EDITORS’ WELCOME

Welcome to the seventh edition of Ad Hoc, the online newsletter of the Melbourne Journal of International Law.

It is our great pleasure to announce the publication of edition 10(1), celebrating the 10th anniversary of the Journal. To mark this milestone, edition 10(1) features a series of reflection pieces on key areas of international public and private law, raising both theoretically- and practically-orientated questions of inclusion, justice, equitable access and regulatory reform within international legal scholarship. In these pieces, prominent academics and past authors of the MJIL reflect upon the past decade of international law within their field of expertise and contemplate future developments and challenges.

In addition, the edition brings together an array of scholarship on generalist topics of international law. Lisa Spagnolo’s article on the (mis)application of the Vienna Sales Convention in Australian courts is an in-depth analysis on recent domestic decisions that have grappled with applying the Vienna Convention on the International Sale of Goods. Further topics considered in edition 10(1) range from the legal regulation of financing climate change mitigation (by Jolene Lin and Charlotte Streck), to the potential for a Nuclear Weapons Convention (by Tim Wright) and Larry Catá Backer’s case note conceptualising transnational regulation of multinational corporations through ‘soft’ law regimes.

Further, this is the first year that MJIL has published short book reviews. These reviews intend to provide our readers with a brief introduction to a particular book and to situate the book within its field of scholarship. We envision that these reviews will be useful in allowing scholars and practitioners to remain up-to-date on recent literature on international law.

This edition of Ad Hoc contains reports by members on our Editorial Committee about their involvement with the Melbourne Law School Jessup Moot Team, the annual Shanghai Forum, attendance to the International Trade Law Symposium in Canberra and involvement with the Center for Transnational Legal Studies. We also report on our Annual Cocktail Evening, which was an excellent opportunity to celebrate our 10th anniversary and the people who made it happen.

We would like to sincerely thank the University of Melbourne and our major sponsors, Allens Arthur Robinson and Mallesons Stephen Jaques, for their continued support and generosity.

We hope you enjoy this edition of Ad Hoc.

Laura Bellamy, Sara Dehm and Jeremy Leung
2009 Editors

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Last summer, I (perhaps madly) put my hand up to be part of the Melbourne Law School Jessup Moot Team. This year was the 50th anniversary of the Jessup, and one of the largest in the competition’s history, with over 500 teams from more than 80 countries competing. Perhaps due to it being the 50th anniversary, we were lucky enough to have an incredibly exciting problem. The problem related to tensions between human rights and sovereignty, child abuse by UN peacekeepers, religious fundamentalism, classified security intelligence, and terrorism thrown in for good measure. You may have seen a bit about the problem in scores of law school marketing paraphernalia over the last six months.

There is no way that I can do justice to what I have learnt from the Jessup in the short space I have here. It’s such a horrible cliché, but I do feel like I learnt as much over those four months as I have in the rest of my degree. I learnt to research properly by jumping in the deep end; trying to get across some of the most controversial and uncertain areas of international law in a couple of weeks. I learnt just how hard it is to work, and what you can get done when you take sleep off the table (in the last couple of weeks leading up to our written submissions being due, we were doing 18–20 hours a day, seven days a week).

I learnt an incredible amount about many areas of public international law, and for the first time really came to appreciate the depth and complexity of it. Having the chance to engage in discussions with incredibly passionate and knowledgeable academics and gain insight into the nuances and debates was invaluable in this. I learnt how to moot persuasively, how to spar with a judge, and even better, how to charm a bench. Most importantly, I got the chance to work in a real team: a team in which everyone was committed, everyone was engaged and we all had each others’ backs. That level of teamwork is pretty rare. I think it is telling that there is a ‘fraternity’ of sorts of past Jessupers who all seem to feel they share a unique experience.

Finally, winning the Jessup in Australia was an incredible personal experience. Mooting in the High Court in front of Chief Justice French and Hilary Charlesworth was a huge adrenalin rush and getting the chance to go to Washington DC (as well as a sneaky New York holiday afterwards) was unbelievable. On a more fundamental level, having the chance to achieve my goals and see through a project I was so personally invested in was hugely rewarding (even if we didn’t manage to bring home a trophy from Washington DC).

I guess I’d just end this gush by recommending the Jessup to other MJIL members. It is a huge commitment: more work than anything you can really imagine or prepare for, and there was definitely more than once when I asked myself what on earth I was thinking. But it is also incredibly rewarding: a rare chance to really immerse yourself in an incredibly interesting subject area and work intensely on a project with a group of people who are equally committed. If you’re proud to fly the international law nerd flag, there’s nothing at law school I could recommend more.

Sienna Merope
MJIL General Member 2009

MJIL is pleased to announce the appointment of the following MJIL members to the 2010 Jessup Moot Team: James Ellis, Steven Muirhead, Jordina Rust and Nahal Zebarjadi. We wish them all the best for their upcoming competition.

(L–R): Associate Professor Tania Voon, Sienna Merope, Felicity Ryburn, Sonja Zivak, Seamus Coleman, Dave Heaton, Associate Professor Andrew Mitchell. Associate Professors Mitchell and Voon are both MJIL Advisory Board members
CONCERNS OVER ECONOMIC GLOBALISATION: 2009 SHANGHAI FORUM

In an elaborate display of Chinese talent to an international audience, local musicians performed both Chinese and international classics during the opening ceremony of the 2009 Shanghai Forum, held from 10 to 12 May 2009 and hosted by Fudan University.

The theme this year was ‘Economic Globalization and the Choice of Asia: Crisis, Cooperation and Development’ and featured top academics, business leaders and political representatives in critical debate of the major issues faced by businesses and national economies today.

During the opening presentations of the forum, key representatives from international and regional organisations including Dr Daisuke Kotegawa of the International Monetary Fund and Dr Ong Keng Yong formerly from the Association of South East Asian Nations discussed topics including the influence of China in international organisations — a topic which prompted intense debate on stage. Amongst other debates, it was fascinating to watch the international community beckon the Chinese Government to practise internationally accepted norms in the most diplomatic ways. However, the buoyant Chinese economy often proved to be a powerful trump card to such attitudes.

International organisations and trading partners acknowledged the growing importance of the Chinese economy — an influence even more pronounced in these financially unstable times, and one that was clearly reflected in the pride of the Chinese people. One particular highlight was witnessing the political interplay between individual countries and economic organisations as parties negotiating to find effective economic solutions.

The Forum was divided into a series of smaller sub-forums, facilitating participation by observers in matters of contention such as international financial market regulation. As one of the three invitees from Australia amongst over 200 international guests, I had the opportunity to question influential Chinese speakers on the controversial increment of the Chinese presence in the Australian resources sector during a discussion on international cooperation in energy industries. The responses were mixed: some were enlightening, as they revealed motivations undisclosed to the Australian public, while others reacted in a puzzling manner by referring to distinct Chinese attitudes and mentalities that would seem foreign to the Western-educated.

I had been invited to the Shanghai Forum as part of the ‘Young Leadership Union’ — comprising students representing 17 countries who have been selected to present their written submissions on the current economic crisis in one of the sub-forums. My paper spoke of the ineffectiveness of the piecemeal and protectionist solutions adopted by many governments in the financial crisis, proposing a more pervasive reorientation of societies and economies. Drawing from a diverse range of resources, including the works of economics Nobel Laureates and interviews with Australian entrepreneurs, I submitted a broad series of solutions founded upon evolving societal values, demographics and future economic trends. I aimed to offer fresh perspectives on age-old problems while proposing solutions that would enable countries to reap the rewards of a globalised and integrated economy in the long run.

At the Union’s sub-forum, participants of various disciplines and education levels expressed diverse perspectives and ideas to tackle the economic problems at hand. In contrast to other discussions, the views presented by the Union generally embodied much more innovation and optimism for the future, without the political overtones which often taint economic issues. To some observers, this signalled hope and confidence that future generations of leaders may be able to put aside political history in pursuit of higher economic goals.

Outside of the formal forum, volunteer hosts from Fudan University gave us a taste of Chinese life and culture. We painted kites with primary school children, explored the vibrant nightlife in the French Concession, and in true Chinese custom, we were treated to scrumptious local cuisine. Although short, the cultural experience and exposure to the multitude of perspectives in economic and political decision-making made the 2009 Shanghai Forum a most memorable and enriching experience.

Zoe Wong
MJIL General Member 2009

Zoe Wong at the 2009 Shanghai Forum in May 2009.

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INSIGHT INTO THE INTERNATIONAL TRADE LAW SYMPOSIUM

International trade lawyers representing the Attorney-General's Department, Department of Foreign Affairs and Trade, the Law Council of Australia, major Australian law firms, along with academics from across the nation met at Old Parliament House over two days in April to discuss recent developments in international trade law and the implications for Australia.

The symposium was a unique chance to hear the insights of not only academics, but also those of our government's representatives involved in real world practice of international law in trade negotiations and dispute settlement. The Attorney-General, the Hon Robert McClelland MP, opened the symposium summarising those issues that the government is currently focusing its efforts on, such as winding up negotiations in the Doha Development Round and increasing Australia's international competitiveness through harmonising domestic regulation in the legal profession and international arbitration.

Several other government trade lawyers provided particularly interesting progress updates on recently completed and ongoing trade negotiations and disputes such as the Free Trade Agreements (‘FTAs’) with Chile and China, the ‘Apples’ dispute with New Zealand, and the slow march towards consensus at the Doha round of WTO negotiations. Implicit in the discussions was a focus on ‘deeper’ economic integration beyond FTAs, an area expanded on by Andrew Elek from ANU, claiming that the future for trade liberalisation lies in harmonisation of domestic regulation, capacity building, transparency and a stronger understanding of e-commerce.

Beyond the input of the government, academics shared their perspectives on a wide range of developments in international law. In this respect, the Melbourne Law School was well represented by faculty members and students. Dr Margaret Young spoke about the potential impact of WTO law on climate change regimes, encouraging discussion, for example, on how domestic regulations on environmental product labelling might affect trade obligations and how interaction between institutions might play an important role in the future. Dr Andrew Mitchell and Dave Heaton discussed the concept of the ‘inherent jurisdiction’ of WTO dispute panels, questioning the potential of equitable remedies such as estoppel to be raised in trade disputes, which linked to further discussions on the judicialisation of WTO panels and proposed reforms to the appellate body. Finally, Mr Jürgen Kurtz discussed the results of his cross-country survey of market-related regulatory responses to the global financial crisis and their potential collective effect on investment disputes, noting particularly that commercial investors will only feel safe operating in the current climate if they continue to be assured of the legal certainty of their investments in foreign jurisdictions.

The symposium was a remarkably insightful experience, one that reassured me that our nation’s representatives and academics do not operate in separate realms of existence, and left me satisfied that voluntarily spending money to visit our nation’s fast-paced capital was certainly worth the expense.

James Thomas
MJIL General Member 2009

A GLOBAL EDUCATIONAL EXPERIENCE AT THE CTLS

The Center for Transnational Legal Studies (‘CTLS’) is an innovative joint-venture between 10 law schools across the world coordinated by Georgetown University. Melbourne Law School is the only Australian representative. This unique educational program brings together faculty and students from the participating law schools to London where we learnt and exchanged perspectives on international, comparative and transnational law.

Last year, I was fortunate to have been selected to attend the first semester of this ambitious program. From the initial address given by Professors David Cole and Nina Pillard from Georgetown University, we were told that the CTLS was a response to growing pressures to impart students with a globalised education. The CTLS certainly lived up to its objective. From the initial orientation session, Professor Carrie Menkel-Meadow guided us through the Global Practical Exercise where we worked through a simulated international commercial arbitration and transnational litigation. Each subject was taught by faculty members from the participating schools. I had the benefit of Professor Kerry Rittich and Professor Sornarajah teaching a course on ‘Globalisation, Governance and Justice’ and Professor Guy Pessach on comparative and transnational aspects on copyright law and transnational legal issues pertaining to art and culture. The Center was also privileged to host well-known academics presenting working papers in our transnational colloquia including Professor Jeffrey Jowell, Professor Conor Gearty and past MJIL author, Professor Philippe Sands QC.

However, the element that distinguishes CTLS from other academic programs is the global community which it builds. I admired the collection of high calibre students and teachers that brought their unique perspectives to the social milieu, each moulded by their cultural heritage, background and social upbringing. I hope more students are as privileged to experience such a forward-thinking and innovative learning institution.

Jeremy Leung
2009 MJIL Editor

Congratulations to the following MJIL members who will attend the CTLS program in 2009–2010: Laura Bellamy, Liz Kofoed, Hannah Kotzman, Claire Roberts, James Thomas, and MJIL alumnus, Devon Whittle.
A SPECIAL EVENING: MJIL ANNUAL COCKTAIL EVENING

As the Journal celebrates its 10th anniversary this year, the Annual Cocktail Evening always promised to be a special evening. It was exceptionally appropriate to commemorate the Journal’s illustrious journey in the Treasury, which housed the historic Bank of Australasia and recalled Melbourne’s prosperous heritage. The evening exceeded all expectations with a fantastic turnout by the Editorial Committee and friends of the Journal including Melbourne Law School faculty members, authors, alumni and distinguished guests. Our guests included Melbourne Law School Dean, Professor James Hathaway, former International Crisis Group President, Gareth Evans, and Honorary Advisory Board member and former President of the International Monetary Fund, William Holder. It was evident that all the attendees have as much fondness for the Journal and its missions as we do.

In keeping with the evening’s sentiments on celebrating the Journal’s development, Anne Orford, the inaugural Michael D Kirby Professor of International Law, provided the feature address. It comes as no surprise to invite Professor Orford who has been a constant supporter of MJIL and a mentor for generations of editors. To echo edition 10(1)’s feature, ‘Reflections on a Decade of International Law’, Professor Orford spoke to the development of ‘Responsibility to Protect’.

We were also privileged to have two of the founding editors, Suzan Davies and Peter Henley, speak of MJIL’s history and how it was borne from an idea between five ambitious friends and Professor Tim McCormack, who continues to preside as an Advisory Board Member. In particular, Suzan Davies cheekily remarked that the Journal’s exponential growth can be measured by its presence in a cross section of libraries globally!

It was also a pleasure to announce the three new Editors who will take the reign in 2010 — Tim Farhall, Chris Hibbard and Mary Quinn. In all, the evening was a huge success that marked not only how far the Journal has come but also glimpsing the enthusiasm and spirit evident in next year’s editorial committee. It shows that MJIL has and will continue to make a bold impact on international legal scholarship.

Jeremy Leung
2009 MJIL Editor

We would like to thank all those who helped us celebrate our 10th anniversary and for sharing such a special evening with us.

We wish Tim Farhall, Chris Hibbard and Mary Quinn, the 2010 Editors-elect, all the best in their upcoming term.
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As a leading centre for international law scholarship and teaching, Melbourne Law School continues to attract world-renowned scholars, teachers and practitioners of international law. Each year, the Law School hosts a variety of events and workshops to facilitate and promote these distinguished guests.

In recent months …

- Professor Panos Koutrakos, Professor of European Union Law at the University of Bristol, presented ‘The International Role of the European Union’, on 18 March 2009, as a part of the Melbourne Law School Guest Lecture Series.

- Professor Gerry Simpson, Chair of Law at the Law School, and Professor of Public International Law at the London School of Economics and Political Science, presented the Inaugural Professional Lecture: ‘War Crimes Trials, Solemnity and the Problem of Evil’, on 22 April 2009. The lecture considered international law’s encounter with evil, particularly how this ‘encounter’ has been defined by the requirements of solemnity, legality and remembrance and by, what Thomas Hardy termed, ‘satires of circumstance’.

- Ms Emily Chew of YWCA Australia, and Rachel Ball, Lawyer with the Human Rights Law Resource Centre, presented ‘Using International Treaties for Local Change’, a Social Justice Seminar hosted by the Melbourne Law Students’ Society, on 6 May 2009. This Seminar discussed some of the findings of the Shadow Reports, the lifecycle of a shadow report, and the broader mechanics and merits of the international treaty system.

- Mr Jürgen Kurtz, Senior Lecturer at the Melbourne Law School, presented ‘International Law, Market Regulation and Financial Crisis’, on 12 May 2009, as a part of the Melbourne Law School Guest Lecture Series.

- Professor Peer Zumbansen, Canada Research Chair in Transnational and Comparative Law of Corporate Governance at Osgoode Hall Law School, York University, presented ‘Transnational Law and Transnational Legal Pluralism: Methodological Observations’, on 3 June 2009. The lecture explored the advantages of a comparative perspective on law and political economies in facing the challenges of the global financial crisis. This lecture was a part of the Institute for International Law and the Humanities Seminar Series.


- Ms Gina Heathcote, academic at the School of Oriental and African Studies in London, presented ‘From Security Council Resolution 1325 to 1820’, on 28 July 2009, as a part of the Institute for International Law and the Humanities Seminar Series. This lecture focused on the discrepancy between the requirement of participation evident in Resolution 1325 and the framing of Resolution 1820 as a response to sexual violence.


- Professor Yasuhei Taniguchi presented a seminar, ‘Enforcement Problem in the WTO — Success, Limitations and Possible Improvement’, reflecting his time on the Appellate Body of the WTO and also commenting on current critiques of the WTO Dispute Settlement Body. This was presented on behalf of the Asian Law Centre and the Institute of International Law and Humanities.

- Dr China Miéville, Honorary Research Fellow at Birkbeck, School of Law, University of London, presented ‘Multilateralism as Terror: International Law, Haiti and Imperialism’, on 20 August 2009 as a part of the Institute for International Law and the Humanities Seminar Series.

- Professor Gerry Simpson held a conversation with Dr Gideon Boas, Monash University, about Dr Boas’ time as Senior Legal Officer at the International Criminal Tribunal for the former Yugoslavia, on 17 September 2009 as a part of the Global Justice Studio.

- Professor Gareth Evans, former President of International Crisis Group, presented a lecture on on 22 September 2009 as a part of the Law Week 2009 Orations.

And coming up …

- On 28 October, Dr Ann Genovese as a part of the Institute of International Law and Humanities will convene a symposium entitled, ‘Interregnums: Between the National and the Post-National’.

- On 9–10 November, Professor Anne Orford will host the workshop, ‘Reason of State: Security, Civility, Immunity and Life’, held jointly by Institute of International Law and Humanities and the Australian Research Council.
MJIL would like to thank its sponsors for their generous support

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THE UNIVERSITY OF
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ALUMNI NEWS

This year, we invited recent graduates Zach Meyers and Allen Clayton-Greene to reflect on their time beyond the Law School at our sponsor firms: Allens Arthur Robinson and Mallesons Stephen Jaques

Allen Clayton-Greene

After a 6 month stint as a barista at Cafe Plum, and a swift trip around the USA and People’s Republic of China, and a year as an Articled Clerk in the Commercial Litigation department, I am currently completing my second rotation, and working as a first year Energy & Resources lawyer at Allens Arthur Robinson. The highlight of my experience at AAR has not, as some people might believe, been the ability to answer the phone as ‘Good morning, this is Allen at Allens’, nor was it being referred to as Allen Clayton Utz by another party to a litigation dispute! Instead, I was privileged with the experience to go to the High Court in Canberra as part of a team representing Rio Tinto (Iron Ore) Pty Ltd.

I still keep in close contact with many former MJILites (having an office next to two of them — Fergus Green and Lydia Wong — certainly helps!). My fondest memory of MJIL life was the training sessions, featuring diagrams and dubious subtitles on anime clips, that were run by Chian, Fergus and Francis, although the hilarious editorial meetings run by Natasha, Bronwyn and Rob come a very close second (especially when they featured catering by Marina and soccer discussions with May and Natasha). In order to keep my passion in things international alive, I am planning to visit Japan/South Korean later this year.

Zach Meyers

I’m currently completing my graduate year at Mallesons Stephen Jaques. After spending four months in the Competition team, I’m currently working in Workplace and Employee Relations for another two months before rotating into the Dispute Resolution group.

The highlights and the challenges of life as a law graduate are really one and the same — being continually thrown into the deep end of legal issues, and learning to swim along the way, is both a challenge and enormously rewarding. I’ve been amazed at the diversity of work, which has involved everything from touring telephone exchange buildings and learning about French spectrum licensing regulations, to executive salaries and sexual harassment claims, through to touring the city to find and photograph misleading advertising. In short, it’s enough to keep me on my toes — and to minimise MJIL withdrawal symptoms somewhat.

That doesn’t mean I’ve strayed too far from international law or editing — I co-edit the firm’s monthly human rights newsletter and have worked on a number of matters for corporate clients involving discrimination issues that engage human rights law. There’s also plenty of pro bono matters, many of which involve international human rights law or the Victorian Charter of Human Rights and Responsibilities.

Despite the human rights work, my proudest moment was finalising an advice on the legal definition of a glass (my final conclusion, after much consideration of the existing jurisprudence, was that a glass is a receptacle with no particular volume).

Alumni in Brief

Congratulations to May Ling Low, 2008 Editor, and Laura Deschamps Ferrari, 2005 Editor, on their marriages to their respective partners. We wish you every joy and happiness!

Fergus Green, 2006 Editor, will be attending the Copenhagen Climate Change Summit in December 2009. We hope to have him report on his experiences when he returns.

After leaving MJIL, Devon Whittle completed an internship at the International Criminal Tribunal for the former Yugoslavia. You can read about his adventures and time spent at the ICTR at his blog: www.james5.org/.

Do You Have Alumni News?

If you are a member of MJIL’s alumni and your contact details have changed, or about to change, please contact us so that we can update our records.

If you would like to be featured in our Alumni News in the next edition, we would be delighted to hear from you.
NEW APPOINTMENTS TO MJIL

The Editors would like to congratulate the following Journal members on their appointment to the Editorial Board:

Executive Board:
Harini Amarasinghe (Submissions Coordinator)
Ashlee Briffa (Sponsor Liaison Officer)
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Millie Williams
Zoe Wong
Fei Wu
Celine Yim
Albert Yu
June Xu
Nahal Zebarjadi

MJIL HONOURS GRADUATES

MJIL would like to congratulate the following alumni on their recent graduation with Honours in Law from the University of Melbourne:

Alex Bowen
Philippa Duffy
Jeff Holowaychuk
Rebecca Hughes
Jensen Li

Emma Sandford
Minjie Shen
Naomi Smith
Andrew Wright

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