

ANZSIL

AUSTRALIAN AND NEW ZEALAND SOCIETY OF INTERNATIONAL LAW

Newsletter

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edited by Mark Jennings

January 2003

President's news

Dear Members

Welcome to the new year – I trust all members had a restful and relaxed Christmas/New Year season and are revived and ready for 2003.

The last six months of 2002 and January 2003 have again been busy ones for Australian and New Zealand international lawyers. For ANZSIL, the Society was able to run a very successful seminar titled "From Bali to Iraq: Law and the response to Terrorism". This seminar, held in conjunction with the Institute of Criminology (University of Sydney) on 12 November, took as its starting point that the 12 October Bali Bombings and the international response raised a number of important legal issues which should be seen in the light of the US and international response to the New York and Washington 11 September 2001 terrorist attacks. The seminar drew these two events together with a contemporary focus on the law concerning terrorism and how those laws are relevant in the search for and prosecution of the Bali bombers, and the legal issues concerning the broader international response to Iraq's defiance of United Nations Security Council Resolutions. Speakers included Dr James Renwick (Sydney Bar), Dr Tim Anderson (School of Economics and Political Science, University of Sydney), Ms Shelley Wright (Sydney Law School), Mr Grant Niemann (School of Law, Flinders University; former prosecutor International Criminal Tribunal for the Former Yugoslavia), Eileen Malloy (US Counsel-General, Sydney), Professor Ivan Shearer (Challis Professor of International Law, Sydney Law School), and Devika Hovell (Gilbert & Tobin Centre for Public Law, University of New South Wales, Sydney). Of particular interest was the discussion led by Counsel-General Malloy on the US position concerning Iraq and its interpretation of UN Security Council Resolution 1441. Ivan Shearer followed that discussion with an analysis of the provisions of the UN Charter governing the use of force, and the grounds for any military intervention in Iraq.

The issues dealt with in the seminar have particular contemporary resonance as the international community watches the work of UN weapons inspectors in Iraq and waits to see how the Security Council responds to the UNMOVIC/IAEA report due at the end of January. The international law issues in the confrontation with Iraq are clearly 'front

and centre'. Of particular interest has been the debate over pre-emption, fuelled by the US position on this issue but also apparently endorsed by the Australian government with Defence Minister Senator Robert Hill calling for a reassessment of the UN Charter. In an Adelaide speech on 28 November, Senator Hill noted as follows:

Some would argue that it's time for a new and distinct doctrine of pre-emptive action to avert a threat. A better outcome might be for the international community and the international lawyers to seek an agreement on the ambit of the right of self defence better suited to contemporary realities.

This challenge and the events surrounding the Iraq crisis present an opportunity for the Society to take a lead in public debate and I encourage all members to discuss these important issues in the office, classroom and where the opportunity presents itself – in the media.

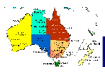
Planning is now well underway for the 2003 Annual Meeting to be held this year from 3-5 July in Wellington. Our last New Zealand Annual Meeting was in 1999 and is well remembered both for the social program and the stimulating presentations. 2003 should be no exception and the Conference Committee headed up by Treasa Dunworth (ANZSIL Vice-President) has begun work on developing the program which this year will commence with a focus on international trade law before moving into the broader theme of international institutions and governance. Given the contemporary debates over the United Nations and new bodies such as the International Criminal Court, International Tribunal for the Law of the Sea, and the WTO the Wellington meeting promises to be very lively. I encourage all ANZSIL members to note the meeting dates in their diary and begin to make plans to attend. More details on the conference program will be announced in coming months.

Finally, can I note with pleasure the recent appointment of Bill Campbell, (ANZSIL Vice-President) as a Commonwealth QC. Bill has been a long time supporter of ANZSIL and his support for the Society has been important in government circles in Canberra. His appointment as QC was well deserved and overdue.

Don Rothwell

17 January 2003

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Reports from ANZSIL Interns

Office of the High Commissioner for Human Rights (OHCHR) Geneva

I undertook an internship with the Office of the High Commissioner for Human Rights ("OHCHR") in Geneva for 5 months in 2002, after completing an Associateship to a judge of the Federal Court of Australia. The OHCHR accepts 24 interns from applicants who are postgraduate students around the world. During my internship I worked with the National Human Rights Institutions team ("NHRI team"). The internship offered diverse work experience pertinent to the domestic implementation of international human rights.

The NHRI team provides advice and assistance in establishing national human rights institutions (national human rights commissions and ombudsmen), ensuring they are established in accordance with international standards relevant to effectiveness and independence (the "Paris Principles"). The post of Special Advisor on National Institutions to the High Commissioner for Human Rights was created in 1995; the Special Advisor since then has been Mr Brian Burdekin, former Federal Human Rights Commissioner of Australia. The Special Advisor and NHRI team also act to strengthen the work in human rights of existing national institutions. Working for this team offered an opportunity to examine human rights in a number of geographic areas and across various thematic mandates. An indicative, but not exhaustive, list of issues with which I assisted involved:– national human rights commissions in Africa and the application of a human-rights based approach to development, job descriptions for officers to staff the national human rights commission in Afghanistan, a General Comment on the role of national institutions for the Committee on the Rights of the Child, follow-up in Fiji to the World Conference against Racism, and a comparison of legislation (the founding legislation of a national human rights institution and immigration legislation) which would prohibit a human rights commission from becoming involved in litigation dealing with immigration issues, a query raised by the New Zealand Human Rights Commission.

The internship has greatly added to my knowledge of various human rights issues and prompted critical thinking about ideas for their better implementation. This has been a direct result of the work with which I was engaged. It was also an indirect result of being within a city in which international law organizations are concentrated. Although busy during my internship, I was able to avail myself of opportunities to attend EXCOM meetings of the High Commissioner for Refugees, talk to representatives of non-governmental organizations, the International Labour Organisation, the United Nations Compensation Commission, other teams within the OHCHR and Special Rapporteurs, and observe Committees which were then in session (the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child). I also participated in activities organised by the Geneva Women in International Trade, a networking organization for women interested in international trade issues, and

took advantage of the free language lessons provided by the United Nations to its staff by taking Russians lessons.

I would like to thank ANZSIL for their financial support; the funds and the very existence of the internship support is a welcome affirmation that undertaking an unpaid internship is worthwhile. I thank the NHRI team (Brian Burdekin, Orest Nowosad, Anne-Marie Saladis, Jacqueline Broussin, Jean-Paul Riviere and Stephanie Kleine-Ahlbrandt) for the pleasure of working with them. I would also like to take the opportunity to thank the following:– the Australians working at the OHCHR for explaining their career routes and making sure that I was invited to functions, and the three contemporaries whose inability to read maps did not stand in the way of adventure. Lastly, I thank the interns in the Bibliotheque room in the Palace Wilson for their firm friendship; I am sure I will hear that all are continuing to work in the service of human rights in the years ahead.

Tanya Pridannikoff



Egyptian Organisation for Human Rights (EOHR) Legal Aid Project for Refugees

Internship – May to November 2002

Egypt has ratified the 1951 Refugee Convention and its Protocol. However, where many governments provide financial assistance to refugees and organisations to protect the rights of refugees, the Egyptian government does not. Most asylum seekers who gain access to the refugee status determination process are generally inadequately informed of the process and what it means to be a refugee. The Egyptian Organisation for Human Rights (EOHR) Legal Aid Project for Refugees seeks to address the lack of support in upholding the international legal rights of refugees living in Egypt. During the period of May to November 2002 I worked in Cairo as an intern for the EOHR Legal Aid Project for Refugees.

Refugees in Cairo

There are roughly 9,000 recognised refugees in Egypt (the number of potential asylum seekers is unknown but is thought to be a significantly greater number) originating from 27 countries in total. The majority of refugees in Cairo have come north from Sudan, most of them Christians from the south. There are also significant numbers of Somalis, Eritreans and Ethiopians, Sierra Leoneans and Liberians and Rwandans and Burundians among others, including Palestinians.

UNHCR Cairo Office

The Egyptian government has delegated the responsibility of providing protection and assistance to refugees arriving in Egypt to the United Nations High Commissioner for Refugees (UNHCR). It is UNHCR's role to determine refugee status, both at first instance and appeal and provide protection and financial assistance to those it recognises as refugees. The UNHCR is also responsible for organising the resettlement of recognised refugees to third countries.

EOHR Legal Aid Project for Refugees

Asylum seekers arriving in Egypt must register with UNHCR. The UNHCR then allocates an interview date and time in order to assess an applicant's claim. The lack of legal aid available for people seeking asylum in Egypt means that many asylum seekers go to their UNHCR interviews unaware of how the refugee status determination process works and how to best present their claim during the limited time available.

It was this gap in assistance that Dr Barbara Harrell-Bond, founder of the Refugee Studies Centre at the University of Oxford and now Distinguished Visiting Professor at the American University in Cairo, sought to address. Dr Harrell-Bond established the Legal Aid Project for Refugees which has been run under the auspices of EOHR since September 2001.

The project's goal is to uphold the rights of refugees living in Egypt. Initially involved in providing legal aid to refugee status applicants, members of the project now also conduct field research and write reports in order to improve policies and practices concerning refugees. Work is also being done to strengthen links between other actors in Cairo involved in refugee protection and assistance.

My involvement

Legal assistance

One of my main responsibilities working on the project was to prepare written testimonies for refugees applying to the UNHCR for refugee status, both at first instance and appeal. This task involved interviewing refugees about their reasons for fleeing their country of origin and, accordingly, writing up their testimonies. Legal arguments were included in the submission to UNHCR, outlining how a refugee client came within the refugee definition contained in the 1951 Refugee Convention. I also accompanied refugee clients to their first instance interviews with UNHCR and was involved in preparing legal submissions for those whose claims had been rejected.

I represented refugees from Sudan, Somalia and Eritrea, among others, gaining first hand knowledge of the conditions in their countries which forced them to leave. It was humbling to spend hours listening to stories told by people with such grace of the violation of their most basic human rights. Most clients had lived through horrendous events before fleeing to Egypt yet continued to raise families and live their lives in often difficult conditions around the city. Many expressed that, although life in Cairo was difficult, with refugees often living without family or financial support, they had no choice but to flee their country so as to be free from persecution.

After having worked on the project for approximately two months, I was nominated to be a supervisor in addition to carrying out my own casework. While working as a supervisor, interns sought my advice on aspects of refugee law, in particular some of the finer points of the refugee definition, as well as the content and structure of submissions to UNHCR and UNHCR procedure.

Policy committee

The project's policy committee was involved in conducting research involving refugee issues and I was very much involved in the committee's work. During my time on the project, the committee was in the process of conducting research into the experiences of unaccompanied refugee children during the refugee status determination process to determine whether UNHCR was adhering to international standards in its dealings with unaccompanied minors. I was involved at the outset in determining the scope of the research, conducting interviews with unaccompanied minors, researching the relevant international law and standards. I also helped to consolidate the findings into a report to be used as a basis for dialogue with UNHCR to encourage the organisation to improve its current practice, bringing it in line with international law.

I interviewed Sudanese and Somali youths in their homes, learning about the difficulties they faced day to day including the lack of medical assistance, their desire to be able to go to school, crowded living conditions, lack of food and having to often work extremely long hours for very little money.

Other activities

During my time working on the project I liaised with UNHCR and Egyptian State Security in respect of detained refugee clients, advocating that their rights during the refugee status determination process be upheld. I also participated in the project's outreach programme and visited members of the Sudanese refugee community to listen to their concerns and provide advice.

Final comments

The work I undertook during my time with the EOHR Legal Aid Project for Refugees gave me a significant understanding of international refugee law and how the international system of refugee recognition and protection works in practice. I also came into contact with, and was able to learn from, many of the various actors involved in refugee work including academics, UNHCR staff members and other non-governmental organisations, as well as refugees themselves. The breadth of experience I acquired working first hand with refugees making their way through the refugee status determination process was invaluable.

Working on the EOHR Legal Aid Project for Refugees stimulated my interest in international refugee law and I intend to continue working in this field in the future. I would like to thank ANZSIL for supporting me in my participation on the project.

Charlotte de Feijter
charlottedf@hotmail.com

ANZSIL MINUTES OF THE ANNUAL GENERAL MEETING

Saturday 15 June 2002 at 12.30pm

Common Room, University House, Australian National University

Present – Members:

Andrew Byrnes, Bill Campbell, Barry Connell, Treasa Dunworth, Kate Eastman, Hossein Esmaeili, Carolyn Evans, Michael Flynn, Craig Forrest, Rebecca Irwin, Stuart Kaye, Ken Keith, Andrew Ladley, Pene Mathew, Colin Milner, Matthew Neuhaus, Jacqueline Peel, Peter Radan, Rosemary Rayfuse, Roland Rich, Kevin Riordan, Gregory Rose, Don Rothwell, Shirley Scott, James Stewart, Prue Taylor, Gillian Triggs, Michael White

Persons attending by invitation:

Alex Conte, Nigel Davidson, Sue Harris, Jessica Howard, Peter Little, Julian Ludbrook, Larry Maybee, Zoe Pearson,

Apologies:

Nigel Fyfe, Ivan Shearer

Minutes:

Cathy Hutton

AGENDA ITEMS

1. Approval of minutes of last meeting

Approval of the minutes of the last Annual General Meeting held on 14 June 2001 was proposed by Barry Connell, seconded by Bill Campbell, and adopted by the Meeting.

2. Report on election of Executive Council members

(refer to this item on page one of the President's Report)

Don Rothwell welcomed the new Council members – Stuart Kaye, Shirley Scott Gillian Triggs and Nigel Fyfe (represented at the meeting by Julian Ludbrook). He thanked the retiring members Tim Caughley, Ken Keith, Pene Mathew, Anne Orford for all their work for ANZSIL in past years.

3. President's Report

Don Rothwell spoke to the Report (attached)

In particular:

- he referred to the continuing strength of ANZSIL as indicated by its very high membership renewal rate (88% for 2002)
- he thanked the Conference organising committee (Andrew Byrnes, Rebecca Irwin, Kevin Riordan and Shirley Scott) for their extremely hard work in putting the program together, a task made more difficult by the late withdrawal of Jose Ramos Horta as the keynote speaker on Friday's Timor Day
- he suggested that the two new features of the 2002 conference – themed sessions on the first day and a postgraduate workshop immediately preceding the conference – be continued at future conferences

- he explained that the relationship between ANZSIL and Centre for International and Public Law (CIPL) would need to be clarified by some kind of MOU as the ANZSIL President was now not the same person as the CIPL Director (as had been the case up to June 2001)
- he flagged the development of a similar relationship between ANZSIL and the Centre for Public Law at the Victoria University of Wellington (NZ)

4. Treasurer's Report

Pene Mathew spoke to the Report (attached). She thanked Cathy Hutton (ANZSIL Secretariat) and Paul Cooke (auditor) for their work in presenting the accounts.

The issue of life membership was raised and it was agreed that the Executive Council would consider this issue for the next AGM.

The following resolutions were then put:

1. The ANZSIL accounts for 2001 are adopted.
proposed by Pene Mathew, seconded by Kevin Riordan and approved by the Meeting
2. Paul Cooke is appointed Auditor of the ANZSIL accounts for the 2002 financial year.
proposed by Pene Mathew, seconded by Treasa Dunworth and approved by the Meeting
3. The annual membership fee is increased to \$60 from 1 January 2003
proposed by Pene Mathew, seconded by Roland Rich and approved by the Meeting

The following motion regarding continuing support for the Jessup Moot had been approved by the Council at their meeting on the previous day and was now put to the AGM

That ANZSIL continues to support three Jessup Moot teams (two from Australia, one from New Zealand), GST free, provided that ANZSIL has the financial resources available

proposed by Pene Mathew, seconded by Ken Keith. and approved by the Meeting

5. Matters raised in the Council meeting on 14 June 2002

- Future activities of ANZSIL

Don believed it was important to have an ANZSIL event in both Australia and New Zealand every year.

The NZ event for 2002 would be a one day seminar in Wellington later in the year (October?) which would involve the NZ Centre for Public Law in some capacity. Following the success of the Postgraduate workshop just held (13 June) Don would be organising a similar event to coincide with this seminar.

The 2003 conference would be in Wellington as there was a long-standing arrangement to hold it in NZ every 4 years. It would be organised on a different basis to the last one in 1999 when the ILA had been joint organiser. In 2003 the NZ Centre for Public Law was likely to be involved with the secretariat duties and the ANZSIL conference now had a well-proven and effective organisational structure.

There would be a one-day event in Canberra in 2003.

Dates for these 3 events would be set as soon as possible and members informed through the newsletter.

- ANZSIL Linkage with other Centres
ANZSIL and the New Zealand Centre for Public Law, Victoria University of Wellington (NZCPL)

The Director of NZCPL, Matthew Palmer, had previously indicated interest in establishing ties with Australian organisations and Don had had some preliminary discussion with him about the possibility of establishing a collaborative relationship. This would be particularly desirable from ANZSIL's point of view as we expected to have our 2003 conference in Wellington (generally regarded as the most suitable location for an international law conference) and NZCPL would be ideally placed to act as (or at least assist with) the conference secretariat. These early discussions had been positive, and Kevin Riordan who had also been speaking with Matthew Palmer, endorsed Don's views on the desirability of collaboration and the Director's support for such a relationship.

The issue of affiliated membership for Centres had been raised in the Council meeting on the previous day and would be further considered.

At the same time, a student member rate could once again be considered.

- ANZSIL support for students

It was noted that there were a large number of students attending the conference.

The post graduate workshop held the previous day (13 June) had been extremely successful. The 8 students who had presented papers had been very grateful for this opportunity to present to peers and to attend the conference at no charge. Similar workshops would be organised in the future

Six applications for internship funding had been received in the latest round and would be considered by a subcommittee of three members of the Council.

Continuing support for the Jessup Moot had been approved by this Meeting.

- DP O'Connell Medal

The Council had discussed this matter at the meeting the previous day. Various issues regarding the guidelines prepared by Hilary Charlesworth, Ivan Shearer and Ken Keith had been extensively covered. The Council will continue to consult and report to members as soon as practicable.

6. Other Business

Nil

The meeting closed at 1.50pm.



ANZSIL MEMBERSHIP RENEWAL 2003

The ANZSIL AGM in June 2002 approved a modest increase in the membership fee for 2003. It is now \$60 for the period January-December 2003. A membership renewal form is included with this newsletter and we look forward to receiving your renewal by the end of February 2003.



News from New Zealand

New Zealand Member of the ILC comments on the Commission's 2002 Session

On 5 November, in the New Zealand Centre for Public Law's office holder lecture series, New Zealand's ILC member, Bill Mansfield, spoke about the past, present and future work of the Commission. Looking to the future, he suggested that the Commission's decision to embark on the new topic relating to the fragmentation of international law was a potentially significant development. Procedurally, it represented a break from past practice in that the Commission had decided on an exploratory methodology whereby it will undertake a series of studies, built around the law of treaties, without deciding in advance what form its work might eventually take or what specific actions might be recommended.

As to substance, the majority of the Commission believed there were positive aspects to the so-called fragmentation of international law and many saw it as evidence of international law's vitality. Nor was the Commission disturbed by the proliferation of judicial bodies. On the other hand, it recognised that some aspects of fragmentation had the potential to create serious difficulties.

Given the Commission's responsibility to take a broad overview of international law, there was scope for it to look at some of the "fracture zones" of international law not as a kind of referee but rather with a view to identifying practical solutions to issues that may have arisen or may be on the horizon. It could also proactively seek to provide studies that might help to avoid the risk to the coherence of international law of different specialised bodies interpreting or applying such basic rules as those in the Vienna Convention on the Law of Treaties.

He was of the view that, while it was early days, the work the Commission had set itself under this topic had the potential to establish a constructive new role for the Commission at a time when some of the central ideas that led to its establishment are under challenge.

United Nations Sixth Committee

The United Nations General Assembly's Sixth Committee decided at its recent 57th meeting to re-convene the Ad Hoc Committee considering the expansion of the scope of legal protection for United Nations and

associated personnel on peacekeeping missions. The Committee will meet between 24 to 28 March 2003. Personnel are already protected to a certain extent by the Convention on the Safety of United Nations and Associated Personnel, which requires States Parties to enact additional protections in their criminal laws to protect persons covered by the Convention. The scope of protection is however limited to peacekeeping missions and does not cover other missions in which personnel are equally at risk. New Zealand has been at the forefront of an attempt to broaden the scope of protection to have the Convention apply in respect of a wider range of UN missions in risky situations. The Committee will consider this question at its March session.

The report of the International Law Commission on the work of its 2002 session was well received by the Sixth Committee. In the ensuing debate, States took the opportunity to put forward their views on the issues considered by the Commission and the specific questions that had been asked of States. Of particular relevance for New Zealand was the debate on the topic of international liability for injurious consequences arising out of acts not prohibited by international law. Many States provided excellent input for the Commission's continuing work on this topic at its 2003 session and we will continue to follow the issue closely.

Ratification of Kyoto Protocol

On 18 November 2002 the Climate Change Response Act was enacted. This will enable New Zealand to ratify the Kyoto Protocol to the UN Framework Convention on Climate Change, which it plans to do before the end of 2002. The stated purpose of the Act is to enable New Zealand to meet its international obligations under the Convention and the Protocol, and all powers and duties under the Act must be carried out in a manner consistent with this purpose (section 3). Part 2 of the Act confers on the Minister of Finance powers to trade in assigned amount units, certified emission reduction units, emission reduction units, and removal units; creates a Registry to manage units; and establishes an inventory agency to carry out New Zealand's inventory responsibilities under the Protocol. Part 3 provides compliance powers, including to obtain and verify data for inventory purposes.

WTO Dispute Settlement

Challenge to US Steel Safeguard

New Zealand, along with Brazil, China, the EU, Japan, Korea, Norway and Switzerland, is a complainant in the current WTO challenge to the safeguard imposed in March 2002 by the United States on a wide range of steel products. Canada, Chinese Taipei, Cuba, Malaysia, Mexico, Thailand, Turkey and Venezuela are Third Parties. This may thus be the largest number of participants yet in a WTO case.

Between them, complainants claim that the United States has failed to comply with nearly all of its relevant obligations under the GATT 1994 Article XIX and the Agreement on Safeguards.

The first hearing of the Panel took place in Geneva from 29–31 October. Complainants coordinated their oral statements to the Panel, dividing the heads of claim between them. The second hearing of the Panel takes place in Geneva from 10–11 December and the Panel is scheduled to circulate its Report to Parties on 28 March 2003.

Japan–Apples Dispute: NZ Third Party Participation

In June 2002, a new WTO panel was established to consider a complaint by the United States against Japan's import restrictions on fresh apples from countries with fire blight. Japan restricts the import of fresh apples from countries with fire blight by requiring a series of stringent sanitary and phytosanitary measures to be taken by the importing country. The United States is seeking the removal of all fire blight restrictions imposed by Japan on apple imports.

New Zealand's participation as a Third Party in the Japan-Apples dispute reflects its substantial interest in the issues of principle raised by Japan's fire blight measures regarding proper implementation of the WTO Agreement on Sanitary and Phytosanitary Measures. Like the United States, New Zealand considers that Japan's controls on apples are unjustified by science and violate the WTO SPS Agreement. The panel held its first hearing on 21 October 2002 and is scheduled to deliver a final decision in March 2003.

New Zealand wins WTO Challenge against Canadian Export Subsidies

On 20 December 2002 the World Trade Organisation (WTO) Appellate Body issued a ruling confirming that Canada had breached its obligations under the Agreement on Agriculture by providing export subsidies in excess of its commitment levels for certain dairy products. This is the latest stage in the longstanding WTO dispute settlement action that New Zealand and the United States have pursued against Canada.

In 1999, following the initial WTO dispute settlement action brought by New Zealand and the United States Canada was found to be in breach of its export subsidy reduction commitments under the Agreement on Agriculture. The most recent proceedings (the 'Canada Dairy Article 21.5 Second Recourse' case) arise from challenges by New Zealand and the United States to the WTO-consistency of measures which Canada purports to have taken in order to comply with the Panel and Appellate Body rulings, and thus with its WTO obligations. Canada sought to defend its claim that it had complied with the WTO ruling through its new Commercial Export Milk scheme (CEM).

In July 2002 a WTO Panel found that Canada had not complied with the WTO ruling and that Canada's CEM scheme breached its obligations under Article 3.3 and 8 of the Agreement on Agriculture by providing export subsidies listed in Article 9.1(c) of the WTO Agreement on Agriculture in excess of its export subsidy quantity commitment levels. In its 20 December 2002 decision the Appellate Body have upheld the Panel's decision. The Appellate Body's decision (WT/DS113/AB/RW2) can be accessed from WTO Documents on line site (go to www.wto.org and follow the prompts for documents).

Terrorism Suppression Act passed

The New Zealand Parliament passed the Terrorism Suppression Act in October 2002. The Act began life as the Terrorism (Bombing and Financing) Bill, implementing obligations in the International Conventions on the Suppression of Terrorist Bombings and the Financing of Terrorism. Following the 11 September attacks in the US,

the bill was expanded to include obligations in United Nations Security Council Resolution 1373. The Terrorism Suppression Act contains a regime for designating individuals and groups as terrorist entities and for freezing and seizing their property. It also contains new offences of recruiting to and participating in terrorist groups. New Zealand is now in full compliance with the financing-related obligations of Resolution 1373 and with most of the special recommendations of the Financial Action Task Force. In November 2002 New Zealand ratified both the Bombings and Financing Conventions. A second terrorism bill is currently being drafted and is expected to be introduced to Parliament by the end of the year. The Counter-terrorism Bill will implement the remaining elements of Resolution 1373 and contain a range of other measures designed to help combat terrorism by strengthening New Zealand's legislative framework. In particular, the bill will include measures to implement the Convention on the Physical Protection of Nuclear Material and the Convention on the Marking of Plastic Explosives. Once the bill is passed New Zealand will be able to accede to both conventions, and will then be party to all the international instruments on terrorism.



News from Australia

The UNCITRAL Draft Preliminary Instrument on the Carriage of Goods by Sea

The 10th session of the United Nations Commission on International Trade Law ("UNCITRAL") Working Group III on Transport Law ("the Working Group") met in Vienna from 16–20 September 2002. The Working Group continued an article-by-article reading of the draft preliminary instrument ("the draft text") on the Carriage of Goods by Sea that it had commenced at the 9th session.

The draft text proposes a new international instrument which will establish a liability regime for multimodal or door-to-door transport. The Working Group's general aims for the new instrument are that it will:

- end the multiplicity of regimes (ie the Hague Rules, the Hague-Visby Rules, the Hamburg Rules and the regional arrangements) by preparing a text which would receive widespread international support;
- reflect modern transport & shipping practices (eg e-commerce); and
- achieve a multimodal regime.

The draft text is lengthy and ambitious and covers issues such as: electronic communication; the period of responsibility; the obligations and liability of the carrier; the obligations and liability of the shipper; freight; and rights of suit. Some of these topics, such as freight, have never been comprehensively dealt with in an international treaty before.

The scope of the instrument and whether it should attempt to be multimodal (door-to-door) or be simply port-to-port in nature remains a central issue for the Working Group. Whilst the majority

of States expressed their support for a multimodal regime, there remained a number who supported a unimodal regime. To attempt to unite the Working Group, the Government of Canada circulated a paper for discussion ("the Canadian proposal") which contained the following three options:

- (1) to continue working on the existing draft instrument, but to add a reservation that would enable contracting States to decide whether or not to implement the multimodal part (especially Article 4.2.1) and the relevant rules governing the carriage of goods preceding or subsequent to the carriage by sea;
- (2) to continue working on the existing draft instrument, including Article 4.2.1 but to insert "national law" after "international convention in Article 4.2.1(b); or
- (3) to revise the existing draft instrument to include a separate chapter each on common provisions, on carriage of goods by sea (port-to-port), on carriage of goods by sea and by other modes before or after the sea leg (door-to-door), and on final clauses and reservations, including a provision on express reservations for the door-to-door chapter.

After some debate, a decision was taken not to fully discuss the Canadian proposal until the next session. The deferral of this issue meant that the Working Group were left to consider the existing multimodal draft text. To further assist the consideration of this issue, the UNCITRAL Secretariat have agreed to circulate a paper on the scope of application of the draft instrument prior to the next meeting.

The member and observer States of the Working Group appear to be highly motivated to develop a new international instrument that will modernise and harmonise the international law regarding the carriage of goods by sea. The draft text enjoys wide support from participating States as a basis for discussion on such a new instrument. Despite this, the first two sessions where the Working Group analysed the text have already identified a number of concerns with some portions of the draft text (notably in the areas of liability of the carrier and the respective obligations of the carrier and the shipper) and there are some States who have not yet expressed their support for a multimodal regime. Accordingly, there will need to be a lot of goodwill, compromises and refinement of the draft text before a new instrument can be finalised that will receive wide support from the international community.

Susan Downing
Office of International Law
Attorney-General's Department

Personalia

On 20 December 2002 the following announcement was made concerning **Bill Campbell**.

I am pleased to announce the appointment of Mr William Campbell as a Commonwealth Queens Counsel.

Mr Campbell was admitted to practice in New South Wales in 1976 and obtained a Master of Laws, specialising in international law, from the University of London in 1979.

He is currently head of the Office of International Law in the Attorney-General's Department, a position he has held for seven years.

Mr Campbell has extensive experience at the highest level in public international law, having advised government in this and related areas for more than 20 years.

He has appeared before international and domestic courts and tribunals, including, earlier this month, as Agent and Counsel for Australia before the International Tribunal for the Law of the Sea.

In 1999, Mr Campbell was awarded the Public Service Medal for his exceptional contribution in the international arena, particularly in relation to natural resource management.

Mr Campbell's appointment is an appropriate recognition of his outstanding ability and expertise in the field of international law.

The Hon Daryl Williams AM QC MP
Attorney-General

ANZSIL members will be sad to hear of the passing late last year of **Professor Jonathan Charney** a distinguished international lawyer and member of the American Society of International Law. Jon made the trip to Australia for the 2000 ANZSIL/ASIL Joint meeting and was an active participant in a variety of sessions while also taking the opportunity to engage in some travel. The following obituary is taken from the ASIL Newsletter (October/November 2002) and reproduced with permission of the American Society of International Law:

Professor Jonathan I. Charney, an international legal scholar, died on September 7 at his home in Nashville, Tennessee. His early work was for the U.S. Department of Justice where he argued his first case before the U.S. Supreme Court. He joined the Vanderbilt Law School faculty in 1972 and continued teaching there until his death. Over those three decades he earned a reputation as a challenging teacher and an advocate of excellence. His many books and articles cover a wide range of areas including international dispute settlement, international criminal law, international legal theory, the law of the sea, and international environmental law. In 1998 he delivered the Hague Academy lectures, an honour extended to leading scholars in international law. He served as a delegate to the Third UN Conference of the Law of the Sea and as a frequent consultant to the United States and other countries around the world. He believed that through diplomacy and proper adherence to international law, nations could better foster peace and manage the world's natural resources. At the time of his death, Charney was Co-Editor in Chief of *the American Journal of International Law*. He is survived by his wife of 36 years, Sharon and three children.

Geoffrey Marston died recently in Cambridge aged 62. He taught at ANU Law School from 1967 to 1970. He became a lecturer in law at Cambridge and a Fellow of Sidney Sussex College in 1973. An extension of his work for the Australian Government in preparing the Commonwealth's arguments in the Seas and Submerged Lands case

(1975) was his book *The Marginal Seabed* (1981). An indefatigable researcher in archives, Geoffrey served the British Yearbook of International Law with great distinction in compiling the practice section "United Kingdom Materials on International Law" for the past 24 years. Geoffrey was also an indefatigable traveller, and wrote whimsical pieces for his College magazine on places as far apart as Borneo and the Falklands.

The Rule of Law on Peace Operations

The Asia-Pacific Centre for Military Law (APCML) hosted a conference titled 'The Rule of Law on Peace Operations' from 11–13 Nov 2002 at the University of Melbourne Law School. The Department of Defence, University of Melbourne, AusAID and Kluwer Law International sponsored the conference.

The conference studied strategic, operational and tactical issues relating to the planning and management of peace operations from the rule of law perspective. Topics discussed included the challenges facing peace operations, Asia-Pacific regional views of peace operations; UN management of legal issues; rule of law strategies for peace operations and operational and tactical experiences and challenges facing peace operations. Syndicate discussions were also held on the framework of peace operations; cultural context of peace operations; disarmament, demobilisation, and reintegration; criminal law; police; military; human rights; accountability and transitional justice and administration.

Discussions during the conference have led to the development of a number of recommendations concerning the application of the rule of law to peace operations. These recommendations will be submitted to the UN so as to inform the Special Committee on Peacekeeping Operations of key legal issues that impact on the planning and management of peace operations. Other outcomes from the conference will be published by the APCML in the near future.

Key note speakers from the UN included Mr Ralph Zacklin, Assistant Secretary-General for Legal Affairs, Office of Legal Affairs UN; and Mr Dennis McNamara, former Deputy Special Representative of the Secretary General, UN Transitional Authority East Timor. Department of Defence speakers included Major General Timothy Ford, former Military Adviser, UN Department of Peacekeeping Operations; and Mr Shane Carmody, Deputy Secretary Strategic Policy. General Peter Cosgrove, Chief of Defence Force, Australia was the guest speaker at the conference dinner. Academic speakers included Dr Bill Durch, Henry L. Stimson Centre, USA; and Professor Michael Bothe, Chair of Public Law, Johann Wolfgang Goethe University, Germany.

Approximately 130 delegates from diplomatic, military, police; NGO and academic institutions from around the world attended the conference. Countries represented at the conference included Canada, East Timor, Fiji, India, Japan, Jordan, Malaysia, Nepal, New Zealand, Nigeria, Papua New Guinea, Philippines, Russia, Sri Lanka, South Africa, Sweden, Thailand, United States of America and Vanuatu.

The APCML conference was the first conference of the second series of the 'Challenges of Peace Operations' Project. The Challenges Project consists of a series of international seminars that examine and discuss aspects of peace operations. The Project originated from, and is coordinated by, the Swedish National Defence College in Stockholm. The Project comprises ten Partner Organisations from different countries, bound together by their common concern over the challenges and consequences of conducting peace operations. The project has two key aims: first, to explore and convey more effective and legitimate ways of dealing with regional conflict; and secondly, to foster and encourage a culture of multi-disciplinary cooperation and partnership amongst organisations and individuals from a wide variety of nations and cultures.

Further information about APCML may be found at www.apcml.org. Further information concerning the Challenges Project may be found at www.peacechallenges.net

MACQUARIE LAW JOURNAL

Call for Papers

The Macquarie University Law Journal is the initiative of students and staff of the Division of Law, Macquarie University, under the General Editorship of Alex Reilly, of the Department of Law at Macquarie University. The journal is published annually, with each edition on a specific legal theme. The journal aims to bring to the theme a critical focus from various disciplinary and theoretical perspectives. VOLUME 3: Self-Determination, Secession and the Creation of States.

The Editors welcome contributions for Volume 3 of the journal, 'Self-Determination, Secession and the Creation of States'. The Guest Editors for Volume 3 are Dr Peter Radan of the Department of Law and Associate Professor Aleksandar Pavkovic of the Department Politics at Macquarie University. Contributions can look at any of the topics - self-determination, secession and the creation of states - either separately or jointly, from a theoretical, normative or ethical perspective, and in the international law /municipal law or politics/international relations contexts. Contributions can be broadly focused or look at specific aspects such as decolonisation or the rights of minorities or indigenous peoples.

Deadline for submissions for Volume 3 is 31 January 2003. The volume will be published in May/June 2003.

Submission of Manuscripts

1. Manuscripts in the form of articles or notes be submitted to: Alex Reilly, Macquarie Law Journal, Division of Law, Macquarie University, NSW 2109. Persons interested in submitting a manuscript are requested to contact either of the two Editors, Dr Peter Radan at <Peter.Radan@mq.edu.au> or Associate Professor Aleksandar Pavkovic at <apavkovi@laurel.ocs.mq.edu.au>. General enquiries about the journal can be addressed to Alex Reilly at <alex.reilly@mq.edu.au>.
2. The word limit for manuscripts is 10,000 (inclusive of footnotes). The journal's style guide is 'Australian Guide to Legal Citation'

which can be accessed through the Melbourne University Law Review home page at <<http://www.law.unimelb.edu.au/mlr/>>.

3. Manuscripts must not have been submitted to, or substantially published in, any other publication.
4. All articles appearing in the Journal are refereed. The process of refereeing usually takes between 4 and 6 weeks. Authors will be notified as soon as possible of the decision of the Editorial Committee regarding publication.

ANZSIL 2003 ANNUAL CONFERENCE 4-6 JULY 2003

WELLINGTON

Call for Papers

A highlight of the 2003 Conference will be a full-day discussion of current developments in international trade law with a review of bilateral, regional and global regimes, including the Australia New Zealand CER (which has its twentieth anniversary this year) and recent WTO decisions. The remainder of the program will feature topical panels on international law issues including terrorism, international security, Iraq, international criminal law, law of the sea, human rights, and The Year in Review.

Papers related to any of the above topics are welcome but papers in any area of international law will be considered. New scholars and practitioners are particularly encouraged to present a paper.

Proposals and/or Abstracts should be submitted by **Monday 10 March 2003** to the ANZSIL Secretariat. Papers submitted in written form after the conference will be published in the proceedings.

The conference brochure will be sent out in April 2003 with details of registration, travel and accommodation.

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Australian National University email: anzsil@law.anu.edu.au

Canberra ACT 2600

WE WANT YOUR NEWS!

Please send material for the next newsletter to

Mark Jennings

Office of International Law
Attorney-General's Department
Robert Garran Offices
National Circuit
Barton, ACT 2600

or by email to:

Mark.Jennings@ag.gov.au

Copy deadline: 1 April 2003.

CENTRE FOR MARITIME LAW

T C BEIRNE SCHOOL OF LAW



The Centre for Maritime Law (CML) has been established within the TC Beirne School of Law, University of Queensland, led by Dr Michael White QC, Executive Director and Dr Sarah Derrington, Director. The Centre has links with the Centre for Marine Studies in the University of Queensland and other Australian and international Centres.

Courses Offered and Seminars Presented in the Maritime Law Concentration 2003–2005

2003	Semester 1	Winter Intensive	Semester 2	Summer Intensive 2003 – 2004
<p>Offshore Energy Law (LAWS 7849 Special Topic – Offshore Energy Law) CourseOutline and/or Brochure – Outline and Registration Form</p> <p>4 day intensive. Mon.3rd–Thurs.6th Feb. 2003</p>	<p>Maritime Law (LAWS5160/7160)</p> <p>Normal LLB/JD Semester 1 lecture course</p> <p>Sea Carriage Law (LAWS7876)</p> <p>4 day Intensive. Tues 25–Fri 28 February</p> <p>Introduction to Maritime Law (LAWS6900)</p> <p>Grad.Dip.Mar.Studies. Lecture program–mainly for Centre for Marine Studies scholars.</p> <p>Marine Environment Pollution. Masters Online. (LAWS7867)</p> <p>Masters course covering 13 weeks – Online Only. No lectures.</p>	<p>International Maritime Law Arbitration Moot (LAWS5161/7161)</p> <p>27 June–1 July. At NUS, Singapore</p> <p>Marine Environment Pollution (LAWS7867)</p> <p>4 day Intensive. Mon 14–Thurs 17 July</p>	<p>Shipping Law (LAWS7865)</p> <p>Intensive. Mon 29 Sept.–Thurs 2 October</p> <p>World Maritime Day Seminar: “In Search of an Australian Shipping Policy” 25th September</p>	<p>Law of the Sea (LAWS7866)</p> <p>4 day Intensive. Late Jan./early Feb. 2004</p>