossings, and transnational solidarities, exemplified by the rise of global Black Lives Matter movement or Indigenous internationalisms. In the tradition of ANZSIL, we also welcome papers and panels on international law topics not connected to the conference theme and the submission of panel proposals from ANZSIL interest groups.

The full call for papers can be found [here](#). The deadline for the submission of paper and panel proposals is 21 February 2022.

The **2022 ANZSIL Postgraduate Workshop** will take place the day before the ANZSIL Conference, on 29 June 2022. This will also be in a hybrid format. The Workshop aims to provide postgraduate degree research students with an opportunity to present their research to their peers, to develop their own feedback and engagement skills, to discuss their experiences of postgraduate research and to make academic and professional connections. Participants will give presentations on an aspect of their research for approximately 10 minutes, followed by a roundtable discussion of each paper. To facilitate this discussion, participants will be required to submit short papers (no more than 1,500 words) for distribution in advance of the Workshop. Participants will also be expected to engage as discussants of other papers. There is no registration fee. Submissions are due no later than 21 February 2022, and more details can be found [here](#).

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

Election of Judge Hilary Charlesworth AM FASSA to the International Court of Justice

On 5 November 2021 (EST), Judge Hilary Charlesworth AM FASSA was elected to the International Court of Justice (ICJ). The election took place at the United Nations headquarters in New York to fill the vacancy resulting from the passing of Australian Judge James Crawford LLD FBA AC SC on 31 May 2021, whose term was due to conclude on 5 February 2024. Judge Charlesworth was nominated for the election by the independent Australian National Group, a body of eminent Australian jurists who serve as Members of the Permanent Court of Arbitration in The Hague.



The election was contested between Judge Charlesworth and Professor Linos-Alexandre Sicilianos of Greece, a distinguished jurist who has previously served as President of the European Court of Human Rights. Judge Charlesworth was elected to the ICJ, having secured an absolute majority of votes in the United Nations General Assembly (119 votes) and the Security Council (11 votes) in the single round of voting.

Judge Charlesworth has been a visiting professor at several law schools in the United States, France and the United Kingdom and has also held both an Australian Research Council Federation Fellowship and a Laureate Fellowship. Judge Charlesworth has also served as a member of the Institut de Droit International and the Curatorium of the Hague Academy of International Law, and as a visiting lecturer at the Hague Academy of International Law. She has previously served as President of the Australian and New Zealand Society of International Law, and has also been closely engaged with the Asian Society of International Law and the American Society of International Law.

Judge Charlesworth has twice served as judge *ad hoc* at the International Court of Justice — *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)* (chosen by Australia) and *Arbitral Award of 3 October 1899 (Guyana v Venezuela)* (chosen by Guyana). Judge Charlesworth is the third Australian and the first female Australian to be elected to the Court, and only the fifth woman to be elected to the Court in its 76-year history.

Draft General Comment on Land and Economic, Social and Cultural Rights

In May 2021, the UN Committee on Economic, Social and Cultural Rights (the Committee) invited all interested parties to comment on its draft General Comment No. 26 on land and economic, social and cultural rights.

Australia provided a submission to the Committee in August 2021. In its submission, Australia addressed matters relating to land and tenure, the right to an adequate standard of living, the rights of Indigenous peoples, armed conflicts and post-conflict situations, and the extraterritorial application of international human rights obligations. Australia's submission can be viewed on the Committee's [website](#).

The Committee received 100 submissions in response to its draft General Comment from States, United Nations agencies, civil society organisations, academia, other entities and individuals.

Disability Royal Commission — CRPD Hearing

On 8 and 9 November 2021, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability held a public hearing on ‘The human rights of people with disability and making the *Convention on the Rights of Persons with Disabilities* [CRPD] a reality in Australian law, policies and practices’.

In opening the hearing, the Chair, the Hon Ronald Sackville AO QC, reiterated that the Royal Commission’s inquiry is framed by human rights, and that the Commissioners intend to apply an approach informed by human rights.

The hearing examined topics including the role, interpretation and application of the CRPD in Australia. Witnesses included representatives from advocacy groups, academia, legal practice, government and the UN Committee on the Rights of Persons with Disabilities. The hearing was held virtually due to ongoing COVID-19 restrictions and impacts.



Transcripts and video recordings of the hearing are available on the Disability Royal Commission’s [website](#). Submissions made to the Royal Commission, including by the Australian Government, are also available on its website.

International Law Commission Draft Conclusions on Peremptory Norms of International Law (*Jus Cogens*)

At its 71st Session in 2019, the International Law Commission (ILC) invited all Governments to comment on its Draft Conclusions on peremptory norms of general international law (*jus cogens*). Australia provided a submission to the Secretary-General of the United Nations in July 2021. In its submission, Australia addressed: the different bases for a *jus cogens* norm; the standard for identifying a *jus cogens* norm; the proposed procedural requirements; and the non-exhaustive list of norms previously referred to by the ILC as having peremptory norm status. Australia also recommended the ILC provide further guidance and State practice in the commentaries on the source, scope and content of the obligations identified in some of the Draft Conclusions, and on how some of the Draft Conclusions interact with resolutions of the United Nations Security Council. Australia’s submission can be viewed on the ILC’s [website](#).

The ILC also received comments and observations from Austria, Belgium, Colombia, Cyprus, the Czech Republic, Denmark (on behalf of Nordic countries), El Salvador, France, Germany, Israel, Italy, Japan, the Netherlands, Poland, Portugal, the Russian Federation, Singapore, Slovenia, South Africa, Spain, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

Participation in CCAMLR-40

The 40th annual meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) was held from 18 to 29 October 2021. The Chair and the Secretariat hosted the meeting from CCAMLR Headquarters in Hobart, with delegations attending virtually (due to COVID-19). The Secretariat, and particularly the Executive Secretary, Dr David Agnew, must be commended for their efforts to support the virtual meeting, particularly in responding to the changing circumstances of lockdowns across Australia, and in Tasmania, in the lead up to and during the meeting.

Although the virtual international meeting format presented some challenges, including accommodating different time zones, the Commission agreed to ad hoc guidelines to support engagement in the virtual meeting and the Commission considered all of its core business items across a full agenda. This year, Members

worked together to agree to the text of a declaration recognising the achievements of CCAMLR over the past 40 years and reaffirming their commitment to cooperation, the objective of the CAMLR Convention and CCAMLR's activities. The declaration is available [here](#). While Members were not able to agree to the adoption of proposed marine protected areas, the Commission discussed a process to advance its consideration of marine protected areas over the next year.

With the CCAMLR meeting taking place in the lead up to COP 26, the Commission noted that climate change was a pressing issue of global importance that needed to be addressed by the Commission within the framework of the CAMLR Convention. Notwithstanding, the Commission could not reach consensus on a resolution on climate change which sought to strengthen CCAMLR's response to impacts of climate change on Antarctic marine living resources, and will work next year to progress that resolution.

The Commission agreed that CCAMLR-41 will take place in person in Hobart from 24 October to 4 November 2022, however due to the ongoing pandemic and any related travel restrictions the Commission agreed to take an early intersessional decision on whether the meeting will be conducted virtually. Maintaining the integrity of CCAMLR as part of the Antarctic Treaty system remains one of the Australian Government's primary objectives, and we look forward to engaging in the meeting and related processes again next year.

Key Developments in Australia's World Trade Organization Dispute Settlement Proceedings

China – Anti-Dumping and Countervailing Duty Measures on Barley from Australia (DS598)

On 3 September 2021, at Australia's request, the WTO Director-General composed the panel to consider Australia's claims concerning China's anti-dumping and countervailing duty measures on Australian barley. The Panel comprises Ms Enie Neri de Ross (Chair), Mr Jose Antonio De la Puente Leon, and Ms Catherina Janse Van Vuuren. The Panel proceedings are ongoing.

In relation to these dispute proceedings, Australia and China have jointly notified their intention to use the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) to resolve any appeal, in the event that the WTO Appellate Body is not functioning at that time.

Further information, including Australia's request to establish a panel and Australia's First Written Submission, is available on the [WTO disputes page](#) of the DFAT website.

China – Anti-Dumping and Countervailing Duty Measures on Wine from Australia (DS602)

On 26 October 2021, at Australia's request, a WTO dispute settlement panel was established to consider Australia's claims concerning China's imposition of anti-dumping measures on Australian bottled wine. The next phase in the process is the selection of panellists to adjudicate the dispute.

Further information, including Australia's request to establish a panel, is available on the [WTO disputes page](#) of the DFAT website.

Key Developments in Investor-State Dispute Settlement Reform Initiatives

Australia continues to actively engage on a range of investor-State dispute settlement (ISDS) reform initiatives.

On 15-19 November 2021, Australia participated in the forty-first session of United Nations Commission on International Trade Law (UNCITRAL) Working Group III, which considered the draft code of conduct for adjudicators in international investment disputes. The draft code was prepared jointly by the International Centre for the Settlement of Investment Disputes (ICSID) and UNCITRAL Secretariats. The Working Group will continue to complete its review of the draft code at a future meeting.

Australia has also continued to engage substantively in a review of the ICSID Arbitration Rules. On 12 November 2021, ICSID released Working Paper #6 which adopted an amendment proposed in a joint submission of 10 ICSID Member States, including Australia. ICSID plans to table the proposed amended rules before the membership in early 2022 for a vote of approval.

Key Developments in Australia’s Free Trade Agreement Negotiations

Australia continues to progress the negotiation and implementation of several bilateral and regional Free Trade Agreements (FTAs). The [DFAT website](#) has further information on these FTAs, including contact points for submitting queries.

Australia-European Union Free Trade Agreement

The twelfth round of negotiations for the Australia-EU Free Trade Agreement is scheduled to take place in February 2022. Despite this delay, numerous representatives from the European Commission, European Parliament and EU Member States have said they still share Australia’s objective to conclude the Australia-EU FTA in the second half of 2022.

Regional Comprehensive Economic Partnership

Australia and New Zealand ratified the Regional Comprehensive Economic Partnership Agreement (RCEP) on 2 November 2021. This triggered RCEP’s entry into force on 1 January 2022. Other RCEP ratifying parties include, as of December 2021, Brunei, Cambodia, China, Japan, Laos, Singapore, Thailand, and Vietnam. RCEP complements and builds upon an existing network of regional trade agreements by providing goods exporters with a single set of rules and procedures to access RCEP markets.

Once it enters into force, RCEP is expected to prompt new investment in regional value chains as goods made in one RCEP party using inputs from another RCEP party will be eligible for the same preferential tariff treatment when exported to a third RCEP party. On services and investment, RCEP also includes new market access commitments from China and ASEAN markets such as Malaysia, the Philippines and Thailand. RCEP also includes a significant forward-looking work plan and has the potential to evolve into an important forum for regional dialogue and cooperation on key trade and economic issues.

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

Election of Dr Penelope Ridings to the International Law Commission



On 12 November 2021, Dr Penelope Ridings was elected to the International Law Commission (ILC) for the 2023-2027 term. The election took place at the United Nations headquarters in New York, and was for all thirty four ILC member positions. Dr Ridings was New Zealand’s candidate, and was co-nominated by Australia, Canada and Sierra Leone. The election was contested with eleven candidates standing for eight positions in the Western European and Others Group (WEOG) slate.

Penelope Ridings is a barrister, international lawyer and Honorary Professor at the University of Auckland with extensive experience in public international law, as a negotiator, advocate and adjudicator. She has deep Pacific experience, and is a specialist in trade law and international environmental law. During her 30 year career at the New Zealand Ministry of Foreign Affairs and Trade, she served as New Zealand’s Chief International Legal Adviser as well as High Commissioner to Samoa and Ambassador to Poland, Latvia,

Lithuania, and Estonia. She has adjudicated high-profile, complex disputes as a WTO Dispute Panellist, acted as Counsel and Advocate before international tribunals, including the International Court of Justice, the International Tribunal for the Law of the Sea and the World Trade Organisation. Dr Ridings is the third New Zealander and the first female New Zealander to be elected to the ILC, and only the 10th woman to be elected to the ILC in its 74-year history.

Update on New Zealand's Trade Negotiation Agenda

On 2 November 2021, New Zealand deposited with the ASEAN Secretary General its instrument of ratification for the Regional Economic Comprehensive Partnership (RCEP). RCEP is a trade agreement between 15 economies in the Indo-Pacific region that is home to almost a third of the world's population and collectively takes over half of New Zealand's exports. New Zealand's ratification, alongside Australia, triggered the agreement's entry into force threshold, meaning RCEP will enter into force on 1 January 2022 between ten RCEP parties (of the fifteen RCEP signatories).

On 20 October 2021, New Zealand and the UK reached agreement on the key elements of a new high quality, comprehensive and progressive UK-NZ Free Trade Agreement. The agreement is notable for the quality of its market access outcomes, its advancement of Māori economic interests including through a dedicated chapter, and novel commitments on trade and the environment. In most areas the legal text has been substantially concluded. Work to finalise the text is continuing, alongside the commencement of the legal review and verification of the agreement.

ANZSIL Member News

New appointments

Pranemie Mandalawatta has recently joined the Australian Red Cross (ARC) International Humanitarian Law (IHL) Department as a Legal Advisor responsible for engagement with the Australian Government and legal sector, including the judiciary. In this role, Pranemie will be the executive officer for Australia's National IHL Committee. Pranemie has a background in IHL, international criminal law, human rights and cyber law. She was formerly acting as a senior legal officer in the Office of International Law at the Australian Attorney General's Department and has also worked as a criminal defence lawyer at a Sydney-based law firm. Pranemie holds a Masters in public international law from the Australian National University and has interned at the International Residual Mechanism for Criminal Tribunals.

Recent publications

Coastal State Jurisdiction Over Living Resources in the Exclusive Economic Zone

Camille Goodman's book explores the way in which—and the extent to which—coastal States can exercise their sovereign rights over living resources in the EEZ under UNCLOS. Essentially, what can coastal States do based on their EEZ fisheries jurisdiction? To provide a comprehensive, contemporary answer to this question, the book documents and analyses the practice of 145 coastal States. This provides a unique perspective on how the UNCLOS fisheries regime has been interpreted and applied in practice. More details can be found [here](#) or on [Twitter](#) and [LinkedIn](#).

War, Law and Business: A module on international humanitarian law for future business leaders

Australian Red Cross and RMIT University have launched a new, immersive experience on international humanitarian law (IHL) for future business leaders, *War, Law and Business*. This is part of an ongoing collaboration in building awareness of IHL among corporate actors.

More than a traditional e-learning module, this interactive simulation places students in the shoes of the CEO of a fictitious extractives company operating in a conflict zone. Along the way, users learn about IHL as a legal and ethical decision-making and evaluation framework that helps one manage the unique risks associated with doing business in a conflict-affected area.

War, Law and Business has been designed for students in business-related disciplines. However, it is also suitable for law students and those already in industry, including early career professionals but also business managers, lawyers and in-house counsel, security personnel and other professionals.

The module is free and accessible to all. To find out more, please watch this [short trailer video](#).

To start playing *War, Law and Business*, visit: www.redcross.org.au/war-law-and-business.

The project team welcomes any feedback and questions. Please contact Ms Fauve Kurnadi at fkurnadi@redcross.org.au or Dr Jonathan Kolieb at jonathan.kolieb@rmit.edu.au with comments/questions or to receive a copy of our supplement kits for educators and professionals.

International Law and the War with Islamic State: Challenges for Jus ad Bellum and Jus in Bello

Associate ANZSIL member, Saeed Bagheri has published *International Law and the War with Islamic State: Challenges for Jus ad Bellum and Jus in Bello*. Through an examination of the Islamic State case, the book offers a comprehensive study to close the gaps in *jus in bello* by contextualising the questions of civilian protection, victimisation and state responsibility by evaluating the US's war-sustaining theory as a justification for the destruction of a territorial state's natural resources that are occupied by armed non-state actors. More information is available [here](#).



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