

ANZSIL Newsletter

September 2021

www.anzsil.org.au

Message from the President

Tēnā koe e hoa,

It is with pride and pleasure I write to you at the beginning of my second (and final) term as ANZSIL President. It has been an unusual but very rewarding first term, and I would like to thank the ANZSIL Council and all ANZSIL members for their continued support.

I am delighted to report that the ANZSIL 2021 Annual Conference on the theme of *Inertia or Innovation? Reshaping International Law for a Complex Future* (30 June – 6 July) and the 2021 ANZSIL Postgraduate Workshop (7 July) were a great success. We had over 200 people registered for the conference, including a record number of students, and feedback from delegates was overwhelmingly positive. I would like to thank everyone who participated in the organisation of the conference and workshop, of panels, and who participated as speakers, chairs and audience members. I encourage you to submit short versions of your excellent papers to the [ANZSIL Perspective](#), which publishes short articles, opinion pieces and commentaries of up to 1500 words on a monthly basis.

As I write this, I like many if not most of my Australian and New Zealand colleagues am in a version of lockdown. In light of the continued uncertainty associated with travel and university funding in these times of COVID-19, the ANZSIL Council has decided that the 2022 annual ANZSIL conference will again be virtual. We appreciate that this will be disappointing news to some of you, but we believe that this decision will allow everyone to participate on an equal basis and will support members in planning their activities for next year. The virtual conference will run across five days from 29 June – 5 July 2022. If conditions permit, we will be supporting in-person events in cities across Australia and New Zealand to support the conference. I am delighted that we have a wonderful core of people who have volunteered to organise the 2022 conference, but we have space for one or two additional members. We are currently significantly gender imbalanced, so particularly welcome male volunteers!

I am pleased that ANZSIL-related events continue in-person and online, and would particularly like to thank the chairs of our various interest groups for connecting members on a regular basis during these challenging times. ANZSIL does have funds to support a small number of activities, and if you would like to apply for small event funding for workshops or regular meetings that connect ANZSIL members, please get in touch directly.

I am proud that our members and friends continue to support and contribute to the work of international organisations, and I would particularly like to congratulate the nomination of Professor Hilary Charlesworth as a candidate for election to the ICJ and Mr Greg Vines as a candidate for Director General of the ILO. I wish both Hilary and Greg every success in their campaigns. I would also like to congratulate Dr Melanie

IN THIS ISSUE

- > [President's Message](#)
- > [Recent Australian Practice](#)
- > [Recent New Zealand Practice](#)
- > [Events](#)
- > [ANZSIL Member News](#)

O'Brien on her election as President of the International Association of Genocide Scholars and Professor Steven Freeland on his appointment as Vice-Chair of a working group on the exploration, exploitation and utilization of space resources established under the UN Committee on the Peaceful Uses of Outer Space (COPUOUS) Legal Subcommittee.

I would like to thank Dr An Hertogen and Tess Kluckow for producing yet another fine and informative edition of the ANZSIL newsletter. As the survey of government activities over the last few months across the varied areas of trade, law of the sea, space law and cyberspace demonstrates, COVID-19 has proven no barrier to Australian and New Zealand engagement with and development of both traditional and emerging areas of international law.

Ngā manaakitanga,



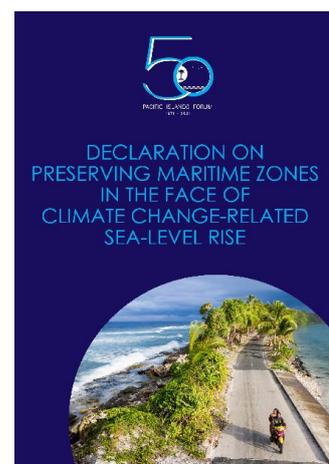
ANZSIL President

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

Pacific Islands Forum Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-Level Rise

On 6 August 2021, Prime Ministers Scott Morrison and Jacinda Ardern, along with the other leaders of the Pacific Islands Forum, made a world-leading declaration on preserving maritime zones in the face of climate change-related sea-level rise. With significant input from New Zealand and Australian officials, the declaration sets out Forum Members' views on how the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS) provisions on maritime zones will apply in the situation of climate change-related sea-level rise impacting their coastlines. It was also made in the context of ongoing international discussions on this issue, including the work of the International Law Commission.

The Pacific Islands Forum's approach in the declaration is firmly grounded in the primacy of UNCLOS as the enduring legal order for the oceans and seas. Forum leaders proclaimed that their maritime zones, once established in accordance with UNCLOS and notified to the Secretary-General of the United Nations pursuant to the relevant provisions of UNCLOS, will be maintained and continue to apply without reduction notwithstanding any physical changes connected to climate change-related sea-level rise, and that this approach is supported by UNCLOS and the principles underlying it.



Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace adopted a consensus report

On 28 May 2021, the sixth Group of Governmental Experts (GGE) on advancing responsible State behaviour in cyberspace in the context of international security (comprising experts from 25 countries, including Australia) reached consensus. The [adopted report](#) represents a commitment to a rules-based cyberspace. Significantly, from an international law perspective, the report: reaffirms the application of international law, and in particular the *UN Charter*, to State conduct in cyberspace; includes a specific reference to the application of international humanitarian law in armed conflict; and, provides a mechanism

for States to share their national views on how international law applies in cyberspace. The Australian Government submitted its views on how international law applies in cyberspace as an annex to the GGE report, which can be found [here](#).

The independent Australian National Group nominates Professor Hilary Charlesworth AM FASSA as a candidate for the election to the International Court of Justice

On 11 August 2021, the Australian Government announced that the independent Australian National Group had nominated Professor Hilary Charlesworth AM FASSA as a candidate for election to the International Court of Justice in the occasional election on 5 November 2021, and that the Australian Government supported the nomination. The Australian National Group is a body of independent and eminent jurists who serve as members of the Permanent Court of Arbitration in The Hague. Pursuant to the Statute of the International Court of Justice, candidates must be nominated by a National Group. The election will take place to fill the vacancy resulting from the passing of Judge James Richard Crawford LLD, FBA, AC, SC on 31 May 2021.



Professor Charlesworth is currently the Harrison Moore Chair in Law and Laureate Professor at Melbourne Law School and a Distinguished Professor at Australian National University. She has been a visiting professor at several law schools in the United States, France and the United Kingdom, delivered the general course on public international law at the prestigious Hague Academy of International Law in 2019, and has also held both an Australian Research Council Federation Fellowship and a Laureate Fellowship. She has been President of the Australian and New Zealand Society of International Law, as well as being closely engaged with the Asian Society of International Law and the American Society of International Law. She is a graduate of University of Melbourne and has a Doctor of Juridical Science from Harvard Law School. Professor Charlesworth has also served as judge ad hoc at the Court on two separate occasions (nominated by Australia in the Whaling in the Antarctic Case, and by Guyana in a case currently before the Court).

Australia nominates Mr Greg Vines as candidate for Director-General of the International Labour Organization

The Australian Government has nominated Mr Greg Vines as Australia's candidate to lead the International Labour Organization (ILO) as Director General for 2022–2027. Mr Vines is a leader in international public service, an expert in diplomatic negotiations and has strong employment and labour relations credentials. He has worked for governments, employers and workers and has more than a decade of experience at the ILO, including as Deputy Director-General where he has implemented an ambitious reform program over the past nine years.

The ILO is the oldest specialised agency of the United Nations. It brings together governments, employers and workers from across the globe to advance social and economic justice through setting international labour standards. Mr Vines is a lawyer and has been actively engaged with the ILO standards supervisory system. If successful, he would be the first Director-General from the Asia-Pacific region.



Mr Vines' leadership has established strong foundations from which he is uniquely positioned to lead the ILO in building an inclusive, sustainable and resilient future of work for all during the COVID-19 recovery. Nominations for the Director-General elections close on 1 October 2021. The election will be held in Geneva on 25 March 2022. The elected Director-General will commence in the role on 1 October 2022. More information on Mr Vines' candidacy can be found [here](#).

108th Session of the Legal Committee of the International Maritime Organization

Australia recently participated in the 108th session of the Legal Committee of the International Maritime Organization (IMO), which was held remotely from 26 July to 30 July 2021. This was the second session to be held online due to COVID-19, following on from the virtual 107th session in late 2020.

Under Article 35 of the IMO Convention, the Legal Committee meets at least once a year, with the Committee's mandate to consider any legal matters which arise within the context of the IMO. The 108th session covered a broad range of maritime issues, including issues related to the fair treatment of seafarers, fraudulent ship registration and fraudulent registries.

The Australian delegation also participated in a drafting group on a Unified Interpretation on the test for breaking the owner's right to limit liability under IMO conventions, and a working group on a regulatory scoping exercise and gap analysis of relevant IMO conventions with respect to Maritime Autonomous Surface Ships.

In the 108th session, the Committee agreed to begin work on measures to transparently assess whether there is a need to amend the liability and limitation limits set out in a series of IMO maritime related liability conventions, following a proposal by Australia. These measures would include routine collection of data, and application of an agreed mythology to assess changes in monetary value. This will ensure that information is available should a Member State want to informally review the liability limits. This work will be progressed intersessionally, with a more detailed proposal to be submitted to the Committee at its 109th session, taking into account comments raised during the 108th session. The Committee also elected Ms Gillian Grant of Canada as the Committee's Chair from 2022 and expressed its sincere thanks and appreciation to the outgoing Chair, Mr Volker Schöfisch from Germany for his work and leadership since 2018.

UN Committee on the Peaceful Uses of Outer Space (COPUOUS) Legal Subcommittee

Between 31 May and 11 June 2021, Australia participated in the 60th session of the UN Committee on the Peaceful Uses of Outer Space Legal Subcommittee (COPUOS LSC). The Australian Government delivered a [statement](#) about its engagement with partners including through the Artemis Accords, which promote the sustainable and beneficial use of space. It also delivered a [statement](#) expressing support for the exploration, exploitation and use of space resources in a manner consistent with international law. A key outcome was the establishment of a working group under the agenda item on the general exchange of views on potential legal models for activities in exploration, exploitation and utilization of space resources, and the appointment of Australian Emeritus Professor Steven Freeland as Vice Chair of this working group (Chaired by Andrzej Misztal of Poland). The report of the 60th COPUOS LSC was adopted by consensus and the final report can be found [here](#).

Participation in WTO Dispute Settlement as a Principal Party

India — Measures Concerning Sugar and Sugarcane (DS580)

The WTO panel considering the dispute brought by Australia, Brazil and Guatemala concerning India's domestic support for sugar and sugarcane, including price support and export subsidies, held its second hearing on 23 March 2021. This second and final hearing followed the parties' filing of their second written submissions in the dispute in February. The Panel is expected to release its final report in late 2021. Australia's submissions and statements in the dispute are available at the [WTO disputes page](#) of the DFAT website.

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

On 28 May 2021, the WTO Dispute Settlement Body established a dispute settlement panel to consider Australia's challenge concerning measures maintained by China on barley imports from Australia. Australia

claims that China's anti-dumping and countervailing duties on Australian barley appear to be inconsistent with certain provisions of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures; and the General Agreement on Tariffs and Trade 1994. Australia's request to establish a panel is available on the [WTO disputes page](#) of the DFAT website.

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

On 22 June 2021, Australia requested consultations with China concerning measures maintained by China on bottled wine imports from Australia. Australia claims that China's anti-dumping and countervailing measures on Australian wine appear to be inconsistent with certain provisions of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures; and the General Agreement on Tariffs and Trade 1994.

Australia held consultations with China on 9 August 2021. Australia's request for consultations is available on the [WTO disputes page](#) of the DFAT website. If Australia and China are unable to resolve the matter following the consultations, Australia, as the complaining party, may request the WTO Dispute Settlement Body establish a panel to adjudicate the dispute.

Australia – Anti-Dumping and Countervailing Duty Measures on Certain Products from China (DS603)

On 24 June 2021, China requested consultations with Australia regarding Australia's imposition of anti-dumping measures on wind towers and railway wheels and anti-dumping and countervailing duty measures on deep drawn stainless steel sinks originating from China. China alleges that the measures are inconsistent with Australia's WTO obligations.

Australia held consultations with China on 11 August 2021. China's request for consultations is available on the [WTO disputes page](#) of the DFAT website. If Australia and China are unable to resolve the matter following the consultations, China, as the complaining party, may request the WTO Dispute Settlement Body establish a panel to adjudicate the dispute.

Participation in WTO Dispute Settlement as a Third Party

European Union — Certain Measures Concerning Palm Oil and Oil Palm Crop-Based- Biofuels DS593)

This dispute, initiated by Indonesia, concerns certain measures imposed by the European Union (EU) and its member States on palm oil and oil-palm crop-based biofuels from Indonesia. Indonesia claimed that the measures imposed by the EU and certain Member States are inconsistent with the Agreement on Technical Barriers to Trade, the General Agreement on Tariffs and Trade 1994 and the Subsidies and Countervailing Measures Agreement.

A panel was established on 29 July 2020. Argentina, Australia, Brazil, Canada, China, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, India, Japan, Korea, Malaysia, Norway, Russia, Singapore, Thailand, Turkey and the United States reserved their right to participate as a third party.

Australia filed its third party written submission on 19 March 2021, responses to questions from the Panel on 27 May 2021 and executive summary on 2 June 2021. Australia's statements and involvement to date in this dispute can be accessed at the [WTO disputes page](#) of the DFAT website.

Recent Trade Law Initiatives

ISDS Reform Initiatives ICSID

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

Australia has recently submitted further preliminary comments on the second draft Code of Conduct for adjudicators, prepared jointly by the International Centre for the Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNCITRAL) Secretariats. The draft Code of Conduct is tentatively scheduled to be discussed at the next meeting of UNCITRAL's Working Group III on ISDS reform in November 2021.

ICSID

Australia has also continued to substantively engage in the review of the International Centre for the Settlement of Investment Disputes (ICSID) Arbitration Rules. On 5 June 2021, ICSID publicly released Working Paper #5 which adopted a number of amendments proposed in a joint submission of 36 ICSID member States, including Australia. ICSID's objective is to place the proposed amended rules before the membership, hopefully by the end of 2021 and, if adopted, to have these in place by early 2022.

Recent Developments in Australia's Free Trade Agreements

Trade and investment relationships with other countries and the agreements that enhance them play a key role in helping Australia recover from the COVID-19 pandemic, as well as boost job opportunities and economic growth. Australia continues to progress the negotiation and implementation of several bilateral and regional free trade agreements (FTAs). Input from stakeholders contributes to developing negotiating positions in respect of these agreements, and the Australian Government welcomes input on these discussions. The [DFAT website](#) has further information on these agreements, including contact points.

FTAs under negotiation

Five negotiating rounds have been held since Australia and the United Kingdom of Great Britain and Northern Ireland (UK) launched negotiations for an FTA on 17 June 2020. Australia is seeking an ambitious and comprehensive FTA with the UK that drives increased trade in goods and services, two-way investment, economic growth and job creation. An FTA with the UK also signals our shared commitment to open markets, free trade and the rules-based global trading system. On 15 June 2021, Australian Prime Minister Morrison and UK Prime Minister Johnson made an [announcement](#) on core elements of the FTA negotiations. Australian negotiators are engaging closely with UK to work through the outstanding details and finalise the legal text, ideally for the agreement to enter into force by 1 July 2022.

Negotiations for a FTA with the EU are progressing well and we remain focused on securing a comprehensive and ambitious agreement with the EU as soon as possible. The eleventh round of negotiations was held, virtually, in June 2021 and intersessional discussions continue regularly across the FTA. The twelfth round is scheduled for October 2021. The [DFAT website](#) has more information.

FTAs concluded but not yet in force

The Regional Comprehensive Economic Partnership (RCEP) Agreement was signed on 15 November 2020. Entry into force will occur 60 days after six ASEAN member States and three non ASEAN member States ratify the agreement. Australia is working towards ratification of the RCEP Agreement in late 2021. The Agreement covers trade in goods, trade in services, investment, economic and technical cooperation and has new rules for small and medium-sized enterprises, government procurement, intellectual property, competition, and electronic commerce.

Expansion of Existing FTAs

On 1 February 2021, the United Kingdom (UK) formally requested accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and on 2 June 2021, the CPTPP Commission agreed to formally commence accession negotiations with the UK. DFAT is now inviting submissions from interested individuals and groups on the opportunities and impacts of the UK's potential accession to the CPTPP. Stakeholders are invited to consider and comment on the commercial, economic, regional and other impacts that could be expected to arise from the UK acceding to the CPTPP. The information stakeholders provide will assist the Australian Government in considering Australia's approach to possible CPTPP accession negotiations with the UK.

The Australia-Singapore Digital Economy Agreement (DEA) entered into force on 8 December 2020. The DEA upgraded the Electronic Commerce chapter of the Singapore-Australia Free Trade Agreement (SAFTA) with a new Digital Economy chapter, providing modernised trade rules to assist businesses and consumers to engage with and benefit from digital trade and the digital economy. Key commitments include enhanced rules to prevent unnecessary restrictions on the transfer and location of data, improved protections for source code, and new commitments on interoperable e-invoicing and e-payment frameworks. The DEA also provides a platform for ongoing agency-level cooperation through seven Memoranda of Understanding (MoUs) on emerging digital issues, including data innovation and artificial intelligence.

The Pacific Agreement on Closer Economic Relations Plus (PACER Plus) is a development-centred FTA. PACER Plus entered into force on 13 December 2020. New Zealand, Australia, Samoa, Kiribati, Tonga, Solomon Islands, Niue and Cook Islands are parties to the Agreement. Nauru, Tuvalu and Vanuatu have signed the Agreement but have not yet ratified the Agreement.

PACER Plus is an important part of Australia's engagement in the Pacific and provides an avenue to help foster a secure, stable and prosperous region. As a development-centred FTA, PACER Plus is accompanied by a \$25 million implementation package funded by Australia and New Zealand. A bespoke unit being set up in Apia, Samoa will deliver technical trade-related assistance under this implementation package to help members realise the benefits from this Agreement.

In the longer term, PACER Plus will also provide commercial opportunities for Australian exporters and investors in a range of sectors. These opportunities will increase over time as the provisions of the Agreement lead to more open and transparent policies, and as wider relationships are built regionally and beyond. More information is available on the [Pacer Plus website](#).

FTAs under review

Australia has initiated work on a General Review of the Japan-Australia Economic Partnership Agreement (JAPEPA) and is seeking input from interested stakeholders with a call for public submissions. The General Review provides a framework to identify trade and investment policy opportunities, review FTA activities and to consider emerging developments in global trade policy more broadly. DFAT would be interested to receive submissions from interested stakeholders through the [DFAT website](#).

The ongoing upgrade negotiations for the ASEAN-Australia-New Zealand (AANZFTA) are an opportunity to ensure AANZFTA remains a contemporary agreement, which contributes to the regional economic recovery post COVID-19 and to further strengthen Australia's economic engagement with ASEAN.

DFAT is seeking submissions from businesses and other interested stakeholders on a general review of the Malaysia-Australia Free Trade Agreement (MAFTA). We are keen to understand the impacts of MAFTA on businesses or other groups in the community since the Agreement entered into force on 1 January 2013. Refer to the [DFAT website](#) for further information.

Other Initiatives

The [FTA Portal](#) makes it easier for the public and businesses to access information about the operation of Australia's FTAs. Goods and services commitments under Australia's FTAs are added to the Portal as soon as possible after the agreements enter into force.

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

New Zealand joins the Artemis Accords

In May 2021 New Zealand joined the Artemis Accords, an international arrangement to guide cooperation on peaceful exploration and activity in outer space, launched by NASA, and signed by 11 nations. The non-binding [Artemis Accords](#) set principles that guide the safe and sustainable exploration and use of outer space such as: transparency, inter-operability, release of scientific data, the use of space resources, safe disposal of debris, and prevention of harmful interference in other's activities.

The Artemis Accords are an important first step, confirming that the extraction and use of space resources must be done consistently with existing international law, and that a multilateral process is required to progress this issue.

New Zealand's position is that there are some significant gaps especially regarding long-term sustainable management of space resources and the space environment. There is a need for additional rules, norms and standards to reinforce the peaceful use of outer space and ensure that the existing international rules applying to outer space are effective in the modern space environment – and ensure the conservation and long-term sustainability of space resources.

Maritime Powers Bill

On 23 July 2021, the Maritime Powers Bill was introduced to the New Zealand House of Representatives and on 6 July 2021, the Bill had its first reading. The Bill is designed to respond to the increasingly dynamic and complex maritime security environment that New Zealand faces by establishing a comprehensive regime for the exercise of law enforcement powers in international waters – the oceans and seas beyond New Zealand's territorial sea.

The Bill provides a clear domestic legal basis for New Zealand law enforcement agencies (including Police, the New Zealand Defence Force, Customs and the Department of Conservation) to stop, board, search and detain ships in international waters where there are reasonable grounds to suspect that a serious criminal offence is being, has been or will be committed on board for which New Zealand has jurisdiction - for example drugs trafficking, wildlife trafficking and human trafficking.

The powers are consistent with New Zealand's international law rights and obligations, and require flag State consent before they can be used in respect of foreign vessels, except for the limited exceptions provided for in UNCLOS.

The Bill will go through the New Zealand Select Committee process, which will involve examination of the Bill in detail and the hearing of public submissions. If passed, it will come into effect in December 2021.

Events

“Festival of Conversations, Ideas and Performances” – Institute for International Law and the Humanities (Melbourne Law School)

It is hard to believe, but Melbourne Law School’s [Institute for International Law and the Humanities](#) (IILAH) is now 15 years old. This seems like an excellent reason to celebrate, and to bring a touch of pleasure and conviviality after a (long) year of alienation. So, members of the IILAH community have decided to come together to mark IILAH’s anniversary with a festival! We cap off our festival by the launch of the [Routledge Handbook of International Law and the Humanities](#). Join us for the celebration!

For the full program and registration information, see [here](#).

IILAH Podcast: ‘Unpacking Transitional Justice: International Law, Memory, Power’

This podcast is the outcome of a seminar series jointly hosted by the [Amsterdam Center for International Law](#) (ACIL) at the University of Amsterdam, and Melbourne Law School’s [Institute for International Law and the Humanities](#) (IILAH). The Series brought together scholars from around the world employing interdisciplinary and critical approaches to the study of transitional justice and international law, broadly understood. You can listen to it here:

- Seminar 1. [Valeria Vazquez Guevara and Eliana Cusato: Truth: facts and post-conflict state-building](#)
- Seminar 2. [Lucas Lixinski and Maria Elander: Community: culture, identities, and memories](#)
- Seminar 3. [Christine Schwöbel-Patel and Hannah Franzki: The Political Economy of International Law](#)
- Seminar 4. [Oishik Sircar, Sara Kendall, and Christopher Gevers: Dealing with...the past?](#)

ANZSIL Member News

Dr Melanie O’Brien (UWA Law School) has been elected as the President of the [International Association of Genocide Scholars](#). She is the first Australian to hold this role, and the first woman in the role in almost 20 years.



Australian and New Zealand
Society of International Law

ANZSIL Newsletter
September 2021

Editors:

- > An Hertogen
University of Auckland
- > Tess Kluckow
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

> www.anzsil.org.au

> twitter: @ANZSIL