Australian and New Zealand Society of International Law

ANZSIL Newsletter

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Message from the President

IN THIS ISSUE

Dear ANZSIL Members,

I am writing this message, as many of you will be reading it, from my dining room table, which has become my office over the last few weeks. The significant restrictions on daily and academic lives on both sides of the Tasman has impacted us all, and created challenges ranging from having to cancel conferences and workshops, to delivering courses online, to meeting virtually via zoom, to combining work with home schooling, to managing needy pets. Some members will have been directly or indirectly affected by COVID 19 and to those we send our heartfelt best wishes. The COVID 19 crisis has led to the development of novel, innovative and sometimes far reaching government measures globally in a way that lacks any precedent, and I am proud to see members continuing ANZSIL's strong tradition of public service through their contribution of advice, commentary, support, criticism and challenge in relation to these measures, both privately and publicly.

The work of ANZSIL itself has of course not been unaffected. As noted below in this newsletter, we have postponed the 28th Annual ANZSIL Conference to December this year, and are hoping that an Australasian 'travel bubble' will permit this to go ahead. Judging by the very enthusiastic responses I have had from participants so far, we will have a great turn out!

Meanwhile, we are increasing our efforts to engage ANZSIL members during this period where face-to-face events are restricted. I am pleased to announce the ANZSIL Zoom Lunchtime Lecture Series that will be held during the first week of July (when the ANZSIL conference would originally have been held), and will feature high profile ANZSIL members giving keynote lectures on a topical issue or on the subject of their research (details to be confirmed in due course). I know that ANZSIL Interest Groups are exploring innovative ways of engaging their members at the moment, and would like to note in particular, the first of a series of zoom-based discussion group meetings of the Oceans and International Environmental Law Interest Group (OIELG) (on maritime autonomous vehicles and the law of the sea) held last week. The International Peace and Security Interest Group (IPSIG) are also developing a virtual seminar series and details of how to get involved with this were also distributed last week. I was delighted to re-launch the *ANZSIL Perspective* last month. *Perspectives* will now be made immediately publicly available on the ANZSIL website, and the new *Perspective* Editorial Team is seeking your contributions so please do get in touch to tell us about your research or to provide commentary on a topical issue. And I am still seeking to highlight ANZSIL authors on our webpage, so don't be shy about getting in touch when you have a new book published!

I would like to thank Zoe Scanlon and An Hertogen for again putting together such an excellent ANZSIL newsletter. In this edition, we provide updates from the Ninth Annual International Law Colloquium run

by the Attorney General's Department in December 2019 and the Beeby Colloquium run by MFAT in November 2019 as well as recent Australian and New Zealand practice and work relating to the ICC, international law in cyberspace, judicial sale of ships and trade and investment. We are pleased to report on the inaugural meeting of the Gender, Sexuality and International Law Interest Group held at Deakin University on 17 February 2020.

Stay in touch, stay safe and, as Jacinda advises, be kind.

With warmest wishes,

With warmest wishes,

Karen Scott
President
karen.scott@canterbury.ac.nz

Rescheduled ANZSIL Conference

Due to Covid-19, ANZSIL 2020 will take place at the ANU from 3 – 5 December 2020 with the ANZSIL Postgraduate Student workshop taking place on 2 December. Participants who have had abstracts or panels accepted will have been contacted and asked for an 'in principle' indication of attendance. If spaces become available, we will contact people on our reserve list and, if necessary, we will re-open the call for papers. It is anticipated that arrangements relating to the conference fee, accommodation and registration will be confirmed in September/October 2020.

This year, Professor Hilary Charlesworth will be giving a keynote lecture on 'Art and International Law', there will also be an extended year-in-review panel, and the President's Panel will focus on 'Indigenous Voices in International Law.' In light of the unprecedented global events of this year, a special plenary panel on 'Covid-19 and International Law' will explore some of the implications of the pandemic for areas of international law such as human rights, law of the sea, state responsibility, international trade etc. If you would like to contribute to this panel, please send a short abstract to karen.scott@canterbury.ac.nz.

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

Ninth annual International Law Colloquium

The Attorney-General's Department held its ninth annual International Law Colloquium in December 2019 at Old Parliament House in Canberra. The Colloquium brought together leading international lawyers from the Australian Government, academia, and the NGO and private sectors to discuss current international law issues and forecast future trends.

Professor Shirley Scott, Professor of International Law and International Relations and Head of the School of Humanities and Social Sciences, UNSW Canberra, delivered the Colloquium's keynote address. Professor Scott spoke about achieving integrity through upholding values, the importance of imbuing international law with norms and values and the need to engage critically with the relationship between values and interests.

Sue Robertson, First Assistant Secretary, Office of International Law, Attorney-General's Department

Colloquium panellists and participants explored issues including the place of international law in new and emerging areas such as space law and cyber activities, the importance of international law in calibrating domestic law and challenges in implementation, and the role of compliance in achieving the integrity of international law and international legal systems.

Some of the questions considered and discussed included:

- Are there limits to how much international law can (and should) reflect values?
- How do we assess national interest?
- How should States place themselves in areas where technology is developing more quickly than the relevant international law regime?
- Is there too much reliance on soft (non-binding) law?
- Do we need new theoretical structures in the new era?
- What role should international lawyers play in shaping this?

The final panel was composed of representatives from each of the panels to reflect on integrity. The free-flowing discussion ranged from a reflection on how to recognise integrity when we see it, to questions of the role of like-mindedness on issues of international law.

The Colloquium forms part of a tradition of dialogue and engagement in respect of international law. The 10th International Law Colloquium will be held in late 2020.

Submissions to the International Criminal Court on the situation in the State of Palestine

In 2015, the Prosecutor of the International Criminal Court (ICC) commenced a preliminary examination into alleged Rome Statute crimes committed in the Palestinian Territories. This was followed, in May 2018, by a direct referral by the Palestinians of the situation, which removed the need for the Pre-Trial Chamber to authorise the Prosecutor to proceed with an investigation. In December 2019, the Prosecutor announced she was satisfied that there was a reasonable basis to proceed with an investigation, subject to a ruling by the Court on the scope of territorial jurisdiction, and on 22 January 2020, filed her request for such a ruling with the Pre-Trial Chamber (PTC). The PTC subsequently invited applications for leave to file observations from *amicus curiae,* including States, organisations and persons, in relation to the request. Australia was granted leave to submit written observations, and filed these on 16 March 2020.

Australia's observations emphasise that Australia is a strong proponent of accountability for serious international crimes and a longstanding supporter of the ICC as an important institution that helps deliver such accountability. Re-affirming Australia's longstanding support of a two-state solution to the conflict between Israel and the Palestinians, the observations note that the question of Palestinian statehood cannot be resolved prior to a negotiated peace settlement between Israel and the Palestinians, and that a finding on Palestinian statehood by the ICC could prejudice a negotiated peace settlement. In the observations, Australia submits that the PTC should rule that the ICC does not have jurisdiction over the situation and the PTC should decline to confirm the Prosecutor's request that the 'territory' over which the Court may exercise its jurisdiction under Article 12(2)(a) comprises the West Bank, including East Jerusalem and Gaza.

Australia's written observations can be found on the ICC website.

Case studies on the application of international law in cyberspace

In March 2020, Australia published a series of case studies on the application of international law in cyberspace. The case studies apply international law to three standalone hypothetical scenarios, demonstrating that existing treaties and customary international law provide a comprehensive and robust framework to address the threats posed by state-generated or sponsored malicious cyber activity. The case studies illustrate that the application of existing international law to cyberspace can enhance international peace and security by increasing predictability of state behaviour, reducing the possibility of conflict, minimising escalation and preventing misattribution.

The case studies were published in the form of a publicly available Australian non-paper to the United Nations Open-Ended Working Group on Developments in the Field of Information and Telecommunications in the Context of International Security. The case studies are available on the Department of Foreign Affairs and Trade's website.

UNCITRAL Working Group VI: Judicial Sale of Ships

In 2018, the topic of the judicial sale of ships was added to United Nations Commission on International Trade Law's (UNCITRAL) work program and allocated to its Working Group VI. The Working Group is now in the process of negotiating a new international instrument relating to the judicial sale of ships.

In recent years, maritime stakeholders had cited several problems in respect of the recognition of the judicial sales of ships by foreign courts. The proposed new instrument is intended to address these issues, by providing a framework to recognise foreign judicial sales of ships. In particular, recognition of clean title would be provided by courts after a judicial sale, thus providing a new owner protection against prior existing claims against the ship. In addition, the draft instrument is intended to provide for the issuance of a certificate which would provide for prior registrations, mortgages and registered charges against the ship to be deleted from relevant State Party registries.

Australia participated in the most recent Working Group meeting in November 2019, where a preliminary decision was made that the draft instrument would take the form of a treaty, as opposed to a model law, and early negotiations on text commenced. The next Working Group meeting was scheduled for 20-24 April 2020 but has been postponed due to COVID 19.

Further information on the Working Group's discussions and progress is available on the UNCITRAL website.

Participation in WTO Dispute Settlement as Complainant or Respondent

India – Measures Concerning Sugar and Sugarcane (DS580)

On 16 January 2020, Australia filed its first written submission in its WTO dispute settlement action against India's domestic support for sugarcane and sugar, including price support, and export subsidies. Australia considers that India is acting inconsistently with Articles 3.2, 3.3, 6.3, 7.2(b), 8, 9.1, 10.1, 18.2 and 18.3 of the *Agreement on Agriculture*; Articles 3 and 25 of the *Agreement on Subsidies and Countervailing Measures*; and Article XVI of the *GATT 1994*. Australia's submission is available on DFAT's website.

Australia – Anti-Dumping Measures on A4 Copy Paper (DS529)

On 4 December 2019, the WTO Panel composed to consider *Australia – Anti-Dumping Measures on A4 Copy Paper* (DS529) published its report. Indonesia's complaint focused on the Anti-Dumping Commission (ADC)'s finding of a "particular market situation" affecting Indonesia's domestic market for A4 copy paper, which led the ADC to reject the relevant Indonesian exporters' domestic prices in its assessment of the "normal value" of the A4 copy paper. The Panel concluded that Indonesia did not establish that the ADC acted inconsistently with Article 2.2 of the Anti-Dumping Agreement when it found a "particular market

situation" existed in the Indonesian domestic market for A4 copy paper. It found that Australia's methodology for calculating the margin of dumping was inconsistent with Articles 2.2 and 2.2.1.1 of the WTO Anti-Dumping Agreement, but did not accept all of Indonesia's claims. The Panel report was adopted by the Dispute Settlement Body (DSB) at its regular meeting on 27 January 2020. On 27 February, Australia and Indonesia agreed to a "reasonable period of time" of 8 months (from 27 January) for Australia to implement the DSB's rulings and recommendations, with an extension of one month in the event of unavoidable delays.

Participation in WTO Dispute Settlement as Third Party

Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products (DS484)

This dispute, initiated by Brazil, concerns certain measures imposed by Indonesia on the importation of chicken from Brazil. This dispute has been through an initial panel process, and is now before a compliance panel (Article 21.5 of the WTO Dispute Settlement Understanding). As a major exporter of animal products to Indonesia, Australia has systemic and legal interests in this dispute. Australia made a statement at the compliance panel hearing on 5 February 2020. Australia's statement and involvement to date in this dispute can be accessed at the WTO disputes page of the DFAT website.

Recent Trade Law Initiatives

ISDS Reform Initiatives

Australia has continued to participate in Working Group III (WG III) of UNCITRAL which is focused on reform of investor-state dispute settlement (ISDS). In July 2017, the UNCITRAL Commission gave WG III a broad mandate to (i) identify concerns regarding ISDS; (ii) consider whether ISDS reform was desirable; and (iii) develop solutions, as appropriate, to be recommended to the Commission. WG III has concluded phases (i) and (ii) of its mandate and is now engaged on phase (iii).

WG III met in Vienna on 14-18 October 2019 where it focused on possible reform options of an advisory centre, a code of conduct and third-party funding. In January 2020, WG III focused on other reform options including the EU proposal for a multilateral investment court, a possible appellate mechanism and selection and appointment of ISDS tribunal members. Other reform options that WG III is yet to consider include: dispute prevention and mitigation; interpretation of investment treaties by treaty Parties; security for costs and frivolous claims; shareholder claims and reflective loss; multiple proceedings and counterclaims; and a multilateral instrument on ISDS reform. The next meeting of WG III is tentatively scheduled for October 2020.

Australia has also continued to engage in the review of ICSID's Arbitration Rules for investor-State dispute settlement proceedings, which commenced in October 2016. Australia participated in the third consultation with ICSID Member States in November 2019. The ICSID Secretariat published its fourth working paper on the proposed amendments (WP#4) on 28 February 2020. The paper can be accessed at ICSID's website.

Recent Developments in Australia's Free Trade Agreements

Australia continues to progress the negotiation and implementation of a number of bilateral and multilateral free trade agreements (FTAs). Input from stakeholders contributes to developing negotiating positions in respect of these agreements, and the Australian Government welcomes input on these discussions. DFAT's website has further information on these agreements, including contact points.

FTAs under negotiation

Leaders of Regional Comprehensive Economic Partnership (RCEP) participating countries attended the 3rd RCEP Leaders' Summit in Bangkok on 4 November 2019. Leaders noted 15 participating countries had concluded text-based negotiations and essentially all their market access issues. Parties are finalising market access negotiations and subjecting the text of the RCEP Agreement and associated documents to a technical legal review prior to signature in 2020. RCEP is a regional FTA that builds on Australia's existing relationships with 15 Indo-Pacific countries (the 10 ASEAN member States and Australia, China, India, Japan, Korea and New Zealand). The Agreement covers trade in goods, trade in services, investment, economic and technical cooperation and has new rules for small and medium-sized enterprises, government procurement, intellectual property, competition and electronic commerce.

Australia is working with the European Union (EU) to achieve a comprehensive and ambitious FTA that delivers outcomes to both Australia and the EU. Australia has now exchanged all initial market access offers and is pursuing its interests, including on goods, services and investment, and government procurement. Australia had a positive and constructive sixth round of negotiations in Canberra, from 10 – 14 February 2020. See the DFAT A-EUFTA news website for more information.

FTA negotiations were launched with the Pacific Alliance (Chile, Colombia, Mexico, Peru) at the Pacific Alliance Summit in Cali, Colombia on 30 June 2017. Eight rounds of negotiations have since been held and substantial progress has been achieved. The Pacific Alliance represents a growing opportunity for Australian businesses – it will build on our existing agreements with Mexico, Peru and Chile and open up new preferential access to Colombia. Australia is committed to working towards timely conclusion of a high-quality agreement with the Pacific Alliance.

FTAs concluded

The Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) was signed by Ministers in March 2019. Australia completed its domestic ratification processes in December 2019. Indonesia passed the relevant legislation in February 2020, and is working to complete its domestic ratification processes. IA-CEPA will enter into force 60 days after Indonesia notifies Australia that those processes are completed. Australian and Indonesian officials are working hard to ensure the full implementation of IA-CEPA from its entry into force, which will be no earlier than May 2020.

Australia and Singapore have finalised negotiations on a bilateral Digital Economy Agreement (DEA). The DEA will operate to replace the Singapore Australia Free Trade Agreement Electronic Commerce Chapter with an expanded Digital Economy Chapter containing new benchmarks for digital trade rules in the region. This includes new or enhanced rules for cross-border data flows, e-invoicing, e-payments and subsea data cables. It will also provide a platform for enhanced agency-level cooperation on emerging digital issues including data innovation, and artificial intelligence. Prime Ministers Scott Morrison and Lee Hsien Loong announced the end of negotiations on 23 March 2020. The DEA is now undergoing legal processes prior to signature and publication later this year.

The Australia-Peru FTA (PAFTA) entered into force on 11 February 2020, following an exchange of notes certifying the completion of domestic treaty making processes. The agreement, which covers trade in goods, trade in services and investment, opens new opportunities for businesses.

The Australia-Hong Kong Free Trade Agreement (A-HKFTA) entered into force on 17 January 2020. The trade agreement strengthens Australia's relations with one of its most significant trade and investment partners. The agreement will provide increased certainty for Australian services providers and investors.

FTAs under review

Australia aims to progress in 2020 the next round of discussions on a review of the services and investment chapters of the China-Australia Free Trade Agreement (ChAFTA), hold meetings of the ChAFTA Joint Commission and Trade in Goods Committee, and commence the mandated General Review of ChAFTA.

Under the Japan-Australia Economic Partnership Agreement (JAEPA), a review of priority agriculture products is due to take place in 2020.

At the annual meeting of ASEAN, Australian and New Zealand Trade Ministers (AEM-CER) in Bangkok on 9 September 2019, Ministers endorsed a work plan for negotiations to upgrade the ASEAN-Australia-New Zealand FTA (AANZFTA). The first round of negotiations is scheduled to be held in New Zealand in June 2020, with intersessional work taking place prior to the negotiations.

Other initiatives

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

The Multilateral Trading System and the COVID-19 Pandemic

The Australian Government is working to ensure that the multilateral trading system continues to operate during the COVID-19 pandemic. At an Extraordinary G20 Leaders' Summit held on 26 March 2020, the Prime Minister of Australia, the Hon Scott Morrison MP, reiterated the importance of open global supply chains. Similarly, the G20 Trade Ministers' Statement of 30 March 2020 emphasised the importance of the rule of law, urging that emergency measures designed to tackle COVID-19, if deemed necessary, must be targeted, proportionate, transparent, and temporary, and that they should not create unnecessary barriers to trade or disruption to global supply chains, and be consistent with WTO rules. The full statement is available on the G20 website.

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

2019 Beeby Colloquium: Blurring boundaries: international law at the frontiers

New Zealand's Ministry of Foreign Affairs and Trade hosted the annual Beeby Colloquium on Thursday 28 November 2019 at the Victoria University of Wellington Law School. Named after New Zealand's renowned diplomat and international jurist, the Colloquium was established to honour Chris Beeby's lasting contributions to international law. With the aim to bring together academics and international law practitioners, the Colloquium is a forum for information sharing, learning and discussion. The theme for the 2019 colloquium was Blurring Boundaries, International Law at the Frontiers. There were three panel sessions which explored topics of trade, the environment and security. The public session addressed the Christchurch Call to Action. A collaboration session where academics and practitioners could discuss their work over the past 12 months in various areas of international law concluded the day. The Colloquium is an invitation-only event and subject to the Chatham House rule (with the exception of the public session) but anyone with a strong interest in international law can request an invitation. The public session during lunchtime was more publicly advertised. The views set out below do not necessarily reflect the views of the New Zealand Government.

Trade Frontiers – Where Trade Meets Privacy and the Digital World, National Security and the Environment

This session explored the interaction of trade law with various other policy areas. First, with regard to trade and privacy protection, it was recognised that the free flow of data is of growing importance to international trade. However, support for the free flow of data can be in tension with the protection of privacy. Establishing the role of international law in regulating data in order to manage this tension effectively is of growing importance but proves to be a challenge. The inclusion of obligations concerning the flow of data in trade agreements provides an interesting example of how this may work.

In regard to trade and national security, the lines are continuing to blur. For over 70 years States have shown a hesitancy to litigate the security exception in the General Agreement on Tariffs and Trade (GATT), for fear of the systemic impacts this could have on the international trading system as a whole. This changed in 2017 when a panel was established to hear a dispute brought by Russia against Ukraine. In this dispute the exception was used for the first time and the WTO panel had to explore it. With, for example, the growing importance of cyber security to digital supply chains, these issues are only going to become more relevant and further discussion will be needed if a clear boundary between trade and national security is to be established.

New Zealand is also moving forward in the area of trade and environment and believes that trade policy can play an important role in supporting climate change and sustainability objectives. New Zealand recently launched negotiations on a new initiative – the Agreement on Climate Change, Trade and Sustainability (ACCTS) – which will cover the liberalisation of trade in environmental goods and services, the development of guidelines for eco-labelling and disciplines to eliminate fossil fuel subsidies. It is hoped that the ACCTS can help to generate momentum for a multilateral solution, including on fossil fuel subsidy reform which, if resolved, could have a significant impact on climate emissions. If trade policy and modern trade rules are going to play a role in sustainable development countries must act now.

Natural Frontiers – The Common Heritage of Mankind?

The idea of international law at the frontier is particularly applicable for contemporary international environmental law and the management of 'natural frontiers' such as the deep seabed, high seas and outer space. The 'common heritage of mankind' has been proposed as the principle by which to manage humankind's interests in these natural frontiers, which are not governed by any one state. This was explored by presenters in relation to the regulation of deep sea-bed mining, outer space resources and the negotiation of a high seas marine biodiversity treaty.

With regard to deep sea-bed mining, the International Seabed Authority (ISA) was set up to develop standards and guidelines to organise, regulate and control all mineral-related activities in the international seabed area beyond national jurisdictions. Its work underway to develop exploitation regulations was considered in detail from an international environmental law perspective.

Another focus was the current negotiations towards a new UN treaty to conserve and sustainably use biodiversity in areas beyond national jurisdiction (Biodiversity Beyond National Jurisdiction, or BBNJ). The treaty will be an implementing agreement to the UN Convention on the Law of the Sea. The draft, currently in its third round of negotiations, covers matters such as marine protection areas, environment impact assessment, marine genetic resources, capacity building and the transfer of marine technology. There is agreement that it must 'not undermine' other relevant treaties but work is ongoing on how to achieve this in practice.

Another natural frontier of international interest in recent times has been outer space. Research shows that the moon may contain vital resources which could help resolve the world's energy crisis. However, it is unclear what the potential environmental damage or economic feasibility is of lunar mining. There is a Moon Agreement but few States are party to it, leaving the legal status unclear. In the 1960s an Outer Space treaty

was signed but due to the huge technological advancements since then more clarity was considered to be needed and the suggestion of a governing body to manage these issues.

Public Session: The Christchurch Call to Action – Breaking New Ground

The public lecture given by Ross Young (Google) and Victoria Hallum (MFAT) considered the international law issues associated with the Christchurch Call to Action. They discussed how states and technology companies have committed to working alongside one another to eliminate terrorist and violent extremist content online.

Technology companies have committed to take transparent steps to combat content, implement measures that mitigate risks and review algorithms. They are committed to confront the spread of hate and violence online and have updated "hate speech" policies. With more than 500 hours of videos uploaded onto YouTube each minute, this is no small feat. Google recently published a transparency report and it was found that of the 9 million videos reported, 87% were flagged by the automation system and 80% were removed before they had a single view. The Global Internet Forum to Counter Terrorism (GIFCT) brings together the UN, technology companies and world leaders to prevent, respond and learn to counter current terrorism concerns. Founded by technology companies, the GIFCT has grown to be an independent entity. It is building out its staff and its work with governments and civil society. Working together enables a spirit of partnership and makes it easier to reach a consensus.

The Christchurch Call could be seen as a new face of multilateralism in the way it engages directly with non-state actors. Victoria explored its implications for international law. Though the Call is explicitly non-binding it is informed by and is compatible with international law and international human rights law in particular. Any action taken must be consistent with the commitment to a free, open and secure internet and must respect human rights. Victoria asked whether the virtual world is the new global commons and asked how international law might evolve to better engage with non-state actors such as technology companies.

Security Frontiers – Counter-Terrorism, International Humanitarian Law and Sanctions

The international security landscape is changing, with complex and fast-moving situations requiring a careful analysis of interactions with international law. This session explored the state of New Zealand's current counter-terrorism legislation, including whether it was fit for its purpose to prevent, criminalise and prosecute terrorism. New Zealand's framework is defined by three eras (pre 9/11, post 9/11 and ISIS era) with a suggestion of a new fourth era following the Christchurch attacks. Presenters explored scenarios where the lines may be blurred between violent extremism and terrorism, and whether future legislative reform has the potential to complicate this distinction further.

The use of sanctions in international law was also addressed. Although there is not a set definition, sanctions essentially are non-enforceable foreign policy measures, designed to influence other states or non-state actors. They are increasingly being used for a diverse range of objectives. They offer a way to operatize regimes, and modern sanctions seem to be responding to and being shaped by, international law.

This year marks the 70th anniversary of the Geneva Convention 1949. Is it still fit for purpose? The short answer was yes. The purpose of the Convention is to govern the rights of States and individuals in armed conflict. It is to reduce unnecessary suffering, protect the victims of war and facilitate peace. However, it should be remembered that it is not a pacifist project nor can it eliminate war. There are many laws, including soft law and supporting documents, which apply in armed conflict. Present day conflicts are increasingly complex with the parties involved and weapons used and these new challenges make it more difficult to determine which rules apply.

Collaboration

The day concluded with a "collaboration" session, in which participants joined one of three groups to share updates and identify opportunities to collaborate in their current areas of research across three themes: international trade law, international environmental and resources law and general public international law.

Conclusions

Feedback from participants in the 2019 Colloquium was once again very positive. The Ministry looks forward to bringing New Zealand's international law community together for another thought-provoking Beeby Colloquium later this year. International law academics and practitioners wanting to be included in the mailing list for the Colloquium should contact BEEBY@mfat.govt.nz.

International Criminal Court and the War Crimes Amendments

In late 2018, Cabinet agreed that New Zealand should ratify the War Crime Amendments to the Rome Statute. These relate to a series of war crimes amendments made in June 2010 at the Review Conference of the Rome Statute at Kampala, Uganda, and further amendments made at the 16th Session of the Assembly of States Parties to the Rome Statute in December 2017 in New York, collectively known as the 'War Crimes Amendments'. Parliamentary treaty examination was completed in June 2019, and the International Crimes and International Criminal Court Amendment Bill 2019 (the Bill) is currently before the Foreign Affairs, Defence and Trade Select Committee as part of the legislative process to implement these amendments into domestic law through the Bill.

The Rome Statute is the treaty establishing the International Criminal Court and prescribes the list of crimes over which the Court has jurisdiction. The War Crimes Amendments make it a war crime to employ —

- the following in a non-international armed conflict:
    - poison or poisoned weapons;
    - asphyxiating, poisonous, or other gases, and analogous liquids, materials, or devices;
    - expanding bullets; and
- the following in both international and non-international armed conflicts:
    - weapons that use microbial agents, biological agents, or toxins;
    - weapons that injure by fragments that are undetectable by X-rays;
    - blinding laser weapons.

In addition, Cabinet has agreed for New Zealand to ratify the latest Amendment to the Rome Statute concerning the starvation of civilians in a non-international armed conflict. This is undergoing parliamentary treaty examination, and public submissions closed on 26 March 2020.

UN Open-Ended Working Group on Cybersecurity, February 2020

The 2nd substantive session of the UN Open-Ended Working Group on Cybersecurity (10-14 February 2020) saw continued discussion among UN member States on the application of international law online. While there was general consensus that international law does apply online as it does offline, there remains a split in views as to precisely how various aspects of international law apply, and whether a treaty may be needed to fill any perceived gaps in this regard.

Several States provided detail around how they saw specific rules of international law applying online, noting many of the practical difficulties raised by the speed and reach of cyber-attacks (for example, in determining attribution or where no physical effects are present). States also raised questions around whether or not international humanitarian law applied online, whether the Rome Statute might apply to 'cyber warfare', and

whether the International Law Commission should be tasked with a topic relating to international law online under its progressive development mandate.

New Zealand, among others, advocated for two practical solutions to assist the international community in addressing the question of how international law applies online:

1) encouraging States to share national views on how international law applies online, with the aim of developing customary international law in this area; and
2) supporting capacity building for states on questions of international law in cyberspace, so that they may be able to fully participate in such discussions.

The 3rd and final substantive session of the Working Group is scheduled to take place in July 2020, with the Chair proposing to release a draft outcome report before then to outline States' agreement on a range of cybersecurity issues, including the application of international law. While the impacts of COVID-19 may mean this timeframe is extended, New Zealand will continue to engage closely in developments in this emerging area of international law.

ANZSIL Member News

ANZSIL Gender, Sexuality, and International Law Interest Group: Report on Inaugural Workshop, 17 February 2020

On 17 February 2020, ANZSIL Gender, Sexuality, and International Law Interest Group hosted its inaugural workshop at Deakin Law School. This workshop brought together academics and practitioners to share their thoughts and provide feedback on works in progress exploring issues in international law through intersectional feminist and queer theory lenses. Throughout the day, participants discussed cutting edge subjects in a number of areas including migration, human rights, peace and conflict, and climate change. The panellists benefited from the audience's comments on their work, and suggestions were also made for research impact and networking opportunities.

A highlight of the workshop was the Q&A mentoring session on careers in international law. The panel featured (from left to right in the photo) Associate Professor Wayne Morgan (Australian National University), Professor Di Otto (Melbourne Law School), Professor Felicity Gerry QC (Deakin Law School), Professor Sundhya Pahuja (Melbourne Law School), and Dr Sarah McCosker (Lexbridge Lawyers). The session generated engaged conversations and provided a unique opportunity for early career academics and practitioners to receive advice from experienced professionals.

The first event of the Gender, Sexuality, and International Law Interest Group was well-attended and helped to foster collegiality between members of the Interest Group. We are grateful to ANZSIL and Deakin Law School for their support of the Interest Group and the workshop.

Recent Publication on Australia's Recent Investment Agreements and ISDS Policy

Ana Ubilava and Luke Nottage of the University of Sydney Law School have recently published a Sydney Law School Research Paper on 'Noteworthy Aspects of Australia's Recent Investment Agreements and ISDS Policy: The CPTPP, Hong Kong, Indonesia and Mauritius Transparency Treaties.' The paper is available on SSRN here.

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ANZSIL Newsletter
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