Welcome to the November edition of the ANZSIL newsletter.

In this edition

News in brief

The post 2009 annual conference issue of the ANZSIL Newsletter.

From the Editors

Welcome to the post conference issue of the ANZSIL Newsletter. It is truly a compendious edition.

We are delighted to be able to include in this newsletter a comprehensive summary of the ANZSIL Annual Conference. Thanks to a team of rapporteurs we have an excellent record of the papers presented, and some of the discussion that they generated.

We are also delighted that Karen Scott of the University of Canterbury was able to transcribe for us her excellent commentary on the conference as a whole which she delivered in the final session.

Special thanks must be extended to the Attorney-General's Department, the Department of Foreign Affairs and Trade, and the Ministry of Foreign and Affairs and Trade for supplying their regular updates on recent Australian and New Zealand practice in the field of international law.

As always we would encourage members of ANZSIL to get in touch with us if they have material that they would like included in the newsletter, such as details of upcoming events, and news of their achievements in international law.

The next newsletter will arrive in your inbox in April 2010 in the lead up to the 2010 ANZSIL conference.

Sarah McCosker and Tim Stephens
Editors

From the President

It is an honour to take on the position of ANZSIL President, and I would like to pay tribute to my predecessor, Professor Campbell McLachlan, who led the Society for four years with great enthusiasm and success. In that role he was supported by the support of the Executive Council, conference organising committee members , the secretariat at the Centre for International and Public Law (ANU) and the New Zealand Centre for Public Law (VUW). I look forward to working with the re-elected and new members of the Executive Council, Wendy Mohring (the ANZSIL Secretariat) at CIPL, and members of the Society.

The Society is in very good shape with a significant program of events and activities already scheduled for the coming months.

Thanks to the considerable efforts of Professor Hilary Charlesworth (ANU) in collaboration with colleagues at the Indian Society of International Law, the two societies will be holding the India- Australia Dialogue on International Law in New Delhi on 5-6 December 2009. A number of ANZSIL members will be presenting papers at the conference.

The 2010 ANZSIL Conference will return to Canberra: 24-26 June 2010.

Next August will see the third stage of the Four Societies Project. This time the event will be hosted by the Japanese Society of International Law, following symposia hosted by the Canadian Council on International Law, and ANZSIL. The call for proposals closes on 20 December 2009. The event will be held at the Awaji Yumebutai International Conference Center on Awajishima Island, Hyogo, Japan (near Kobe) on 27-28 August 2010.

In the coming two years there are a number of challenges and opporuntities facing the Society. There are moves, which I welcome, to establish an International Economic Law Group within ANZSIL to reflect the strong body of international economic lawyers within the Society and the importance of this area of law. I would also like to see ANZSIL build on its existing links with international law colleagues and societies in the Asia Pacific region. I would welcome further ideas from members on activities the Society might undertake in the coming years.

In conclusion, I would like to thank Tim Stephens and Sarah McCosker, who have done such a fine job in producing the Newsletter.

Andrew Byrnes
President

From Our 2009 Conference Sponsors

Cambridge University Press

In acknowledgement of ANZSIL's 17th Annual Conference, Cambridge University Press would like to offer all members and conference delegates a 20% discount on a selection of Cambridge Law Titles. To find out more and place your on line order, please visit this link.

HURRY! THIS EXCLUSIVE OFFER ENDS 30 NOVEMBER 2009.

Oxford University Press

OUP's growing public international law list demonstrates our commitment to providing scholars with the full range of topics in international law across the full range of formats: books, journals, and case reports; available online and in print. The books programme is expanding with new volumes in our *Oxford Commentaries on International Law Series*, new *Oxford Handbooks*, and a new edition of the classic *Satow's Diplomatic Practice*. Adding to our current stable of international law journals, next year we will be launching T*he Journal of International Dispute Settlement*. And our online services continue to grow: the *Max Planck Encyclopedia* published its 1000th article in September and the *Oxford Reports on International Law* recently passed the 2000 decisions mark.

For Your Diary - 2010 Annual Conference

The 18th ANZSIL Conference and postgraduate workshop will be held in Canberra in June 2010.

Postgraduate workshop: Wednesday, 23 June 2010

ANZSIL conference: Thursday, 24 June 2010, Friday, 25 June 2010, Saturday, 26 June 2010 (concludes at 1 pm)

Four Societies Project - 2010 Symposium

Expressions of interest are called for by 20 December 2009. For details please see the ANZSIL website.

Recent Australian Practice

Australia's appearance before the UN Committee on Economic, Social and Cultural Rights in May 2009

Australia appeared before the UN Committee on Economic, Social and Cultural Rights on 5 and 6 May 2009 in relation to its Fourth Periodic Report under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Australia's Common Core Document, comprising Australia's Fifth Periodic Report under the International Covenant on Civil and Political Rights (ICCPR), and Fourth Periodic Report under the ICESCR, was tabled in Parliament and lodged with the United Nations on 25 July 2007. All documentation related to Australia's hearing before the UN Committee on Economic, Social and Cultural Rights, including NGO shadow reports, can be found at: <www.ohchr.org>

Visit to Australia of UN Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous Peoples

Professor James Anaya, UN Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous Peoples, undertook a country visit to Australia from 17-28 August at the invitation of the Australian Government. The purpose of the visit was to make recommendations on how the human rights situation of Indigenous Australians could be improved, and to find examples of good practices that could be recommended to other countries. The Special Rapporteur met Indigenous leaders and communities, and NGOs in Canberra, Adelaide, Perth, Alice Springs, Darwin, Groote Eylandt, Cairns and Sydney, and met with Ministers, members of parliament and officials. The Special Rapporteur released a preliminary report dated 24 September.
The preliminary report provides an overview of the Special Rapporteur's initial observations following the conclusion of this visit. It is available at < <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A.HRC.12.34.Add10.pdf>. A full report on the situation of indigenous peoples in Australia, with conclusions and recommendations, will be provided at a later date.

Australia's National Human Rights Consultation

The report of the National Human Rights Consultation Committee was provided to the Attorney-General, Robert McClelland, on 30 September 2009 and was released publicly on 8 October 2009. The Committee received more than 35,000 submissions and conducted over 65 community roundtables and public hearings in more than 50 urban, regional and remote locations across the country. The Government will outline a formal response in the coming months. Further information on the National Human Rights Consultation is available at <www.humanrightsconsultation.gov.au>. A copy of the report is available at: <http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report_NationalHumanRightsConsultationReportDownloads>

Maritime Powers Bill

On 15 September 2009, the Australian Government announced the development of the Maritime Powers Bill. At present there are more than 35 Commonwealth Acts that contain maritime enforcement powers which differ considerably in terms of the kinds of powers they contain and the approaches they take to particular powers. The Maritime Powers Bill will contain a comprehensive suite of powers for enforcing Australia's laws at sea and will repeal duplicate provisions in existing Acts.

The proposal for a single maritime enforcement law was developed following a comprehensive review of maritime enforcement powers conducted by the Office of International Law in the Attorney-General's Department. The development of this legislation represents a major innovation in the co-ordination of Australian maritime enforcement activities.

It is anticipated that the Bill will be ready for introduction in the Autumn 2010 Parliamentary sittings.

Finalisation of negotiations on Agreement on Port State Measures to Prevent, Deter and Eliminate IUU fishing

The text of a new legally-binding Agreement on Port State measures to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing was agreed upon at the UN Food and Agriculture Organisation (FAO) in August 2009. 91 countries participated in the Technical Consultation to develop the Agreement, which was funded by Australia, Canada, New Zealand, Norway and the United States, and was held over four sessions between June 2008 and August 2009. The Agreement has been concluded under Article XIV of the FAO Constitution. Accordingly, it has been reviewed and approved by FAO's Committee on Constitutional and Legal Matters, and will go to the FAO Conference in November for final review and formal adoption before being opened for signature. The Agreement will enter into force 30 days after the deposit of the 25th instrument of ratification. The Agreement places clear obligations on port states with respect to entry to, and use of, their ports by IUU fishing vessels, but does not limit the rights of port states to take more stringent action in accordance with international law. The report of the Technical Consultation, and a copy of the Agreement, can be accessed through the FAO website at <ftp://ftp.fao.org/FI/DOCUMENT/tc-psm/2009/report.pdf>.

ICAO Legal Committee Meeting 9-17 September 2009

The ICAO Legal Committee meeting took place on 9-17 September 2009 in Montreal, Canada to consider draft Protocols to The Hague and Montreal Conventions. The Protocol to the Montreal Convention contains several new offences including use of aircraft as weapons as well as updating the Convention in accordance with the latest UN counter-terrorism instruments. The Protocol to The Hague Convention broadens the scope of the hijacking offence as well as updating the Convention in line with other UN counter-terrorism instruments. Both Protocols include new ancillary and inchoate offences including a conspiracy offence. The Protocol to the Montreal Convention proposes two transport offences, including a transport of materials offence and a transport of fugitives offence. The Legal Committee meeting agreed to recommend to the ICAO Council that the two Protocols be forwarded to a Diplomatic Conference to be held in 2010.

Australia's signature of the Optional Protocol to the Convention Against Torture

On 19 May 2009, Australia signed the Optional Protocol to the UN Convention Against Torture. Australia became a party to the UN Convention Against Torture in 1989. The Optional Protocol is designed to further the objectives of the Convention Against Torture, by strengthening monitoring mechanisms and mechanisms focused on preventing acts of torture. The Optional Protocol contains two main sets of obligations. First, States Parties undertake to grant the UN Subcommittee on Prevention of Torture unrestricted access to all places of detention and certain related information about detainees. Second, States Parties must establish or designate one more independent national preventive mechanisms, with the power to examine places of detention regularly. The Australian Federal Government is currently continuing consultation with the States and Territories as part of consideration of ratification of the Optional Protocol.

Australia's accession to the Optional Protocol to the Convention on the Rights of Persons with Disabilities

On 21 August 2009, Australia acceded to the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities. On 20 September 2009, the Optional Protocol entered into force for Australia. The Optional Protocol provides a mechanism for individuals who have exhausted domestic remedies to make complaints to the UN Committee on the Rights of Persons with Disabilities that their rights under the Convention have been violated by conduct engaged in after the entry into force of the Optional Protocol. Australia's

accession to the Optional Protocol follows Australia's ratification of the Convention on the Rights of Persons with Disabilities in July 2008.

Lodgement of reports under the Convention on the Rights of the Child and two Optional Protocols

Australia has submitted its fourth report under the Convention on the Rights of the Child and its initial reports under the two Optional Protocols to the Convention. The two Optional Protocols cover the Involvement of Children in Armed Conflict and the Sale of Children, Child Prostitution and Child Pornography. All three reports were tabled in the Australian Parliament on 25 June 2009 and were lodged with the Office of the United Nations High Commissioner for Human Rights shortly after. Copies of the reports can be accessed on the website of the Attorney-General's Department at: <http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_ReportsundertheConventiononTheRightsoftheChild>

Australia will appear before the UN Committee on the Rights of the Child to be examined on the reports when asked to do so by the Committee. Australia last appeared before the Committee on 13 September 2005 and was examined on its Combined Second and Third Report under the Convention.

Australia's leadership on post-2012 UN Framework Convention on Climate Change legal form discussion

Australia initiated international debate through its submission on the legal form of the post-2012 international climate change outcome in November 2008 suggesting a legally binding outcome – in the form of either a single new treaty or two treaties (Kyoto Protocol and a new treaty under the United Nations Framework Convention on Climate Change). Subsequent submissions in 2009 developed this proposal, culminating in a model treaty in May 2009 which incorporated the innovative legal construct of national schedules. The schedules proposal has garnered support amongst both developed and developing countries, particularly through its potential to co-exist and be complementary to other architecture proposals.

Prior to the last UNFCCC meetings (Bonn, August 2009), Australia and the United States opened the debate on the legal form of the post-2012 outcome to the broader international climate change community, hosting an informal seminar on the major legal architecture proposals. The event proved constructive and optimistic. Presentations uncovered significant points of convergence between the architecture proposals on the table. Several Parties picked up Australia's national schedules approach as a potential means of facilitating that convergence.

New Zealand Practice

Antarctic Liability Annex

New Zealand is currently working towards approval of Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty. Annex VI creates a regime of liability for environmental emergencies which take place in the Antarctic Treaty area, providing an incentive for preventing damage to the Antarctic environment, as well as a cost-recovery regime for responding to environmental emergencies that do arise. The Annex fulfils in part the longstanding obligation, contained in Article 16 of the Protocol on Environmental Protection to the Antarctic Treaty, for the Parties to elaborate rules and procedures relating to liability for damage arising from activities in the Antarctic Treaty area. Thus, the Annex is an important part of the Antarctic environmental protection regime, of which New Zealand is a strong supporter.

The Antarctica (Environmental Protection: Liability Annex) Amendment Bill was introduced into the House in June 2009. The Bill will implement many of the obligations in the Annex through amendments to the Antarctica (Environmental Protection) Act 1994. It imposes certain obligations and liabilities for environmental emergencies in the Antarctic Treaty area. The Bill passed its first reading in August, and has been referred to the Foreign Affairs, Defence and Trade Select Committee. Passing this legislation will allow New Zealand to formally approve the Annex.

South Pacific Regional Fisheries Management Organisation

New Zealand is to host the 8th round of negotiations to establish a South Pacific Regional Fisheries Management Organisation (SPRFMO), to manage the non-highly migratory fisheries of the South Pacific, in Auckland 8 – 14 November this year. Following good progress at the 7th session of negotiations in Lima, Peru, it is hoped that the Auckland meeting will be the final negotiating meeting at which the Convention text will be adopted. New Zealand and Australia continue to engage actively in the SPRFMO negotiations.

New Zealand has continued to work to implement the interim measures agreed by the participants in the negotiations in 2007 in response to United Nations General Assembly Resolution 61/105 to avoid adverse impacts of deep sea fishing on vulnerable marine ecosystems. The interim measures also put in place interim restraints on fishing for pelagic species on the high seas.

Implementation of the bottom fishing provisions of Resolution 61/105 is being reviewed this year during the annual Sustainable Fisheries Resolution discussions and has been the subject of a Report by the UN Secretary General. Both the Secretary General's Report and the New Zealand submission reporting on New Zealand's implementation of the bottom fishing provisions of Resolution 61/105 may be found at: http://www.un.org/Depts/los/general_assembly/general_assembly_reports.htm)

Update on Convention on Cluster Munitions – Parliamentary Examination Complete and Bill Introduced

New Zealand was one of ninety-four countries to sign the Convention on Cluster Munitions when it opened for signature at a signing ceremony held in Oslo, Norway, on 3 December 2008. Since March 2009, the Foreign Affairs, Defence and Trade Committee conducted an international treaty examination on the Convention and recommended that New Zealand proceed expeditiously with implementing legislation to enable New Zealand to ratify the Convention. The Cluster Munitions (Prohibition) Bill, which implements obligations in the Convention was introduced on 21 July 2009 and is currently before the Foreign Affairs, Defence and Trade Committee. It is due to report the Bill back to Parliament no later than February 2010. Once the Bill is passed, New Zealand will be able to ratify the Convention.

Implementation of the 2005 SUA Protocols

The Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf ('the SUA Protocols') amend the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf which New Zealand ratified in 1999 and implemented through the Maritime Crimes Act 1999. Like their parent instruments, the SUA Protocols are regarded by the international community and the United Nations system as among the core 16 international counterterrorism instruments.

New Zealand is a signatory to the SUA Protocols and is now working towards ratification. On 27 July 2009, the Foreign Affairs Defence and Trade Committee completed its international treaty examination of SUA Protocols and recommended unanimously that New Zealand proceed towards ratification. Before New Zealand can proceed to ratify the two protocols, some legislative changes are necessary. Work is currently underway with a view to having a Bill ready for introduction to Parliament during 2010.

New Zealand – Singapore Double Tax Agreement

A Convention between New Zealand and Singapore for the Avoidance of Double taxation and the Prevention of Fiscal Evasion with

Respect to Taxes on Income was signed in August 2009. It is not yet in force. The Agreement will reduce tax impediments to cross-border trade and investment and enable tax administrations in New Zealand and Singapore to assist each other in the detection and prevention of tax evasion and tax avoidance. The Agreement updates and replaces the 1973 Agreement with Singapore, one of New Zealand's key trading and investment partners.

Tax Information Exchange Agreements

In the past 6 months New Zealand has signed Agreements for the Exchange of Information Relating to Taxes with Bermuda, the Cook Islands, the British Virgin Islands, the Cayman Islands, Gibralter, the Isle of Man, Jersey, and Guernsey. Once in force, these agreements will enhance the ability of tax officials to detect and prevent tax avoidance and evasion.

New Zealand – Canada Air Services Agreement

An Agreement between the Government of New Zealand and the Government of Canada concerning Air Services was signed in Singapore on 21 July 2009. The main purpose of the agreement is to remove route, capacity and code-share constraints and thereby enable further expansion of services.

Working Holiday Schemes

The Agreement between New Zealand and the Kingdom of Spain on a Working Holiday Scheme was signed in Wellington on 23 June 2009. This supplements the already extensive network of working holiday schemes New Zealand has in place. The purpose of these Agreements is to promote people-to-people links between New Zealand and working holiday scheme partner countries by allowing people between the ages of 18 and 30 to travel to the other country and engage in employment.

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

New Zealand and Australia, along with the ten members of the Association of South-East Asian Nations (ASEAN) signed the Agreement Establishing the ASEAN - Australia-New Zealand – Free Trade Area in Cha-am, Phetchaburi, Thailand on 27 February 2009. This Agreement is the first time that ASEAN has negotiated a comprehensive free trade agreement as part of a 'single undertaking' which, as well as Goods, Services and Investment commitments, includes areas such as Sanitary and Phytosanitary, Competition Policy and Intellectual Property.
As a whole, the ASEAN region is New Zealand's third largest export market and in 2008 was worth $4.6 billion. The Agreement will gradually make 99% of New Zealand's exports to key ASEAN members, Indonesia, Malaysia, the Philippines and Viet Nam tariff-free.

New Zealand has notified completion of its internal requirements necessary for entry into force of the Agreement. The Agreement will enter into force once New Zealand, Australia and four ASEAN member states have notified completion of their internal requirements.

WTO Dispute Settlement processes

In September 2007, New Zealand initiated dispute settlement proceedings in the WTO concerning phytosanitary measures applied by Australia to New Zealand apples. The final written submissions in the Australia – Apples case were made by New Zealand and Australia in April 2009, and the final Panel hearings concluded in Geneva in July 2009. The Panel is expected to make its findings in the case early in 2010.

Malaysia - New Zealand Free Trade Agreement

New Zealand will sign the Malaysia - New Zealand Free Trade Agreement in Kuala Lumpur, Malaysia, on 26 October 2009. Minister of Trade Tim Groser welcomed the conclusion of negotiations on the text in June, noting that "improved market access and greater certainty for New Zealand goods and services exporters and investors are just some of the benefits achieved." Malaysia is New Zealand's eighth most important global export destination: in 2008 New Zealand exported almost one billion dollars worth of goods to Malaysia. The Agreement will enter into force once New Zealand and Malaysia have advised of the completion of their internal requirements necessary for entry into force of the Agreement. New Zealand is currently in the process of drafting legislation to implement the Agreement.

Annual Conference - Summary of Proceedings

At the Annual Conference held in Wellington in July several postgraduate students kindly volunteered to make a record of the proceedings. What follows is a summary of the majority of the conference sessions. The Editors of the Newsletter and the ANZSIL Executive express their sincere gratitude to the rapporteurs for their efforts. The summaries were edited by Dr Sarah McCosker.

Plenary 1 - Multilateralism
(reported by An Hertogen, PhD Candidate, University of Auckland)

In the opening session of the 17th ANZSIL annual conference on 'The Future of Multilateralism in a Plural World,', Professor Alan Boyle, Colin Keating and Professor Roger Clark addressed the theme of multilateralism. Professor Alan Boyle (Edinburgh University) discussed 'Challenges to the International Law-making Process: The United Nations Security Council and Climate Change'. Colin Keating (Security Council Report, Columbia) discussed 'Prospects for the Multilateral Security System', while Professor Roger Clark (Rutgers) discussed 'The International Criminal Law System'. The session was chaired by Rt Hon Dame Sian Elias, Chief Justice of New Zealand.

After an entertaining rendition of an imaginary conversation with Peter Fraser's statue on the Victoria Law School's lawn, Professor Clark asked 'multilateralism—as opposed to what?'. Colin Keating pointed to an increased interest of States in multilateral responses because of the spread of bad local decisions to which unilateral and bilateral solutions cannot necessarily respond better than multilateral initiatives.

The requirement of sovereign consent and the central role given to consensus in treaty negotiations were however seen as an obstacle to multilateralism and the speakers discussed the role of the United Nations Security Council (UNSC) as one of the main alternative international law makers.

Colin Keating pointed out how the Security Council's scope of action has broadened over time, and particularly in the 1990s, through an expansive interpretation of what constitutes a threat to or breach of the peace under article 39 of the UN Charter. This broader scope of action offers opportunities to bring in other issues of global concern. An open question raised by Professor Boyle was how to decide when the UNSC is the right forum to legislate a particular global problem, such as climate change, and what the UNSC's precise task would be.

Despite the UNSC's importance and its potential in international law-making, the speakers raised concerns regarding its legitimacy. These concerns were related to both process and substance. Professor Boyle pointed out that although the UNSC has the advantage of speedily enacting universally binding rules that prevail over international treaties, there are serious issues with the UNSC's accountability, transparency and membership. The membership issue, and the role of the five permanent members (P5) was also picked up upon by Colin Keating, as a reason why the UNSC-based multilateral security system is not working. On the one hand, the P5's veto reflects the pre-1945 balance of power and an international legal system strongly wedded to the ideas of sovereignty and consent. On the other hand, this system is increasingly challenged by emerging powers and the existing tension makes co-operation more difficult to achieve.

The membership issue also has an impact on the substance of the rules made by the UNSC. Professor Clark pointed out how UNSC

Resolution 1373 effectively short-circuited treaty-making on terrorist financing and allowed the P5 to cherry-pick the parts they preferred in the treaty negotiations and to give them binding power through the UNSC resolution.

The conclusion was that multilateralism is 'creaking' because of the various pressures to which it is subject. Potential solutions were addressed by the speakers and during the discussions. Professor Boyle suggested that as part of UN reform, the composition of the UNSC and its relationship with the UN General Assembly need to be reviewed to increase the UNSC's legitimacy. Colin Keating argued against increasing the permanent membership to include the emerging powers, pointing out that these are often even more conservative in protecting sovereignty and consent than the P5. Instead, he believed in the need for a cultural shift to achieve real improvement and the need for States to commit resources to multilateral efforts.

Session 2 – Oceans
(Reported by Yolinda Chan, PhD Candidate, University of Auckland)

Camille Goodman (Attorney-General's Department, Australia):'Multilateral Approaches to Governing International Fisheries: Compromise We Can Believe In?'

The oceans, which cover over 70% of the earth's surface, play a critical role to the ecosystems and provide a high biological diversity that has sustained the lives of the global human population. However, because the oceans are inter-connected and interdependent, the harvest of fisheries from the oceans is also a source of conflict. As fish is considered a common resource and the rights and obligations regarding the conservation and management of international fisheries are generally vague, over the last decade developments have exposed the need for a more comprehensive approach to the enunciation and implementation of cooperative obligations to conserve and manage these living marine resources, both on the high seas and in areas under national jurisdiction. Currently, there are three possible options for governing international fisheries: (1) unilateral governance; (2) corporate governance; and (3) multilateral governance.

While Ms Goodman's paper argued that multilateral approaches are necessary to effectively regulate international fisheries and conserve the marine environment, a multilateral approach also has its limitations such as the reluctance of some regional fisheries management organisations to accept new members; political problems; too many meetings and organisations; lack of capacity to implement; and the problem of the 'negotiation loop' with states willing to negotiate but not ready to implement the negotiation outcomes. The paper concluded that for a cooperative solution to work, the negotiated outcomes must be better for all parties and that binding rules are required to deter non-compliance.

Dr Afshin Akhtarkhavari (Griffith University): 'Environmental Principles and Social Learning within the Ocean Dumping Regime

Environmental principles are abstract in nature, difficult to understand and have varying effects. Hence, environmental principles, in the context of negotiations, can constrain as well as stimulate debates. Social learning theory on the other hand, focuses on the learning that occurs within a social context. It considers that people can learn through observation, imitation, and modelling.

A lot of multilateral institutions engage states in international negotiations through conventional conferences, which built on earlier norms and agreements. However, increasingly, many scholars argue that the concepts like consent, obligation, and compliance are not well suited to identifying important shifts in the common understanding amongst actors because traditional concepts of international law often cannot highlight the dynamics of international negotiations.

By tracing the development of the 1996 Protocol to the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (London Convention) and the role of environmental principles within the ocean dumping regime, this paper highlighted the importance of social learning in the context of the recent responses by the Conferences of Parties to the London Convention and 1996 Protocol to the issue of the sequestration of carbon dioxide and its injection and storage into sub-seabed geological formations. It was found that the discursive practices of actors within the conferences of parties typically resembled 'arguing' rather than 'bargaining' because environmental principles, particularly the precautionary principles, interplayed with and constituted the social context of negotiations and dialogue amongst states. The paper concluded that environmental principles offer a more appropriate alternative vision of change because they are able to influence and shape social learning amongst states in international negotiations.

Andrew Serdy (Southampton University): 'Some Views are More Equal than Others - Article 4 of the Antarctic Treaty and Submissions to the Commission on the Limits of the Continental Shelf

The Antarctic Treaty sets forth principles and rules to be applied not only to the Antarctic continent, but also to the maritime space of the Antarctic. Seven States Parties to the Antarctic Treaty (including Australia) have claimed territorial sovereignty over parts of Antarctica and some of these claims overlap. Two States, while not recognizing any territorial claims in Antarctica, maintain a basis of claims in respect of Antarctic territories. Other States within the system have not made any claims nor do they recognize claims to sovereignty. A part of the Antarctic continent remains free from claims of national sovereignty. The Antarctic Treaty has devised a mechanism for dealing with these conflicting positions. This is embodied in article IV.

On 2 December 1999, the Australian Government announced that it would take action to define the limits of the continental shelf off the Australian Antarctic Territory (AAT). To implement this decision the Australian Government provided approximately $30 million over five years for the survey work required to establish the baselines, determine the foot of the continental slope, and delineate the outer limit of the shelf. The purpose of the Government's decision was to enable Australia, in accordance with the UN Convention on the Law of the Sea (UNCLOS), to define the outer limit of the area in which those rights may be exercised.
Article 4 of Annex II of UNCLOS provides that where a State intends to establish the outer limits of the continental shelf in accordance with article 76 of UNCLOS, it must submit particulars of such limits to the Commission on the Limits of he Continental Shelf (CLCS) within ten years of the entry into force of UNCLOS for that State. In Australia's case, that deadline was in November 2004. The deadlines for other Antarctic claimants were in 2005 (Argentina), 2006 (France, Norway and New Zealand), and 2007 (United Kingdom and Chile).

Australia's 2004 submission to the CLCS attracted attention for including both an area of prolongation of the landmass of the ATT beyond 200 nautical miles from the territorial sea baseline, and a request to the CLCS not to consider that part of the submission 'for the time being'.

The paper argued that although the Australian request seems to have had the desired political effect by defusing the potential controversy, it has come at a cost to Australia's legal interests under both UNCLOS and the Antarctic Treaty. Mr Serdy argued that Australia's interests might be shielded while the Antarctic Treaty is in force, but would diminish the strength of its territorial claim should the Treaty ever be terminated. The episode also highlights the diminishing confidence that States place in the non-prejudice clauses of the respective treaties, both of which appear perfectly adequate to protect all parties' positions if only they were prepared to give effect to them according to their terms.

Session 3 – Human Rights
(reported by Louise Buckingham, PhD Candidate, University of New South Wales)

Joanna Mossop (Victoria University of Wellington), chaired the session, opening with the observation that human rights have a long and important pedigree in international law, and have expanded to encompass a wide range of rights, such as Indigenous rights, women's rights and environmental rights. This expansion is evidence of dynamism. The fact that human rights continue to be controversial and important may be seen in the examples of Zimbabwe, the Middle East, and Fiji.

Dr Farhad Talaie (Shiraz University, Iran): 'The Necessity of Strengthening Human Rights Protection in the 21st Century and the Mechanisms to Achieve It'

Dr Talaie suggested that human rights function to improve the situation in the whole world, as we have all experienced human rights violations. He pointed to the necessity of strengthening legal protection in the twenty-first century. Dr Talaie's presentation discussed Australia, Iran, New Zealand and core international human rights treaties.

Dr Talaie asked basic questions, such as: what are human rights? Who should enjoy them? Is the existing framework sufficient? These issues were raised in the context of the larger challenge central to his paper: how to improve respect for human rights and fundamental freedoms around the world? He noted that although the UN has attempted to achieve for 60 years now, the situation is not perfect (citing the examples of the former Yugoslavia and Rwanda).

Dr Talaie asked whether article 1(2) of the UN Charter had been fully implemented, and answered in the negative. Likewise the preamble of the ILO Convention of 1919 and the Universal Declaration of 1945.
Dr Talaie listed nine core human rights treaties and eight Protocols, and considered and compared those that New Zealand, Australia and Iran had ratified. Regarding ILO Conventions, he observed that on the surface it appears that Australia and New Zealand have done better than Iran, but suggested that just looking at what has been adopted does not indicate whether something has been completely observed. Iran has ratified thirteen ILO Conventions (out of a total of 188) and five of these are amongst the eight that are concerned with fundamental human rights. Ultimately, Dr Talaie argued that universality is required.

Beginning with the premise that corporations have largely operated in a vacuum as far as International Law is concerned (with no legal obligations directly imposed), Justine Nolan considered whether methods of International Law are suited to 21st century reality: how are non-state actors, such as corporations, dealt with? Has the law missed an opportunity for framing corporate responsibility/violations issues within Human Rights?

Justine Nolan, University of New South Wales: 'Corporate Responsibility and the Limits of "Soft Law" in Protecting Human Rights'

Justine Nolan argued that the application of international human rights law to corporations could be suitable, and questioned whether 'soft law' norms were sufficient to prevent corporate human rights abuses (within this, she questioned the limits of soft law). Ultimately, she asked through this paper: where now for corporate responsibility and human rights?

Ms Nolan's paper included discussion of issues of generality versus specificity, and the rise of soft law, and how it isgradually legitimising human rights as being within corporations' sphere of responsibility. Ms Nolan noted that soft law can be attractive as it can be inspirational and aspirational).

Ms Nolan suggested that use of soft law allows for testing of new grounds and, in the corporate responsibility context, seems to have proved to be non-binding only in a strict legal sense (that is, to ignore soft law norms may be at a corporation's peril and thus their effect is not 'soft' at all.)

Justine Nolan described this as a 'consequentialist approach' and suggested that it has often been designed by business interests. She explained that there was a strong movement in the 1970s towards binding regulations on transnational corporations (which were scuppered by the 1980s); the 1980s were characterised by a soft approachdevised by corporations, unions and NGOs, culminating in the 'UN Norms on Responsibilities of Companies' that many countries lobbied against.

2005 marked the appointment of the UN Secretary-General's Special Representative on Business and Human Rights and a tripartite framework was proposed. Ms Nolan considered the relevance of human rights to business and looked at the example of BHP in Oktedi, Papua New Guinea, where international law provided no means of redress against transnational corporations.

There are limitations to soft law solutions, Ms Nolan argued. The UN Global Compact, for instance, is a useful educational tool but is limited in internalising and extending norms. Important aspects of consistency and accountability seem to be limited and instead, the goodwill of corporations is relied upon, which may be problematic.

Catherine Iorns Magallanes (Victoria University, Wellington): 'Indigenous Electoral Representation in International Human Rights Law'

Catherine Iorns Magallanes used the image of the two towers (from the 'filmed-in-NZ' version of Tolkien's classic) to indicate two areas that have not yet merged and that provide something to aspire to. Considering the intersection between Indigenous peoples' rights and democratic rights, in this paper, Catherine Iorns Magallanes looks at the emerging right of democracy and focuses on collective and group rights.

The UN's Working Group on Indigenous Populations (the WGIP) and the Declaration on the Rights of Indigenous Peoples are examined in the paper in the contexts of Indigenous peoples' and political theorists' (separate) arguments about appropriate models of accommodation. Ms Iorns Magallenes discussed the need for group-based accommodations in State design (that is, in modern liberal democracies, the need for Indigenous peoples to receive more positive protection as a group), where the aim is power sharing. Rationales are: instrumental; self governance; key to self determination (eg through federalism). Ms Iorns Magallanes suggests that this would need to be guaranteed in constitutional legislation.

Traditionally, international law has taken a more limited view. Democracy rights in international law have tended to be individual, procedural, and election-based. Factors that political scientists have regarded as critical include party pluralism, secret ballots, universal suffrage, access and so on. The idea has prevailed that as long as certain procedural aspects are guaranteed, the particular system is less important.

Ms Iorns Magallanes noted that the dominant definition of democratic participation does not mesh with that of Indigenous peoples or political theorists. Indigenous rights are group-based, including participation in state decision-making. Ms Iorns Magallanes cited the work of Erica-Irene A. Daes, and James Anaya, in terms of the need for a redefinition of Indigenous peoples and States; details should be left to Indigenous peoples to negotiate in good faith. Ms Iorns Magallanes also referred to the argument that consociational theorists' views run contrary to international law (that power-sharing and guaranteed group representation are not in keeping with the goals of international law and its vision of democracy).

Ms Iorns Magallanes considered the significance of the Declaration on the Rights of Indigenous Peoples: previously Indigenous communities were seen as encompassed within the State; as a result of the Declaration, they are now viewed as international.
In conclusion, Ms Iorns Magallanes argued that if Indigenous peoples' rights are not going to be left at the periphery, they must be integrated, necessitating the rethinking of democracy rights.

Session 4 – Climate Change
(reported by Fanny Thornton, PhD Candidate, ANU)

This session, chaired by Roger Wilkins AO, Secretary of the Australian Attorney-General's Department, largely focused on exploring some of the possible impacts of climate change.

Bruce Burson (New Zealand Refugee Status Appeals Authority): 'The 1951 Refugee Convention and International Climate Migration'

Bruce Burson outlined the migratory consequences of climate change and key policy challenges which are emerging in this area. He argued for effective and equitable responsibility sharing between States in respect of climate change-related displacement, highlighting also the limitations of the Refugees Convention in relation to the full breadth of the problem.

Professor Stuart Kaye (Melbourne University): 'The Law of the Sea and Climate Change: A Rising Tide of Problems'
Professor Stuart Kaye's presentation focused on climate change and the possible impact of sea level rise on maritime jurisdiction, stressing shortcomings of the United Nations Convention on the Law of the Sea, especially regarding mechanisms to determine 'land' and thus jurisdiction over territorial sea. He provided illuminating examples of how some States are already acting to protect features

currently under their authority from ocean inundation.

Dr David Leary (University of New South Wales): 'Climate Change and Radical Thinking: International Law and Ocean Energy Post 2012'

Dr David Leary's presentation explored climate change and renewable energy sources, focusing particularly on ocean energy and its potential to contribute to future energy needs. He drew attention to a new generation of ocean energy technologies, then considered gaps and limitations in current international legal and regulatory frameworks, offering suggestions on how to overcome these.

The Commentator for this session was Duncan Currie (Barrister, Adviser Greenpeace International). Mr Currie's remarks appropriately reminded the audience that the problems raised by all three presenters will have to be tackled jointly by the community of nation States.

Plenary 2 - Pluralism
(reported by An Hertogen, PhD Candidate, University of Auckland)

In the second plenary, Professor Theodore Christakis, Dr Jacqueline Mowbray and Dr Erika Techera discussed the theme of pluralism. The presentations touched upon very different subjects, with the first two dealing with plurality as a fact and the latter focusing on legal pluralism. Dr Mowbray's presentation on the challenges of linguistic diversity for multilateralism dealt primarily with the implications for international law of linguistic diversity at the international level, whereas the other two dealt with international law responses to infra-state diversity.

Professor Theodore Christakis (Grenoble): 'Ethno-political Conflicts, Separatist Claims and International Law'

Professor Christakis analyzed the implications for international law of the recent declarations of independence by Kosovo, Abchazia and South-Ossetia. He described how the principle of self-determination does not recognize a right to independence, but that international law does not explicitly prohibit secession either, given that statehood is a factual situation. He argued however that this might ultimately undermine international law's goal of maintaining stability, because it incentivizes factions within a State to use force to create statehood "on the ground" and States to forcibly repress these factions to avoid the facts of statehood to emerge. He then discussed a number of political and legal limits on secession to evaluate whether some legal limits exist.

Dr Jacqueline Mowbray (University of Sydney): 'Language in the International System: How Linguistic Diversity Presents a Challenge for Multilateralism'

Dr Mowbray assessed whether linguistic diversity is an obstacle to multilateralism and whether multilateralism is a threat to linguistic diversity. She reported on research into the varied and ad hoc linguistic policies of a variety of international organisations and on the impact thereof on participation in these organisations, not just at the State level, but also within multi-lingual States. She then explored the UNESCO Cultural Diversity Convention to assess whether linguistic diversity could also be an obstacle to multilateralism.

Dr Mowbray's presentation attracted most of the questions in the following discussion with delegates pointing to the comparative advantage of New Zealand and Australian diplomats at international negotiations and organisations. The discussion also touched upon the role of languages as a tool of geo-political influence and their stake in geo-political conflict, such as in Africa.

Dr Erika Techera (Macquarie University): 'Strengthening International Law to Address the Needs of Legally Pluralist Nations'

Dr Techera addressed the question of how international environmental law can be effective in Small Island Developing States in the South Pacific whose legal systems are often characterized by legal pluralism. Her presentation surveyed various international environmental law instruments that provide for Indigenous rules. She argued that there is a need for better integration between international environmental norms and customary norms and that an international body facilitating the exchange of ideas and best practices should be established.

Session 5 – International Criminal Law
(reported by Jamie Eng, Victoria University of Wellington)

Welcoming delegates to a session entitled "The International Criminal Justice System" the Chair, Justice David Baragwanath of the New Zealand Court of Appealnoted the particular importance of this area of international law, recalling Professor Maitland's view that the heart of the law is the criminal law. In the session that followed, Anees Ahmed (Senior Assistant Prosecutor, Extraordinary Chambers in the Courts of Cambodia (ECCC)) tackled the special challenges and opportunities posed by hybrid tribunals through the lens of his experience in Cambodia, while Fergus Hanson of the Lowy Institute (Sydney) addressed the problem of dealing with suspected war criminals within domestic borders.

Anees Ahmed: 'Making Hybrid Criminal Tribunals a Better Solution for Post-conflict Societies'

Anees Ahmed noted in his address that the ECCC represents an interesting development in international criminal law. Neither a domestic court, nor an international tribunal, the ECCC is best described as an 'internationalised' chamber. With this hybrid model have come tensions, in particular between the priorities of the Cambodian state on one hand, and the expectations and priorities of the international community—represented by the UN—on the other. The heterogeneous mix of international and domestic prosecutors, pre-trial judges and trial judges in Cambodia has posed difficult questions over the desirable scope of prosecution as well as the true function of the ECCC: should it perform a truth-telling or nation-building role, or should it simply be a forum for the prosecution of criminal indictments? These problems and tensions are played out against a background of difficult legal questions—such as whether genocide can be committed against one's own people.

Mr Ahmed also fielded questions on the practical challenges faced by the ECCC. In particular, discussion focussed on the challenge of including victims as civil parties to proceedings, and the risks and benefits of holding trials in situ in Phnom Penh.

Fergus Hanson: 'Dealing with Suspected War Criminals'

Fergus Hanson discussed the possible policy responses open to the Australian Federal government to the presence of war crimes suspects within Australian borders. While the official policy of pursuing prosecution is dogged by cost problems, other reactive measures such as stripping refugee status or citizenship are similarly vexed. Against this background, it was suggested that a dedicated war crimes unit of the Federal Police should be established and that border screening should be enhanced.

In particular, and with the theme of the conference in mind, Mr Hanson suggested that more coordinated international cooperation must form part of the policy response. Such coordination would face problems, though, not least of which is the variable sophistication of the data-retrieval and data-sharing mechanisms of tribunals and courts dealing with war crimes suspects internationally.
Wrapping up the session, Commentator Alberto Costi (Victoria University of Wellington) commented that the importance of the broad themes raised by the two speakers' topics: the important role that States play in the functioning of international criminal law; the difficulties faced in terms of screening, immunity and retrospectivity, and the importance of monitoring the impact of hybrid tribunals on the cohesion of international criminal law.

Session 6: the World Trading System
(reported by Umair Ghori, PhD candidate UNSW)

This session was chaired by Meredith Kolsky Lewis, Victoria University of Wellington.

Crawford Falconer (Deputy Secretary, Trade and Economics Programme, New Zealand Ministry of Foreign Affairs and Trade): 'Prospects for Multilateral Trade Negotiation'

At the outset, Mr Falconer stated that the outlook on Doha Round is quite negative and it is unclear when it will be concluded. He particularly stated that its conclusion next year is overly optimistic. The global financial crisis affected progress of the Doha Round as well since countries became more concerned about stabilising their economies.

Mr Falconer also highlighted that due to the global financial crisis, there is a great temptation to fall into protectionism. He was also of the view that the degree of attention given to the Doha Round has not translated into action and that this Round is more or less in the 'nice to have' category rather than a 'must have.' In order to reach a settlement, political leaders have to be the decision makers and after the global financial crisis, this decision should be taken quickly.

According to Mr.Falconer, the future of multilateral negotiations is speculative and that the era of 'big bang' multilateral negotiations are a thing of the past. Doha Round is the last one of its kind and there is little possibility of it being concluded any time soon. The reason for this is diversity of interests.

Mr Falconer was also of the view that from the perspective of the developed countries, there is not much left to do. Industrial tariffs have gone down, agricultural tariffs will stay for the foreseeable future and so will the tariffs on services which never attracted much attention.

At a multilateral level, not much liberalisation has happened. If the doomsday scenario of Doha Round's failure does occur, then it will lead to increased protectionism and all that has been achieved in the past will be wasted.

Jo Feldman (Attorney-General's Department, Australia): 'When to Get out of the Way: The Role of WTO in Protecting the Global Commons'

Ms Feldman stated that in theory increased trade has always led to increased economic growth which results in reduced poverty. With this is mind, she queried whether the WTO should move to protect the environment. In other words, does the WTO inhibit environmental protection?

According to Ms.Feldman, non-government organizations believe that the WTO's work is largely against the environment. However, this is not entirely accurate since the WTO does provide exceptions under Article XX. WTO jurisprudence (for example the Shrimp-Turtle case and the Brazil Tyres case that followed it) indicates that countries are utilising Article XX exceptions.

Ms. Feldman highlighted that the WTO Appellate Body set out a clear test for countries to ensure that they do not apply unilateral environmental measures in an arbitrary or unjustifiable manner. In order to pass the Article XX chapeau test, the measure (i) must be applied in a non-discriminatory manner and (ii) countries imposing environmental measures must be cooperative and flexible.

Sharmin Jahan Tania (BRAC University, Bangladesh): 'The Interface between Market Access and Sustainable Development in the Present Economic Crisis'

Ms Tania's presentation mostly highlighted the definition and the treatment of sustainable development in the WTO. She highlighted that this has been expressly recognized as a goal of the WTO as well as being endorsed in the Doha Round. This concept was also discussed in the 1987 Bruntland Report and the US–Shrimp decision recognised all three aspects of sustainable development, that is, economic development, social development and environmental protection.

According to Ms Tania, market access to developing countries for their agricultural exports is critical for these economies to develop in a sustainable fashion. This is impeded by 'dirty Tariffication,', tariff rate quotas, exclusion of sensitive products from Tariffication, tariff peaks, tariff escalation and safeguard measures. Moreover, with regard to domestic support, the Agreement on Agriculture, through an extremely complicated system of 'amber box', 'blue box' and 'green box' labelling, made it difficult for the poor countries to figure out how developed countries made arrangements for providing domestic support legally without making any substantial change to their current practices. As a consequence, these regimes lead to product pricing from developed countries artificially cheap which bring down world prices, suppress the income of farmers of developing countries, squeeze local producers out of their domestic markets, increase their food imports and debt levels.

Ms Tania stated that there is enough space for governments to erect new WTO-consistent trade barriers. She cited data from the International Trade Centre which shows that many nations raised tariffs in 2008. WTO subsidy negotiations involve commitments on subsidy ceilings which are knows as bound subsidies. Given the wide gap between applied and bound subsidies, States can raise their applied subsidies without violating WTO-commitments. Both the US and EU could treble their agricultural subsidies without running into WTO ceilings. WTO rules allow all members to impose new tariffs on goods that the member itself determines are 'unfairly' traded.

Ms Tania also stated that bailing out and competitive devaluation programmes of the govt have triggered antidumping investigations which resulted in 40% increase in antidumping cases.

Plenary 3: Regionalism
(reported by Meg Brodie, PhD Candidate, University of Melbourne)

This Plenary was chaired by Justice Susan Glazebrook, of the New Zealand Court of Appeal, who began by briefly introducing the panel speakers and the three commentators.

Catherine Renshaw, Andrew Byrnes, Andrew Durbach (University of New South Wales): Regional and national human rights protection: creating a new model in the Pacific?

Multilateralism, what else is there?

Professor Andrew Byrnes began by suggesting that human rights regimes offer some answers to this question. He focused on four avenues through which human rights are protected: universal (encompassing UN bodies, reporting and inquiry procedures and UPR); regional (including the regional bodies present Europe, Africa and the Americas); national (such as the development of national human rights institutions); and networks (for example, the Asia Pacific Forum). In commencing the discussion about what mechanisms are best for the Asia-Pacific region, Professor Byrnes emphasised the underlying assumption that action and institutions are required at all of these levels.

Ms Catherine Renshaw

Ms Renshaw focused her presentation on the experiences of the Pacific region. She argued that the needs of the Pacific region provide an opportunity to create a new model for human rights protection, which might need to transcend our understanding of regional and national models.

Ms Renshaw highlighted efforts at a regional level, noting that interest in the establishment of a regional mechanism has waxed and waned. Perceived problems with previous proposals have included western assumptions about law and the cultural and economic burden it would demand. There have however been renewed calls for a Pacific regional body, particularly in light of the weakness of national mechanisms, evidenced by the Fijian Human Rights Commission siding with the 2006 coup.

Ms Renshaw explained the move to establish national human rights institutions (NHRIs) in the Pacific, pushed by the vision of the Office of the High Commissioner of Human Rights that all nations have NHRIs that are compliant with the Paris Principles.The reality is that small dispersed island communities with limited resources may struggle to implement this model. In order to deal with both the historical ambivalence towards a regional body and the challenges to sovereignty that a regional body lacking legitimacy might present, the principle of subsidiarity—devolving power so that it is located as close as possible to those it is exercised over—will be necessary. This may mean that a 'cookie cutter' Paris Principles model for NHRIs will not be readily used in the Pacific, but national

based institutions should nevertheless be the focus.

Commentary: From the Pacific perspective

Ms Imrana Jalal (Pacific Regional Rights Resource Team) challenged the paper's analysis of the Pacific, rejecting the subsidiary principle and local responses as inappropriate in this context. Ms Jalal noted that national structures for human rights protection require democracies with the rule of law operating, which she argued did not characterise Pacific nations. Further she submitted that national bodies have been shown to be ineffective in these circumstances, citing the experience of Vanuatu's Ombudsman. Devolution to the local village structures should be strongly resisted, particularly because they fail to protect the rights of women. Ms Jalal made the case for a regional mechanism which would commence as a supportive body and gradually evolve. Although a regional human rights mechanism might be seen as undermining sovereignty, it could allow the Pacific to exercise resistance against the Australian and New Zealand hegemony, and act as a Pacific voice on issues such as climate change.

Ms Freda Talao (Chairperson, Individual & Community Rights Advocacy Forum) endorsed much of what Ms Jalal presented, noting however the different challenges which Papua New Guinea (PNG) faces. Ms Talao supported community level ownership to the extent that it has been an important pillar of restorative justice in PNG, where custom is used to resolve many conflicts. However much evidence shows that at the village level there is a lot of discrimination, especially against women and children. Ms Talao noted the need for a NHRI in PNG, but the lack of political will to establish one. In the absence of a strong national mechanism, Ms Talao argued that a regional mechanism would assist in moving the agenda forward.

Joy Liddicoat (Commissioner, New Zealand Human Rights Commission), noted the contentious nature of the debate, highlighting that it was an interesting time for multilateralism in the Pacific. A fight has begun for the Pacific to be recognised as a distinct region from the Asia Pacific. There has been ambivalence, and also Pacific diffidence around engagement in the multilateral arena. As a result there are tensions, because there is no 'Pacific sovereign voice.' The intersection between customs, culture and human rights also creates tensions. Commissioner Liddicoat observed that NHRIs can play a role in creating spaces for new conversations about customs and human rights. Ultimately a regional or national mechanism is only as effective as those participating in it want it to be. The form of any NHRIs developed by Pacific states is for Pacific states to determine. There are a number of ways in which Pacific NHRIs can engage with the Paris Principles and perhaps graduated accreditation is the most appropriate.

The discussion generated by this session was lively. Delegates asked about the ASEAN proposals, which were predicted to result in a relatively soft mechanism being established. It was also thought that this would be too far removed to be an appropriate body for the Pacific. Further, specific Pacific concerns would be lost when partnered with Asia. It was queried whether or not the process could be jump-started by creating a regional office of the OHCHR and noted that a small office based in Suva already exists.

Parallels were drawn between the experiences of other regional organisations such as the Pacific Aviation Safety Office where centralised expertise gradually enhanced state compliance.

The presenters reasserted that they were not arguing that there should be no regional mechanism, but that there needs to be a link back to the national. It was queried what a soft regional mechanism adds, particular whether or not the same resources would be chased, and if this could not be achieved through the Asia Pacific Forum network where expertise are transferred across institutions.

Concluding comments: Drawing the Plenary together

Noting the divergent views, Associate Professor Andrea Durbach concluded by observing that this should not be a contest of 'national' versus 'regional', rather an acknowledgment of the difficulties of both the national and regional models. Custom, culture and human rights all need to be accommodated in ways which don't perpetuate imperialism. National mechanisms are difficult for small states to maintain and there is an artificiality that the Paris Principles impose. The emerging 'Pacific sovereignty' needs to be given visibility, perhaps through an incremental regional approach. There is a need for a hybrid model where the national and regional support and complement each other.

Session 8 – Governance of International Organisations
(reported by Meg Brodie, PhD Candidate, University of Melbourne)

The session was chaired by Dr Ben Saul (University of Sydney), who began by emphasising this panel's focus on compliance or methods of compliance. Dr Saul briefly introduced the three panellists highlighting their experiences as both scholars and practitioners.

Dr Sarah McCosker (Attorney-General's Department, Australia): 'Challenges and Innovations: Multilateralism in the United Nations Human Rights System'

Dr McCosker considered the challenges and innovations which multilateralism brings to the UN human rights system. In the human rights system a new generation of multilateral engagement has seen increasing specialisation, procedural innovations, greater focusing on prevention and monitoring and a broadening of scope for formal participation in the system. Dr McCosker considered how this is playing out under both the treaty and Charter-based bodies. She reviewed obligations created by the Optional Protocol to the Convention Against Torture and the Convention on the Rights of Persons with Disabilities, stressing the requirements to build institutions, and the increased role of civil society in guiding the process of implementation. Dr McCosker also looked at State Parties' interactions with the treaty bodies, such as a new move for draft General Comments to be distributed to states for comment. Whilst Dr McCosker argued that consultation with states was positive, it raised a number of questions about the status of General Comments. Further, reporting to the treaty committees also has a range of difficulties, and innovation is required to ensure constructive engagement. The Charter based Universal Periodic Review, at least in theory, increases multilateral engagement through peer review.

Dr McCosker submitted that multilateralism offers the potential for change and adaptation in the human rights system. This change is slow, incremental and uneven, but the emergence of a more complex dialogue, which also involves non-state actors, makes the system more open to diverse influences. The ongoing changes are clearly important but innovation in process should not diminish the time states spend on the achievement of substance.

Associate Profressor Alison Duxbury (University of Melbourne): 'The Exclusion of States from Regional Organisations'

Associate Professor Alison Duxbury began by asking the question, what do we want out of multilateral and regional organisations? Although regional organisations have diverse aims, there are two common features: a strong adherence to principles of sovereignty and a willingness to exclude members from the organisation. The paradox is that whilst sovereignty is respected, exclusion may be based on circumstances within a state's sovereignty.

Associate Professor Duxbury gave different examples of exclusion, including Fiji's suspension from the Pacific Island Forum; the de facto exclusion of Cuba from the Organisation of American States; the African Union's exclusion of states where there has been a coup against an elected leader; and Myanmar's decision to forfeit its rotating chair of ASEAN as a form of suspension of participation.

Associate Professor Duxbury argued that role of membership sanctions is to sanction certain behaviour and put pressure on States to conform. They also demonstrate an international or regional organisation's desire to be seen to be concerned about democracy and human rights and thus legitimate in the eyes of other international actors. However there are problems with the practice. Despite a wide range of human rights abuses, suspension is limited to only the most egregious violations. Exclusion is a clumsy weapon, as it removes a state from an organisation at the time you particularly want to influence it. Whether or not it is an effective solution depends on the aims of exclusion. Its ability to change behaviour depends on the benefits of membership. A willingness to suspend means a move away from strict sovereignty.

Christopher Michaelsen (University of New South Wales): 'The Security Council's 1267 Sanctions Regime'

Mr Christopher Michaelsen's paper considered the United Nation's Security Council (UNSC) 1267 counter-terrorism sanctions regime. One of the features of the regime is a consolidated list of individuals and entities to which the scheme may apply. From its establishment there have been serious human rights concerns relating to both operational and technical issues. In essence the scheme is 'preventive by design, punitive by impact'. Rights to a fair hearing, judicial review and effective remedy, all guaranteed under IHRL, do not exist.

Mr Michaelsen noted that this has been addressed in a number of fora, including by the European Court of Justice in the Kadi and Al Barakaat case. However, reforms have been limited. Developments include the creation of a focal point within the UN Secretariat and summaries of decisions are posted on the administering Committee's website. Mr Michaelsen presented a number of options for change, including for example: the creation of a review mechanism independent of the Security Council; the establishment of an ombudsman; or the creation of a review panel. There is however a lack of political will to create change.

Mr Michaelsen concluded questioning the effectiveness of the 1267 tool and the consequences for the credibility of UN counter-terrorism efforts when the 1267 scheme operates without regard for international human rights law.

The discussion commenced asking whether excluding a state from a regional organisation could be counter-productive. It was acknowledging that it could be, depending on the power of an organisation or institution to insist on compliance, weighed against membership benefits. The most interest was generated around the question of whether or not the establishment of a sanction regime is contrary to the purposes and principles of the UN under the Charter, and where this argument could be made. The position was advanced that both human rights and fair process are integral to the purposes and principles of the UN and it is difficult to understand why the court in Kadi did not refer to this. This question fits within a larger discussion of how the role of law plays out for the Security Council.

Finally, questions were raised regarding States' choices and commitments when participating in review of Draft General Comments. Read positively, the process is a gesture of openness and transparency, however it creates an onus on States and there are difficulties because the process is confidential. It also raises interesting questions about the legal consequences of a State indicating its disagreement with aspects of a draft General Comment.

Annual Conference - Summation and Commentary by Karen Scott

It is a great honour to be asked to attempt to provide commentary on the conference as a whole. It is also a rather terrifying task. Apart from the challenge of trying to pull together the many complex themes of this conference, there is also the logistical difficulty presented by the fact that, apart from the plenaries, ANZSIL sessions are run in tandem. Unfortunately, unlike Hermione Granger of the Harry Potter novels, I do not possess a time-turner, which would permit me to be in two places at once! Thus defeated by the laws of physics, I have had to rely on conference abstracts and one or two spies present in sessions I could not attend.

In light of the theme of this Conference—The Future of Multilateralism in a Plural World—it is perhaps unsurprising that two topics, which lend themselves to a multilateral response dominated: climate change and security.

2009 is likely to prove a pivotal year for climate change as states come together in Copenhagen in December to negotiate a post-Kyoto agreement. Although the human impact of climate change is hard to measure, a report issued in May of this year by the Global Humanitarian Forum, which is a think-tank run by Kofi Anan, estimated that 325 million people around the world are already seriously affected by climate change every year, and that this number could more than double to around 660 million by 2030. In the very first plenary of this Conference, Alan Boyle explored the extent to which the Security Council could be utilised as a body to develop, implement and enforce climate change regulations. This was an ambitious proposal, which generated lively discussion. Rather more conservatively, in session six, which focused on the world trading system, Jo Feldman ably demonstrated how Article XX of the General Agreement on Tariffs and Trade has been evolved through recent jurisprudence to provide a platform for the adoption of unilateral measures for the protection of the environment, including those which address climate change. Jo also argued (quite correctly in my view) that Article XX as interpreted by the WTO Appellate Body actively promotes the negotiation of multilateral environmental measures as opposed to the adoption of unilateral measures. Nevertheless, Crawford Falconer in the same session, cautioned against using WTO litigation to try to legitimise climate change-related trade measures. In his view (again, quite correctly) the need for a politically negotiated solution is an imperative.

Climate change was of course the focus of a designated session on Thursday. All three speakers, rather than addressing climate change directly, focused on the potential impacts of climate change on other regimes. Both Stuart Kaye and David Leary examined the extent to which the law of the sea regime is able to respond to both challenges and opportunities resulting from climate change. Stuart focused on the impact of sea-level rise on low-lying territories, baselines and the status of rocks and islands under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), whilst David examined the extent to which UNCLOS facilitates the development of wave and hydrokinetic energy. Both speakers concluded that the law of the sea as it stands is sufficiently robust and able to adequately manage these challenges and opportunities. The same conclusion was not reached by the third speaker in this session—Bruce Burson—who examined the hotly contended issue of climate refugees and migrants. Bruce concluded that the Refugee Convention is found wanting in terms of its application to persons forced to flee on account of the impacts of climate change. Bruce indicated that he regarded the Convention as illustrative rather than definitive with respect to providing a model for the management of so-called climate refugees. Rather, it is the role of human rights to respond, and, in particular, an application of the concept of self-determination. What all these papers have in common is that they recognise that climate change will have, is having, an impact on many, if not all institutions, and many, if not all, regimes and bodies of rules. Climate change has the undoubted potential to challenge long-accepted rules and concepts in international law, such as the definition of statehood, the notion of self-determination, and the concept of nationality. We, as international lawyers, need to begin thinking pre-emptively about how we are going to manage these challenges. Some regimes and institutions will be sufficiently robust to withstand these challenges; others will not.

The second theme, which to an extent, dominated, is that of security. Issues relating to security are of course the bread and butter of international lawyers. Colin Keating in his paper on multilateral security reminded us that twenty percent of UN members are currently subject to Security Council consideration. Moreover, he noted that global military expenditure has increased by forty-five percent in the last decade. Nevertheless, in contrast to previous ANZSIL conferences, there was much less focus on terrorism and much more emphasis on the recent attempted and successful secessions in Eastern Europe and beyond, and on managing the after-math of conflict. Theodore Christakis explored how the international community has responded to the recent secessions of Kosovo and South Ossetia, among others. He appeared to arrive at the rather unsettling conclusion, that the present security-paradigm has the effect of promoting conflict rather than a peaceful solution. And his answer to his elegantly framed question—"does international law have a role to play in the Kingdom of the fait accompli?"—was equivocal.

Turning to the aftermath of conflict, Roger Clark described international criminal law as having a past, a vigorous present and a hardy future. Two speakers explored alternative mechanisms to the multilateral approach to post-conflict resolution. Anees Ahmed examined the option of a hybrid tribunal as the preferred model for bringing justice to post-conflict societies. Christopher Joyner, in this session, focused on reconciliation as a tool for conflict resolution and, in particular, explored its growing role in domestic US politics. Both these papers indirectly point to the limits of a multilateral response to conflict and, to a greater extent, to post-conflict situations. Nevertheless, Colin Keating pointed out that reliance on unilateral, bilateral or even regional approaches can, at times, be ineffective. In his opinion, the failure to implement a multilateral response has led to the neglect of Afghanistan and to an increase in the proliferation of nuclear and other weapons in North Korea, Iran, Syria and Israel.

One topic which was somewhat conspicuous by its relative absence is the financial, now economic, crisis. This event has dominated world headlines for over a year and yet, we have hardly discussed it at this Conference although it did feature in the Governor-General's speech this morning. Only one paper explicitly referred to it in any detail. Sharmin Jahan Tania pointed out that the crisis has

already precipitated the adoption of seventy-eight restrictive trade measures to date, and warned that access to markets by developing states must not be compromised in light of this crisis. More positively, Crawford Falconer noted that the crisis has, to an extent, revitalised the Doha negotiations and that there is at least some prospect for the adoption of an agreement next year. Nevertheless, I cannot help but wonder whether the financial crisis actually represents a much more significant, much more fundamental challenge to the international legal system as a whole. The statistics associated with this crisis are mind-boggling. The public debt of ten leading rich countries is predicted to rise from a hefty seventy-eight percent of GDP in 2007 to a frankly frightening one hundred and fourteen percent by 2014. These governments will owe around US$50,000 for each and every one of their citizens – this certainly puts my credit card bill into perspective! Moreover, the global imbalance caused by America's huge current account deficit and China's huge surplus cannot be entirely irrelevant when examining the balance of power between these states. It is predicted that China's GDP will surpass that of the US in the next twenty-five to thirty years. As noted by Matthew Windsor, albeit in a different context, inequalities among states shape relations between states. It seems inevitable that the world's centre of gravity is shifting from West to East. China and India are unlikely to be unscathed by the financial crisis, but they are likely to be less affected than many Western states. It also seems likely that the West for at least a few years will be in a weak position to assist other states financially and to invest. China is likely, and indeed is already, stepping into this breach and investing in a number of developing states.

But does this have implications for us, as international lawyers? Well, I think that there is no doubt that as the balance of power moves from West to East, states such as India and China will demand better seats at the negotiating table, undoubtedly above the salt, to use a medieval analogy. They will also demand a seat within the private dining room, where deals are stuck before public negotiations begin. But I think the real question is whether these states will be satisfied with a better seat at the table, or whether, to mix my metaphors, they will want to change the rules. And if so, are we prepared for this? From one perspective, the financial crisis is a bit like climate change. The world's climate is cyclical and moves through cooler and warmer periods periodically. However, anthropogenic emissions appear to have speeded up this cycle and it is the speed or pace of change that is the problem. Similarly, the balance of power periodically alters between states and India, China and Brazil have all been developing fast over the last few years. But the economic crisis has potentially speeded up this process to the extent that both lawyers and diplomats alike may not have the opportunity to carefully manage this change.

At the first session of this Conference, Campbell McLachlan showed us a front cover of a recent edition of The Economist headed: 'What a Way to Run the World!' Some of the papers presented at this Conference responded to this exclamation. A good proportion of the papers presented over the last couple of days focused on a rather different question: how do we want to run the world? And the answer to that question would appear to include concepts and notions such as legitimacy, transparency, and the inclusion of both state and non-state actors within the system, to name but a few. What perhaps has struck me most about this Conference has been the focus on process and legitimacy—in both international law-making and international institutions. This might be described as the constitutionalisation of international law—constitutionalisation in the broader sense of the term. Alan Boyle in the first session noted that process is integral to the legitimacy of law-making and, in fact, that process matters more than substantive consensus. His paper explored the extent to which the Security Council has the right processes to be accepted as a legitimate law-making body. Jacqueline Mowbray's paper on linguistic diversity can also be categorised as one focused on issues of process. In a fascinating study she ably pointed out that the inability to participate in UN institutions and negotiations in one's own language impacts upon that participation. It operates as a practical and symbolic barrier; and as such, can also affect the perceived legitimacy of the institution or regime.

Issues of process, legitimacy, transparency and accountability all arose in papers given by Chester Brown and Duncan French in the context of international adjudication and international dispute settlement. Alison Duxbury explored issues of process and legitimacy in the context of the expulsion of states from regional organisations. She identified a number of problems connected to process—not least the selective use of expulsion by these organisations. And the lack of due process and transparency have seriously undermined any claim to legitimacy by Security Council Resolution 1267, which requires states to freeze assets, restrict the movement of individuals and entities associated with Al Qaeda and the Taliban. Christopher Michaelson, who examined this resolution in depth yesterday afternoon, indicated that the consequences of a lack of protective processes and legitimacy may have potentially far reaching consequences for the UN in terms of the damage it may do to other counter-terrorism tools and the loss of its moral authority to criticise states about the human rights implications of their own measures. Many of the innovations to human rights instruments highlighted by Sarah McCosker in her paper focused on process, including the controversial decision to provide draft comments to states and civil society for feedback and changes to reporting obligations. While Sarah conceded that by and large these are positive developments (although they themselves create certain challenges) she did express the concern that these instruments could potentially persuade states to prioritise process over substance.

The question—how do we want to run the world—brings us back to our Conference theme. Should we, can we, run the world on a multilateral basis? Can a multilateral response prove ultimately supportive of pluralism? A number of the papers presented at this Conference support wholeheartedly a multilateral response to particular problems. As Camille Goodman pointed out in her paper, eighty percent of the world's commercial fish stocks are either fully or over-exploited. A multilateral response seems to be the only reasonable way forward here. Roger Clark was also supportive of multilateralism in the context of international criminal law. In fact he went as far as to say "multilateralism—what else is there?" Well, Roger, actually quite a lot according to a number of other speakers! The liveliest debate of the Conference took place in the third plenary. In fact, the dispute did not focus on the propriety of a multilateral response versus a local response, but between a regional response and a local response. Catherine Renshaw, Andrew Byrnes and Andrea Durbach in their paper supported the creation of national human rights bodies within the Pacific as guided by the principles of sovereignty and subsidiarity. This proposal was opposed by Imrana Jalal and Freda Talao, who both favoured the creation of low-key regional institutions to provide guidance, support and to move the agenda forward. A number of other papers also favoured an approach which is more individual and less multilateral, more able to respond to the particular needs of the region, states or group of indigenous peoples.

Before coming to this Conference, I looked up both "multilateral" and "plural" in the Oxford English Dictionary. The first meaning of the word "multilateral" refers to an agreement, treaty or conference etc., in which three or more parties participate. These days, as Sarah McCosker pointed out in her paper, the term multilateral bears a rather more sophisticated meaning—a qualitative as opposed to a quantitative definition, which recognises the involvement of non-state actors, that is linked to governance and which is a dynamic concept. But going back to the Oxford English Dictionary, the second meaning of "multilateral" refers to "having many sides". The title of this Conference implies at the very least, a disjuncture or tension between multilateralism and pluralism. But the definition of multilateralism as meaning "many sided" provides a link or a bridge if you like, to pluralism. And I think that it is in this definition of multilateralism that the future of multilateralism lies. A large number of the papers presented at this Conference point to the virtues of, and the imperative nature of a multilateral response. But the vast majority of these papers also recognise the limitations of a multilateral response, which is sometimes drafted as a one size fits all solution to international problems. The future of international law in my view is clearly a multilateral one (and this was strongly endorsed by the MFAT / DFAT speakers who presented earlier this morning); but one in which we are aware of the many sides of multi-dimensional problems and multilateral solutions. The challenge we face as international lawyers is to develop multilateral responses that are sufficiently flexible and nuanced to support and meet the needs of a plural society. Campbell McLachlan opened this Conference with something of a history lesson. He reminded us that watershed moments in history, which were followed by a paradigm shift in the international legal system, were preceded by scholarship, which facilitated that paradigm shift. He gave us the examples of the work of Grotius in the seventeenth century and Lauterpacht in the twentieth century. I don't know whether we are on the cusp of a paradigm shift, but as international lawyers we are clearly facing some significant challenges. What is however, clear, is that the vibrancy of international legal scholarship, which has been demonstrated over the last two days at this Conference, provides an excellent foundation for rising to this challenge, and I look forward to continuing the conversation and debate in Canberra in 2010.

Upcoming Events

'Feminist Internationalisms: Celebrating Feminist Engagements with International Law and Politics'

A two day workshop at the ANU on 23-24 November 2009, organised by the Centre for International Governance and Justice in the Regulatory Institutions Network.

This two-day workshop will focus on Australasian work on feminist internationalism in the fields of international relations and international law. Papers will explore economics, security, democracy and human rights using feminist inquiry both as a theoretical lens and a methodology. The keynote speaker is Professor Ann Tickner, University of Southern California. This workshop is supported by the Australian Research Council.

Further details available here.

'International Conference on Human Rights in the Asia-Pacific Region: Towards Institution-Building'

27-28 November 2009, Sydney Law School, University of Sydney.

On 4 June 2008, Australian Prime Minister Kevin Rudd announced his vision for the establishment of an Asia- Pacific community. Subsequently, the Human Rights Sub- committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade has undertaken an inquiry into international and regional human rights mechanisms and possible models for the Asia-Pacific region. Will such a regional institution include a function to monitor and protect human rights across the region? If so, will it succeed in effecting policy change in the face of the strong assertion of state sovereignty to avoid degradation of domestic political legitimacy? This conference brings together experts in this area to explore how current practices might be effectively harnessed to realise a truly effective and integrated regional community based on the norms and spirit of human rights protection.

Further details available here.

'The Investment Treaty Arbitration Conference - Evolution and Revolution in Substance and Procedure'

Sydney Law School, University of Sydney on 19-20 February 2010.

This conference explores some of the most controversial issues in contemporary investment treaty law and arbitration discourse and practice. A global web of investment treaties has emerged, free trade agreements increasingly contain investment protection provisions, and investor–state arbitration is now well-established on the international plane as a significant dispute resolution mechanism. These developments are, however, impacting on a wide range of non-investment areas and politico-legal issues. The conference will explore these impacts, emerging issues in the nature of investment treaties, evolving jurisprudential trends, and potential changes in future direction for investment law and arbitration. Structurally, the conference will have two streams — one addressing the way in which developments in investment agreements and investment treaty arbitration are impacting on the substantive principles of international investment law, and one addressing emerging procedural issues. There will also be two further streams of cross-cutting issues — one addressing the interaction between investment arbitration and 'commercially-oriented' areas such as international commercial arbitration, WTO law, or international tax treaty dispute resolution; and one addressing the interaction between foreign investment law and policy with issues relating to the environment, development, human rights, and the Asia-Pacific.

Further details available here.

'Antarctic Visions: Cultural Perspectives on the Southern Continent'

21-23 June 2010, University of Tasmania, Hobart, Australia

Following the success of the "Imagining Antarctica" conference at the University of Canterbury, Christchurch, New Zealand in September 2008, the University of Tasmania will host "Antarctic Visions," a second conference examining Antarctica from a cultural perspective. Drawing on the arts, social sciences and humanities, the conference will focus attention on the ways we perceive and represent the southernmost continent. Connections with other disciplines - particularly scientific disciplines - are encouraged, as are new approaches to familiar challenges, such as the whaling and climate change debates. While the primary focus of the conference is on the far south, papers which combine Antarctic and Arctic material are welcome. The conference coincides with the Hobart Midwinter Festival, which offers a rich selection of polar-related exhibitions, activities and presentations.
Papers of twenty minutes with ten-minute question times will be invited. Panel proposals are also welcome.

Recent Publications by ANZSIL Members

The Tokyo International Military Tribunal - A Reappraisal

by Neil Boister and Robert Cryer

The Tokyo International Military Tribunal (IMT) is not frequently discussed in the literature on international criminal law, and it is often thought that it was little more (and possibly less) than a footnote to the Nuremberg proceedings. This work seeks to dispel this widely held belief, by showing the way in which the Tokyo IMT was both similar and different to its Nuremberg counterpart, the extent to which the critiques of the Tokyo IMT have purchase, and the Tribunal's contemporary relevance. The book also shows how the IMT needs to be treated, not just as one overarching entity, but also as being made up of different sets of people, who made up the prosecution, the defence and the judges. These disagreed with each other, and at times internally, over the way in which the trial should proceed, and the book shows how each had an impact on the proceedings.

The book is a comprehensive legal analysis of the Tokyo IMT, covering its law, theory, practice and the lessons it may teach to those prosecuting and defending international crimes today. It also places the trial in its political and historical context. The work is based in part on extensive archival research undertaken by the authors, which has unearthed large quantities of documents that have previously been ignored by those who have studied the Tribunal.

Lis Pendens in International Litigation (Martinus Nijhoff, 2009)

by Campbell McLachlan QC

What legal principles apply when courts in different jurisdictions are simultaneously seised with the same dispute ? This question — of international lis pendens — has long been controversial. But it has taken on new and urgent importance in our age. Globalization has driven an unprecedented rise in forum shopping between national courts and a proliferation of new international tribunals. Problems of litispendence have spawned some of the most dramatic litigation of modern times — from anti-suit injunction battles in commercial disputes, to the appeals of prisoners on death row to international human rights tribunals. The way we respond to this challenge has profound theoretical implications for the interaction of legal systems in today's pluralistic world. In this wide- ranging survey, McLachlan analyses the problems of parallel litigation — in private and public international law and international arbitration. He argues that we need to develop a more sophisticated set of rules of conflict of litigations, guided by a cosmopolitan conception of the rule of law.

The Confluence of Public and Private International Law (Cambridge University Press, 2009)

by Alex Mills

A sharp distinction is usually drawn between public international law, concerned with the rights and obligations of states with respect to other states and individuals, and private international law, concerned with issues of jurisdiction, applicable law and the recognition and enforcement of foreign judgments in international private law disputes before national courts. Through the adoption of an international

systemic perspective, Dr Alex Mills challenges this distinction by exploring the ways in which norms of public international law shape and are given effect through private international law. Based on an analysis of the history of private international law, its role in US, EU, Australian and Canadian federal constitutional law, and its relationship with international constitutional law, he rejects its conventional characterisation as purely national law. He argues instead that private international law effects an international ordering of regulatory authority in private law, structured by international principles of justice, pluralism and subsidiarity.

International Courts and Environmental Protection (Cambridge University Press, 2009)

by Tim Stephens

International environmental law has come of age, yet the global environment continues to deteriorate. The challenge of the twenty-first century is to reverse this process by ensuring that governments comply fully with their obligations, and progressively assume stricter duties to preserve the environment. This book is the first comprehensive examination of international environmental litigation. Analysing the spectrum of adjudicative bodies that are engaged in the resolution of environmental disputes, it offers a reappraisal of their relevance in contemporary contexts. The book critiques the contribution that arbitral awards and judicial decisions have made to the development of environmental law, and considers the looming challenges for international litigation. With its unique combination of scholarly analysis and practical discussion, this work is especially relevant to an era in which environmental matters are increasingly being brought before international jurisdictions, and will be of great interest to students and scholars engaged with this vital field.

ANZSIL
ANZSIL Secretariat
Centre for International and Public Law
ANU College of Law
Australian National University
Canberra ACT 0200

cipl@law.anu.edu.au
+61 2 6125 0454