



ANZSIL Newsletter

December 2015

www.anzil.org.au

Message from the President

This is my first message to members of ANZSIL as President of the Society. I am very honoured to be taking on this role, and acknowledge with many thanks the tremendous leadership of Anne Orford during her time as President. Can I also take this opportunity to congratulate Anne on being awarded a prestigious Australian Research Council Laureate Fellowship (one of only 15 nationally). Anne will be researching the legal issues involved in intervention by external actors in civil wars, drawing on recent examples in Iraq, Ukraine, and Syria. This is a timely and important project that is sure to make a major contribution to the development of international law on these issues.

The recent horrific attacks in Paris and Beirut are a reminder of why there remains an urgent need to examine how international law can be brought to bear in order to counter terrorism, while also upholding human rights and helping to bring peace and stability to fractured and fracturing nations. There was a sense, at least in the some quarters, in the aftermath of the 9/11 terrorist attacks that international law was part of the problem rather than part of the solution in confronting terrorism. Perhaps in the wake of recent events there is a better understanding that international law does have the rules and processes in place to combat violent extremism, if only states are prepared to use them. In a marked departure from the mood in 2001 and 2003, there has been a reaffirmation that states must act within, and not outside of, international law when confronting Daesh. As Australia's Foreign Minister Julie Bishop [observed](#) after the Paris attacks, any additional military response by Australia in Syria would need to have a 'legal basis under international law'.

Amidst the terror and tragedy it has been easy to overlook many other significant issues and events for international law in 2015. Among these was the celebration of the 70th anniversary of the United Nations, which presented a moment for all nations to reflect on the achievements of the organisation; particularly for Australia and New Zealand. For only the second time in the history of the United Nations, Australia and New Zealand have held [successive terms](#) as elected members of the Security Council. Both states have used the opportunities that this position presents to address a range of issues of shared importance to them, including the challenge of climate change for Pacific island nations, which New Zealand [highlighted](#) during its Presidency of the Council in July. Climate change is of course currently the focus of discussions Paris, with 21st Conference of the Parties to the UN Framework Convention on Climate Change being one of the last chances for agreement to be reached to avoid dangerous global warming.

This *Newsletter* is brimming with information on past and forthcoming ANZSIL events. Please make sure you save the date for the 2016 annual conference which will be held in Canberra from 30 June to 2 July 2016. The Conference Organising Committee is

IN THIS ISSUE

> 2016 ANZSIL Conference

> 2015 ANZSIL Conference Report

> CIPL Changing of the Guard

> A/NZ ILC Candidate

> Recent A/NZ International Law Practice

> Internship Reports

> Upcoming Events

> Member News

already hard at work planning panels. I would encourage you to attend the conference and to submit a paper; the call for papers will be circulated in coming weeks.

In closing, I extend my thanks to our *Newsletter* editors Amelia Telec (Attorney General's Department) and Anna Hood (Auckland University). Amelia and Anna are part of a new editorial team for our ANZSIL publications, very ably and generously led by John Reid (Attorney General's Department, and ANZSIL Vice President). Thanks to the efforts of John Reid and others, ANZSIL has been able to produce an entirely new publication, *Perspectives*. Exclusive to ANZSIL members, *Perspectives* provides timely and insightful analysis and commentary on issues of international law. I am very grateful to our contributors to *Perspectives* and invite all members to consider submitting their very own *Perspective* in 2016. Previous *Perspectives* are available on the members-only section of the ANZSIL website, which has undergone a complete revamp thanks to Camille Goodman (ANU, Attorney-General's Department, ANZSIL Secretary). Among other things, the new website makes joining ANZSIL and renewing membership very straightforward. But should you have any questions about membership or other matters please do contact Lisa O'Farrell or Tim Grainger at the Centre for International and Public Law at the ANU College of Law who are our efficient and ever-obliging Secretariat.

Tim Stephens

tim.stephens@sydney.edu.au

Twitter @TimStephens10

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

The 23rd annual conference of ANZSIL was held at the Victoria University of Wellington from 2-4 July 2015, hosted by the New Zealand Centre for Public Law. The theme of the conference this year was 'International Law-Making at a Crossroads' and speakers were invited to reflect on how contemporary international law-making is changing or has changed, examining diversification of actors, process and outcomes in that regard. The result was a packed agenda, comprising 14 different panels over three days, three keynote speakers (Gerry Simpson of Melbourne University, Mary Keyes from Griffith University, and Douglas Arner from University of Hong Kong), and our now standard "Year in Review" session, always useful for those of us outside government.

Within the overall theme of law-making, the panels covered the usual array of international law topics including environmental law, trade law, investment law, law of the sea, international organisations and, of course, human rights law. It was especially heartening to see increasing numbers of presentations in the area of private international law, including a brilliant tour de force from Mary Keyes on private international law-making in the 21st century (Let's just say that if you're a student at Griffith, do not miss the chance to take Mary's course!)

Another strong feature of this year's conference was International Humanitarian Law reflecting the fact that 2015 is the centenary of the New Zealand Red Cross. In addition to presentations from Marnie Lloyd of the New Zealand Red Cross on Health Care in Danger and from Netta Goussac on the ICRC's Customary International Law project, the conference heard a special keynote address from Sir Kenneth Keith on "International Humanitarian Law: Principles, Problems and Prospects", in what was the Inaugural Sir Kenneth Keith Address, which will be a feature of all future Wellington-based ANZSIL conferences. That is a fitting tribute to Sir Kenneth because as members will be aware, Sir Kenneth has recently returned from his term at the International

Court of Justice – New Zealand’s first permanently appointed judge to the Court. With a long involvement in international humanitarian law over the decades, the subject matter of his address fitted perfectly into the overall law-making theme of the conference.

We continued with what is fast becoming an ANZSIL tradition (thanks to the work of Maddy Chiam at Melbourne University, who unfortunately could not attend this year) — a free-flowing “panel discussion” on a particular topic or theme. In previous years, the topics have been International Law and Social Media (2013) and International Lawyers as Public Intellectuals (2014). This year the topic was the Role of International Legal Advisors to Government. An engaging and reflective session revealed the sometimes unexpected route to government service that the participants had taken, and provided a number of interesting insights into the way in which the advisors see the “speaking law to power” dynamic. We were privileged to have Katrina Cooper (Australian Department of Foreign Affairs and Trade), Bill Campbell (Australian Attorney-General’s Department), Penelope Ridings (New Zealand Ministry of Foreign Affairs and Trade) and John Reid (Australian Attorney-General’s Department) share their thoughts of their experiences. We also heard about the law/power dynamic from the point of view of an academic and sometimes-advisor to government — Gerry Simpson.

The conference closed at lunchtime on Saturday and was tinged with sadness as Anne Orford closed proceedings — her last act as ANZSIL President. But already, Tim Stephens was busy working the room, rounding up volunteers for the Organising Committee for the 2016 Conference – watch this space!

Treasa Dunworth

2016 ANZSIL Conference: Save the Date

The theme of the 2016 Conference will be ‘International Law of the Everyday: Fieldwork, Friction and Fairness’. The 2016 ANZSIL Conference will take place in Canberra on from 30 June – 2 July 2016 at University House, Australian National University, Canberra. The call for papers will be circulated in December. Panel proposals should be emailed to the [ANZSIL Secretariat](#) to the attention of Fleur Johns, David Letts and John Reid.

Directorship of Australian National University Centre for International and Public Law

At the end of this year Professor Kim Rubenstein will step down from her role as Director of the Centre for Public and International Law (CIPL) at the Australian National University (ANU) College of Law, a position she has held since 2006. Kim's period as Director has seen CIPL strengthen its reputation as one of Australia's most respected centres for research into international, administrative and public law. Through her highly active commitment to pursuing the objectives of research, community outreach and fostering the linkages between international and public law, Kim has taken the Centre's work and activities to new heights, including through an enhanced series of public seminars in cooperation with the Department of Foreign Affairs and Trade, the Attorney-General's Department and the ANU College of Law. She has also taken the initiative to engage CIPL more broadly with other Centres within the ANU and to develop the links with government institutions from the Australian Capital Territory and other Universities.

From an ANZSIL perspective we have valued enormously the contribution Kim and her colleagues at the Centre have made, as the ANZSIL Secretariat, to the efficient functioning of the Society in the full spirit of trans-Tasman cooperation. Kim's boundless enthusiasm and clear-sighted direction has been critical to the successful running of the ANZSIL Conferences which have been held during her tenure as Director, as well as to the work undertaken between Conferences. We thank her most warmly for the outstanding contribution she has made to ANZSIL and extend our best wishes for her "new phase" at the ANU College of Law.

We also warmly welcome the incoming Director of CIPL and Head of the ANZSIL Secretariat, Associate Professor James Stellios from the ANU College of Law, who will commence in January 2016. James is extremely well qualified to take on these responsibilities as he filled those roles in 2013 when Kim was on sabbatical.

Richard Rowe, Member, CIPL Advisory Board



Professor Kim Rubenstein, outgoing Director of CIPL

Australia and New Zealand's candidate for the UN International Law Commission: Professor Chester Brown

Australia and New Zealand have co-nominated Professor Chester Brown as a candidate for the International Law Commission, for elections to be held in November 2016.

Chester Brown is Professor of International Law and International Arbitration at the University of Sydney and a barrister at 7 Wentworth Selborne Chambers. He is a highly accomplished international lawyer with a breadth of experience across academia, government and private practice. He has acted in proceedings in a number of international courts and tribunals, including the International Court of Justice, and was formerly a legal adviser at the British Foreign and Commonwealth Office.

In a joint ministerial statement, Australia's Attorney-General, Senator the Hon George Brandis QC, and Minister for Foreign Affairs, the Hon Julie Bishop MP, described Professor Brown as 'a highly accomplished, dynamic Australian candidate who would

bring a wealth of expertise and experience to the work of the International Law Commission’.

The International Law Commission’s 34 members are elected for five-year terms. If elected, Professor Brown would be the second Australian to serve on the Commission. The first was Professor James Crawford AC, now a Judge of the International Court of Justice, who served on the Commission between 1992 and 2001.



Professor Brown speaking at International Law Week, New York, November 2015

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

> Australia’s Universal Periodic Review

On 9 November 2014, Australia appeared before the UN Human Rights Council for the second cycle of the Universal Periodic Review (UPR). The UPR involves the periodic review of the human rights records of all 193 UN Member States and is designed to prompt, support, and expand the promotion and protection of human rights on the ground. Australia’s appearance was held in a constructive and respectful atmosphere, with a wide range of issues discussed by Member States. Non-Government Organisations (NGOs) and the Australian Human Rights Commission played an important role in raising the profile of significant issues such as disability rights and domestic violence during Australia’s UPR.

During the interactive session in the Human Rights Council, 104 countries asked questions of, and made recommendations to, Australia. Australia made nine voluntary commitments as part of the process, including in relation to promoting and protecting the rights of older people internationally; taking further steps to end unlawful discrimination on the grounds of sexual orientation, gender identity and intersex status under Australian law; and developing a public and accessible process for monitoring Australia’s progress against UPR recommendations.

Australia received 290 recommendations in total. These recommendations relate to a wide variety of issues, including immigration and asylum seekers; the rights of Indigenous Australians; domestic violence and the gender pay gap; and the ratification of international instruments including the Optional Protocol to the Convention Against Torture. The Government will genuinely and properly consider all recommendations made to Australia by Member States in consultation with civil society. The Attorney-General’s Department will dedicate its annual NGO Human Rights Forum in

December to discussing the UPR recommendations and Australia's response. Australia will appear before the UN Human Rights Council to formally respond to the recommendations in March 2016.

Preparations for Australia's appearance were led by officers of the International Law and Human Rights Division in the Attorney-General's Department, with extensive support and input from agencies across the Commonwealth and States and Territories.

Documentation related to Australia's appearance can be accessed [here](#).

> Report under Article 51 of the UN Charter

On 9 September 2015, Australia's Ambassador to the UN wrote to the President of the UN Security Council to report that Australia is taking measures against Islamic State in Iraq and the Levant (ISIL) in Syria in support of the collective self-defence of Iraq as part of international efforts led by the United States, as required under Article 51 of the UN Charter.

This followed the Government of Iraq writing to inform the Security Council on 20 September 2014 that ISIL had established safe havens outside Iraq's borders in Syria and that ISIL attacks emanating from these positions posed a direct threat to the security of the Iraqi people and Iraqi territory. At that time, Iraq requested the United States lead international efforts to strike ISIL sites and military strongholds in Syria in order to end the constant attacks on Iraq, to protect Iraqi citizens and, ultimately, to enable Iraqi forces to regain control of Iraq's borders.

Article 51 of the UN Charter recognises the inherent right of States to act in individual or collective self-defence where an armed attack occurs against a UN Member. Australia noted in its report that States must be able to act in self-defence when the Government of the State where the threat is located is unwilling or unable to prevent attacks originating from its territory. Australia's report also notes that the Government of Syria has, by its failure to constrain attacks upon Iraqi territory originating from ISIL bases within Syria, demonstrated that it is unwilling or unable to prevent those attacks.

In response to the request for assistance by the Government of Iraq, the report notes that Australia is therefore undertaking necessary and proportionate military operations against ISIL in Syria in the exercise of the collective self-defence of Iraq. These operations commenced on 11 September 2015.

The report notes that these operations are not directed against Syria or the Syrian people, nor do they entail support for the Syrian regime. Furthermore, the report notes that Australia will abide by its obligations under international law when undertaking such military operations.

An ANZSIL *Perspective* on this matter was published in October, and can be accessed on the Members Content page of the ANZSIL website.

> Recent developments with Australia's Free Trade Agreements

A number of bilateral and multilateral free trade agreements (FTAs) involving Australia have recently passed notable stages towards their conclusion and entry into force. This is part of the Australian Government's commitment to negotiating and implementing FTAs, in order to encourage regional economic integration and create strong ties with trading partners.

Australia recently concluded negotiations with China regarding the China-Australia FTA (ChAFTA), which was signed on 17 June 2015. It is currently undergoing domestic implementation and approval processes, with implementing legislation introduced in

Australia on 16 September and the report of the Joint Standing Committee on Treaties tabled in Parliament on 19 October. ChAFTA builds on Australia's successful commercial relationship with China, and lays an historic foundation for the next phase of the two nations' economic relationship. China is Australia's largest export market for both goods and services, accounting for nearly a third of total exports, and a growing source of foreign investment. Australia is one of only a handful of developed countries to have concluded an FTA with China and both countries are working hard to have the agreement in force by the end of 2015.

Negotiations for the Trans-Pacific Partnership Agreement (TPP) were concluded on 5 October 2015, with the text being publicly released on 5 November 2015. It is expected that countries will formally sign the agreement shortly. The TPP is a landmark trade agreement, bringing together 12 countries representing around 40 per cent of global Gross Domestic Product (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, the United States and Vietnam). It is expected to deliver significant benefits to Australia, including new opportunities for businesses, farmers, manufacturers and service-providers in the rapidly growing Asia-Pacific region. The Agreement also addresses a number of contemporary issues not typically covered in trade agreements, such as e-commerce, labour, environment, and anti-corruption and competition policy, with the latter including rules for State-owned enterprises. The TPP is seen as providing a pathway towards the long-term regional objective of a FTA of the Asia Pacific. TPP countries will now follow their respective domestic treaty making processes. The agreement will enter into force once all original signatories advise that their domestic processes have been completed or, once two years have passed after signature, at least six signatories accounting for 85% of combined Gross Domestic Product have done so.

These developments on ChAFTA and the TPP follow in the footsteps of FTAs with Korea and Japan entering into force in December 2014 and January 2015 respectively. Australia is also currently involved in active negotiations for the Regional Comprehensive Economic Partnership Agreement (RCEP), the Australia-India Comprehensive Economic Cooperation Agreement (CECA), the Pacific Agreement on Closer Economic Relations (PACER Plus) and the Trade in Services Agreement (TiSA).

> Commencement of arbitration on the interpretation of Article 8(b) of the Timor Sea Treaty

On 24 September 2015, Timor-Leste initiated arbitration against Australia under the 2002 *Timor Sea Treaty* (TST) contesting Australia's exclusive jurisdiction over the pipeline running from the Bayu-Undan gas field in the Timor Sea to Darwin, including for the purposes of taxation. Australia's position is that it has exclusive jurisdiction over the pipeline, including for the purposes of taxation. That position is supported by the text of Article 8(b) of the TST, which provides: 'A pipeline landing in East Timor shall be under the jurisdiction of East Timor. A pipeline landing in Australia shall be under the jurisdiction of Australia.'

The Arbitral Tribunal is in the process of being convened in accordance with the dispute resolution procedures in Annex B of the TST. Australia's defence of the arbitration is being led by the Solicitor-General and supported by a small team within the Office of International Law in the Attorney-General's Department.

The Article 8(b) Arbitration is separate from recent litigation between Australia and Timor-Leste, reported on in previous ANZSIL newsletters, comprising:

> *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)* before the International Court of Justice, and

> *Arbitration under the Timor Sea Treaty (Timor-Leste v. Australia)*, concerning the validity of the *Agreement on Certain Maritime Arrangements in the Timor Sea* (CMATS) and administered by the Permanent Court of Arbitration.

The case in the International Court of Justice was discontinued, following an application from Timor-Leste, on 11 June 2015. The CMATS Arbitration is currently adjourned.

> Port State Measures Agreement

Australia ratified the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (PSMA) on 20 July 2015. The PSMA will enter into force 30 days after 25 Parties have ratified it. As at 28 October 2015, the PSMA had 13 Parties (and a further 14 signatories).

The PSMA promotes the objective of preventing, deterring and eliminating illegal, unreported and unregulated (IUU) fishing through the implementation of effective port State measures, thereby ensuring the long-term conservation and sustainable use of living marine resources and marine ecosystems. The PSMA introduces four key mechanisms to prevent, deter and eliminate IUU fishing, namely: preventing entry to port; preventing the use of the port; imposing requirements to inspect vessels; and requiring flag States to take action if IUU fishing is reported to them following the taking of other measures under the PSMA. These measures will make it more difficult for the products of IUU fishing to enter the market, in turn making IUU fishing more difficult and less profitable, and therefore less attractive. In addition, the PSMA introduces mechanisms for information-sharing in order to facilitate implementation of the PSMA.

The PSMA was approved by the UN Food and Agriculture Organization and opened for signature in November 2009.

> New treaty to establish Australia's membership of the Asian Infrastructure Investment Bank

On 29 October 2015, Australia ratified the Articles of Agreement for the establishment of the Asian Infrastructure Investment Bank (AIIB). Australia will lodge its Instrument of Ratification with the AIIB depository in late-2015, confirming Australia as a founding member of the AIIB. There are 57 prospective founding members of the AIIB and Australia is expected to be the sixth-largest shareholder.

The AIIB is an international organisation headquartered in Beijing, which will provide funding to facilitate major infrastructure projects in the region. The AIIB is expected to boost economic growth and connectivity, create jobs and promote trade in the region by financing much needed infrastructure investment. Joining the AIIB will promote stronger linkages between Australia and its neighbours, drive economic growth and generate benefits for Australian trade and businesses.

> Negotiations to commence for a new implementing agreement to the UN Convention on the Law of the Sea

On 19 June 2015, the UN General Assembly agreed, in Resolution 69/292, to commence treaty negotiations for a legally binding instrument under the UN Convention on the Law of the Sea on the 'conservation and sustainable use of marine biological diversity beyond national jurisdiction'.

The Resolution establishes a Preparatory Committee that will meet in 2016 and 2017 with a mandate to make substantive recommendations to the General Assembly by the end of 2017 on the elements of a draft treaty text. Preparatory Committee negotiations on the new agreement will address the conservation and sustainable use of marine

biological diversity of areas beyond national jurisdiction, in particular, 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.

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

> Establishment of a World Trade Organisation (WTO) panel to examine Indonesian restrictions on agricultural products

On 18 March 2015, New Zealand submitted a request to the Chair of the WTO Dispute Settlement Body for the establishment of a panel in the *Indonesia – Importation of Horticultural Products, Animals and Animal Products* (WT/DS/477) dispute. The decision to proceed to a WTO panel responds to New Zealand's concerns about Indonesia's import restrictions on agricultural products, which have had a significant impact on New Zealand's exports to Indonesia in recent years. For example, beef exports have fallen by over 90% in what was once a significant export market while trade in a number of horticultural products has been held back. A WTO panel has now been constituted and timetable issued that will see the co-complainants' first written submissions filed in mid-November.

New Zealand participation as a third party in WTO disputes

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

In the *US – Country of Origin Labelling* case, the Appellate Body Compliance Report was issued on 18 May this year, which rejected the United States' arguments against the panel's findings under Article 2.1 of the WTO Agreement on *Technical Barriers to Trade Agreement* (TBT). The Appellate Body maintained the compliance panel's conclusions that the amended country of origin labelling measure increases the record-keeping burden for imported livestock entailed by the original country of origin labelling measure. The Appellate Body rejected the United States' arguments that the panel's conclusions were based on "incorrect hypothetical" scenarios that were not based on actual, or the most common, trade situations. New Zealand participated as a third party in the compliance phase appeal of the proceedings. New Zealand's written and oral submissions reflected its interest in the correct interpretation of the TBT when it comes to country of origin labelling.

On 4 June, Canada requested authorisation from the WTO Dispute Settlement Body to suspend the application of certain tariff concessions and related obligations to the United States, however the United States objected to the level of suspension of concessions and obligations proposed by Canada. Accordingly, as required by Article 22.6 of the Dispute Settlement Understanding, the matter has been referred to arbitration.

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

On 15 October, Brazil requested the establishment of a WTO dispute settlement panel to hear its complaint challenging Indonesia's import restrictions for chicken products. Brazil's concerns, while focused on chicken meat, largely overlap with those regarding agricultural imports raised by New Zealand and the United States in their own WTO dispute with Indonesia. New Zealand participated as a third party in the consultations phase of this dispute and is currently considering its participation in the panel phase.

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

New Zealand participated as a third party in the compliance phase of WTO proceedings brought by Mexico challenging the United States' revised regulations that set out when tuna products sold in the United States may be labelled as "dolphin-safe". New Zealand's submissions reflect its interest in the correct interpretation of the Agreement on Technical Barriers to Trade when it comes to eco-labelling. New Zealand presented its oral statement to the Appellate Body on 21 September 2015. The Appellate Body's report is due to be released by 20 November 2015.

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

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

> Korea – Import Bans, and Testing and Certification Requirements for Radionuclides (WT/DS495)

On 20 August, Japan requested the establishment of a WTO dispute settlement panel to hear its complaint challenging Korea's import bans and additional testing and certification requirements on certain food products from Japan. These sanitary and phytosanitary measures were adopted in 2011 in response to food safety concerns following the Fukushima nuclear disaster, and are still in place. New Zealand notified its interest as a third party in this dispute on 28 September.

Free Trade Agreements

> Trans-Pacific Partnership

TPP will be New Zealand's first FTA with the United States, Japan, Canada, Mexico and Peru. Tariffs will be eliminated on 93% of New Zealand's trade with these new partners, once TPP is fully phased in. New Zealand has existing FTAs with the other six Parties and TPP bolsters and strengthens these agreements.

The 12 TPP Parties (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Viet Nam) collectively constitute approximately 36 percent of world GDP, worth a total of \$US28 trillion.

The Agreement's entry into force provision means that, once it has been signed, the signatories will have two years to complete their domestic approval, legislative and ratification procedures so that the Agreement can enter into force. If, after two years, all the signatories have not completed these procedures, then there are further processes in place that allow the Agreement to enter into force for those that are ready, provided that there are at least six signatories in this position, and that together they account for at least 85 percent of the combined GDP of the original signatories in 2013.

> New Zealand – Korea Free Trade Agreement

The New Zealand-Korea FTA was signed in Seoul on 23 March 2015. The FTA will deliver real economic benefits for both New Zealand and Korea and creates the groundwork for an even closer bilateral relationship into the future. On entry into force, current duty-free access will be 'bound in' and existing tariffs will be eliminated on 48.3% of New Zealand goods exports to Korea. Once the FTA is fully implemented in Year 20, 97.9% of New Zealand's current exports will enter Korea quota and duty-free. Tariffs on Korea's exports to New Zealand will be phased out by Year 7. The FTA includes commitments on services, investment (including investor-state dispute settlement) and government procurement, and provides for cooperation in areas such as

customs procedures and trade facilitation, sanitary and phytosanitary measures, technical barriers to trade and intellectual property. The FTA also includes chapters on labour and environment - only the second time New Zealand has included these in the body of a trade agreement.

New Zealand's Foreign Affairs, Defence and Trade Select Committee completed its Parliamentary Treaty Examination of the FTA in May 2015. The FTA will be implemented into domestic law through both legislation and regulations. The *Tariff (Free Trade Agreement between New Zealand and the Republic of Korea) Amendment Act 2015* received Royal Assent on 28 September 2015 and the regulations are expected to be made in November 2015. The FTA will enter into force once both sides have completed their domestic implementation processes, and is expected to be before the end of the year.

> New Zealand – European Union FTA

On 29 October 2015, the New Zealand Prime Minister and the Presidents of the European Council and the European Commission committed to start the process for negotiations to achieve swiftly a deep and comprehensive high quality FTA. Such a FTA will support sustainable growth and investment, opening up new trade and business opportunities and generating new employment for the European Union and New Zealand. Discussions to define the scope and overall approach to the negotiations will start as soon as possible.

Significant Treaty Actions

> Articles of Agreement of the Asian Infrastructure Investment Bank

New Zealand signed the *Articles of Agreement of the AIIB* on 29 June 2015.

> WTO Agreement on Government Procurement

New Zealand acceded to the WTO *Agreement on Government Procurement* on 10 July 2015. The Agreement entered into force on 12 August 2015.

Requests for ANZSIL financial support for events or activities: New guidelines

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

Internship rounds

> Encouraging numbers for October internship support round

ANZSIL's internship support program has seen significant growth on previous rounds, with 19 applications received in October.

Of the 19 applicants, 15 were women, and four were men; with 16 applicants based in Australia, and three in New Zealand. As in previous rounds, applications covered a range of internships at a diverse range of organisations based around the world, including the UN, the International Criminal Court (ICC), the American Civil Liberties Union, private law firms, and research and educational institutions.

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

- > Ms Claire Brighton, who will undertake a six-month internship with the ICC
- > Mr Timothy Matthews, who will undertake a three-month internship with the Special Tribunal for Lebanon, and
- > Ms Ashna Taneja, who will undertake a two-month internship with the UN Commission on International Trade Law Regional Centre for Asia and the Pacific.

ANZSIL's internship support round will again be offered in 2016, with the April round closing on **22 April 2016** and the October round closing on **21 October 2016**.

> Intern report – Miriam Cullen

With the benefit of an ANZSIL grant, I was appointed a Visiting Professional in the Office of the Prosecutor at the ICC for a period of six months from April 2015. I had the privilege of working directly with Prosecutor Fatou Bensouda and Deputy Prosecutor James Stewart, as well as their immediate staff.

The Visiting Professional Programme at the ICC is distinct in that it attracts people who already possess relevant experience in their chosen profession. It uniquely offers to those selected the opportunity to draw upon that experience to offer a significant contribution to the Court's work. Having been previously employed in law reform, parliament, academia, the UN, and the Australian foreign service, my work was divided between legal policy in the Legal Advisory Section and public relations in the Prosecutor's Immediate Office. My time at the Court gave practical context to my doctoral research, the working title of which is: 'Competing Imperatives: The UN Security Council and International Justice'.

For the Legal Advisory Section, I played a leading role in developing, drafting and compiling the first version of the operational elements of the Prosecutor's forthcoming policy on children, and to that end provided relevant policy development advice. There is no doubt that children are uniquely affected by the crimes that the Office of the Prosecutor investigates: war crimes, crimes against humanity and genocide. All too often victims in a direct sense, children are also devastatingly affected by the broader consequences of atrocity crimes. Children lose family, caregivers, community, education and their quality of health declines, alongside a contemporaneous intensification of responsibilities as they suddenly find themselves head of a household, pregnant as a result of rape, or simply alone. The comprehensive policy being prepared by the Prosecutor will guide the Office in all of its work as it touches upon the lives of children, from preliminary examinations and investigations through to concluded prosecutions and appeals.

For the Immediate Office I was called upon to prepare briefings and draft speeches, talking points and opinion pieces on areas of critical concern. I accompanied the Prosecutor and Deputy Prosecutor on TV and radio interviews as media sought comment on various developments that coincided with my time at the Court. Indeed, several events necessitated a prompt and considered response from the Office of the Prosecutor. President Al Bashir's hurried exit from the African Union Summit in Johannesburg was one such example; another was the release of a report by the NGO 'Breaking the Silence' which alleged serious violations of international humanitarian law in Gaza. Rising tensions in Guinea also drew the Prosecutor's attention.

I was impressed by the personal and ardent commitment of the Prosecutor and her staff to the ideals to which the ICC aspires. There is a determination to see justice done and a heartfelt confidence that the Court can and does make a difference. Still, my overall impression was that the ICC is caught between a rock and a hard place. It must reconcile the world's ideals for a global criminal court with the practical reality of this work. Many of the normative expectations of the Prosecutor's Office are simply

unrealistic, buoyed as they are by media headlines that demonstrate a pervading ignorance of the legal and practical constraints. Indeed, the best efforts of the Prosecutor are Sisyphean without the meaningful cooperation of ICC member states and financial support at least commensurate with the demands placed upon it.

Of course, to point out that the ICC's task is difficult does not mean that it should be relieved of its responsibilities. The legal and institutional constraints within which the Court must operate do not render the job impossible. My point is, rather, that we must temper our expectations of the Court with due recognition of the challenges involved. That is not to expect any less of justice itself but to appreciate that the Court cannot be all things to all people. It is not a panacea. (For the interested reader, Darryl Robinson has written an excellent piece on this in a forthcoming edition of the *Leiden Journal of International Law* entitled 'Inescapable Dyads: Why the ICC Cannot Win').

Almost a decade ago I was an intern at the Association of Defense Counsel for the International Criminal Tribunal for the Former Yugoslavia. I am grateful to ANZSIL for supporting my opportunity to return to the city where I was first inspired to commence a career in international law and policy. On this occasion I have participated in events to commemorate the 70th anniversary of the Nuremberg trials, was present in The Hague for the 14th Assembly of States Parties to the ICC, and have attended lectures and participated in various conferences. I was also pleased to be invited to speak at the Annual Meeting of the Academic Council on the UN System, at which I discussed the Security Council's methods of work as they relate to international criminal law and justice. I am now a visiting research fellow at the TMC Asser Institute, The Hague, and in January 2016 will commence as a visiting doctoral student at the University of Oxford.



Internship support recipient Miriam Cullen with ICC Deputy Prosecutor James Stewart

Upcoming Events and Calls for Papers

> Sixth International Four Societies Conference: Call for Papers

The international law societies of Australia and New Zealand, Canada, Japan, and the United States of America (the "Four Societies") have held five conferences bringing together early career scholars around a common theme, generally leading to an edited

conference volume. The goal of this initiative is to foster a scholarly network between members of the four sponsoring societies.

The Canadian Council on International Law will host the Sixth International Four Societies Conference at the Centre for International Governance Innovation in Waterloo, Ontario on 21-22 July, 2016, on the theme of “**International law, Innovation, and the Environment.**” The Steering Committee for the Sixth Conference now invites paper proposals from members of the Four Societies. Applications to take part in the conference should include a paper description not exceeding 300 words and the applicant’s curriculum vitae. Submissions should be sent by e-mail to the Society of which the applicant is a member (anzsil@anu.edu.au for ANZSIL members). The deadline for submission of proposals is **January 4, 2016**.

Each sponsoring society will select four papers, subject to the review and approval of the Steering Committee comprised of members from the Four Societies. Preference will be given to papers by those who are in the early stages of their careers. The selected participants will be notified in late January 2016. Each participant will submit a full paper to the organisers by 20 June 2016 for distribution to the other participants. Transportation to the venue will be subject to arrangement between each sponsoring organisation and its conference participants (and may include the seeking of internal university support or use of an existing grant). Lodging and meals at the venue during the conference will be provided by the organisers.

ANZSIL strongly encourages all interested members to apply. Further information can be found on the ANZSIL [website](#).

> **12th ESIL Annual Conference, Riga: Call for Papers and Posters**

The 12th ESIL Annual Conference will be held in Riga on 8- 10 September 2016. The conference will be hosted by the Riga Graduate School of Law in cooperation with the Latvian Constitutional Court. The theme of the conference is: **How International Law Works in Times of Crisis**. The deadline for all submissions is **31 January 2016**. The call for papers can be found [here](#).

> **Franz Lieber Prize: Call for Submissions**

The American Society of International Law's (ASIL's) Lieber Society on the Law of Armed Conflict awards the Francis Lieber Prize to the authors of publications that the judges consider to be outstanding in the field of law and armed conflict. Both monographs and articles (including chapters in books of essays) are eligible for consideration – the prize is awarded to the best submission in each of these two categories.

Criteria: Any work in the English language published during 2015 or whose publication is in proof at the time of submission may be nominated for this prize. Works that have already been considered for this prize may not be re-submitted. Entries may address topics such as the use of force in international law, the conduct of hostilities during international and non-international armed conflicts, protected persons and objects under the law of armed conflict, the law of weapons, operational law, rules of engagement, occupation law, peace operations, counter-terrorist operations, and humanitarian assistance. Other topics bearing on the application of international law during armed conflict or other military operations are also appropriate.

Age Limit: Competitors must be 35 years old or younger on 31 December 2015. Membership of ASIL is not required. Multi-authored works may be submitted if all the authors are eligible to enter the competition. Submissions from outside the United States are welcomed.

Submission: Submissions, including a letter or message of nomination, must be received by **9 January 2016**. Three copies of books must be submitted. Electronic submission of articles is encouraged. Authors may submit their own work. All submissions must include contact information (e-mail, fax, phone, address). The Prize Committee will acknowledge receipt of the submission by e-mail.

Prize: The Selection Committee will select one submission for the award of the Francis Lieber Prize in the book category and one in the article category. The Prize consists of a certificate of recognition and a year's membership of ASIL. The winner of the Lieber Prize in both categories will be announced at the ASIL's Annual Meeting in April 2016.

Printed submissions must be sent to: Professor Laurie Blank, Emory University School of Law, 1301 Clifton Road, Atlanta, Georgia 30322, USA. Electronic submissions must be sent to: Lblank@emory.edu

> International Review of the Red Cross: Call for papers

The International Review of the Red Cross welcomes submissions for its upcoming issues:

- > Wars in cities (deadline for submissions is **December 2015**)
- > Detention - contemporary practices and the humanitarian response (deadline for submissions is **March 2016**)
- > The protection of refugees, IDPs and migrants (deadline for submissions is **June 2016**).

Information about the Review, and instructions for submitting an article can be found [here](#).

> Paul Reuter Prize on International Humanitarian Law 2015: Call for Applications

The Paul Reuter Prize will be awarded for the eleventh time in 2016, and applications are due on **31 December 2015**. The Prize, in the amount of 5,000 Swiss francs, is generally awarded every three years for a major work in the sphere of international humanitarian law. It is financed by the Paul Reuter Fund, which was created in 1983 thanks to a donation made to the International Committee of the Red Cross by the late Paul Reuter, Honorary Professor at the University of Paris and member of the Institut de droit international. The Fund's purpose is twofold: to contribute financially to an undertaking in the field of international humanitarian law (e.g. the publication of a book), and to finance the Paul Reuter Prize. Information about eligibility for the Prize and how to apply can be found [here](#).

> Event: International Humanitarian Law: Issues of Current Significance and in Memory of Henri Dunant

4 December 2015, 8:45am-12:45pm, VUW Law School Room G34 (Ground Floor)
Please RSVP to ILANZ@vuw.ac.nz by 30 November 2015 -- Although there is no registration fee for the event, RSVPs are required as spaces are limited. More information is available on the ANSZIL [website](#).

> Masters courses in international law at ANU

ANU is offering three new courses in 2016 as part of its Masters program that may be of interest to ANZSIL members:

- > 'Critical Approaches to International Law' (Suzanne Akila and Hilary Charlesworth), March 2016
 - > 'Business and Human Rights' (Jolyon Ford), July-Sept 2016 online
 - > 'International Criminal Law' (Helen Brady and David Re, international prosecutors) 1-4 August 2016
-

Recent publications by Members

- > Dr Jolyon Ford, 'Business and Human Rights: Bridging the Governance Gap' *Chatham House Research Paper* (22 September 2015) available [here](#).
- > Professor Rosemary Rayfuse (Ed), *Research Handbook on International Marine Environmental Law* (2015), more information available [here](#).

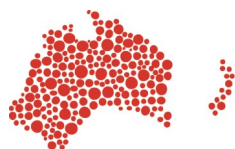
Recent movements and new appointments of ANZSIL members

On 1 August 2015, Andrew Serdy was promoted to Professor of Public International Law & Ocean Governance at the University of Southampton, following his appointment earlier in the year as an external examiner of various modules for the Faculty of Law at the University of Edinburgh.

In October 2014 Rosemary Rayfuse was appointed as Visiting Professor Marine Law and Governance in the School of Business, Economics and Law at the University of Gothenburg, Sweden. The appointment is for a period of three years. On May 29 2015 Rosemary was also awarded a Doctor of Laws, honoris causa (LLD h.c.) by the Faculty of Law, Lund University, Sweden.



Professor Rayfuse receiving a Doctor of Laws, honoris causa (LLD h.c.) from Lund University, Sweden.



Australian and New Zealand
Society of International Law

ANZSIL Newsletter
December 2015

Editor:

- > **Amelia Telec**
Commonwealth
Attorney-General's
Department

Published by:

- > ANZSIL Secretariat
Centre for International
and Public Law
ANU College of Law
Australian National
University
Canberra ACT 2600
- > +61 2 6125 2906
- > anzsil@anu.edu.au
- > www.anzsil.org.au