



ANZSIL Newsletter

May 2015

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Message from the President

As the wealth of activities described in this Newsletter makes clear, it has been a very productive year for the Society.

> Fifth International Four Societies Conference, July 2014

ANZSIL hosted the Fifth International Four Societies Conference at the ANU on 1-2 July 2014. The goal of the Four Societies initiative is to bring together early career scholars and senior commentators from ANZSIL, the American Society of International Law, the Canadian Council of International Law, and the Japanese Society of International Law, in order to foster a scholarly network between individuals associated with the four sponsoring societies. The 2014 conference was on the theme of Experts, Networks, and International Law. The chosen participants from the Four Societies were William W Burke-White, Jacqueline Parry, Cecily Rose, and Pammela Q Saunders, (American Society of International Law); Suzanne Akila, Monique Egli Costi, Philipp Kastner, and Josephine Toop, (Australian and New Zealand Society of International Law); Cameron Jefferies, Tahnee Prior, and Sujith Xavier, (Canadian Council on International Law); and Hitomi Kimura, Masahiro Kurosaki, Kei Nakajima, and Dai Tamada (Japanese Society of International Law).

The following senior delegates from all four societies attended the conference and provided intensive feedback to the participants: Andrew Byrnes (University of New South Wales), John Currie (University of Ottawa), Holly Cullen (University of Western Australia), Lori F Damrosch (Columbia University, ASIL President), Treasa Dunworth (University of Auckland), Joanna Harrington (University of Alberta), Yuji Iwasawa (University of Tokyo), Christopher Michaelsen (University of New South Wales), Anne Orford (University of Melbourne, ANZSIL President), John Reid (Attorney-General's Department), and Catherine Renshaw (Australian Catholic University). My thanks also to the Australian Government Department of Foreign Affairs and Trade for their generous sponsorship of last year's Four Societies Conference, and to the members of the ANZSIL and international steering committees who put so much time and effort into organising the event.

The Sixth Four Societies Conference will be hosted by the Canadian Council on International Law in mid-2016 – a call for papers will be circulated to members in the coming months.

> 22nd ANZSIL Annual Conference and Postgraduate Workshop, July 2014

The 22nd Annual Conference of ANZSIL took place at ANU from 3 to 5 July 2014. The theme of the conference, Towards International Peace through International Law, was chosen to resonate with the commemorations taking place around the world in 2014 to mark the centenary of the beginning of World War 1. We received a record number of conference paper proposals for the conference, which provided an opportunity to reflect upon the project of achieving international peace through international law that has shaped the past century, and the role that international lawyers have played in the pursuit of that goal. The resulting programme featured a stellar line-up of distinguished and emerging scholars. Plenary and keynote speakers included Bill Campbell QC (AGD), Hilary Charlesworth (ANU), BS Chimni (JNU), Lori Damrosch (Columbia), Joanna Harrington (Alberta), Yuji Iwasawa (Tokyo), Fleur Johns (UNSW), Sir Kenneth Keith (ICJ), Dino Kritsiotis (Nottingham), Penelope Ridings (MFAT), Donald Rothwell (ANU),

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and Joseph Weiler (EUI), with programme highlights including a plenary panel exploring the implications of the ICJ's judgment in the Whaling in the Antarctic case, a breaking issues panel on Crimea and the Ukraine, and a panel discussion on international lawyers as public intellectuals.

My particular thanks to the Conference Co-Chair Anna Hood and the other members of the programme sub-committee – Rebecca LaForgia and Caroline Foster – and to our generous sponsors: the ANU College of Law, the Australian Government Attorney-General's Department, the Australian Government Department of Foreign Affairs and Trade, the New Zealand Ministry for Foreign Affairs and Trade, Hart Publishing, and Oxford University Press.

The Postgraduate Research Students, convened by Petra Butler and Adam McBeth, was held on 2 July preceding the ANZSIL Conference. Participants were chosen through a competitive process, and provided with sponsorship towards their travel and accommodation costs associated with the Workshop and free registration at both the Workshop and the ANZSIL conference. The Workshop brought together an exciting group of postgraduate researchers, and provided them with the opportunity to present their research to their peers, discuss their experiences of postgraduate research, and strengthen their academic and professional connections.

> 23rd ANZSIL Annual Conference and Postgraduate Workshop, July 2015

The 23rd ANZSIL Conference will take place from Thursday 2 July 2015 to Saturday 4 July 2015 at Victoria University of Wellington in New Zealand. The theme of the conference is International Law-Making at a Crossroads: Participants, Processes, and Principles. It will offer participants the chance to hear innovative scholars and practitioners reflecting upon the history, development and challenges of international law-making in the broad fields of public and private international law. Our distinguished keynote speakers are Gerry Simpson (University of Melbourne), Sir Kenneth Keith (VUW), Mary Keyes (Griffith University), and Douglas Arner (University of Hong Kong). Conference highlights also include a plenary panel on The Security Council as International Law-Maker featuring Michael Bliss (DFAT) and Colin Keating (Special Envoy to MFAT) and the now annual, eagerly anticipated Q&A style panel discussion, this year on the theme of The Role of International Legal Advisors to Government and featuring Katrina Cooper (DFAT), Bill Campbell (AGD), Penelope Ridings (MFAT), John Reid (AGD), and Gerry Simpson (University of Melbourne). In addition, panels exploring international humanitarian law-making will run throughout the conference, in recognition and celebration of the New Zealand Red Cross Centenary in 2015.

The ANZSIL Postgraduate Workshop will take place the day before the conference, on Wednesday 1 July 2015, convened this year by Petra Butler (VUW) and Daniel Joyce (UNSW).

Further information about the conference can be found later in the Newsletter. Early-bird registrations close this week, so for those who have not already registered to participate at this conference, this is the time to do so.

> ANZSIL at the American Society of International Law Colleague Societies Breakfast, Washington DC, March 2015

The American Society of International Law has established a new Colleague Societies Initiative. Its first event was a Colleague Societies Breakfast held at this year's ASIL Meeting. Sir Kenneth Keith attended the breakfast on behalf of ANZSIL, where he was one of twenty-six attendees from a dozen international law societies who engaged in a discussion about the activities of their societies and the potential for future collaboration. The major 'action item' to emerge from the breakfast was the objective of holding a Colleague Societies panel and/or reception at the 2016 ASIL Annual Meeting. We will keep ANZSIL members informed of any upcoming events.



> ANZSIL at the World Meeting of Societies for International Law

The French Society for International Law (Société française pour le Droit international) is hosting a meeting of all national or regional societies for international law at the Council of Europe in Strasbourg on 27-28 May 2015. The meeting aims to gather scholarly societies whose purpose is to study, protect and promote international law, and establish a framework for reflecting on their role and future cooperation. Participants will discuss the role and functions of societies for international law in the modern world, the relations between societies of international law and other actors on the world stage, and possible means to strengthen links and organize relations with a view to increasing the influence of societies for international law. Dr Sarah McCosker has kindly agreed to attend the meeting as the ANZSIL representative.

> Jessup Moot

I am delighted to join with my colleagues in congratulating the University of Sydney for their outstanding achievement in winning the Philip C Jessup International Law Moot Court Competition for 2015. Congratulations also to all the other teams who participated in the Australian and international rounds of the Jessup Moot Competition, especially those who made it to the advanced stages of the competition, as well as to the organisers.

> Thanks to colleagues

This will be my last contribution to the Newsletter in my capacity as President, as my term comes to an end at the ANZSIL conference this year.

My thanks to all those who have supported the work of Society during my time as President will be included in my report to the ANZSIL AGM, to be held on Friday 3 July 2015 at 12.45pm. For now, I would like to extend my thanks to Tim Stephens and Amelia Telec for their hard work in producing this Newsletter, to colleagues in the Australian and New Zealand governments who have prepared the instructive and valuable summaries of recent state practice, and to other colleagues who have contributed items to the Newsletter.

I would also like to take this opportunity to thank Wendy Mohring for her outstanding support for ANZSIL since taking over the administrative reins in 2009. Wendy decided at the beginning of 2015 to take early retirement from the ANU, and while we were very sad to farewell her, we know that she will make the very most of life beyond the academy. In a goodbye message, she wrote: 'I feel like I am leaving family behind, looking after ANZSIL has always been my favourite job and my happiest memories will be the ANZSIL conferences – even 2014's 5 day festival (4 Societies).'

Since Wendy's departure, Tim Grainger has taken charge of the ANZSIL Secretariat. In his day job, Tim is the Senior Manager, Marketing and Communications at the ANU College of Law, and he helped ensure a smooth transition and helping modernise our administrative processes and website.

James Brown Scott, one of the founders of the American Society of International Law, wrote in 1920:

We cannot insist upon international law abroad if we do not honor it at home. Therefore, every society of international law is a nursery of peace, and every review or journal of international law is a guarantee of justice.

One of the delights of the ANZSIL Presidency has been witnessing the generosity and energy with which colleagues from government, the academy, civil society, and the private sector work collectively to honour international law at home, rather than just insisting upon it abroad. I am extremely grateful to all the ANZSIL members who have worked so hard on convening events, managing conferences, raising sponsorship, participating in discussions, supporting students, and building collaborations during my term as President. It is this collective effort that sustains the dynamic, mutually supportive, and deeply engaged international law community of scholars and practitioners in Australia and New Zealand.

I look forward to seeing many of you in Wellington in July.

Anne Orford



2015 ANZSIL Conference: International Law-Making at a Crossroads: Participants, Processes and Principles

The 23rd Annual Conference of the Australian and New Zealand Society of International Law (ANZSIL) will take place from Thursday 2 July 2015 to Saturday 4 July 2015 at Victoria University of Wellington, in Wellington, New Zealand.

The expansion and fragmentation of international law has brought a new complexity to international law-making.

Today, there is an unprecedented diversification of actors, processes and fora involved in the creation of international standards, with government organisations, non-state actors and other networks are increasingly involved in the norm developing process.

While certain forms of international collaboration are deliberately aimed at facilitating international agreement without establishing legally binding obligations, such agreements achieve a remarkable degree of compliance by states.

Theories of international law-making no longer focus only on the fixed sources of law, but also explore the generation of law as an ongoing process of communication, interpretation, and narration.

These innovative efforts at engaging in and making sense of legal diplomacy raise significant questions about the legitimacy, accountability, effectiveness, and nature of international law.

Keynote speakers include:

- > Professor Douglas Arner, Faculty of Law, University of Hong Kong
- > Sir Kenneth Keith, Victoria University of Wellington
- > Professor Mary Keyes, Griffith Law School, Griffith University
- > Professor Gerry Simpson, Kenneth Bailey Professor of Law, University of Melbourne

Registration is open. To register, please visit the ANZSIL website and follow the instructions in the registration form.

ANZSIL Life Memberships Awarded

At the ANZSIL Annual General Meeting on 4 July 2014, the Society welcomed the inaugural award of life membership to three of the most long-standing and distinguished members of ANZSIL: Professor Hilary Charlesworth AM, Sir Kenneth Keith and Professor Ivan Shearer AM.

The award of life membership may be made under Article 5.4 of the ANZSIL Constitution, to a person who has been an ANZSIL member for fifteen or more years, has served as a Council member for four or more years, and has contributed significantly through involvement in international law to the advancement of international law in Australia or New Zealand.

Professor Charlesworth, Sir Kenneth and Professor Shearer have each contributed enormously to the development, practice and teaching of international law in Australia and New Zealand, and have an outstanding record of service to the Society: they were all founding members of ANZSIL and served together on the inaugural Executive Council; Professor Charlesworth was the first President of ANZSIL, and Professor Shearer and Sir Kenneth were the first Vice Presidents.

They also share the particular distinction of having been called upon by the Governments of Australia or New Zealand to act as judges on international courts or tribunals in proceedings in which Australia and New Zealand have been involved. And from 2006 to 2015, Sir Kenneth also served with distinction as a Judge of the International Court of Justice.

ANZSIL President Anne Orford presented Life Membership certificates to Professor Charlesworth and Sir Kenneth at the AGM on 4 July 2014. Professor Shearer was unable to attend, and Council will seek to present his Life Membership certificate at a suitable opportunity.

> Professor Hilary Charlesworth AM

Professor Hilary Charlesworth AM is Professor and Director of the Centre for International Governance and Justice in the Regulatory Institutions Network at the Australian National University (ANU). She also holds an appointment as Professor of International Law and Human Rights in the College of Law, ANU. She has held visiting appointments at United States and European universities. She held an Australian Research Council (ARC) Federation Fellowship from 2005-2010 and currently holds an ARC Laureate Fellowship.

Professor Charlesworth serves on the editorial boards of a number of international law journals and served as Co-Editor of the Australian Yearbook of International Law from 1996-2006. She was elected to the Institut de Droit International in 2011. She has worked with various non-governmental human rights organisations on ways to implement international human rights standards and was chair of the Australian Capital Territory government's inquiry into an ACT bill of rights, which led to the adoption of the ACT Human Rights Act 2004. She was appointed judge ad hoc of the International Court of Justice in 2011 for the Whaling in the Antarctic case.

> Professor Ivan Shearer AM

Professor Ivan Shearer AM is Emeritus Professor of Law at the University of Sydney (having retired from the Challis Chair of International Law in 2003), and Adjunct Professor in the School of Law at the University of South Australia. He previously taught at the University of New South Wales (1975-1993) and the University of Adelaide (1965-1972). He has held visiting positions at the Australian National University, the University of Melbourne, Indiana University, Bloomington, the United States Naval War College, Newport, and All Souls College, Oxford.

Professor Shearer is a member of the Bars of New South Wales, Victoria and South Australia, and has appeared in cases before the higher Australian courts including the High Court of Australia. Professor Shearer served as a Senior Member of the Australian Administrative Appeals Tribunal from 2004 to 2008. He is a member of the Panel of Arbitrators of the Permanent Court of Arbitration, The Hague. He was judge ad hoc in two cases before the International Tribunal for the Law of the Sea, Hamburg, and continues to serve in international arbitrations. Since 2001 Professor Shearer has served as an elected member of the United Nations Human Rights Committee. In March 2007 he was elected Vice-President of the Committee for a term of two years.

> Sir Kenneth Keith



ABOVE (L-R): ANZSIL President Professor Anne Orford with ANZSIL Life Members Sir Kenneth Keith and Professor Hilary Charlesworth AM

Sir Kenneth Keith was a judge of the International Court of Justice from 2006 to 2015, the first New Zealander to be elected to that position. Before that he was a judge of the New Zealand Court of Appeal and Supreme Court and of appellate courts in the Pacific and a member of the judicial committee of the Privy Council. He has also sat on a number of international tribunals. He was a member of the legal teams in the ICJ in the Nuclear Tests cases.

Judge Keith was a founding member of the New Zealand Law Commission, a member of bodies which proposed official information legislation, the bill of rights and the proportional electoral system. Earlier he was a member of the Office of Legal Affairs of the United Nations assisting the International Law Commission and related bodies and the New Zealand Department of External Affairs.

For much of his working life Judge Keith has been an academic, primarily at the Victoria University of Wellington. He studied law there and at the University of Auckland and Harvard Law School. Judge Keith has published widely in the areas of administrative law, constitutional law, law reform, legal education and international law.

Recent Australian Practice in International Law

> Professor James Crawford elected to the International Court of Justice

Professor James Crawford AC SC was elected to the International Court of Justice (ICJ) on 6 November 2014, following receipt of an absolute majority of votes in both the UN Security Council (UNSC) and the UN General Assembly (UNGA). He was nominated as a candidate for election by the national groups of 27 countries. Professor Crawford's nine year tenure as one of the Court's fifteen judges commenced on 6 February 2015. He is only the second Australian judge on the Court, the other being Sir Percy Spender who served from 1958 to 1967.

Professor Crawford is an eminent international lawyer who has enjoyed an illustrious academic career, having held the positions of Professor of Law at the University of Adelaide, Dean of Law and Challis Professor of International Law at the University of Sydney and, for more than 20 years, Whewell Professor of International Law at the University of Cambridge. His scholarly writings in the field of international law mark him as a jurist of the first rank. Professor Crawford was also the first Australian member of the UN International Law Commission. He has appeared as Counsel in many leading cases before several international tribunals, including in the ICJ.

Professor Crawford's campaign was strongly supported by the Australian Government and the Australian National Group. The Australian National Group at the time consisted of the four Australian members of the Permanent Court of Arbitration, being their Honours French CJ and Gageler J of the High Court of Australia, Professor Hilary Charlesworth AM and Professor Ivan Shearer AM.

> Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission

On 2 April 2015, the International Tribunal for the Law of the Sea (ITLOS) delivered its Advisory Opinion on the Request submitted by the Sub-Regional Fisheries Commission (SRFC). This was the first advisory opinion rendered by the full Tribunal under article 138 of its Rules.

The SRFC, established by a group of seven West African States, had requested an advisory opinion from the ITLOS on the obligations and liabilities of flag States for illegal, unregulated and unreported (IUU) fishing activities as well as the liability of international agencies where a fishing licence is issued within the framework of an international agreement.

Australia, joined by a number of other States, including the US, UK, China, Ireland, Spain, Argentina and Thailand, submitted that the request to ITLOS for an advisory opinion did not fall within the jurisdiction of the Tribunal as fully constituted, or, in the alternative, that ITLOS should

exercise its discretion and decline the request for an advisory opinion. Bill Campbell QC and Stephanie Ierino of the Office of International Law, Attorney-General's Department, presented the oral submissions of Australia to the Tribunal.

The Tribunal unanimously decided that it had jurisdiction to give the requested advisory opinion, but limited that jurisdiction to the exclusive economic zones (EEZs) of the SRFC Member States. In response to the questions posed by the SRFC, the Tribunal replied that flag States are under a number of 'due diligence' obligations to ensure that vessels flying their flag do not conduct IUU fishing activities in the EEZs of the SRFC Member States. However, it further declared that a flag State will not be liable if it has taken all necessary and appropriate measures to ensure that vessels flying its flag do not conduct such activities.

The Advisory Opinion is available on the Tribunal's website.

> **Australia's Sanctions Role during our UNSC Term: Improved Transparency**

Australia completed its 2013-2014 term as a member of the UN Security Council (UNSC) at the end of 2014. It was an early priority for Australia's UNSC term to seek to enhance the effectiveness of sanctions. Sanctions are of primary strategic importance to the UNSC. The Council utilises sanctions in response to a range of threats to international peace and security, including to counter conflict, terrorism and proliferation of Weapons of Mass Destruction. Sanctions are also an increasingly important instrument for the protection of civilians, to prevent violations of international humanitarian law and human rights abuses.

The improved transparency of Sanctions Committees is an example of the impact of Australia's advocacy and approach during its time on the UNSC. At the outset of Australia's UNSC term, only three of nine Sanctions Committee with a requirement to report periodically to the Security Council did so in public. At the end of Australia's term, 8 of 11 Committees reported in public, including the two Committees established during Australia's term. In 2014 five Committees held consultations with the State subject to sanctions (Somalia/Eritrea, CAR, Yemen, Sudan, Libya), whereas only two such regional meetings had been held in the preceding seven years (DRC, Somalia, both in 2007). This greater transparency and engagement enhances the relevance and legitimacy of sanctions. It also demonstrates to elected Members of the UNSC the potential their sanctions role gives them to make a genuine difference in the situations on the Council agenda.

> **Australia's appearance before the United Nations Committee against Torture**

On 10 and 11 November 2014, Australia appeared before the UN Committee against Torture for its fifth periodic reporting cycle on Australia's implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Australian delegation had a constructive dialogue with the Committee on a wide range of questions through two rounds of questions over two days. The Australian delegation's engagement with NGOs in the lead up to the appearance was also well received.

On 28 November 2014, the Committee released its Concluding Observations, which are the Committee's views regarding Australia's compliance with its obligations under the Convention. The Concluding Observations positively acknowledged Australia's achievements in progressing its obligations under the Convention, including the 2010 enactment of a new torture offence in the Criminal Code Act 1995 and the establishment of the Parliamentary Joint Committee on Human Rights under the Human Rights (Parliamentary Scrutiny) Act 2011. The Concluding Observations also raised a number of specific areas and issues that, in the view of the Committee, need to be addressed. The Committee has requested that Australia provides updates in relation a number of issues by 28 November 2015, including violence against women, Indigenous interaction with the criminal justice system, non-refoulement and mandatory immigration detention.

The Australian Government will consider carefully the Committee's concluding observations. In

accordance with usual practice, Australia's response to the observations will form the basis of its next periodic report under the Convention, along with a list of issues from the Committee prior to the next reporting period in 2018.

> **Arbitration under the Australia-Hong Kong IPPA**

On 21 November 2011, Philip Morris Asia initiated arbitration against Australia under the 1993 Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments (Hong Kong Agreement). Philip Morris Asia argues that Australia's Tobacco Plain Packaging Act 2011 and Regulations constitute an expropriation of its Australian investments in breach of Article 6 of the Hong Kong Agreement. Philip Morris Asia further argues that Australia's tobacco plain packaging measure is in breach of its commitment under Article 2(2) of the Hong Kong Agreement to accord fair and equitable treatment to Philip Morris Asia's investments. Philip Morris Asia further asserts that tobacco plain packaging constitutes an unreasonable and discriminatory measure and that Philip Morris Asia's investments have been deprived of full protection and security in breach of Article 2(2) of the Hong Kong Agreement. Australia rejects these claims.

The Arbitration is being conducted under the UN Commission on International Trade Law Arbitration Rules 2010. A three person Arbitral Tribunal has been appointed to hear the matter. Australia appointed Professor Don McRae of the University of Ottawa as an arbitrator. Philip Morris Asia appointed Professor Gabrielle Kaufmann Kohler as an arbitrator. The Secretary-General of the Permanent Court of Arbitration appointed Professor Dr Karl-Heinz Böckstiegel as the presiding arbitrator. The arbitration is being administered by the Permanent Court of Arbitration.

Australia's conduct of the Arbitration is being led by the Solicitor-General of Australia and a small team of Counsel, supported by a legal team within the Office of International Law in the Attorney-General's Department and the Australian Government Solicitor.

On Australia's application, in April 2014 the Arbitral Tribunal agreed to bifurcate the proceedings and hear two of Australia's preliminary objections to jurisdiction in advance of any merits phase. Australia argues firstly, that Philip Morris Asia's purported investment in Australia has not been "admitted ... subject to [Australia's] law and investment policies" in accordance with Article 1(e) of the Hong Kong Agreement; and secondly, that Philip Morris Asia's claim falls outside the scope of Article 10 of the Hong Kong Agreement because it relates to an pre existing dispute and/or amounts to an abuse of right. These preliminary objections were argued in an oral hearing in Singapore in February 2015. Further information may be found on the Permanent Court of Arbitration website.

> **Prospective new UN Convention on the Law of the Sea (UNCLOS) implementing agreement**

In January 2015 the UN Working Group on the conservation and sustainable use of biodiversity in areas beyond national jurisdiction, mandated by the UNGA to consider a prospective new treaty under UNCLOS, held its final meeting. The Working Group recommended by consensus that UNGA agree to commence negotiations on such a treaty. This marked a significant milestone, given the spectrum of views within the international community.

Consistent with the mandate from the 2012 UN Conference on Sustainable Development, an UNGA decision is required by the end of its current (69th) session, which finishes in September 2015. Assuming UNGA follows the recommendations of its Working Group, a preparatory committee would then meet in 2016 and 2017 with a mandate to make "substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument". The UNGA, on the advice of the preparatory committee, would then convene a diplomatic conference with a view to finalising a treaty.



The January Working Group further recommended that the prospective new treaty should address marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity building and the transfer of marine technology. The Working Group also affirmed that the negotiation process should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

Both New Zealand and Australia contributed actively to the formulation of the Working Group's recommendations, with New Zealand coordinating the drafting of some key elements.

Recent New Zealand Practice in International Law

> South Pacific Regional Fisheries Management Organisation

The South Pacific Regional Fisheries Management Organisation (SPRFMO) Commission held its third Commission meeting in Auckland, New Zealand, 2-6 February 2015. The Commission continued to make significant progress, with the adoption of a new binding measure for jack mackerel, a boarding and inspection measure, and three new/revised conservation and management measures (CMMs); as well as placing (for the first time) two vessels on the SPRFMO list of illegal, unregulated and unreported (IUU) fishing vessels. This was the final meeting chaired by New Zealander Bill Mansfield who has been involved as Chair of SPRFMO since its inception. The Commission elected Gordon Neil of Australia as the new Commission Chair.

The management of the jack mackerel fishery continues to provide the Commission's most significant challenge. All members proposed to stay within the Scientific Committee's recommended catch limit despite there being an increase of only 20,000t from last year (to 460,000t). The discussions centred on how the additional catch should be allocated. Although consensus was eventually reached, some delegations laid markers that are likely to make next year's jack mackerel discussions even more difficult.

This year's discussion on the SPRFMO IUU List culminated in consensus amongst Members to list two vessels: the Russia-flagged *Aurora* and the Peru-flagged *Damanzaihao* (previously *Lafayette*). New Zealand played an integral role in providing evidence supporting the listing of the *Aurora*, which was photographed by a New Zealand Defence Force aircraft with its net in the water in a known fishing ground while unauthorised to fish.

The Commission added to the stable of management measures already in place in the SPRFMO with the adoption of four other new and revised CMMs covering boarding and inspection procedures, data standards, a compliance monitoring scheme, and regulation of transshipment and other transfer activities. Details of the CMMs in force in the SPRFMO Area can be found on the Commission's website.

> New Zealand requests establishment of a World Trade Organisation (WTO) panel to examine Indonesian restrictions on agricultural products

On 18 March 2015, New Zealand submitted a request to the Chair of the WTO Dispute Settlement Body for the establishment of a panel in the Indonesia – Importation of Horticultural Products, Animals and Animal Products (WT/DS/477) dispute. New Zealand's Panel Request was made alongside an identical Panel Request by the United States, which is a co-complainant in the dispute.

The decision to proceed to a WTO panel responds to New Zealand's concerns about Indonesia's import restrictions on agricultural products, which have had a significant impact on New Zealand's exports to Indonesia in recent years. For example, beef exports have fallen by over 90% in what was once a significant export market while trade in a number of horticultural products has been held back.

New Zealand and the United States held WTO dispute settlement consultations with Indonesia in 2013 and again in 2014. Unfortunately, these consultations did not resolve the dispute which is why New Zealand and the United States are now seeking a ruling from a WTO panel.

New Zealand participation as a third party in WTO disputes

> United States – Country of Origin Labelling (WT/DS 384 and WT/DS 386)

New Zealand participated as a third party in the compliance phase appeal of WTO proceedings brought by Canada and Mexico challenging the United States' revised country of origin labelling measures on various food products.

The oral hearing for the appeal was held on 16-17 February in Geneva. New Zealand's written and oral submissions reflect New Zealand's interest in the correct interpretation of the Agreement on Technical Barriers to Trade (TBT Agreement) when it comes to country of origin labelling.

The Appellate Body's report is likely to provide useful guidance on the national treatment obligation in Article 2.1 of the TBT Agreement and the "more trade-restrictive than necessary" test in Article 2.2 of the TBT Agreement. The Appellate Body's report is scheduled to be distributed to WTO Members in May 2015.

> Indonesia – Chicken Meat and Products (WT/DS484)

On 16 October 2014, Brazil requested WTO dispute settlement consultations with Indonesia challenging its import licensing restrictions. Brazil's concerns, while focused on chicken meat, largely overlap with those regarding agricultural imports raised by New Zealand and the United States in our own WTO dispute with Indonesia. On 3-4 December 2014, New Zealand participated as a third party in Brazil's WTO consultations with Indonesia.

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

New Zealand participated as a third party in the 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 as "dolphin-safe". New Zealand's submissions reflect our interest in the correct interpretation of the Agreement on Technical Barriers to Trade when it comes to eco-labelling.

> Australia – Tobacco Plain Packaging (WT/DS434, WT/DS435, WT/DS441, WT/DS458 and WT/DS467)

New Zealand is participating as a third party in the WTO dispute settlement proceedings against Australia in respect of its tobacco plain packaging regime. One WTO Panel has been composed to hear the five complaints by Ukraine, Honduras, Dominican Republic, Cuba and Indonesia. The Panel has announced that it "expects to issue its final report to the parties not before the first half of 2016".

> Free Trade Agreements

The New Zealand-Korea Free Trade Agreement (FTA) was signed in Seoul on 23 March 2015. The FTA will deliver real economic benefits for both New Zealand and Korea and creates the groundwork for an even closer bilateral relationship into the future. On entry into force, current duty-free access will be 'bound in' and existing tariffs will be eliminated on 48.3% of New Zealand goods exports to Korea. Once the FTA is fully implemented in Year 20, 97.9% of New Zealand's current exports will enter Korea quota and duty-free. Tariffs on Korea's exports to New Zealand will be phased out by Year 7. The FTA includes commitments on services, investment (including investor-state dispute settlement) and government procurement, and provides for cooperation in areas such as customs procedures and trade facilitation, sanitary and phytosanitary measures, technical barriers to trade and intellectual property. The FTA also includes chapters on labour and environment - only the second time New Zealand has included these in the body of a trade agreement. The FTA will enter into force once both sides have completed their domestic implementation processes. For New Zealand, the FTA (and an accompanying National Interest Analysis) was presented to the House of Representatives on 24 March 2015 and is currently being

considered by the Foreign Affairs, Defence and Trade Select Committee. New Zealand is hoping to introduce implementing legislation in the next few months.

> IUU fishing vessels and the right of visit

In January 2015 the Royal New Zealand Navy offshore patrol vessel HMNZS Wellington intercepted three IUU fishing vessels in the Southern Ocean, in the area of the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). The vessels were flying the flag of Equatorial Guinea, which is not a party to CCAMLR or the UN Fish Stocks Agreement (UNFSA). New Zealand sought urgent confirmation of the flag from Equatorial Guinea, and requested permission to board and inspect the vessels. Responses received from Equatorial Guinea indicated that the vessels were not in fact flagged to that state, giving rise to a suspicion that they were stateless. Under the customary “right of visit”, reflected in Article 110 of UNCLOS and Article 21(17) of UNFSA, a warship may board a vessel to verify its nationality where there is reasonable ground for suspecting that it is stateless. In the event, HMNZS Wellington was unsuccessful in boarding the vessels due to the sea conditions and the evasive tactics of the masters, but gathered extensive evidence of the vessels’ activities. One of the vessels, still flying the flag of Equatorial Guinea, was subsequently intercepted and boarded by Australian authorities in the Indian Ocean. These interceptions were valuable contributions to ongoing efforts against IUU fishing, which engage aspects of both international law and the domestic fisheries laws of multiple states, including claimed/actual flag states, port states, and the states in which the operators and beneficial owners of IUU vessels reside.



Australia Wins the Jessup Cup

A team of five University of Sydney law students (Sarah Bradbury, Nathan Hauser, Sam Murray, Angus Nicholas, and Alice Zhou) has won the Jessup International Law Moot Court competition. This is the second year in the row that an Australian team has won the Jessup Cup, with the University of Queensland winning the cup in 2014. The University of Sydney has now won the Jessup Cup on four occasions, equally the National University of Singapore as the most successful law school in the Jessup competition since it was opened to non-US law schools.

The University of Sydney team defeated Pontificia Universidad Católica de Chile in the Grand Final moot held in Washington DC. On the bench were Sir Kenneth Keith (presiding) and Her Excellency Judge Joan Donoghue (ICJ) and distinguished international law academic and former State Department advisor Professor Harold Koh. Alice Zhou was named best advocate in the final, and Sarah Bradbury the best oralist in the competition as a whole.

ANZSIL extends its congratulations to the University of Sydney team and their coach and Faculty advisors (Rob Pietriche, Tim Stephens (Australian Rounds) and Alison Pert (International Rounds)) for this tremendous performance.

ANZSIL also congratulates the University of Western Australia team (Leo Simoens, Charlotte Westbrook, Jordan Aitken, Eleni Kannis and Adam Rompotis) and their coach (Rachel Paljetak) which also represented Australia at the International Rounds. The team advanced through the preliminary rounds, the run off rounds, octo finals, and the quarter finals. They were defeated by the University of Sydney in the semi finals.

Congratulations also to Auckland University which represented New Zealand in the International Rounds. The Auckland team was ranked in the top 50 teams in the preliminary rounds, and two members of the team won top 100 oralist awards (Aidan Lomas and Caitlin Hollings).

ANZSIL provides financial support for the Australian and New Zealand teams advancing to the International Rounds of the Jessup Competition.

BELOW (L-R): Harold Koh, HE Judge Joan Donoghue, Sir Kenneth Keith, Alice Zhou, Sarah Bradbury, Sam Murray, Angus Nicholas and Nathan Hauser.



Upcoming Events and Calls for Papers

A Century of War: The Evolution of Warfare Since WWI

The International Review of the Red Cross invites the submission of articles for an issue examining 'A century of war: the evolution of warfare since WWI'.

The deadline for submissions is 31 July 2015.

Possible topics to be explored include:

- > trends in the evolution of conflicts since World War I
- > the challenges to IHL posed by the constant evolution of conflicts / means of warfare
- > how humanitarian actors have adapted their response to conflicts & crises since World War I
- > the notions of death and killing in war (deaths of combatants; civilian deaths).

Within the parameters of the journal's aim, topics may be examined, for instance, from an historical, legal, political, military-security, sociological or humanitarian perspective, taking either a general or a regional approach. Contributions may be emailed to review@icrc.org.

For more information about how to submit an article to the journal, please see our Guidelines for authors.

Joint Asian International Economic Law Conference

The Joint Asian International Economic Law Conference will be held on 20-21 July 2015 at the Sofitel Nusa Dua in Bali, Indonesia.

The theme of the conference is "Regionalism in Asia-Pacific and Beyond: Challenges and opportunities". Registrations are now open and early bird rates apply until 25 April. The conference is a joint project between the Asian WTO Research Network (AWRN), the Asian International Economic Law Network (AIELN) and the International Economic Law Interest Group of the Australian and New Zealand Society of International Law (ANZSIL IELG).

The program and registration are available online via <http://www.awrn.asia/>

We look forward to welcoming you to Bali. For queries about the conference or to discuss sponsorship opportunities, please contact Dr Lisa Toohey at L.Toohy@unsw.edu.au



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