



ANZSIL Newsletter

December 2016

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Message from the President

It is always an interesting time to be an international lawyer, and 2016 has certainly been one of the most significant years for international law in decades. The succession of electoral surprises has been monumental not only politically but also legally. They have involved challenges to elements of the international legal order to which we have grown accustomed, most notably the project of European integration.

The paroxysms of populism in 2016, some of which have taken aim at real or perceived deficiencies in international law, are a powerful reminder that a rules-based international legal system can never be taken for granted. There is a strong sense that the period of relative calm in the post-Cold War era, and the consensus on the importance of international law for maintaining the peace, is under challenge. In such uncertain times the college of international lawyers of which we form part must be far more visible. The international legal system needs those who are committed to upholding it, to explaining its importance, and who will defend it. However, saying that the international legal system should be defended is naturally not the same as claiming that every rule of international law is defensible. There is always room for critical scrutiny and appraisal, not least because this serves to demonstrate the vitality of our discipline and its responsiveness to contemporary needs.

ANZSIL's Annual Conference has always provided an opportunity for this, and the 2017 conference will be no exception. 2017 marks the 25th annual conference of the Society, and will be held from 29 June to 1 July at [QT Canberra](#). The 2017 conference theme, 'Sustaining the International Legal Order in an Era of Rising Nationalism', taps into the zeitgeist and invites reflections on the future of global governance amidst the resurgence of nationalist, isolationist and protectionist sentiment in a number of States. The Co-Chairs of the Conference Organising Committee, Rain Liivoja, Imogen Saunders and Amelia Telec are already at work preparing the conference program. They have secured an outstanding line-up of keynote speakers, including [Natasha Affolder](#) (UBC), [Balakrishnan Rajagopal](#) (MIT) and [Kerrie Sadiq](#) (QUT). I encourage you to submit a paper or panel proposal, or simply to attend the conference. For further information please see the [Call for Papers](#).

As always, I extend my sincere thanks to our dedicated *Newsletter* editors Zoe Scanlon (Attorney-General's Department) and Anna Hood (University of Auckland).

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2017 ANZSIL Conference 29 June 1 July 2017: Save the Date

The theme of the 2017 Conference will be ‘Sustaining the International Legal Order in an Era of Rising Nationalism.’ The 2017 ANZSIL Conference will be held at [QT Canberra](#) from 29 June – 1 July 2017. The [Call for Papers](#) is now open and closes on Friday 24 February 2017. Further information on the conference, including registration and accommodation options will be made available early in 2017.

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

> Participation in WTO Dispute Settlement as a Third Party

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

> *Russia – Live Pigs and Pork Products* (DS475) – Australia submitted a third participant submission, and participated in the November hearing before the Appellate Body. Australia chose to participate in this appeal as it raises systemic issues concerning the substantive legal obligations and rights of WTO Members under the Agreement on the Application of Sanitary and Phytosanitary Measures (‘the SPS Agreement’).

> *Indonesia – Safeguard on Certain Iron or Steel Products* (DS490 / DS496) – Australia participated in the October third party session before the Panel. Australia chose to participate in this dispute given it concerned the proper interpretation of the Agreement on Safeguards.

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

The Department of Foreign Affairs and Trade has also been conducting outreach activities with industry, government, legal and academic stakeholders on Australia’s use of the WTO dispute settlement system, as well as developments in investment law. For further information, contact trade.law@dfat.gov.au.

> Recent Developments with Australia's Free Trade Agreements

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

The Joint Standing Committee on Treaties continued to consider the Trans-Pacific Partnership Agreement (TPP), following its signature on 4 February 2016 in Auckland and the tabling of the TPP text and accompanying National Interest Analysis in the Australian Parliament on 9 February 2016. On 17 May 2016, Ministers from TPP countries met to review progress on their respective internal processes to approve the Agreement.

On 6 May 2016, Australia and Singapore announced that the Third Review of the Singapore-Australia Free Trade Agreement (SAFTA) was substantially concluded. The SAFTA Review was an initiative of the Australia-Singapore Comprehensive Strategic Partnership and sought to update and modernise SAFTA in line with the outcomes achieved in the TPP, which included both Singapore and Australia.

Australian and Indonesian Trade Ministers reactivated negotiations for the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA), with an announcement on 16 March 2016. The third round of negotiations was held in Indonesia in May 2016.

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

> Visit by Jean-Marie Henckaerts – Legal Adviser, International Committee for the Red Cross

On 9 November 2016, the Attorney-General's Department hosted an inter-departmental roundtable, including representatives from DFAT and the Department of Defence, with visiting International Committee of the Red Cross (ICRC) legal adviser, Jean-Marie Henckaerts.

Jean-Marie is heading the project to update the ICRC Commentaries on the Geneva Conventions of 1949 and their Additional Protocols of 1977. The [updated Commentary on the First Geneva Convention](#) was launched in March, and includes updated commentary on provisions that underpin some of the most pressing humanitarian challenges in international humanitarian law ('IHL') today, including the geographical and temporal scope of IHL, the obligation to respect and ensure respect for IHL, and the protection of the wounded and sick, medical facilities and personnel.

At the roundtable, Jean-Marie shared insights about the approach of his team in compiling the updated Commentary, and engaged in candid discussion with Australian Government legal advisers on a range of topical issues raised by that Commentary.

The ICRC and International Law Association Reporter also coordinated the publication of a three part blog mini-series to coincide with Jean-Marie's visit to Australia. The second instalment of that series is a [contribution](#) by John Reid, Head of the Office of International Law at the Commonwealth Attorney-General's Department. John's contribution brought a State's perspective to that discussion, highlighting the importance of State practice in understanding the Common Article I obligation to respect and ensure respect for IHL.

> *Kamasae v Commonwealth of Australia (No 6)* (Foreign relations and ICRC documents ruling)

A recent decision of the Supreme Court of Victoria, [Kamasae v Commonwealth of Australia \(No 6\)](#), clarified the extent of the confidentiality of International Committee of the Red Cross (ICRC) communications subject to discovery in legal proceedings, pursuant to the *International Organisations (Privileges & Immunities) (International Committee of the Red Cross) Regulation 2013* (Cth) ('ICRC Regulation').

The Commonwealth is the first respondent in proceedings before the Supreme Court of Victoria regarding alleged breaches of duties of care owed by the Commonwealth to

persons detained on Manus Island. The Commonwealth objected to the production of certain documents upon discovery. *Inter alia*, the Commonwealth objected to the disclosure of certain documents in reliance on the ICRC Regulation.

The ICRC Regulation gives effect in Australian law to an arrangement between the Government of Australia and the ICRC made on 24 December 2005 ('the Arrangement'), which is Schedule 1 to the ICRC Regulation. Paragraph 11 of the Arrangement provides:

The Government of Australia undertakes to respect the confidentiality of ICRC reports, correspondence and other communications. This includes an undertaking not to divulge their contents to persons and/or organisations other than the designated recipients and not using them in the course of legal proceedings without prior written authorisation from the ICRC.

This is reflected in Regulation 6(13), which provides:

The confidentiality of ICRC reports, correspondence and other communications must be respected, and the contents of these reports, communications and other correspondence must not be:

- (a) divulged to persons or organisations other than the persons for whom they are intended; or
- (b) used in the course of legal proceedings;

without prior written authorisation from the ICRC.

Justice Macaulay considered the application of the ICRC Regulation to eight of the documents. His Honour accepted the Commonwealth's submission that Regulation 6(13) 'is, in effect, declaratory of the confidentiality of the contents of the ICRC communications unless the ICRC provides authorisation in writing that the contents may be divulged' (at [91]-[94]). His Honour did so for reasons including that a 'central characteristic of [the ICRC's] work is the maintenance of the confidentiality of its communications with parties (state and non-state) with whom it must communicate in order to go about its work' (at [92]).

His Honour also held that the protection afforded by Regulation 6(13) 'extends to secondary disclosure of the contents of an ICRC communication whether that secondary disclosure is effected by direct summary or paraphrasing of the ICRC communication, or by the disclosure of information from which reliable inferences can be drawn about those contents' (at [100]).

The next hearing in the matter is scheduled for 9 December 2016.

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

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

> *United States – Tuna II (Mexico) (WT/DS 381)*

New Zealand is once again participating as a third party in the second compliance phase of WTO proceedings brought by Mexico challenging the United States' revised regulations that set out when tuna products sold in the United States may be labelled 'dolphin-safe'. New Zealand's participation reflects its commercial and systemic interest in ensuring that environmental labelling is pursued within the parameters of WTO

Agreements and in matters related to compliance with the WTO Dispute Settlement Body's rulings and recommendations. Third party submissions are due in December 2016 and the oral hearing is scheduled for January 2017.

> Recent Developments with New Zealand's Free Trade Agreements

The Trans-Pacific Partnership Agreement Amendment Bill was introduced to the New Zealand House of Representatives on 9 May 2016. The Bill makes all the necessary changes to primary legislation required by New Zealand to ratify the Trans-Pacific Partnership Agreement (TPP). Following consideration by New Zealand's Foreign Affairs, Defence and Trade Select Committee, which received written and oral submissions from the public, the Bill was passed on 15 November 2016. The Bill will commence on the date that the TPP enters into force for New Zealand.

Aside from the Bill, there are a few other regulations and administrative measures that New Zealand will also put in place as part of ratification. TPP provides for an initial period of up to two years for all signatories to complete their legal procedures necessary to ratify the Agreement.

The Pacific Islands Forum Ministers concluded the legal text of Pacific Agreement on Closer Economic Relations - Plus (PACER Plus) at the Special Forum Trade Ministers Meeting in Christchurch on 26 August 2016. The text is subject to legal verification, after which it is expected to be signed. New Zealand is also currently actively involved in negotiations on the Regional Comprehensive Economic Partnership Agreement (RCEP) and the Trade in Services Agreement (TiSA).

> Paris Agreement on Climate Change

New Zealand ratified the Paris Agreement on Climate Change, a global agreement under which all Parties will take action to reduce greenhouse gas emissions, on 5 October 2016. This made it one of the 55 countries representing 55 per cent of global emissions to ratify and contribute to meeting the Agreement's threshold for entry into force. It entered into force on 4 November 2016, demonstrating the continuing momentum behind it.

New Zealand recently announced its intention to extend its ratification of both the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement on Climate Change to include Tokelau, at the first meeting of the Parties to the Paris Agreement held in Marrakech, Morocco, in conjunction with meetings of the governing bodies of the UNFCCC and its Kyoto Protocol from 7-18 November 2016.

> Other Significant Treaty Actions

On 5 October 2016, New Zealand and the European Union signed the Partnership Agreement on Relations and Cooperation in Brussels. The Partnership Agreement provides a comprehensive framework for more effective bilateral engagement between the European Union, its Member States and New Zealand. It will strengthen political dialogue and cooperation on economic and trade matters, as well as across a wide range of other areas. The Partnership Agreement was tabled in the House of Representatives for treaty examination on 12 October 2016.

New Zealand and the United States signed the Agreement between the Government of New Zealand and the Government of the United States of America on Technology Safeguards Associated with United States Participation in Space Launches from New Zealand on 16 June 2016. The Agreement enables the use and secure management of sensitive US space launch and satellite technology in New Zealand. The parliamentary

treaty examination process for the Agreement was completed on 19 August 2016. The Outer Space and High Altitude Activities Bill, which will provide the regulatory regime to implement certain international obligations of New Zealand relating to space activities and space technology, including this Agreement, was introduced into Parliament on 19 September 2016. It has been referred to the Foreign Affairs, Defence and Trade Select Committee for consideration.

New Zealand acceded to the Optional Protocol to the Convention on the Rights of Persons with Disabilities on 4 October 2016.

ANZSIL financial support for events or activities

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

Internship support

Each year, ANZSIL provides financial support for students to undertake unpaid internships in international organisations and NGOs. This year ANZSIL supported Kate McCallum to undertake an internship at EarthRights International and Amanda Stoltz to undertake an internship at the New Zealand Mission to the United Nations. Reports about their internship experiences can be found below.

> Results of the October internship support round

ANZSIL's internship support program continues to be popular, with 17 applicants for internship support in the October 2016 round. Thirteen applicants were women, and four were men; with 12 applicants based in Australia, and four in New Zealand, and one dual Australia/New Zealand National. As in previous rounds, applications covered a range of internships at a diverse range of organisations based around the world, including the International Criminal Court (ICC), the UN High Commission for Refugees and the UN Office on Drugs and Crime.

Two applicants were awarded internship scholarships of \$AU2000 each:

- > Liam McAndrews (Australia), United Nations Assistance to the Khmer Rouge Trials in the Extraordinary Chambers of the Courts of Cambodia
- > Claire McGeorge (New Zealand), International Criminal Court

ANZSIL's internship support round will again be offered in two rounds in 2017 (April and October).

> Intern report – Kate McCallum

Through the assistance of the ANZSIL internship support grant, I completed a three-month internship with [EarthRights International](#) (ERI) in their Chiang Mai office in Thailand. EarthRights International is a non-governmental organisation that works in land rights issues in South-East Asia and the Amazon. Their mission is to combine 'the power of law and the power of people in defence of human rights and the

environment’, with a particular focus on abuses that arise from unsustainable development projects. ERI campaigns in the Mekong region include hydropower dams, extractive industries, Special Economic Zones, and pollution.

From August 2016, I worked with the Mekong legal team, a group of both international and local Thai lawyers, working on case campaigns and capacity building across the Mekong region. As an intern, my role was to provide research, drafting, and programme support for projects and activities run by the Mekong legal program. I worked with the Mekong Legal Director and Legal Coordinators on short tasks such as the launch of a regional EIA manual, as well as on one extended research piece. As the legal team works closely with the campaigns team, I participated in campaigns and gender mainstreaming trainings, and learnt about ERI’s work with communities and local grass roots organisations.

As well as working with the legal team, I was invited to spend time at the EarthRights school to work with students on preparing research proposals and reports. There are two EarthRights schools run each year, which teach campaigning and legal skills to young human rights and environmental defenders from Myanmar, China, Thailand, Laos, Cambodia and Vietnam. Once students graduate from the EarthRights school they become part of the [EarthRights Alumni network](#), maintaining contact with ERI and connecting with students from different years. Spending time with the students and teachers at the EarthRights school was one of the most rewarding parts of my internship. The school helps train and empower young environmental defenders, and helps to create new connections between ERI’s campaign work and local communities and organisations.

The Mekong Legal Internship is a unique opportunity for law students or recent law graduates to experience the dynamics of working in an international NGO in a politically restrictive region. I am truly grateful for the support of ANZSIL in undertaking this internship.



Kate McCallum (third on the right) at EarthRights International

> Intern report – Amanda Stoltz

2016 has been an exciting and varied year. After completing my LLM at the University of Cambridge, I attended the Hague Academy for International Law before moving to New York to undertake an internship with the New Zealand Permanent Mission to the

United Nations. New York is certainly not a cheap city to live in and the internship support I received from ANZSIL was crucial in allowing me to take advantage of this incredible opportunity.

I was fortunate to be working at the New Zealand Mission while New Zealand was sitting on the Security Council and for the duration of the Sixth Committee's 71st Session. Covering the Sixth Committee provided a valuable opportunity to consider a variety of contemporary issues in international law, such as universal jurisdiction and the criminal accountability of United Nations officials, and to follow the progress of relevant resolutions on these issues. The Sixth Committee's 71st session also overlapped with International Law Week and the election of members of the International Law Commission. During this time, I was able to attend many of the side events that took place, and to benefit from the expertise and knowledge of leading international lawyers. These events included sessions on the role of women in international arbitration, reservations to treaties, the importance of the rule of law for Africa, the relevance of general principles of international law, and the development of the jurisprudence of the International Tribunal for the Law of the Sea.

Following the close of the Sixth Committee, I followed the progress of the Resolution on Oceans and the Law of the Sea, which I found particularly interesting given my background and interest in international environmental law. I was also able to participate in numerous Security Council meetings, including a discussion on the Colombian peace agreement referendum, and was present at a General Assembly meeting where the Secretary General apologised for the United Nations' role in the Haiti Cholera epidemic.

It has certainly been a busy few months, but it hasn't all been work. I have also had the chance to build friendships with incredible people from all around the globe. All in all, my experience with the New Zealand Mission has provided me with valuable insight into the workings of the United Nations and the role of Member States in furthering the United Nations' goals. It has also reaffirmed my desire to pursue a career in international law.



Amanda Stoltz (far right, back row) with Sixth Committee Interns at the United Nations

Upcoming Events and Calls for Papers

> Conference on Protecting Cultural Property in Armed Conflict: Obligations in War and Peace, University of Adelaide, 7-8 December 2016

This conference provides an opportunity to bring the issue of protections for cultural property in armed conflict to the fore in the thinking of Australian decision makers and is a forum for experts and the Australian public to share their insights and experience. The conference will explore the international legal paradigms impacting cultural property protections; related contemporary Australian issues; and approaches to cultural property protections and State implementation of Hague obligations. Speakers confirmed include:

- > Anna Segall, Legal Advisor and Director, Office of International Standards and Legal Affairs – UNESCO
- > Shane Simpson AM, Heritage lawyer and author of *Borders of Culture: Review of the Protection of Movable Cultural Heritage Act 1986*
- > Dale Stephens CSM, Adelaide Law School, University of Adelaide
- > Tim McCormack, Special Adviser on IHL to the Prosecutor of the International Criminal Court in The Hague
- > Peter Stone, UNESCO Chair in Cultural Property Protection and Peace, Newcastle University
- > Phoebe Wynn-Pope, Director IHL and Movement Relations, Australian Red Cross

The conference venue is the Ligertwood Building at the University of Adelaide Law School, Wednesday 7 – Thursday 8 December. For further information please contact [Anna Griffin](#). Register online at <https://www.trybooking.com/NGXL>.

> 2017 International Association of Genocide Scholars Conference

The International Association of Genocide Scholars (IAGS) will hold its 13th meeting in Brisbane on 9-13 July 2017, at the St Lucia campus of the University of Queensland. The conference is jointly hosted by the TC Beirne School of Law and the Asia Pacific Centre for the Responsibility to Protect. The conference theme is 'Justice and the Prevention of Genocide'. Nearly seven decades after the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, the hopes embedded in that document remain largely unfulfilled. The theme of the 2017 IAGS conference revisits the two core components of the Convention: justice for acts of genocide, and prevention of future genocides. The 2017 Conference of IAGS will provide Australian lawyers, and law and politics students, with a unique opportunity to engage with many of the world's leading genocide scholars and lawyers. The IAGS conference is multi-disciplinary.

Keynote speakers include:

- > Gloria Atiba-Davies (Victims and Witnesses Unit, International Criminal Court)
- > William Smith (Deputy International Co-Prosecutor of the Extraordinary Chambers in the Courts of Cambodia)
- > Phoebe Wynn-Pope (Director, IHL and Movement Relations, Australian Red Cross)

Please see the [Call for Papers](#) for more information. The deadline for abstract submissions is 15 December 2016. Further information about the conference is available on [the website](#). Please send any enquires to [Dr Melanie O'Brien](#).

> Disaster Risk Reduction and International Law Symposium 2017

The University of Reading (UK) is hosting the Disaster Risk Reduction and International Law Symposium between 29 June and 1 July 2017. The Symposium is organised by the Reading School of Law and the multidisciplinary Walker Institute, and is co-sponsored by the American Society of International Law (Disaster Law Interest Group). Discussions will be framed around the principles and objectives underpinning the Sendai Framework on Disaster Risk Reduction 2015-30, noting the relevance of other global initiatives including the Sustainable Development Goals 2015 and UN Framework Convention on Climate Change. The Symposium will be a unique opportunity to discuss, debate, inform and progress the development of law, policy and practice governing Disaster Risk Reduction (DRR) and disasters at the national, regional and international levels. Papers are invited which examine one or more of the following research questions, and should be framed around key principles and objectives of the Sendai Framework on DRR:

- > What 'soft' and 'hard' law DRR related norms currently exist within international law, whether more generally or within specific legal regimes?
- > How will/should DRR related law and policy develop within specific fields of law?
- > What are the current and potential law, policy and/or practice implications of findings in (1) and/or (2), especially in relation to improving the coherence of DRR law at national/regional/global levels, and associated implementation and enforcement mechanisms?

Adopted approaches should include: (a) regional or country-specific case studies; (b) theoretical/conceptual frameworks; and/or (c) examples of state/non-state actor practice. Anyone wishing to present a paper should submit a 500 word abstract outlining their proposed topic(s) together with a personal biography of no more than 200 words to drrsymposium@reading.ac.uk by Friday 17 February 2017. Decisions regarding whether or not proposed papers have been accepted will be communicated by mid/late March 2017. Further symposium and booking details are available [here](#). Please email drrsymposium@reading.ac.uk if you wish to be notified when full booking details are available or for any other enquiries.

Recent publications by Members

- > Ben Saul, *Indigenous Peoples and Human Rights: International and Regional Jurisprudence* (Bloomsbury, London, 2016)
- > Ben Saul, *The International Covenant on Economic, Social and Cultural Rights: Travaux Préparatoires* (Oxford University Press, Oxford, 2016), 2 volumes, 2,752 pages

ANZSIL Member News

> Treasa Dunworth Speaks on Nuclear Disarmament at the United Nations

Treasa Dunworth, ANZSIL's Vice-President, presented a paper entitled 'Negotiating Nuclear Disarmament: Clarifying the Law' at the United Nations in October 2016. Treasa's presentation was part of side-event hosted by New Zealand's Ministry of Foreign Affairs at the 71st session of the General Assembly's First Committee. It was designed to consider a range of legal questions about the possibility of developing a nuclear weapon ban treaty. These issues included the legal relationship between a ban treaty and the Nuclear Non-Proliferation Treaty; the precise nature of the obligation States have to pursue nuclear disarmament negotiations; and the process by which any

new obligations might be instituted. Treasa's paper was a great success and, along with an array of other initiatives, contributed to the First Committee passing a resolution that recommended the General Assembly commence negotiations on a treaty banning nuclear weapons in 2017.



Treasa Dunworth (far left), speaking at the United Nations.



Australian and New Zealand
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