



ANZSIL Newsletter

December 2022

www.anzsil.org.au

Message from the President

Tēnā koutou ANZSIL Members,

With a sense of relief, which I think is shared by many colleagues, we are approaching the end of 2022! It has been a busy year for ANZSIL members, and the final quarter of the year has been no exception with very successful conferences run by the IELIG, GSIL and OIELIG interest groups over the last few weeks. The period has been equally busy for our governments as the very helpful updates indicate. I would particularly like to congratulate past ANZSIL president Anne Orford on the award of the ESIL Monograph prize for her book, *International Law and the Politics of History* (CUP, 2021) and Melanie O'Brien for the publication of her new book, *From Discrimination to Death: Genocide Process through a Human Rights Lens* (Routledge, 2022). I encourage ANZSIL members to send me details of their new publications for our books corner of the ANZSIL website. I would also like to congratulate past ANZSIL President Hilary Charlesworth on her nomination as a candidate for re-election to the ICJ in 2023, and I wish Hilary and the Australian government every success in the election campaign next year.

ANZSIL members will have hopefully seen that we have recently announced a number of new publication prizes, which we are very excited about. The inaugural ANZSIL Book and Journal Article/ Book Chapter Publication Prizes closes on 1 February 2023 and publications meeting the criteria published in the previous two calendar years are eligible. The inaugural AYBIL/ANZSIL Student Paper Prize closes on 15 January 2023. Please check out our [website](#) for further details and conditions relating to both prizes and encourage your colleagues and students to apply!

The [2023 ANZSIL conference](#) will be held in person at Victoria University of Wellington – Te Herenga Waka, in Wellington, New Zealand from 29 June – 1 July and explores the theme of resilience and international law, which seems particularly appropriate in light of recent environmental and geopolitical events. We welcome abstracts for papers and panels by 10 February 2023. The postgraduate workshop will take place the day before the annual conference, on 28th June, and call for papers can be found [here](#).

I would like to thank the ANZSIL Council for their continuing and significant support for ANZSIL activities throughout 2022. I would also like to thank the co-convenors of our (now) six interest groups for all their work in connecting their members within and beyond ANZSIL and for organising workshops, seminars, discussion groups, hallway events and much more this year. I would especially like to thank An Hertogen and Jordan Tsirimokos for the production of another friendly and informative ANZSIL newsletter.

As most of us are looking forward to a well-deserved warm summer break this year, I am mindful of the challenges and tragedies unfolding elsewhere in the world, not least Ukraine, where ordinary citizens are facing conditions not seen in Europe since World War Two. And there are of course other areas of the globe that are equally war-torn but which do not make nightly headlines on the news. I am grateful for the efforts of ANZSIL members in many different capacities – from academic to practitioner – as well as the Australian

IN THIS ISSUE

- > President's Message
- > Recent Australian Practice
- > Recent New Zealand Practice
- > ANZSIL International Economic Group Interest Group
- > ANZSIL Member News

and New Zealand governments to support our increasingly fragile (but hopefully resilient) international rules-based order, and anticipate that such efforts will continue and indeed be stepped in in 2023. Hopefully our 30th ANZSIL conference will make a small contribution to that process.

On that (slightly) solemn note, I would like to wish all ANZSIL members and friends and supporters a safe and restful summer and a very happy New Year!

Merry Christmas, meri Kirihimete!

Ngā manaakitanga,

Karen Scott

ANZSIL President

karen.scott@canterbury.ac.nz

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

Russian invasion of Ukraine: response by Australia

Statements calling on Russia to comply with international law

Australia continues to urge Russia to uphold international law in public statements and multilateral fora. Some examples include the following.

On 23 August, at the Crimean Platform Summit, the Foreign Minister delivered a pre-recorded statement on Crimea deploring 'Russia's suppression of human rights in Crimea, including arbitrary detentions, arbitrary arrests, torture and forced disappearances, including of the Mejlis of the Crimean Tatar people.'

On 24 August, Australia joined a statement with international partners marking 'Six Months of Russia's Full-Scale Invasion of Ukraine'. The statement deplored 'the Russian Federation's failure to implement UN General Assembly resolutions A/ES/11-1 of 2 March 2022 [[A/RES/ES-11/1](#)] and A/ES/11-2 of 24 March 2022 [[A/RES/ES-11/2](#)] as well as its failure to comply with the legally binding order by the International Court of Justice of 16 March 2022 in particular its failure to immediately cease its use of force against Ukraine.'

On 28 August, the Foreign Minister issued a media release stating that Russia had 'deliberately obstructed progress' at the tenth Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), and that '[i]ts actions directly challenge core tenets of the NPT.' The Foreign Minister again condemned Russia's 'ongoing, unprovoked and unjustifiable war of aggression' and called on Russia 'to immediately withdraw its forces from Ukrainian territory.'

On 2 October, the Foreign Minister and Attorney-General issued a media release stating that additional targeted financial sanctions and travel bans would be imposed on 28 Russian appointed separatists, ministers and senior officials. The media release also conveyed the Australian Government's position that 'Russia's sham referenda in occupied areas of Ukraine are illegitimate and have no legal effect'. The statement confirmed that '[t]he regions of Luhansk, Donetsk, Kherson and Zaporizhzhia are sovereign Ukrainian territory' and that 'President Putin's annexation is illegal and any claims that these territories are now part of Russia are baseless and false.' The statement also announced that Australia had filed an intervention in the International Court of Justice (ICJ) case brought by Ukraine against Russia (see below).

Australia's Ambassador to the UN delivered statements to the UN General Assembly recognising that 'Russia's sham referenda in the occupied areas of Ukraine have no legal effect' (on 10 October) and that 'the injuries suffered by Ukraine as a result of Russia's violations of international law require full reparation by Russia, in accordance with the law of State responsibility' (on 14 November).

UN General Assembly resolutions in response to Russia's actions in Ukraine

Australia co-sponsored key UN General Assembly emergency special session resolutions condemning the Russian invasion [[A/RES/ES-11/1](#) adopted 2 March], bringing attention to the humanitarian consequences [[A/RES/ES-11/2](#) adopted 24 March], suspending Russia from the Human Rights Council [[A/RES/ES-11/3](#) adopted 7 April], condemning Russia's sham referenda and illegal attempted annexation of four Ukrainian regions [[A/RES/ES-11/4](#) adopted 12 October] and recognising the need for an international compensation mechanism for damage arising from Russia's invasion [[A/RES/ES-11/5](#) adopted 14 November].

Intervention in Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation) before the International Court of Justice

On 30 September, Australia filed an intervention in the ICJ case brought by Ukraine against Russia. In this case, Ukraine is claiming that Russia has violated the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). In announcing the filing of the intervention, the Foreign Minister and Attorney-General called on Russia to 'immediately comply with the ICJ's legally binding order of 16 March 2022 to immediately withdraw its military forces from Ukraine.' They reiterated that 'as a member of the United Nations, Russia is legally obliged to comply with decisions of the ICJ in any case to which it is a party.'

On 3 October, Russia filed preliminary objections to the jurisdiction of the ICJ and to the admissibility of Ukraine's application. On 7 October, the ICJ issued an order fixing 3 February 2023 as the time-limit within which Ukraine may present a written statement of its observations and submissions on the preliminary objections raised by Russia.

Nomination of Judge Hilary Charlesworth for re-election to the International Court of Justice



On 2 September, the Australian Government announced its support for the candidacy of former ANZSIL President, Judge Hilary Charlesworth, for re-election as a Judge of the ICJ. The election will take place at UN headquarters in New York in late 2023.

The Australian National Group will formally nominate Judge Charlesworth as a candidate for the election when nominations open in early 2023. The Australian National Group is an independent body of esteemed Australian jurists who serve as Members of the Permanent Court of Arbitration in The Hague.

Judge Charlesworth is an eminent jurist who has made an exceptional contribution to the study and practice of international law. She has already contributed to the important work of the ICJ, having been elected to the ICJ on 5 November 2021 to fill the vacancy created by the death of the late Judge James Crawford. Judge Charlesworth is the first Australian woman elected to the Court and only the fifth female permanent judge in the ICJ's 77-year history.

Prior to her election to the ICJ, Judge Charlesworth served as a judge ad hoc on two occasions, in the cases of *Guyana v Venezuela* and *Australia v Japan*. She has been President of ANZSIL, as well as being closely engaged with the Asian Society of International Law and the American Society of International Law. She previously held the Harrison Moore Chair in Law and the position of Laureate Professor at the University of Melbourne, and was a Distinguished Professor at the Australian National University.

Judge Charlesworth has also been a Visiting Lecturer at a number of prominent universities around the world, including Harvard Law School, the London School of Economics and New York University. Her research and publications in international law are multi-faceted, addressing the structure of the international legal system, peacebuilding, human rights law and international humanitarian law, international legal theory and feminist international legal theory.

More information on Judge Charlesworth's candidacy can be found [here](#).

Fifth Intergovernmental Conference on the Biodiversity Beyond National Jurisdiction treaty

From 15-26 August, Australia participated in the fifth Intergovernmental Conference on Biodiversity Beyond National Jurisdiction (BBNJ). States are progressing negotiations for a new implementing agreement under the UN Convention on the Law of the Sea (UNCLOS) for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. Delegations made substantial progress to agree a considerable amount of text, but negotiations fell short of finalisation.

Several key issues remain unresolved. States have not yet agreed on the nature of benefit-sharing arising from the utilisation of marine genetic resources of the high seas. Underpinning this are differing views on the legal principles applicable to the high seas and some of its resources. Other issues to be negotiated relate to the extent of the decision-making powers of the Conference of the Parties, the possibility of an opt-out process as part of decision-making on area-based management tools, thresholds for decision-making, dispute settlement and the institutional arrangements to be established.

Australia, along with many other States, is working towards conclusion of the new treaty when negotiations resume in early 2023. A concluded treaty will help protect the biodiversity of the high seas – currently one of the least protected areas in the world, covering over half of the earth's surface.

Australia worked hard at the fifth session to pursue a treaty that delivers meaningful conservation benefits and supports marine scientific research and innovation. We worked constructively with other States to build consensus, including with Pacific Island countries, New Zealand, Canada and Norway to secure broad support for a provision protecting the traditional knowledge of indigenous peoples and local communities.

To get the treaty over the line at the resumed session, all delegations will need to work together to find new and creative solutions to outstanding issues. Australia will seek to preserve the progress made during negotiations in August and work constructively towards conclusion.

UNCLOS 40th anniversary celebration at UN New York

On 15 November, the Permanent Mission of Australia to the UN in New York co-hosted a virtual dialogue with the Permanent Missions of Brazil and the Philippines to celebrate the 40th anniversary of the adoption of UNCLOS. UN Chief Legal Counsel, Under-Secretary-General Miguel de Serpa Soares, delivered the opening remarks.

The event involved discussion of UNCLOS' application to new and emerging technologies in the context of fisheries, maritime autonomous vehicles, deep sea mining and marine scientific research in the high seas. The expert speakers for the event were ANZSIL members Professor Natalie Klein (UNSW) and Dr Camille Goodman (University of Wollongong), as well as Maria Angela Ponce (Assistant Secretary for Maritime and Ocean Affairs in the Department of Foreign Affairs of the Philippines) and Professor Wagner Menezes (Associate Professor of International Law of the University of São Paulo).

The event marked UNCLOS' contribution to the maritime domain and demonstrated how UNCLOS will continue to provide the comprehensive legal framework for maritime activities into the future. During the event, Ambassador Mitch Fifield proposed the establishment of an UNCLOS 40th anniversary songbook, with initial recommendations including Six Months in a Leaky Boat (Split Enz), Under the Sea (Sebastian the Crab), and The Downeaster 'Alexa' (Billy Joel).

41st meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR-41)

The 41st meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) was held from 24 October to 4 November at CCAMLR headquarters in Hobart, with delegations attending in person for the first time since 2019.



Australia worked with other delegations to strengthen the consideration of climate change in CCAMLR. An Australian co-sponsored resolution on climate change was adopted, the first agreed since 2009. Agreement was reached in CCAMLR's Scientific Committee to a revised krill management approach, with further detailed discussions to follow. The Commission also adopted conservation measures and compliance reports as is its usual practice.

While Members were not able to agree to the adoption of proposed marine protected areas (MPAs), the Commission agreed to a special meeting on MPAs to take place in Chile in April 2023. The Australian Government committed \$AUD100,000 financial support for the special meeting. Australia looks forward to supporting Chile's role as host and to continuing engagement with all Members on the MPA proposals.

In the opening session, a number of states condemned Russia's invasion of Ukraine (including Australia). Australia was among approximately 20 CCAMLR Members that participated in a walkout during Russia's reply statement. Australia also joined likemindeds on a statement at the meeting closure, led by the EU, highlighting the impact of Russia's blocking behaviour on CCAMLR and called on Russia to respect the principle of science-based decision making and the ecosystem approach underpinning CCAMLR.

Ecuador was welcomed as the 27th member of CCAMLR. Ukraine was elected as Chair of CCAMLR for 2023-24. To strengthen institutional processes, Australia will lead intersessional work to develop a code of conduct for CCAMLR meetings that will address harassment, bullying and discrimination.

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 intersessional work and the meetings next year.

Participation in WTO Dispute Settlement

Australia–Anti-Dumping and Countervailing Duty Measures on Certain Products from China (DS603)

On 6 September, the World Trade Organization (WTO) Secretariat announced the establishment of the Panel that will adjudicate the dispute launched by China concerning Australia's imposition of anti-dumping and countervailing duties measures on imports of certain Chinese steel products, being railway wheels, wind towers and stainless steel sinks.

The first organisational meeting was held on 12 October, and the timetable and working procedures have since been finalised by the WTO Secretariat and circulated to parties. The Panel will consider two rounds of written submissions and hold two substantive hearings with the parties before finalising its report. The final report is not expected before 2024.

Further information is available on the [DFAT](#) and the [WTO](#) website.

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

New Zealand progresses CPTPP dairy dispute against Canada

On 7 November, New Zealand submitted its request for the establishment of a panel to hear the dispute against Canada regarding the administration of dairy tariff rate quotas (TRQs) under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). New Zealand's panel request, which sets out the basis of New Zealand's claim, is available on the Ministry of Foreign Affairs and Trade [website](#).

New Zealand initiated the dispute in May this year by requesting consultations with Canada. Consultations were held in June but these did not resolve matters. After careful consideration New Zealand decided to progress the dispute by requesting the establishment of a panel. This is the first dispute taken by any party under CPTPP and is the first dispute New Zealand has taken under a free trade agreement.

The next step in the case is for New Zealand and Canada to engage in a process to compose the panel by selecting three individuals to sit as panellists.

Clean, healthy and sustainable environment

On 28 July, the UN General Assembly passed a [resolution](#) (A/76/L.75) recognising the right to a clean, healthy and sustainable environment, following a similar resolution adopted by the Human Rights Council in October 2021. New Zealand voted for the resolution but issued an explanation of vote stating that it does not consider the right to have legally binding status, as the resolution is not reflective of customary international law, and the right is not agreed in any international treaty. Instead, the resolution constitutes a political declaration. New Zealand also expressed that the process by which the right was brought to the General Assembly should not be seen as a substitute for the development of international law.

ANZSIL International Economic Law Interest Group Annual Workshop

The IELIG holds an annual workshop on international trade and economic law, which encourages open and frank discussion between members of the Interest Group and guests from government, the profession and academics on international economic law issues around the world. On Friday 18 November, the Interest Group held its 2022 Annual Workshop on Zoom. The morning sessions comprised a keynote by Simon Lester (WorldTradeLaw.net) on 'The US Challenge to China's Role in the World Trading System', and a panel on WTO and regional trade issues (featuring contributions from Martin Luther Munu from Maastricht University; David Watson from University of British Columbia; Alex San Martim Portes from the Australian National University; Elizabeth Sheargold from University of Wollongong; and An Hertogen from the University of Auckland). In the afternoon, the focus shifted to international investment law with a panel on corruption and investor obligations (featuring contributions from Saurabh Sharma from Rajiv Gandhi National University and Nguyen Thi Anh Tho from Hanoi Law University) and a panel celebrating the winners of the 2021 John Jackson Prize (featuring contributions from Emma Aisbett from the Australian National University; Jonathan Bonnitcha from the University of New South Wales; Anne Orford from the University of Melbourne; and Malcolm Langford from the University of Oslo). The Workshop discussions also engaged various non-presenting attendees from a range of different countries and institutions. The Interest Group's Co-Chairs, Christian Riffell and Esmé Shirlow, look forward to the Interest Group's next meeting which will likely take place in-person in April 2023. Stay tuned for more details!

ANZSIL Member News

ESIL Monograph Prize for Anne Orford

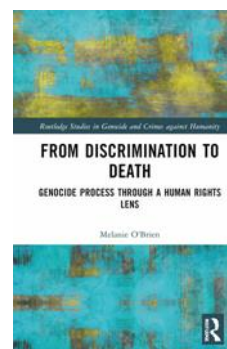
Professor Anne Orford's acclaimed book *International Law and the Politics of History* (CUP, 2021) has been awarded the 2022 European Society of International Law Monograph Prize. You can read the Judges' decision [here](#).

Sir Ian Barker Award for Karen Scott

As all ANZSIL members know, Professor Karen Scott is a formidable ANZSIL President. Her colleagues and friends are delighted to announce that the New Zealand Legal Research Foundation awarded her the 2021 Ian Barker Published Article Award for her published article, ['Does Aotearoa New Zealand Need an Oceans Policy for Modern Ocean Governance?' 35 \(2021\) *Ocean Yearbook* 273 – 339](#). The article was described as 'a magisterial contribution which will be a reference point' for future research, policy and legislation for the conservation and management of New Zealand's oceans.

Melanie O'Brien, *From Discrimination to Death: Genocide Process through a Human Rights Lens* (Routledge, 2022)

From Discrimination to Death studies the process of genocide through the human rights violations that occur during genocide. Using individual testimonies and in-depth field research from the Armenian Genocide, Holocaust and Cambodian Genocide, this book demonstrates that a pattern of specific escalating human rights abuses takes place in genocide. Offering an analysis of all these particular human rights as they are violated in genocide, the author intricately brings together genocide studies and human rights, demonstrating how the 'crime of crimes' and the human rights law regime correlate. The book applies the pattern of rights violations to the Rohingya Genocide, revealing that this pattern could have been used to prevent the violence against the Rohingya, before advocating for a greater role for human rights oversight bodies in genocide prevention.



The pattern ascertained through the research in this book offers a resource for governments and human rights practitioners as a mid-stream indicator for genocide prevention. It can also be used by lawyers and judges in genocide trials to help determine whether genocide took place. Undergraduate and postgraduate students, particularly of genocide studies, will also greatly benefit from this book.

ANZSIL members can use the code FLE22 to receive a 20% discount. Further information via [this link](#).



ANZSIL Newsletter
December 2022

Editors:

- > **An Hertogen**
University of Auckland

- > **Jordan Tsirimokos**
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

> twitter: @ANZSIL