Australian and New Zealand Society of International Law

anzsil newsletter

Welcome to the February edition of the ANZSIL newsletter.

In this edition

News in brief

The Annual Conference is on 23-25 June at University House at the ANU. Register today!

From the Editors

The ANZSIL Annual Conference is fast approaching. It will be held at University House at the Australian National University from Thursday 23 June to Saturday 25 June (finishing at 1.15pm). There is still time to register for the conference and details on how to do so can be found here.

Thank you as always to the Attorney-General's Department, the Department of Foreign Affairs and Trade, and the Ministry of Foreign and Affairs and Trade for supplying the very helpful updates on recent Australian and New Zealand practice in public international law.

As former Jessup mooters ourselves, we were delighted by the strong performance of Australian and New Zealand teams in the international rounds in Washington D.C. in March. The University of Sydney defeated Columbia University in the World Championship Round. This was the second year in the row that an Australian team had won the Jessup Cup, with the ANU College of Law winning the title in 2010 (on that occasion also defeating Columbia University). Both the University of Western Australia and Auckland University reached the Octo-Finals in 2011. Auckland were narrowly defeated by Columbia University. Since 2000 Australian teams have dominated the Jessup, winning the Jessup Cup on six occasions.

We both had the privilege of being present at the 2011 World Championship Round, which was argued before a highly distinguished panel: Thomas Buergenthal (Former Judge, International Court of Justice), Claudio Grossman (Former President, Inter-American Commission on Human Rights) and Mark Pieth (Chairman, OECD Working Group on Bribery in International Transactions).

During their trip to Washington the University of Sydney and University of Western Australia teams were privileged to attend a meeting with senior Australian diplomats at the Australian Embassy and engaged in a wide-ranging discussion on the role and relevance of public international law to the work of the mission.

Sarah McCosker and **Tim Stephens**

Editors

From the President

Description

2011 Annual Conference

The Australian and New Zealand Society of International Law (ANZSIL) and the ANZSIL Secretariat, the Centre for International and Public Law, ANU College of Law, is delighted to present the

19th Annual ANZSIL Conference - The Promise and Limits of International Law

Date: Thursday 23 June - Saturday 25 June (concluding at 1.15pm)
Venue: University House, The Australian National University, Canberra

Distinguished Featured Speakers Include:

Professor Beth Simmons, Clarence Dillon Professor of International Affairs International Relations, Harvard University

Professor Yuji Iwasawa, Professor of International Law, University of Tokyo; Vice-Chairperson, United Nations Human Rights Committee

Dr Manoj Kumar Sinha, Professor of Law, WB National University of Juridical Sciences, Kolkata

Mr David Unterhalter SC, Chairman of the Appellate Body of the World Trade Organisation, Professor of Law, University of the Witwatersrand, and barrister, Monckton Chambers

Professor Anne Orford, Michael D Kirby Chair of International Law, Australian Research Council Professorial Fellow and Director of the Institute for International Law and the Humanities, Melbourne Law School

For information about the Conference Program and how to Register, please visit the ANZSIL webpage.

Recent Australian Practice in International Law

Progress of the Cluster Munitions Bill

The Attorney-General introduced the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010 into Parliament on 27 October 2010. The Bill will ensure that Australia domestic law is consistent with the Convention on Cluster Munitions (the Convention) which Australia signed on 3 December 2008. The Bill was passed by the House of Representatives on 18 November 2010. The Bill was referred to the Senate Foreign Affairs, Defence and Trade Legislation Committee, which tabled its report on the Bill on 25 March 2011. The Committee recommended that the Senate pass the Bill, noting that the Bill gives effect to the Convention's requirement for States Parties to impose penal sanctions for conduct prohibited by the Convention. The Bill will likely be debated in the Senate during the 2011 Winter sittings. Once all measures to give effect to the Convention are in place, the Government has indicated it will move as quickly as possible towards lodging Australia's instrument of ratification for the Convention.

Australian participation in the Preparatory Committee on the Arms Trade Treaty

In December 2009, the United Nations General Assembly resolved to hold a four-week Conference on the Arms Trade Treaty in 2012 to elaborate a legally binding instrument of the highest possible common international standards for the transfer of conventional arms. The General Assembly also resolved that a Preparatory Committee meet in 2010 and 2011 to make recommendations to the 2012 Conference on the elements that would be needed to attain an effective and balanced legally binding instrument.

The first and second Preparatory Committee meetings were held in New York in July 2010 and March 2011. The next meeting will be in July 2011, and a final meeting will likely be held in mid-2012. Australia was an active participant in the Preparatory Committee meetings and will continue to be involved, consistently with its strong support for the development of an Arms Trade Treaty. Australia was a co-author of the 2006 United Nations General Assembly resolution which called for the development of an Arms Trade Treaty, and has co-authored every related United Nations General Assembly Resolution since 2006, including the December 2009 Resolution mandating formal treaty negotiations.

Australia files memorial in the case concerning *Whaling in the Antarctic (Australia v. Japan)*

On 9 May 2011, in accordance with the time-limits set down by the International Court of Justice (ICJ), Australia filed its Memorial in the case concerning *Whaling in the Antarctic (Australia v. Japan).*

Australia initiated legal proceedings against Japan in the ICJ in May 2010, challenging Japan's whaling program in the Southern Ocean. In March 2011, the ICJ accepted the nomination of Professor Hilary Charlesworth AM as Australia's ad hoc judge in the case.

Australia will argue that Japan is in breach of the moratorium on commercial whaling under the International Convention for the Regulation of Whaling, as well as a prohibition on such whaling in the Southern Ocean Sanctuary, also established under

that Convention.

Japan has sought to rely on an exception to the Convention concerning whaling 'for purposes of scientific research'. Australia will argue the whaling carried out by Japan is commercial, not scientific, and does not fall within that narrow exception.

Australia's Memorial will remain confidential until its public release is ordered by the Court, which is likely to be at the first oral hearing of the case. Japan must file its Counter-Memorial by 9 March 2012.

Australia appears before the UN Human Rights Council for its first Universal Periodic Review

On 27 January 2011, Australia appeared before the UN Human Rights Council for its first Universal Periodic Review (UPR). The Australian Government delegation was headed by the Hon Senator Kate Lundy, Parliamentary Secretary to the Prime Minister and included Australia's Permanent Representative to the United Nations, Ambassador Peter Woolcott, as well as senior Australian Government officials from Commonwealth Departments.

During the interactive session, 53 countries asked questions of and made recommendations to Australia. Australia received 145 recommendations in total. Issues raised included international human rights treaties, domestic implementation of human rights obligations, the rights of Indigenous peoples, the rights of asylum seekers, refugees and migrants, Australia's counter-terrorism legislation, the rights of persons with disabilities and, the rights of women and children.

Australia announced a number of voluntary commitments at its UPR including the establishment of a full-time Race Discrimination Commissioner in the Australian Human Rights Commission; the tabling in Parliament of concluding observations of UN treaty bodies and UPR recommendations; the establishment of a systematic process for the regular review of Australia's reservations in international human rights treaties; increased funding for OHCHR and the Asia-Pacific Forum of National Human Rights Institutions; the establishment of a public online database of recommendations from the UN human rights system; and its intention to use the UPR recommendations accepted by the government to inform the development of Australia's National Human Rights Action Plan.
Australia chose to defer consideration recommendations made to it until the June 2011 session of the Human Rights Council. In recent months, the Australian Government has undertaken extensive consultation with Commonwealth Departments, States and Territories, the Australian Human Rights Commission and non-government organisations regarding the recommendations. It is currently finalising its response which is due to be adopted by the Human Rights Council on 8 June 2011.

Draft Third Optional Protocol to the Convention on the Rights of the Child – development of a new complaints mechanism

Negotiations on a draft Third Optional Protocol to the Convention on the Rights of the Child (CRC) took place in Geneva from 6-10 December 2010 and 10-16 February 2011. The draft optional protocol proposes to establish an individual communications (complaints) mechanism in relation to rights arising under the CRC and its two substantive optional protocols, similar to communications mechanisms available under other international human rights instruments.

The Australian Government delegation played a constructive role in the negotiations. At the conclusion of the meeting in February 2011, a Chair's text was agreed by the Working Group, but with the possibility that some States may seek to have the text reopened.
The Working Group's report is scheduled to be presented at the Human Rights Council session beginning on 30 May 2011.

Gillard Government Trade Policy Statement – Trading our way to more jobs and prosperity

On 12 April 2011 the Australian Government released a new trade policy statement which will shape Australia's approach to current and future trade negotiations. The trade policy statement sets out key principles such as non-discrimination and transparency to guide Australia's trade policy strategy.

The trade policy statement also sets out disciplines to guide trade negotiations and the Government's trade negotiating agenda. This follows a review of Australia's trade

policy conducted by the Minister for Trade, the Hon Dr Craig Emerson MP, which also considered the recommendations of the Productivity Commission Report on Bilateral and Regional Trade Agreements released in December 2010. The policy statement contains five principles to guide Australia's trade policy strategy. These are:

1. Unilateralism: pursuing trade-related economic reform without waiting for other countries to reform their trade policies.

2. Non-discrimination: Australia will not seek to entrench preferential access to markets in trade negotiations, simply an opportunity to compete on terms as favourable as anyone else's.

3. Separation: foreign policy considerations not overriding trade policy.

4. Transparency: the public will be well informed about trade negotiations and have an opportunity for input.

5. Indivisibility of trade policy and economic reform.

The Trade Policy Statement accepts the Productivity Commission's recommendation that Australia no longer seek to include investor-state dispute settlement provisions in trade agreements. Investor-state dispute settlement provisions allow private investors from a state party to submit a claim to international arbitration that another state party has breached its investment obligations. While Australian Governments have, in the past, sought the inclusion of investor-state dispute settlement procedures in trade agreements with developing countries, the Gillard Government will discontinue this practice. The Government does not support provisions that would confer greater legal rights on foreign businesses than those available to domestic businesses.

The Responsibility to Protect

Australia is a strong supporter of the Responsibility to Protect (R2P) principle and has been working actively to promote R2P in the United Nations (UN). Through AusAID, Australia has committed almost $6 million over four years (2008-2012) for R2P advocacy.

In September 2010, Australia's Foreign Minister, the Hon Kevin Rudd MP, participated in a Ministerial Meeting on R2P in the margins of the UN General Assembly, highlighting Australia's commitment to strengthening international capacity to prevent and halt mass atrocities and to implement the R2P principle.

On 23 March 2011 at the 16th Session of the UN Human Rights Council, Australia delivered a joint statement on R2P on behalf of 56 countries. The statement urged all States to implement their responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and called on the international community to continue to provide international assistance and capacity building to help States in this regard. The statement enjoyed strong support across all geographic regions and constitutes a first step on R2P in the Human Rights Council context.

UN Secretary-General (UNSG) Ban Ki-moon has been a strong supporter of R2P. He appointed Edward Luck as UN Special Adviser on R2P in 2007, and the UN has established a Joint Office for its Special Advisers on Genocide and R2P. UNSG Ban has issued annual R2P reports since 2009, which have been followed by UN General Assembly debates on R2P. More recently, the R2P principle was invoked in UN Security Council resolutions 1970 and 1973 which recalled the responsibility of the Libyan authorities to protect its population.

Recent New Zealand Practice in International Law

New Zealand - Hong Kong, China Closer Economic Partnership Agreement

The New Zealand - Hong Kong, China Closer Economic Partnership Agreement entered into force on 1 January 2011. The Agreement is Hong Kong's first free trade agreement, aside from its Closer Economic Partnership Agreement with Mainland China, and will complement New Zealand's existing free trade agreement with Mainland China.

WTO Dispute Settlement processes

Australia - Apples

In September 2007, New Zealand initiated dispute settlement proceedings in the WTO

concerning phytosanitary measures applied by Australia to New Zealand apples. The Panel released to the WTO Membership in August 2010. Following an appeal by Australia on several of the Panel's findings related to two of the pests at issue in the case (fire blight and apple leaf-curling midge), the Appellate Body report was released on 29 November 2010.

The Appellate Body upheld the Panel's finding that all sixteen of Australia's quarantine measures applied to New Zealand apples and challenged by New Zealand are inconsistent with Australia's legal obligations under the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement"). The reports were adopted by the WTO Dispute Settlement Body on 17 December 2010. Australia and New Zealand agreed on a reasonable period of time for Australia to implement the WTO findings of 9 months, expiring on 17 August 2011. As part of the implementation process, Biosecurity Australia is undertaking a scientific review of its quarantine measures applied to New Zealand apples.

WTO disputes to which New Zealand is a third party

New Zealand involves itself as a third party in WTO dispute settlement proceedings when it has a substantial interest in the case. New Zealand's interests often involve systemic matters of WTO law. As an export economy, New Zealand takes a keen interest in ensuring proper interpretation of, and widespread compliance with the WTO Agreements. New Zealand is currently involved as a Third Party in three disputes:

o US - Tuna

This dispute involves a claim by Mexico under the TBT Agreement and the GATT regarding measures in place in the United States that govern the ability of tuna to be marketed in the United States using domestic "dolphin-safe" labelling. New Zealand submitted a written Third Party submission and presented a statement at the first Panel hearing held in Geneva from 18-20 October. The Panel report is expected in mid-2011.

o US - Mandatory Country of Origin Labelling

Canada and Mexico have brought a claim against the United States' under the TBT Agreement and the GATT concerning its measures requiring mandatory country of origin labelling at the point of sale in respect of certain products, including beef and pork. New Zealand submitted a written Third Party submission and presented a statement at the first Panel hearing held in Geneva from 14-15 September. The Panel report is expected in mid-2011.

International Renewable Energy Agency

New Zealand acceded to the Statute of the International Renewable Energy Agency, effective from 1 May 2011. The Agency is a new global forum on renewable energy, and aims to promote the widespread adoption and sustainable use of all forms of renewable energy.

New Zealand will be a member of the Agency, which will ensure we have access to the IRENA work programme. Policy makers and New Zealand companies should be able to take advantage of opportunities that may result. Membership is in line with New Zealand's domestic policy commitment for 90 percent of electricity to be generated from renewable sources by 2025, and complements our membership of the International Energy Agency.

Heavy Fuel Oils

In March 2010 the IMO adopted a prohibition on the use or carriage of heavy grade oil in the Antarctic, which is to take effect in August 2011. Norway and New Zealand played a leading role in promoting the prohibition within the IMO, which stemmed from a formal request by the ATCM in 2005. The prohibition with reduce the risk of environmental damage from oil. It will have a significant effect on Antarctic tourism, particularly on the large 500 passenger-plus cruise ships which use heavy grade oil. The International Association of Antarctica Tour Operators (IAATO) estimates that as a result of the ban overall Antarctic tourism numbers are expected to drop by as much as 20 percent.

South Pacific Regional Fisheries Management Organisation

Thirteen countries signed the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, which will establish the

South Pacific Regional Fisheries Management Organisation (SPRFMO), by the time the signature period closed on 31 January 2011.
Once established, the SPRFMO will govern the non-highly migratory high seas fisheries of the South Pacific Ocean. New Zealand is the depositary for the Convention and as of 1 June five countries had become party to the Convention (New Zealand, Belize, Cook Islands, Denmark in respect of the Faroe Islands and Cuba). The Convention will enter into force 30 days after eight Contracting Parties have ratified, acceded, accepted or approved the Convention. The eight Parties must comprise a particular mix of non-coastal states and coastal states from the east and west of the South Pacific Ocean. The Convention is expected to enter into force sometime during 2012.

Colombia hosted the second session of the Preparatory Conference for the Commission in 24 to 28 January 2011. The session agreed new interim measures for jack mackerel including a 2011 catch limit. The third (and possibly final) Preparatory Conference will be held in Santiago, Chile from 30 January to 3 February 2012.

United Nations Security Council Sanctions

On 23 December the United Nations (Iran) Sanctions Amendment Regulations 2010 entered into force. The Amendment Regulations implement the requirement in United Nations Security Council Resolution 1929 (UNSCR 1929) for New Zealanders to exercise vigilance when doing business with Iran through an Iran Business Registration Scheme. The Scheme requires New Zealanders "doing business" (ie being in anyway involved in provision or receipt of goods or services) with Iran to register with the New Zealand Government through MFAT. To register, applicants must describe the steps taken to ascertain the identity of their Iranian business partners (including providing authenticated documentation), state the general nature of the business and sign a declaration that the applicant believes on reasonable grounds that the business could not contribute to Iran's proliferation-sensitive nuclear activities; or to the development by or on behalf of Iran of nuclear weapon delivery systems, or violations of UNSC Resolutions against Iran.

The United Nations Sanctions (Iran) Regulations 2010, implementing all other elements of UNSCR 1929, entered into force on 2 September 2010.

The United Nations Sanctions (Libya) Regulations 2011 entered into force on 1 April 2011. The Regulations give effect to UNSCR 1970 and 1973 which impose sanctions against Libya in response to the use of force and human rights abuses by the Libyan regime against civilians during protests in Libya. The Regulations include an arms embargo against Libya; enforce a no-fly zone over Libya; implement a travel ban and asset freeze against senior members of the Libyan regime and require New Zealanders to exercise vigilance when doing business with Libyan firms.

Upcoming Events

Human Rights and Governance Colloquium - Queensland University of Technology - Friday 25 November 2011

The Faculty of Law at QUT is holding a two day international law colloquium in November: 2011 Human Rights and Governance Colloquium - Shifting Global Powers: Challenges and Opportunities for International Law (Thursday 24 and Friday 25 November 2011 - QUT, Brisbane, Australia)

Further details and registration are available here.

Sydney Centre for International Law - Seminar Series

The Sydney Centre for International Law at the Faculty of Law, University of Sydney, is hosting a series of public and legal professional development seminars exploring recent developments in key areas of public and private international law.

Upcoming seminars in 2011 include:

Litigating Disputes in the WTO Dispute Settlement System: A Distinctive System or a Familiar Extension of Litigation under Domestic Law? - 22 June 2011

Guest speaker: David Unterhalter, Member of the WTO Appellate Body. Chair: Dr Brett Williams, Sydney Law School.

Click here for further details and registration.

After Ruggie: The Future of Business and Human Rights - From Courtrooms to Boardrooms and Beyond - 27 June

In June 2011, the UN Human Rights Council will consider the Guiding Principles on Business and Human Rights. These Guiding Principles are the culmination of six years of research, consultation and discussion with governments, businesses and civil society by the UN Secretary-General's Special Representative on Business and Human Rights, Professor John Ruggie. This seminar will evaluate the guiding principles - commending their strengths while criticising their weaknesses. We will consider whether the principles are adequate to address the broad diversity of corporate activities - from extractive industries to financial services.

Guest speakers: Professor David Kinley, Sydney Law School; Rachel Nicholson, Allens Arthur Robinson; Odette Murray, Attorney-General's Department.

Click here for further details and registration.

Building an Asia Pacific Community - 30 August 2011 - 3-6pm

This session will consider regulatory implications of the proposal by Kevin Rudd to go beyond existing mechanisms within the vibrant Asia-Pacific region to promote better "habits of cooperation" in economic, security and socio-political affairs.

Guest speakers: Irene Baghoomians, Sydney Law School; Micah Burch, Sydney Law School; Professor Philomena Murray, University of Melbourne; Dr Luke Nottage, Sydney Law School; Associate Professor Ben Saul, Sydney Law School; Dr Brett Williams, Sydney Law School.

Click here for further details and registration.

Ethics of Cross-Jurisdictional Practice - September 2011 (date to be confirmed)

Guest speakers to include: Dr Fleur Johns, Sydney Law School.

Internship Reports

Under its internship support program, ANZSIL provides financial support for unpaid internships with International Organizations and NGOs.

Annelise Young

Extraordinary Chambers in the Courts of Cambodia

From January – July 2010, I undertook an internship in the Office of the Co-Prosecutors at the United Nations Assistance to the Khmer Rouge Tribunal in Cambodia. This was made possible by a grant for internship support from ANZSIL, for which I am truly grateful.

Background

The Extraordinary Chambers in the Courts of Cambodia (or Khmer Rouge Tribunal) is a hybrid Tribunal, based on the civil law system. It was set up by an agreement between the Cambodian government and the UN to prosecute senior members of the Khmer Rouge for the international crimes of Genocide, Crimes Against Humanity and War Crimes as well as national crimes occurring during the period of Democratic Kampuchea between 1975-1979.

During my internship, the Office of the Co-Prosecutor was primarily undertaking pre-trial preparation for case 002, in which the remaining four most senior members of the Khmer Rouge will be brought to trial. They are Nuon Chea ('Brother Number Two' in the Khmer Rouge hierarchy, underneath Pol Pot), Ieng Sary ('Brother Number Three' and the Minister of Foreign Affairs of Democratic Kampuchea), Ieng Thirith (Ieng Sary's wife, Pol Pot's sister in law, and the former Minister for Social Affairs) and Khieu Samphan, (the former head of Democratic Kampuchea although this was more of a figurative role, and Pol Pot was the real leader).

While the trial in case 002 had yet to commence, much of our work also involved written appeals to the Pre-Trial chamber and small hearings dealing with pre-trial issues such as detention of the accused, disputes over evidence being placed on the case file and disagreements between the Office of the Co-Investigating Judges (OCIJ), Defence and Office of the Co-Prosecutors (OCP) over procedural issues concerning

the internal rules of the Court.

Challenges

An enormous amount of effort and commitment has gone into making the Tribunal function, given that it faces arguably more challenges than the other International Criminal Tribunals. For one, unlike the ad hoc Tribunals where French and English are the official languages, the ECCC has three official languages: English, French and Khmer. Official documents must be translated into all three, considerably slowing down the prosecution process.

Second, the Tribunal receives the least funding of the International Criminal Tribunals. As a result there are not enough staff to meet the vast workload, and so interns are given a lot of responsibility. While it is great experience for us, there is a climate of uncertainty about the future of the Tribunal and the international support for it. For example, while I was working there, Japan, one of the largest sponsors of the Court, announced a 75% cut in their funding. Third, the old age of the accused in case 002 and their worrying state of health creates an impetus to begin the trial 002 as soon as possible for fear they will die before the trial is finished. However the sheer scale of case 002 – four accused, crimes stretching over nearly a 4 year period and encompassing the whole of Cambodia - means that progress is inevitably going to be slow.

In addition, from a common law perspective, the civil law system 'adds in' several steps, such as the Prosecution writing the final submission and the Office of the Co Investigating Judges writing a closing order (that can be appealed to the Pre-Trial Chamber) as a means of simply indicting the Charges Persons. This arguably works much better in a smaller domestic court, but can seem repetitive and slow in a trial of this scale. Moreoever, the Trial Chamber is not bound by the decisions of the Pre-Trial Chamber, so entire issues (such as judicial findings concerning Joint Criminal Enterprise) will be re-argued. Finally, the delay of more than thirty years since the reign of the Khmer Rouge means that there is very little forensic evidence on which to rely, unlike in the ICTR, ICTY and ICC.

Judgment in Case 001

These challenges illustrate why the 26 July the Trial Chamber judgment in case 001 was such a significant milestone. It was an exciting time to be at the Court. The public reaction, however, was mixed. Some were pleased that the ECCC, given the many challenges I just mentioned, was able to successfully convict its first accused. Others were disappointed, particularly by the fact that Duch, the head of the S-21 torture prison in which more than 12 000 people were killed, was given only a 35 year sentence. The sentence, once mitigated by 5 years for the fact that Duch's pre-trial detention was illegal, and then counting the near 11 years he has already spent in prison, means that he will only serve 19 years in prison. Given that he is only 67 years old, he may in fact walk out alive. Nonetheless, it is not far from the Co-Prosecutors' requested sentence of 40 years, and fairly consistent with international jurisprudence.

As it is based on the civil law system, the Tribunal provides victims the ability to become a civil party to the proceedings. This arguably heightens the achievement of justice and dignity for the victims through giving them an additional voice not present in common law criminal proceedings. However, many of the civil parties also expressed disappointment with the judgment – only 66 of the 90 civil parties were granted reparations. Moreover, while it was well understood that only moral (not monetary) reparations would be granted, the nature of those reparations – having the civil parties' names read out in the judgment and compiling a list of Duch's apologies for the website – has been criticised as the large majority of victims do not have access to the internet, and the Trial Chamber rejected other reparations the parties asked for as they weren't sufficiently specific.

Outreach

The ECCC outreach program is vital to the goal of reconciliation which underpins the workings of the Court. The program focuses on the need to spread awareness of the trials to the majority of Cambodians who live in rural areas. Buses transport Cambodians who are interested in watching the trial from the countryside to the Court. They are also given a stipend for the day so that they are not prohibited from attending because they will miss a day of work. The public affairs unit and Victims Unit travel to smaller towns to conduct question and answer sessions, and distribute booklets informing people about the ECCC. In addition to ECCC-initiated projects, a local Cambodian film company has made a series out of the first case 001, called 'Duch on Trial', where the highlights from the trial are broadcast throughout the nation.

Despite this, there is a strong sense that many Cambodians are indifferent to the Court because they already believe that the accused were instrumental in perpetrating the crimes of Democratic Kampuchea. Therefore some believe that a trial is a redundant exercise when the money could be better spent on humanitarian projects within Cambodia (true as this may be, the ECCC costs only a fraction of the amount of aid donated to Cambodia in general). In addition, during outreach sessions, there is often much confusion about the nature of potential reparations to be awarded to the Civil parties. Many Cambodians expect monetary compensation, and it seems understandably absurd that the best the ECCC can hope to provide is moral reparations.

Next Steps

Much has happened in the four months since I left the Court. The OCIJ have written the Closing Order and indicted the four accused in case 002. The defence and many applicants who were refused civil party status are set to appeal the closing order to the Pre Trial Chamber.

Both the defence for Duch and the Office of the Co-Prosecutors have announced that they intend to appeal the judgment in case 001.
At the 8th Plenary session in September, the internal rules were amended to allow, critically, for the award of collective moral reparations to civil parties in the form of projects recognised by the Court (such as the construction of memorial stupas and parks). The means of funding these awards, however, is yet to be established.

The Pre Trial Chamber recently upheld the OCIJ's finding that political interference had not occurred in the attempt to summons top ranking government officials to give evidence in case 002 – with the international judges filing a strong dissent. At the same time, Prime Minister Hun Sen, himself an ex Khmer Rouge, has announced that there will be no more trials after case 002, despite the fact that the OCIJ has already commenced investigations in cases 003 and 004.

Statements like this illustrate just how frustrating Cambodia's political matrix continues to be, and therefore the importance of the ECCC in helping Cambodia move forward – in recording the truth, achieving justice for the victims and their families, strengthening the judicial system in Cambodia, and reconciliation. All the more reason why ANZSIL's grants of ECCC internship support are so vital.

Stephen Tang

World Health Organization, Geneva

For three months in the second half of 2010, I had the privilege of being an intern with the Mental Health Policy and Service Development unit (MHP) at the World Health Organization headquarters in Geneva.

MHP is a small but friendly and highly energetic team within the Department of Mental Health and Substance Abuse. The team works with closely with governments, service user organisations, NGOs and other international agencies to help countries implement programs and create appropriate and human rights-compliant laws/policies in relation to mental health. All this is done with the aim of ensuring that effective mental health treatment, prevention, and promotion programs are available, accessible and effective.

As an ANU PhD (Clinical Psychology) candidate/psychologist and a LLM student/former lawyer, I was excited by this opportunity to apply my experience from both professions in this unique international context. This is also an interesting time to be involved in this global dialogue, especially as the Convention on the Rights of Persons with Disabilities gains momentum following its entry into force in 2008. The CRPD was developed with the active participation of disability organisations, including organisations representing persons with mental and psychosocial disabilities. It has been embraced widely by the disability movement as the universal standard for the human rights of all people with disabilities.

At the same time, there is also an urgency to this task of improving mental health laws, services and policies. WHO's own estimates show that there are almost 400 million people in the world who have a longer-term mental or psychosocial disability (including depression, schizophrenia, substance use disorders, epilepsy and dementias). Almost one million people die by suicide each year. By 2030, depression will be the leading cause of disease burden in the world. We also know that that mental and psychosocial disabilities have a disproportionate impact in low- and middle-

income countries yet currently receive a very small fraction of funds and attention compared with other health issues.

My internship at the WHO began in the unseasonably warm European summer of 2010. The WHO and other UN agencies were abuzz with activity from the hundreds of interns that had gathered in the city at this time. This provided an extraordinary opportunity to learn and share with young people from all sorts of cultural, professional and educational backgrounds. I was humbled by not only the tremendous amount of talent and life experience that the other interns brought to their work, but also by their passion and determination to bring about positive change in full recognition of the limitations of the current international system.

A major part of my internship was assisting with the launch of the WHO's Mental Health and Development report. This was a landmark report which presented compelling evidence showing that persons with mental and psychosocial disabilities have often been ignored or intentionally excluded from many development efforts. Examples include the denial of access to emergency relief services, income-generation programs, physical health care and educational opportunities. This only exacerbates the vulnerabilities of an already marginalised group. The report concludes by providing a sensible framework for how all development actors can take steps to include and involve this vulnerable group in all development activities. In preparing for the launch, I was involved in preparing policy briefs and press materials, learning the delicate art of diplomatic speechwriting and assisting in the coordination of the event with other UN agencies and permanent missions.

I was also involved in reviewing the domestic mental health legislation for Pacific Island and African countries. This was done with the assistance of a checklist created by MHP which assesses the legislation against human rights standards and evidence-based best practice for treatment and care. In many countries, the current mental health legislation allows a person to be deemed as 'insane', 'mentally defective' or 'unsound of mind' by the unilateral declaration of a single public official or doctor without any training in mental health. The consequences that follow can be terrifying. It can mean indefinite confinement in poorly-run psychiatric institutions with no access to treatment, rehabilitation or even judicial review. It also typically means that the person's economic, social and cultural rights are denied. For instance, other legislation often operates to prohibit persons with a mental disability from marrying or having children, being a citizen, voting, or owning property. The extent to which such laws directly violate the rights of persons with mental and psychosocial disabilities calls for a decisive but collaborative response. I was encouraged to see how MHP has worked with a number of governments around the world who are committed to rights-based reform to develop programs for ongoing evaluation and reform, with the participation of mental health service users and their families firmly in the foreground.

To explore the reasons for and extent of human rights violations against persons with mental and psychosocial disabilities in low- and middle-income countries, I was also tasked with designing and deploying a questionnaire to hear the experience of affected individuals and what they believe should be done to improve the situation in their own countries. The responses of this questionnaire form a central part of a forthcoming article on mental health and human rights, to be published later this year in The Lancet's second Global Mental Health Series.

Throughout my internship, I was very impressed by MHP's ability to get things done. It goes without saying that international organisations can be highly bureaucratic, inefficient places. Nonetheless, the unit managed to have an influential but respectful voice at all levels — from working with individual advocates to contributing to high-level discussions on the MDGs) — and in many countries. To me, this was a demonstration of the importance of adopting a multisectoral and inclusive approach for global mental health. It also demonstrated to me that there can be a common language between the scientific/research evidence, international law, diplomacy and the stories of individual and organisations from around the world.

As the mercury plummeted and the number of summer interns dwindled, so too my time in Geneva was up. It was time to swap the jet d'eau of Lac Léman with the familiar water jet of Lake Burley Griffin. While I left Geneva no more fluent in French, I feel that I gained a tremendous amount of familiarity and fluency with the language of international human rights law, mental health policy, and the need for action at all levels. What I learnt during my internship with the WHO continues to influence me in the way I approach my clinical work as a psychologist, as well as a member of the community in which one in four people will experience a mental health condition at

some point in their lives. Mental health, after all, is an issue that crosses all national boundaries — it is equally relevant in Canberra as it is in Geneva, in Honiara as in Accra.

Finally, I would like to express my deep appreciation to ANZSIL for providing me funding under its internship support program. Without this support, the internship — and its many opportunities for learning and participation — would have been impossible. My internship has since led to an ongoing working relationship with the WHO in the form a consultancy with MHP. I greatly look forward to being part of this global partnership working towards the attainment of the highest possible level of health — particularly mental health — by all people.

New Digest of International Law Scholarship

ANZSIL Member **Associate Professor Don Anton** is publishing online a very helpful regular digest of developments in international legal scholarship.

The Digest brings together material (including abstracts, summaries and references) of the following types of publications

I. SSRN Legal Scholarship Network/bepress Legal Repository/NELLCO Legal Scholarship Repository/Publishers Advances
II. Books
III. Journals
IV. Blogs (select items)
V. Gray Literature
VI. Documents
VII. Media/Press Releases

The Digest is available here and you can subscribe to receive the digest via email.

Congratulations to Don on this significant initiative, which will be of considerable assistance to those working in the field of international law.

Personalia

Professor Gillian Triggs, Dean of the Faculty of Law at the University of Sydney, has been appointed Challis Professor of International Law.

Recent Publications by ANZSIL Members

Caroline E Foster, University of Auckland, has published *Science and the Precautionary Principle in International Courts and Tribunals: Expert Evidence, Burden of Proof and Finality* (Cambridge University Press, 2011). A 20% discount is available for ANZSIL members until 31 August 2011 (Discount Code S11FOSTER).

Donald R Rothwell, Stuart Kaye, Afshin Akhtarkhavari and **Ruth Davis**, have published their new international law cases and materials book: *International Law: Cases and Materials with Australian Perspectives* (Cambridge University Press, 2011).

Gillian Triggs, University of Sydney, has published the second edition of her textbook on international law: *International Law: Contemporary Principles and Practices* (LexisNexis Butterworths, 2nd ed, 2011).

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