



ANZSIL Newsletter

December 2020

www.anzsil.org.au

Message from the President

Dear ANZSIL Members,

To describe 2020 as an ‘extraordinary’ year does not constitute hyperbole. No one has been unaffected by the COVID-19 pandemic, and for people who have lost loved-ones, their lives have been changed forever. The unprecedented closure of Australian and New Zealand’s borders has impacted many economic sectors, not least, tertiary education. The loss of academic jobs, particularly within Australian universities in 2020, impacts us all as we lose decades of expertise and experience within the sector as well as valued colleagues. At least one university this year has deliberately targeted international law academics for staff cuts; an extraordinary decision given how 2020 has demonstrated emphatically our global interdependence and the value and necessity of international law that underpins and supports that interdependence. The teaching of and research into all areas of international law is no less important in 2020 than it was in 2019 and we all have a responsibility to ensure our colleagues and our university managers understand that. To our valued colleagues who have decided (voluntarily or not) to leave their institutions this year, we thank you for your contribution to our discipline and we wish you all the best in whatever the future holds for you.

Notwithstanding (or maybe because of) the pandemic, ANZSIL has had a busy year. Although we had to cancel our annual conference, we have organised 12 society-wide online seminars featuring 27 speakers in July and December this year. Our five ANZSIL interest groups have been equally active, with a total of 26 seminars and other online events run in 2020. The 2020 ANZSIL Postgraduate Student Workshop took place online on 2 December. The ANZSIL *Perspective* was revamped this year, and a total of 25 *Perspectives* have been published since March. Further changes to the *Perspective* are anticipated in 2021, including improving access through an online blog format. These events have demonstrated the value of regular online ANZSIL events throughout the year and we will be continuing these initiatives into 2021 and beyond. The 28th annual conference will take place from 30 June – 6 July 2021 and will be a fully online event. You can submit your abstract and on the theme of *Inertia or Innovation? Reshaping International Law for a Complex Future* on our [website](#) and the deadline is 1 March 2021. We are pleased to confirm Professors Hilary Charlesworth and Tony Anghie as keynote speakers, and the President’s Panel will focus on ‘indigenous voices in international law’.

I am grateful to An Hertogen and Tess Kluckow for producing yet another excellent edition of the ANZSIL newsletter. In this edition, we provide an overview of the ANZSIL December Zoom series as well as the 2020 postgraduate workshop; benefit from a detailed overview of what DFAT and MFAT have been focusing on in the second half of 2020, including a summary of the successful (and in-person!) Beeby Colloquium organised by MFAT on 25 November; and hear from Aidan O’Callaghan, who undertook an ANZSIL supported internship at the Office of the Legal Counsel of the African Union in early 2020. We are also pleased to profile two edited collections by ANZSIL authors.

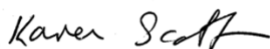
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I would like to sincerely thank and acknowledge the members of the ANZSIL Council, the co-convenors of our five interest groups, the editors of the *Perspective* and the newsletter, and the members of the 2020/2021 ANZSIL Conference for all their hard work for ANZSIL and on behalf of its members this year.

Finally, I would like to take this opportunity to wish all ANZSIL members, and their friends and families, a peaceful and relaxing festive season and all best wishes for the New Year.

Yours,



Karen Scott
President

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ANZSIL December 2020 Zoom Seminar Series

Between 1 and 11 December 2020 21 speakers across seven sessions shared their research and current thinking on contemporary issues with ANZSIL members. The Series was drawn from four panels that would have been presented at the ANZSIL 2020 conference as well as the traditional and popular year-in-review session, in addition to two research seminars. Below are the abstracts of each of the Panels.

Guilfoyle, McCormack and McIntyre in Conversation: The International Criminal Court: Threats, Challenges, and Opportunities

This panel, moderated by Ms Kate Smith, brought together in conversation Ms Gabrielle McIntyre, Associate Professor Douglas Guilfoyle and Professor Tim McCormack. They discussed how the world's first permanent judicial institution with jurisdiction over serious international crimes continues to face its fair share of challenges. The causes are complex and interconnected. To blame "growing pains" or "teething issues" is to forget that the ICC has operated for almost as long as the ad hocs. Instead, regard must be had to the international processes that created the Court, and the particular array of relationships and tensions it must navigate as a result.

The ICC is a creature of multilateral treaty – to which a third of the world's States are not party. Its authority derives not from the UN Security Council but (for the most part) from States Parties' delegation of jurisdiction. The Court has missed key opportunities to consolidate the legal narrative concerning its role in an increasingly fractured international political landscape, and its interactions with those States that have not acceded to the Rome Statute. States Parties have been slow to underpin the lofty ideals captured in the Rome Statute with effective governance oversight and reliable selection of those most qualified to serve in key posts.

But the necessarily imperfect nature of the institution should not detract from its important contributions to the canon of international criminal law, and the role it serves in normalising in the contemporary international landscape the principles of individual criminal responsibility for serious international crimes borne from Nuremberg.

2020 Year in Review

In this session, chaired by Karen Scott, Victoria Hallum, Sue Robertson, and Simon Newnham gave an edited overview of legal developments of significance to Australia and New Zealand in 2020.

International Law Commission: Past and Future Contributions to the Development of International Law

Dr Penelope Ridings, New Zealand's candidate for the International Law Commission (ILC) for election in 2021, considered the impact of the ILC on the development of international law in the first seven decades of its existence, and the contribution that New Zealanders and Australians have made to the work of the Commission. It went on

to reflect on what the future holds for the ILC and the importance of maintaining the ongoing relevance of the ILC and its work.

Autonomous Military Technology and the Development of International Law

Chaired by Eve Massingham, the panel considered how rapid developments in artificial intelligence are driving advances in complex robotic systems that can operate without real-time human supervision. Such systems have a wide spectrum of application, ranging from self-driving cars to autonomous weapon systems. The legal implications of the latter have preoccupied the international community for the better part of the last decade. For the past three years, a Group of Governmental Experts (GGE) has met under the auspices of the Convention on Certain Conventional Weapons to explore the prospects of regulating the so-called ‘lethal autonomous weapon systems’. This panel offered multiple perspectives on this intergovernmental process, which might (or might not) lead to the adoption of a legally or politically binding instrument to govern the use of autonomous weapons. Netta Goussac considered the GGE process broadly, and put it in the context of other international discussions on the regulation of emerging military technologies. Darryn Mullins looked at the Australian position in this process, and critically examined the interplay between legal and ethical arguments that have been made by proponents of further regulation. Simon McKenzie focused on one particular concept – ‘control’ – that has featured prominently in the GGE debates, and contrasted it to the notion of ‘command’ that features in several international law instruments.

The “New Zealand School of International Law”?

Led by Professor Karen Scott, Professor Alberto Costi, editor of the recently published *Public International Law: A New Zealand Perspective*, and Dr An Hertogen, co-editor (with Dr Anna Hood) of the forthcoming *International Law in Aotearoa/New Zealand*, reflected on overall themes and ideas that have emerged from each book, and explored the idea of a New Zealand School of International Law.

China and One Hundred Years of the Svalbard Treaty, Past, Present and Future

In this presentation, Nengye Liu examined China’s engagement with the Svalbard Treaty over the past hundred years. It first provided an overview of China’s involvement of the Svalbard Treaty as part of the post-World War I order. The presentation then discussed China’s recent expansion in the Arctic, including in the Svalbard Archipelago. As a rising power, China has become more and more confident in interpreting and shaping the existing global governance regimes in order to pursue its own national interests. This presentation therefore shed light on where and how China might influence the future governance of the Svalbard, a strategically important region in the Arctic.

Geopolitical Change and the Antarctic Treaty System

From its very creation, resolution – or at least management – of geopolitical tension, has been at the heart of the Antarctic Treaty System (ATS). The 1959 Antarctic Treaty was formed during a high point of the Cold War to effectively manage tension by demilitarising the Antarctic continent and making commitments to peaceful use and scientific research. The ATS now faces a new set of geopolitical tensions and biophysical drivers of change. The 53 member states parties to the Antarctic Treaty now include very large and fast rising states such as China and India and newly acceding members such as Malaysia and Pakistan, which may challenge interpretation and/or implementation of existing norms. There have even been calls for a greater security emphasis in Antarctic law and policy. The ATS also faces significant governance challenges from the increased scale of science activities, tourism, shipping, fishing and potentially bioprospecting. A warming global climate is also a key driver of change in Antarctica and the Southern Ocean, affecting both biophysical and human systems. Throughout its history the ATS has been viewed as a successful example of international law and governance due to its ability to adapt and respond to internal and external tensions. In this Panel, chaired by Jeffrey McGee, Marcus Haward, Tim Stephens, A.J. Press, Nengye Liu and Shirley Scott, explored ways in which this new geopolitical environment and changing biophysical drivers are creating new challenges for ATS. The panel explored these new challenges to the ATS and the legal and institutional developments that might be required for their management.

ANZSIL Postgraduate Workshop

The annual ANZSIL Postgraduate Workshop was held on 2 December 2020 via Zoom and nine students from across New Zealand and Australia presented on work associated with their PhD thesis, provided commentary on each other's work and engaged in robust and collegiate discussion. A number of the topics had a strong law of the sea theme: the development of community interests in the protection of the marine environment (Millicent McCreath, UNSW); unregulated fishing on the high seas and the formation of customary international law (Osvaldo Urrutia, VUW); the contested meaning of 'not undermining' in the BBNJ negotiations (Ethan Beringen, Adelaide) and state practice and maritime zones (Frances Anggadi, ANU). Other topics were focused around the areas of international criminal and humanitarian law: state responsibility and the prevention of atrocity crimes (Yvonne Breitwiser-Faria, TC Bernie School of Law); the treatment of child soldiers in ICL (Silvina Sánchez Mera, La Trobe), human control, IHL and autonomous weapon systems (Tarisa Yasin, Bond University). The final topics comprised the global commons in international investment law with particular focus on renewable energy investments (Hui Helen Pang (UNSW) and the values or interests in the rules of procedure of the ICJ (Juliette McIntyre, University of South Australia). The workshop was chaired by Professors Donald Rothwell (ANU) and Karen Scott (Canterbury) and was attended by a number of academics and non-presenting postgraduate students.

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

Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction

The Intergovernmental Conference on an internationally legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) has commenced an intersessional programme of work that will run from September to December 2020. BBNJ seeks to ensure conservation and sustainable use of biodiversity in areas beyond national jurisdiction.

Negotiations are oriented around four thematic clusters:

- 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 first three intergovernmental conferences took place in New York in September 2018, April 2019 and August 2019. The fourth and final session, originally scheduled for 23 March to 3 April 2020, was postponed due to the impacts of COVID-19.

The program of intersessional work seeks to maintain momentum in negotiations through continuing dialogue on the four thematic clusters, as well as cross-cutting issues. Australia is participating in the intersessional work via online discussion forums (on the Microsoft Teams platform), online meetings and webinars.

Participation in CCAMLR 39

The 39th annual meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) was held online, due to COVID-19, from 27 to 30 October 2020. Agreeing to a virtual meeting required unprecedented negotiation and planning. Under Article XIII of the CAMLR Convention, the Commission is required to hold at least one meeting each year in Hobart, Australia, unless it decides otherwise. Members exchanged views through e-groups (an online forum-style format) and met intersessionally several times through Heads of Delegation meetings, to not only agree to meet virtually, but also to agree on the parameters for the virtual meeting. Members agreed to virtual meeting procedures as well as a condensed agenda, noting the Commission, the Scientific Committee and its subsidiary bodies were meeting for shorter periods, informally, or only convening e-groups. The Secretariat, and particularly the Executive Secretary, Mr David Agnew, must be commended for their efforts to make the virtual meeting a reality.

Although the virtual international meeting format presented significant difficulties – consider, for instance, our New Zealand colleagues, who started the meeting at 11pm each night – the Commission was able to consider core business items. These included implementation and compliance, administration and finance, management of marine resources, and conservation measures for the 2020/21 fishing season. Whilst Members were not able to agree to measures relating to climate change and marine protected areas, the issue remained on the agenda, which in itself was a positive outcome given the meeting’s condensed agenda.

The form of next year’s CCAMLR meeting remains unknown. This year provided useful insight into how Members may approach next year’s meeting preparation. Regardless of its format, maintaining the integrity of CCAMLR as part of the Antarctic Treaty System remains one of the Australian Government’s primary objectives, and we look forward to engaging in the meeting and related processes again next year.

Australia’s suspension of bilateral crime cooperation treaties with Hong Kong

The Australian Government recently relied on the Vienna Convention on the Law of Treaties (VCLT) to suspend operation of two treaties with Hong Kong: The Agreement for the Surrender of Accused and Convicted Persons between the Government of Australia and the Government of Hong Kong (‘the Extradition treaty’), and The Agreement between the Government of Australia and the Government of Hong Kong concerning Mutual Legal Assistance in Criminal Matters (‘the MLA treaty’).

Australia’s suspension of the Extradition treaty was undertaken on the basis of a fundamental change of circumstances, pursuant to the mechanism set out in Article 62 of the VCLT. An essential basis for Australia’s consent to be bound by the Extradition treaty was that Hong Kong would enjoy a high degree of autonomy, judicial independence and human rights protections which were guaranteed by the Sino-British Joint Declaration. These circumstances were undermined by the National Security Law enacted by the People’s Republic of China in June 2020. On 9 July 2020, Australia notified Hong Kong via diplomatic note of its intention to suspend the Extradition treaty. The suspension came into effect on 9 October 2020, upon the expiration of the VCLT’s three month notification period.

On 28 July 2020, Hong Kong notified Australia via diplomatic note of its unilateral suspension of the Extradition treaty as well as the unilateral suspension of the MLA treaty. However, it did not provide the basis on which the Extradition treaty was to be suspended, the date on which the purported suspension would become effective, or a request to enter into consultations regarding Australia’s earlier notice to suspend the Extradition treaty. Further, the unilateral action by Hong Kong in respect of the MLA treaty did not provide the legal basis for suspension.

In the circumstances, the Australian Government considered it appropriate that the MLA treaty be suspended on the basis of mutual consent, in accordance with Article 57 of the VCLT. The suspension of the MLA treaty also came into effect on 9 October 2020.

The Joint Standing Committee on Treaties unanimously endorsed the treaty actions in its [Report 190](#). In a [media release](#), Committee Chair Mr Dave Sharma MP stated that ‘[t]he evidence gathered by the Committee establishes a strong public foundation for the actions of the Australian Government’.

Australia joins the Artemis Accords

At the 71st International Astronautical Congress (IAC), held virtually on 13 October 2020, Australia was one of eight international partners that signed the Artemis Accords (along with Canada, Italy, Japan, Luxembourg, the United Arab Emirates, the United Kingdom, and the United States). The Artemis Accords establish a practical set of principles to guide space exploration cooperation among nations participating in the NASA’s 21st century lunar exploration plans. The Accords are grounded in the Outer Space Treaty of 1967 and aim to increase the safety of operations, reduce uncertainty, and promote the sustainable and beneficial use of space. The Accords include principles on transparency, interoperability, preserving outer space heritage, space resources, deconfliction of space activities and orbital debris. You can read the Artemis Accords [here](#) and watch the Artemis Accords signing video [here](#).

Australian Prime Minister’s UK Policy Exchange Virtual Address

On 23 November 2020, Australian Prime Minister the Hon. Scott Morrison MP [made an address](#) at the UK Policy Exchange where he accepted the inaugural Grotius Prize in recognition of his work in support of the international

rules based order. The Grotius Prize is given in honour of the founding thinker of international law, Hugo Grotius (1583 – 1645). In his address, the Prime Minister discussed the importance of multilateral groupings and institutions like the five eyes arrangement, G7, the World Trade Organization, the OECD and the G20. He also expressed support for a global pandemic treaty as proposed at the G20 Leaders’ summit in November 2020 to ensure we are better prepared to respond to future pandemics.

Participation in WTO Dispute Settlement

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

As readers would be aware, the Panel's report was circulated publicly on 4 December 2019. The Panel confirmed that Australia's finding of a ‘particular market situation’ in the Indonesian A4 copy paper market was consistent with the WTO Anti-Dumping Agreement but found that Australia acted inconsistently in a specific application of Australia's anti-dumping laws.

Australia and Indonesia agreed not to appeal the Panel's findings, and the Panel report was adopted by the WTO Dispute Settlement Body (DSB) at its regular meeting on 27 January 2020. Australia and Indonesia agreed that Australia would have a ‘reasonable period of time’ (8 months from 27 January 2020) in which to implement the Panel's findings, with an extension of one month in the event of unavoidable delay.

In August 2020, following a ‘review of measures’ by the Anti-Dumping Commissioner (the Commissioner), the Minister for Industry, Science and Technology, Karen Andrews, accepted the Commissioner’s recommendation to revoke the dumping duty notice insofar as it applies to exports of A4 copy paper to Australia from Indah Kiat and Pindo Deli (details available [here](#)).

As required under WTO rules, Australia notified the DSB in September 2020 of its full implementation of the recommendations and rulings of the DSB in DS529, within the ‘reasonable period of time’ for implementation agreed with Indonesia (report available [here](#)).

Unless and until anything occurs to alter the Minister’s decision in a manner that raises a dispute about whether Australia has implemented the Panel’s findings, Australia considers the issue of implementation to be resolved.

Australia and Indonesia signed an agreement on 2 October 2020 with respect to Articles 21 and 22 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* on how to sequence any further WTO dispute proceedings that may be required to resolve this dispute, should a disagreement as to compliance arise in the future.

Canada – Measures Governing the Sale of Wine (DS537)

Australia and Canada agreed in July 2020 that Canada would move to remove restrictions at the federal level and the provinces of Nova Scotia and Ontario (media release available [here](#)).

This built on the agreement reached in April 2019 with respect to British Columbia’s measures, with discussions continuing regarding certain measures in Quebec.

ISDS Reform Initiatives

Australia has terminated five Bilateral Investment Treaties (BITs) in recent years, replacing them with modern investment chapters in free trade agreements (FTAs), as well as successfully renegotiating and updating its BIT with Uruguay. In July 2020, Australia began a review of its remaining 14 BITs. The Department of Foreign Affairs and Trade (DFAT) called for submissions to inform the review, releasing a paper to prompt discussion. The detailed submissions made in response, and the discussion paper, can be found on the [DFAT website](#). While the formal submission period has ended, DFAT continues to welcome input to the review.

On the multilateral front, Australia ratified the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, better known as the Mauritius Convention on Transparency, on 17 September 2020. The Convention will enter into force for Australia on 17 March 2021 and will apply modern transparency provisions to Australia’s network of older-style bilateral investment treaties.

Australia continues to actively participate in multilateral discussions on investor-State dispute settlement (ISDS) reform, which have been taking place in the United Nations Commission on International Trade Law (UNCITRAL) since 2017. UNCITRAL's Working Group III has a three-stage mandate to: (i) identify concerns regarding ISDS; (ii) consider whether ISDS reform is desirable; and (iii) develop solutions, as appropriate, to be recommended to the Commission.

Working Group III, which is now in the third stage of the mandate, met for the seventh time from 5–9 October 2020 in a hybrid virtual and in person format. The meeting focused on reform options, such as on frivolous claims, multiple proceedings, and security for costs, which could be implemented through a multilateral instrument on ISDS procedural reform. The next meeting is scheduled to take place in New York in April 2021.

Australia has also continued to actively engage in the review of the International Centre for the Settlement of Investment Disputes (ICSID) Arbitration Rules. Most recently, Australia has been reviewing a draft Code of Conduct for adjudicators prepared jointly by the ICSID and UNCITRAL Secretariats.

Recent Developments in Australia's Free Trade Agreements

Trade and investment relationships with other countries and the agreements that enhance them will play a key role to help Australia recover from the COVID-19 pandemic, as well as boost job opportunities and economic growth. Australia continues to progress the negotiation and implementation of a number of bilateral and regional FTAs. Input from stakeholders contributes to developing negotiating positions in respect of these agreements, and the Australian Government welcomes input on these discussions. The [DFAT website](#) has further information on these agreements, including contact points.

FTAs under negotiation

The second round of Australia-United Kingdom Free Trade Agreement (AU-UK FTA) negotiations was held virtually from 21 September to 2 October 2020, with over 40 meetings covering trade in goods, services and investment, legal and institutional, and cross-cutting issues such as digital trade. Australia and the UK remain committed to concluding a comprehensive and ambitious agreement as quickly as possible. The third round of negotiations is scheduled for late November 2020.

Australia's negotiations for a comprehensive and ambitious FTA with the European Union (EU) have continued even as both Parties have been dealing with the impact of COVID-19. Australia and the EU concluded Round 8 of negotiations virtually in September 2020 and will hold Round 9 in late November 2020. The EU is Australia's third largest trading partner and source of foreign investment. See the [DFAT website](#) for more information on the Australia-EU FTA.

Pacific Alliance FTA negotiations (Chile, Colombia, Mexico, Peru) have been paused due to COVID-19. Since starting negotiations on 30 June 2017, there have been eight rounds of negotiations and substantial progress has been achieved. Chief negotiators last met in Colombia in October 2019.

FTAs concluded but not yet in force

The Regional Comprehensive Economic Partnership (RCEP) Agreement was signed on 15 November 2020. Entry into force will occur 60 days after six ASEAN member States and three non-ASEAN member States ratify the agreement. Australia will push for entry into force of the Agreement as soon as possible. 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 and Singapore have concluded negotiations on a bilateral Digital Economy Agreement (DEA). The DEA will replace the Electronic Commerce chapter of the Singapore-Australia Free Trade Agreement (SAFTA) with a new Digital Economy chapter, providing modernised trade rules to assist businesses and consumers to engage with and benefit from digital trade and the digital economy. Key commitments include enhanced rules to prevent unnecessary restrictions on the transfer and location of data, improved protections for source code, and new commitments on interoperable e-invoicing and e-payment frameworks. The DEA will also provide a platform for enhanced agency-level cooperation on emerging digital issues including data innovation and artificial intelligence.

The DEA has been tabled in Parliament and is being reviewed by the Joint Standing Committee on Treaties prior to entry into force.

The Pacific Agreement on Closer Economic Relations Plus (PACER Plus) (covering Australia, New Zealand and nine Pacific island countries – Cook Islands, Kiribati, Nauru, Niue, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu) was concluded on 19 April 2017. On 14 October 2020, the Cook Islands became the eighth Party to ratify the Agreement. This triggered the 60-day count-down for entry into force, which will occur on 13 December 2020. Australia, New Zealand, Samoa, Kiribati, Tonga, Solomon Islands and Niue have also ratified the Agreement. A key objective of PACER Plus is to support the development of the Pacific Island countries through increased regional economic integration. Entry into force of PACER Plus will provide an additional source of funding and program support through the Implementation Unit (AUD25.5 million) to improve trade practices in the long term.

New FTAs in force

The Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) entered into force on 5 July 2020, 60 days after Indonesia notified Australia it had completed its domestic ratification processes. IA-CEPA was signed by Ministers in March 2019, and Australia completed its domestic ratification processes in December 2019. IA-CEPA delivers significant new trade and investment opportunities to businesses in both countries, at a time when both countries are seeking to recover from COVID-19. Under the Agreement, over 99 per cent of Australian goods exports by value to Indonesia will enter duty free or under significantly improved preferential arrangements. These include tariff cuts on a range of Australian agricultural products, and a commitment to issue import permits automatically and without seasonality for certain products. IA-CEPA also delivers strong outcomes for Australian investors and service providers, who now have improved access and certainty in important sectors such as education, tourism, communications, health, aged care and mining services. The Agreement has also secured guaranteed levels of Australian ownership in a range of sectors, including hospitals, certain infrastructure, and businesses providing certain technical and vocational training.

FTAs under review

Under the Japan-Australia Economic Partnership Agreement (JA-EPA), Australia has initiated the market access review and negotiation of specified priority agriculture products mandated for 2020, and is working towards the general review of the Agreement mandated for 2021.

The planned upgrade negotiations for the ASEAN-Australia-New Zealand (AANZFTA) are an opportunity to ensure AANZFTA remains a contemporary agreement, which contributes to the regional economic recovery post-COVID-19 and to further strengthen Australia's economic engagement with ASEAN. Work has been delayed due to COVID-19. DFAT has issued a call for submissions for the China-Australia Free Trade Agreement (ChAFTA) Post-Implementation Review, which is required to be undertaken within five years of the entry into force of the agreement in December 2015, in compliance with the Australian Government Guide to Regulation.

Other Initiatives

The [FTA Portal](#) makes it easier for the public and businesses 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.

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

September Pacific regional conference on sea level rise and international law

New Zealand participated in the 2020 Regional Conference on Securing the Limits of the Blue Pacific: Legal Options and Institutional Responses to the Impacts of Sea-Level Rise on Maritime Zones in the Context of International Law which took place virtually on 9–11 September and 17 September 2020. The conference sought to explore potential legal options and strategies to take forward the strong commitment made by Pacific Islands

Forum (PIF) Leaders in 2019 to a collective effort, including to develop international law, to ensure that maritime zones could not be challenged or reduced as a result of sea-level rise caused by climate change. The conference was attended by all Forum members, as well as legal experts from around the globe, and concluded with agreement on a set of recommended priority actions which will be carried forward by a Forum Officials Specialist Subcommittee.

Release of New Zealand Position Statement on International Law and State Activity in Cyberspace

New Zealand issued a [position statement on how international law applies to State activity online](#) on 1 December 2020.

States have endorsed by consensus at the UN General Assembly that international law applies online as it does offline. However, there is no consensus among States on precisely how existing rules of international law apply to State activity in cyberspace.

New Zealand has consistently argued that existing international law, supplemented by non-binding, voluntary norms, is capable of effectively regulating State behaviour online. In issuing a position statement, New Zealand has further articulated and shared its view on precisely how international law applies to State activity online, particularly in relation to the application of the use of force, non-intervention, and the rule of sovereignty online. New Zealand's statement underscores the fundamental importance of existing legal frameworks in cyberspace.

The New Zealand Ministry of Foreign Affairs and Trade (MFAT) Legal Division led the drafting of this position statement over the last 18 months. The process of developing New Zealand's position included substantive agency consultation, as well as engagement with partners and academics, to advance legal thinking on these complex and difficult issues.

The release of New Zealand's position statement provides a concrete contribution to the development of customary international law and New Zealand hopes it will support further constructive discussion on the precise application of international law online.

Beeby Colloquium 2020: International Law in Times of Crisis

Named after New Zealand's renowned diplomat and international jurist, the Beeby Colloquium was established to honour Chris Beeby's lasting contributions to international law. With the aim of bringing together academics and international law practitioners, the Colloquium is a forum for information sharing, learning and discussion. The Colloquium is an invitation-only event and subject to the Chatham House rule, with the exception of the public session, however anyone with a strong interest in international law can request an invitation. The public session was attended by approximately 200 people. The views set out below do not necessarily reflect the views of the New Zealand Government.

After the year that was 2020, it seems only fitting that this year's Beeby Colloquium hosted by the New Zealand MFAT centred on the theme of 'International Law in Times of Crisis'. As the dust settles around initial State responses to the COVID-19 pandemic and its long-term impacts begin to emerge, questions have arisen as to the role of international law in times of crisis. Specifically, can international law deliver, flex and adapt to such unforeseen circumstances? And perhaps more importantly, what is the role of international law in managing these crises going forward?

Keynote Panel: International Law in Times of Crisis

These questions were the focus of the first panel session. For some of the panellists, 2020 was the year that the world forgot international law. The rise of populism in particular has revealed the gaps in the world's capacity to respond to crises through its usual mechanisms. While the SARS pandemic was successfully controlled through the decisive power of high political commitment, the onset of COVID-19 has been characterised by generally slow responses and hesitancy to take advice from international institutions such as the WHO.

For other panellists, the interplay between crises and international law commenced well before 2020. Crises are cumulative and systemic, not a response to a series of events. Rather, COVID-19 had exposed the failed model of hyper-globalisation, the institutions which support it and the vulnerability of States, particularly those in the Global

South. The vocalisation, politicisation and integration of the Global South in supply chains, tourism, hybrid State markets and economies means these States can no longer be ignored. International law responses by New Zealand in particular will need to adopt a different lens to address these tensions.

The emergence of global regulatory standards, such as due diligence and regulatory coherence, have been relatively respectful of State sovereignty but are also increasingly transcending international norms and its exceptions. It is these standards that enable international law to flex through times of crisis. However, the influence of international law remains constrained. The real crisis is the Anthropocene, the new geological epoch which extends beyond existing tensions regarding State sovereignty and argues that international law is a product of both environmental stability and instability, and can be used simply to justify a crisis. While international law is a useful instrument to set out substantive rules, ultimately it is up to States to deliver in times of crisis.

Looking Outwards: The State of our International Legal Institutions

COVID-19 has undoubtedly presented the international legal community with significant challenges. However, the 'crisis' implied in this year's Colloquium theme does not solely refer to international law's impact on the global pandemic. Rather, this year's Colloquium also raised questions regarding the present and future mandates of several key international legal institutions. The second panel looked at the current state of these institutions, including the WTO dispute settlement process, the International Court of Justice (ICJ), the United Nations Security Council (UNSC), the International Criminal Court (ICC) and the International Law Commission (ILC).

For each institution, panellists considered:

- how well the institution is fulfilling its original mandate
- whether it needed to adjust to changing circumstances
- whether there are signs of crisis in the organisation, and if so, what is provoking these signs; and
- what contribution the institution is making to the international legal system.

The US dissatisfaction with the WTO dispute settlement system in particular has been brewing for a long time. The complexity and length of cases due to the failure of multilateral negotiations has contributed to accusations of overreach and gap filling. More specifically, the WTO is clearly struggling to fulfil its function as a forum for negotiations, and now as a forum for two-tier dispute settlement.

The ICJ has largely maintained its judicial output throughout COVID-19 and continues to perform its functions under the UN Charter for the 74 States which recognise its official jurisdiction to solve international disputes. This reflects the broad vote of confidence in its mandate and State trust in the rule of law. However, its capacity to move with the times remains hindered to some extent by its inability to deal with disputes in a timely and cost-effective manner, as well as its lack of universal reach, particularly for non-State actors.

The UNSC, despite its tendency to paralysis, has at least avoided an existential crisis of legal authority and relevance.

Similarly, the ICC, which has been criticised for its lack of international influence and performance, is just entering its 'teenage years' and has frequently been pulled into issues which some consider to exceed its original mandate and jurisdiction. This suggests that the next several years will likely involve some adoption of the 300 recommendations which have emerged out of the Court's 2019 Independent Expert Review.

Finally, the ILC, tasked with the development and codification of international law, has filled its original mandate very well, with many of the treaties that form the foundation of the contemporary international legal order having their origins in the work of the Commission. The Commission continues to be impactful and respond to the critical needs of States, with the key current example of this being the Commission's work on sea level rise.

Ultimately, trust and confidence in these institutions is crucial for their effective functioning. The critical features of any international legal institution include relevance, timeliness, persistence and effective leadership. In times of crisis this requires the recognition of signals of disengagement of powerful actors in the global community.

Public Session: A New Zealand Perspective on International Law

The highlight of the day was a keynote public address delivered by Dr Penelope Ridings, MNZM, one of New Zealand's most distinguished international lawyers and New Zealand's candidate for the 2023-27 term at the International Law Commission. Dr Ridings was introduced by Sir Kenneth Keith, ONZ, KBE, QC and Judge at the International Court of Justice from 2006 to 2015. Drawing on her extensive experience as a practitioner of

international law, Dr Ridings examined the pursuit of international law in New Zealand, focusing on how New Zealand has shaped the development of international law and the characteristics that set New Zealand international lawyers apart. A full copy of her address, and further information about her candidacy, is available [here](#).

Looking Inwards: The International Treaty-Making Process in New Zealand

The final panel addressed the process of treaty-making, specifically within New Zealand. Issues canvassed included engagement with Māori, engagement on trade agreements and the ‘Trade for All’ Advisory Board’s key recommendations released in November 2019, which seek to ensure that trade policy delivers for all New Zealanders.

Discussions included the recommendations of the Waitangi Tribunal in its Wai 262 Report, Chapter 8 of which focused on Māori inclusion in the process of treaty-making and negotiation. Audience discussion raised questions as to the extent to which government agencies should be leading such processes and how Māori can be better engaged. In many cases, Māori involvement would need to go beyond consultation.

Finally, there was discussion of the public and Māori engagement behind the scenes of New Zealand’s participation on negotiations for an UN Treaty on the conservation and sustainable use of Biodiversity Beyond National Jurisdiction (BBNJ). Expectations of public involvement in the making of international treaties had increased over the past decade – including in New Zealand. Improved technology was also facilitating public engagement, and government processes were adapting to these changes. Two recent public engagement innovations in the BBNJ process were outlined: the establishment of a working group to provide input on Māori interests in the negotiations, and the appointment of a legal academic as an adviser to the New Zealand delegation.

Conclusions

After the events of 2020, it was great to bring together academics and international law practitioners at this year’s Beeby Colloquium. The Ministry looks forward to presenting another thought-provoking Beeby Colloquium next year. International law academics and practitioners interested in being added to the mailing list for the Colloquium should contact BEEBY@mfat.govt.nz.

WTO interim appeal solution becomes operational

Earlier this year, New Zealand, Australia and a group of other WTO Members negotiated and agreed the text of an interim appeal solution called the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). The MPIA is a stop-gap measure that [preserves a second-tier of review in trade disputes](#) between participants for the period the Appellate Body is unable to function (the Appellate Body has been unable to hear appeals in trade disputes since December 2019, owing to an impasse concerning the appointment of new Appellate Body members). A pool of 10 arbitrators has now been agreed by the 23 participating WTO Members and notified to the WTO, allowing the MPIA to become fully operational. Dr Penny Ridings, formerly the New Zealand Government’s Chief International Legal Adviser, is among those selected to serve as an arbitrator.

Under the MPIA, participating WTO Members signal their intention to enter into a legally binding arbitration procedure (based on Article 25 of the WTO Dispute Settlement Understanding) in order to access a second tier of review. The procedures for arbitration – once entered into by disputing parties – closely follow those for Appellate Review as set out in Article 17 of the Dispute Settlement Understanding. This includes timeframes for appeals, limiting appellate review to issues of law rather than fact, and preserving the ability for ‘third party’ Members with an interest in the dispute to participate. In order to assist the arbitrators meet the 90-day timeframe for issuing awards, arbitrators may also take appropriate organisational matters to streamline the proceedings (including page limits on submissions or proposing to parties the exclusion of some claims). Three arbitrators will be drawn from the pool of 10 to consider a given appeal, with each arbitrator bringing demonstrated expertise in law, international trade and the subject matter of the WTO Agreements.

Internship Report

Office of the Legal Counsel of the African Union (Aidan O'Callaghan)

Between November 2019 and January 2020, I undertook a legal internship with the Office of the Legal Counsel (OLC) of the African Union (AU) in Addis Ababa, Ethiopia. For this internship, I was generously supported by ANZSIL through its Internship Support Program.

To say that I learnt a lot through this program would be an understatement. The African Union's internship policy stipulates that interns must not be confined to menial tasks, but should be involved in the substance of the organisation's work. Accordingly, I worked closely with the professionals at the OLC, performing tasks akin to those ordinarily performed by full-time Legal Officers.



What made my time at the AU especially valuable, was the exposure I gained to the AU's conscious and determined approach to international law, which I have yet to experience anywhere else. As the uniting body for an incredibly diverse continent, the AU is required to balance extremes in almost every facet of its work. Accordingly, to work as an international lawyer in such an intensely diverse environment requires heightened lateral thinking, without forgetting the core principles which unite the Union. As such, I learnt

just how crucial it is that international lawyers and academics never forget to account for divergent perspectives, which can lead to wholly different, or uniquely nuanced conclusions.

An illustrative example was during my time working on AU Administrative Tribunal cases, wherein lawyers from different legal and cultural backgrounds would each approach legal issues from different perspectives. Particularly, some of my colleagues would focus on the role of the AU to be impartial, others would adopt an aggressively adversarial approach, and still others would balance these factors strategically, depending on the case. By pooling these unique approaches, we were able to represent the AU effectively, without compromising its core values.



Through sitting-in on meetings of African Ministers, delegates, and AU Staffers, I gained insight into where the Continent has come from, and where it is headed. On the one hand, I heard of extraordinary developments in the spread of medicine and the control of disease, while I also helped preside over the signing of a Treaty to establish an African Medicine Agency, illustrative of the AU's desire to not settle for good, but to strive for great. Moreover, not only did I learn of the *decades* of hurdles which had been conquered prior to the entry into force of the African Continental Free Trade Area – the largest such area on Earth – I also heard great ambitions for the Continent to boost regional trade by over 50 per

cent in the next few years. In short, it is clear that the African Union, through international law, has made great strides towards equitable development in Africa, and has high ambitions to create a continent which is developed, prosperous, and fair.

Unsurprisingly, I am unable to adequately capture months' worth of experience into a short report, but should anyone be interested in anything related to the AU or its international law approach, I would be more than glad to provide further information and insights. I am immensely grateful to ANZSIL for generously enabling me to

undertake this experience, which will remain with me for the rest of my life, and certainly complement my career in innumerable ways.

Calls for Papers

Cambridge International Law Journal

The Cambridge International Law Journal (CILJ) is currently accepting paper proposals for its 10th Annual International Law Conference, titled *National Sovereignty and International Co-operation: The Challenges of Navigating Global Crises?*. The Conference will be held entirely online from 18-20 March 2021. The call for papers is available [here](#).

International Trade and Business Law Review

The International Trade and Business Law Review ('ITBLR') invites submissions from legal scholars and researchers, legal practitioners, justice professionals, and policy officials for publication in Volume XXIII of the ITBLR in 2021. The ITBLR also encourages high quality submissions from law students.

Founded in 1995, the ITBLR is a peer-reviewed journal that publishes articles, case notes, comments, and book reviews on international trade, business law, investment, commercial arbitration, and governance and regulation. The ITBLR provides a platform for rigorous and thought provoking scholarly and critical debates on emerging issues and developments in international trade and business. Submissions utilising comparative analyses incorporating international perspectives are particularly welcomed. Submissions that focus on topics outside of the above themes will be considered if they are sufficiently connected to the ITBLR's primary topics of focus.

Articles should not exceed 10,000 words in length and should include an abstract of approximately 200 words. Case notes, comments, and book reviews should not exceed 2,500 words. All footnotes must be consistent with the Australian Guide to Legal Citation 4th edition.

Submissions that are provisionally accepted will undergo a double-blind peer review. Accepted submissions will be edited by a select team of Student Editors at Curtin Law School ('Student Editorial Board'). The Student Editorial Board is mentored by Editorial Consultants Dr Sharmin Tania and Dr Martin Allcock, and Editorial Assistant Meika Atkins. The ITBLR is overseen by the Editor-in-Chief, Curtin Law School's Dean of Law, Professor Robert Cunningham.

Please submit articles for this issue via email to the ITBLR's Editorial Consultants, Dr Sharmin Tania and Dr Martin Allcock at ITBLR@curtin.edu.au.

The ITBLR will accept submissions for Volume XXIII until 31 July 2021, with the expectation of publishing at the end of 2021.

Asia-Pacific Journal of International Humanitarian Law

In October 2020, the ICRC and the University of the Philippines Law Center Institute of International Legal Studies published the first edition of the Asia-Pacific Journal of International Humanitarian Law, available for free access [here](#). The Journal has been re-branded and re-formatted since its previous iteration as the Asia-Pacific Yearbook of International Humanitarian Law, which published five volumes between 2005-2017. The new Journal will be an annual publication, composed of peer-reviewed scholarly articles, book reviews, and updates on significant IHL-related events and developments. The Journal welcomes submissions about IHL issues of relevance to the Asia-Pacific, or those authored by someone from or based in the Asia-Pacific. The Call for Papers for the 2021 edition is available [here](#). The Journal accepts papers until 10 January 2021 through the submission platform at apjhl.org or by email to apjhl.upd@up.edu.ph.

Events

GSIL IG Hallway Conversations Event

On Wednesday 16 December at 13:00 AEDT the Gender and Sexuality in International Law Interest Group will be hosting another Hallway Conversations online event. The last one was a wonderful time of community building for all who attended so we'd love you to join us as we do it again! Email anzsil.gsil@gmail.com to RSVP and get sent the zoom details.

OIELIG Workshop 2021

The Oceans and International Environmental Law Interest Group (OIELIG) is reconvening a workshop that was due to be held in April 2020, but which was cancelled owing to the COVID-19 pandemic. The rescheduled workshop will be held on 15 and 16 April 2021. It will be held in Wellington at Victoria University of Wellington for those who are able to physically travel, and also online for those who cannot. The goal is to allow for in-depth consideration of draft papers in the areas of law of the sea and international environmental law and build networks among ANZSIL scholars. Abstracts are due on or before 20 January 2021. Those who were scheduled to participate in 2020 are encouraged to apply again, but others are also welcome. The call for papers is available [here](#).

OIELIG Online Discussion Group

During 2020, OIELIG has been running monthly online discussions. We have discussed draft papers, research and current events involving international environmental law and law of the sea. Although we have not yet determined the shape of the 2021 events, if you are interested in being added to the distribution list for 2021, please email [Joanna Mossop](mailto:Joanna.Mossop). Participants need not be members of OIELIG, or even ANZSIL, but obviously membership is encouraged.

ANZSIL Member News

Recent Books

Changing Actors in International Law

Karen N. Scott, Kathleen Claussen, Charles-Emmanuel Côté and Atsuko Kanehara (eds), *Changing Actors in International Law* was published by Brill on 5 November 2020. This edited collection is the product of the seventh Four Societies Conference held in Tokyo in May 2018 and features 16 chapters exploring diverse and dynamic actors in international law from the perspective of norm-makers and responsibility and the resolution of disputes. The five ANZSIL scholars (one joint ASIL participant) comprise: Amy Maguire (self-determination claimant groups and the creation of international norms); Shea Esterling (legitimacy, participation and international law-making with respect to the restitution of cultural property to Indigenous Peoples); Sarah Castles (individuals, corporations and state jurisdiction with a focus on business and human rights arbitration); Shiri Krebs (asymmetrical legal conflicts); Jarrod Hepburn (non-state actors in international dispute settlement – the case of domestic investment statutes). The Four Societies conferences are a joint meeting of junior scholars from ANZSIL, ASIL, CCIL and JSIL and the eighth meeting was due to take place at the University of Berkeley, California in 2020 but has been postponed owing to COVID-19.

Genocide and Victimology

Genocide and Victimology, edited by Yarin Eski (Routledge, 2020), is an exploration of genocide in its diverse features, considered from different yet connected perspectives, to offer an interdisciplinary, victimological imagination of genocide. The book includes in its exploration critical and cultural victimologies and criminologies of genocide, accompanied by, and recognising, the rich scholarship on genocide in the fields of religion and history, theatre studies and photography, philosophy and existentialism, post-colonialism, and ethnography and biography. Written in a clear and direct style, this book will appeal to students and scholars in criminology, sociology, cultural

studies, philosophy, history, religious studies, English literature. Given the broad geographical focus in the book on genocides in Africa, the Americas, Asia, and Europe, it speaks to the ongoing international debates surrounding international justice for, and research on, genocidal victimisation and will, therefore, inform (scientific) audiences across the globe that are concerned with not repeating a history of genocide.

All the royalties from this book shall be donated to the International Federation of Red Cross and Red Crescent societies (IFRC). For a 20% discount, enter the code FLR40 at checkout. For more information, please click [here](#).



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