Welcome to the fifth edition of Ad Hoc, the biannual newsletter of the Melbourne Journal of International Law.

We are delighted to announce the imminent release of volume 9(1) of the Journal, comprising an exciting and diverse collection of pieces which we hope will push the boundaries of international legal scholarship. This volume draws together theoretical and practical perspectives on themes including gender, human rights, responses to climate change and international trade.

Professor Janet Halley’s article takes a critical and interdisciplinary approach, drawing upon literary debates and feminist theory to question the criminalisation of rape in international law. Justice Kirby explores the growing transnational dialogue between judges on international human rights jurisprudence, commenting on the scope of this dialogue in the Australian context. A contribution by Antony Taubman, Acting Director and Head of the Global Intellectual Property Issues Division of WIPO, discusses the role of the TRIPS dispute settlement process in shaping Australia’s intellectual property policy. A case note on the current ICJ case of Ahmadou Sadio Diallo addresses the protection of shareholders’ rights under international law. Anna Dorevitch and Dr Michelle Foster present an insightful and comprehensive assessment of Australia’s protection of victims of sex-trafficking under migration and refugee law. It also gives us particular pleasure to be publishing a piece by Fergus Green, a former MJIL Editor, on the issues arising from the fragmentation of the doctrine of international legal personality.

This edition of Ad Hoc also reports some of the many international law-related events at the Melbourne Law School, including distinguished guest speakers and the recent successes of its moot teams.

Finally, we would like to thank our sponsors for their generous support which enables the Journal to continue to contribute to and promote international legal scholarship. This year, we would particularly like to welcome Deacons as a major sponsor and to reiterate our appreciation to our continuing sponsors for their commitment: Allens Arthur Robinson, Blake Dawson, Mallesons Stephen Jaques and Rio Tinto.

We hope you enjoy this edition of Ad Hoc.

Rebecca Hughes, May-Ling Low and Zach Meyers
2008 Editors

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MELBOURNE LAW SCHOOL HOSTS A VISIT BY HINA JILANI: SPECIAL REPRESENTATIVE OF THE UN SECRETARY-GENERAL ON THE SITUATION OF HUMAN RIGHTS DEFENDERS

The University of Melbourne Human Rights Forum was established in 2005 to create a focal point from which to foster interdisciplinary research and informed discussion on human rights issues. It seeks to promote dialogue and approaches to human rights and facilitate outreach to the broader community on current human rights issues. When the Human Rights Forum was established, one of its aims was to host an international visitor with wide-ranging expertise in human rights at the University. In accordance with this aim, the Convenor invited Ms Hina Jilani to visit the University as the 2008 International Visitor of the Human Rights Forum.

Hina Jilani is the Special Representative of the UN Secretary-General on the situation of Human Rights Defenders. She is an advocate of the Supreme Court of Pakistan and was a founding member of the Women's Action Forum, the Human Rights Commission of Pakistan and the first legal aid centre in Pakistan. Ms Jilani was a member of both the International Commission of Inquiry on Darfur established by the Security Council and the UN Expert Group on Darfur.

Ms Jilani is the recipient of a number of awards, including the Human Rights Award of the Lawyers Committee for Human Rights, the Millennium Peace Prize for Women and the Human Rights Litigation Award of the American Bar Association.

Ms Jilani’s visit to the University of Melbourne (31 March – 5 April) attracted wide-ranging interest from members of the University, the public and media, and offered an extraordinary opportunity to engage with the human rights and legal community.

On Tuesday 1 April, Ms Jilani gave a public lecture in the Melbourne Law School to an audience of approximately 300 people on the subject of ‘Defending Human Rights’. She discussed the difficulties faced by human rights defenders in many regions of the world and the national and international mechanisms for protecting their work. The lecture was introduced by the Hon Justice Lex Lasry of the Supreme Court of Victoria. Following the lecture, the Human Rights Forum hosted a dinner at University House. In attendance were Susan Brennan (World President of the YWCA and member of the Victorian Bar), the Rt Hon Malcolm Fraser, the Hon Justice Lex Lasry, Philip Lynch (Director of the Human Rights Law Resource Centre), Professor Tim McCormack, Brian Walters SC (former President of Liberty Victoria) and three members of the Human Rights Forum Steering Committee (Alison Duxbury, Associate Professor Dianne Otto and John Tobin).

Ms Jilani’s visit to Melbourne as the Human Rights Forum’s inaugural international visitor was very successful. Feedback from events held at the University has been extremely positive and we have received numerous requests for copies of her speeches. The external events were also very well attended with the Law Institute reporting that the seminar with Ms Jilani was one of their best.

In conclusion, the visit by Hina Jilani to the University of Melbourne Human Rights Forum provided an excellent opportunity for the University to profile its expertise in the area of human rights and to enable students to engage with a prominent international human rights lawyer. The range of media and public interest aroused by the visit, combined with Ms Jilani’s willingness to engage with the University and wider community while in Melbourne, strengthened and deepened our links with the human rights and legal community.

Alison Duxbury
Convener of the Human Rights Forum and Senior Lecturer at the Melbourne Law School.
Melbourne Law School competed in the regional round of the European Law Students’ Association WTO Moot Court Competition in Adelaide from 12–15 March 2008. The competition was hosted by the Institute for International Trade ('IIT') at the University of Adelaide and held at the Oaks Plaza Pier Hotel in Glenelg. For the Melbourne team, it represented the culmination of approximately four months of hard work.

The team comprised four LLB students: Olaf Ciolek, Emily Long, Jessica Rae and Devon Whittle. They came together in late November 2007 for their first meeting with their coaches (Drs Andrew Mitchell and Tania Voon) to begin researching the problem, which focused on the WTO’s General Agreement on Trade in Services, with particular focus on trade in telecommunications services. The issues raised by the problem involved the Annex on Telecommunications, the Reference Paper (as adopted by the respondent in the case), anti-competitive practices, market access, national treatment and domestic regulation.

The team finalised its written submissions — for both the complainant and the respondent — on 14 January 2008, after many weeks of long days and late nights in the law library. The next two months were spent earnestly working on oral mooting skills, fine-tuning arguments and learning how to present technical ideas as simply as possible.

On 6 March 2008, shortly before departing for Adelaide, the team held an exciting Exhibition Moot before a tough panel of five experts: Michael Coleman (General Counsel, Telstra Wholesale), Peter Gallagher (Principal, Inquit Communications), Dr Gavan Griffith QC (barrister and international arbitrator), Professor Anne Orford (Australian Professorial Fellow and Director of the Institute for International Law and the Humanities, Melbourne Law School) and Peter Truswell (Executive Officer of the WTO Disputes Section, Trade Law Branch, Department of Foreign Affairs and Trade (‘DFAT’)).

The oral rounds in Adelaide comprised three Preliminary Moots for each team and then a Grand Final, held on Saturday 15 March. The Preliminary Moots revealed a diversity of mooting styles and arguments on the part of opposing teams, and the Melbourne team was excited to enter the Grand Final ranked first. The Grand Final between the University of Melbourne (complainant) and the Victoria University of Wellington (‘VUW’) (respondent) was of a very high standard and adjudicated by five eminent judges: Victoria Donaldson (Visiting WTO Fellow, IIT and Counsellor, WTO Appellate Body Secretariat), Professor Mary Hiscock (Emeritus Professor of Law, Bond University), Melissa Kelly (DFAT), David Morgan (Director, Economic Analytical Unit, DFAT) and Andrew Stoler (Executive Director, IIT).

The Grand Final was a tight competition and the Melbourne team-members’ nerves were running high as they awaited the final results to be announced at the presentation dinner on the evening of the Grand Final. After all those late nights spent writing, the Melbourne team was thrilled to receive the awards for Best Complainant Written Submission, Best Respondent Written Submission, and Best Overall Written Submissions. The team also received the award for Runners-Up in the regional round. The VUW team was announced the winners of the round, and the Melbourne Law School wishes the team luck as they proceed to the final rounds to be held in Geneva in April–May.

Although naturally disappointed to end their WTO mooting experience in Adelaide, the members of the Melbourne team are extremely pleased with their achievements and with their decision to participate in the competition, which has led to a range of fantastic experiences. The team and their coaches thank the many people both within and outside Melbourne Law School who provided assistance in judging practice moots and discussing complicated aspects of WTO law. They are also very grateful for the generous support provided by the Chartered Institute of Arbitrators (Australia), Melbourne Law School and Telstra.

Drs Andrew Mitchell and Tania Voon
Co-coaches of the Melbourne Law School Mooting Team and Senior Lecturers at the University of Melbourne
REPORT ON THE 2008 PHILIP C JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

In accordance with a long and illustrious tradition, Melbourne Law School entered a team in the 2008 Philip C Jessup International Law Moot Court Competition.

The 2008 Jessup Moot problem explored the inherent tension between the human rights of individuals accused of terrorist activities and the human rights of citizens in societies the target of terrorism, all (of course) from an international law perspective. This allowed the comparison of domestic counter-terrorism legislation introduced in various nations since September 11 and a focus on the legality of recent state practice in forced abductions, extraordinary rendition and the successive legal emanations of the US Military Commission in Guantánamo Bay. The problem also explored Head of State immunity rationae materiae with respect to acts of torture and cruel, inhuman and degrading treatment. In preparing their submissions, the team examined treaties, news sources and diplomatic pronouncements, the jurisprudence of international courts and tribunals, foreign case law and a great deal of academic commentary.

The long established friendship between the Melbourne Journal of International Law and the annual Jessup Moot Team continued to bring intellectual and personal rewards to both sides this year. The 2008 team’s coach, Associate Professor Dianne Otto, is a member of the Journal’s Advisory Board and team member Claire Leslie is the 2008 Case Note Editor.

In addition, the Jessup Team was fortunate to have the support of past and current Journal Editors, Peter Henley, Jeldee Robertson and Rebecca Hughes, and former Editorial Board members Lauren Knight and Sarah Finnin, who were all enthusiastic volunteer judges in practice moots and offered the team valuable advice in using international law as an advocate.

A sophisticated response to the problem required a detailed understanding of international humanitarian law and its interaction with human rights law. The Jessup team was fortunate to have at its disposal the International Humanitarian Law Symposium issue 8(2) of the Journal, which was launched in December 2007. Several of the contributors to this volume and earlier issues of the Journal, as well as members of the Journal’s Advisory Board, generously gave their time to judge the team’s practice moots and to explain finer points of international law to the Team. Special thanks must go to Alison Duxbury, Professor Ian Malkin, Bruce Oswald, John Tobin, Dr Helen Durham, Professor Timothy McCormack and Professor Gerry Simpson. The Team was fortunate to have the support of many other members of faculty at the Melbourne Law School, whose expertise in international law and advocacy before the International Court of Justice, and experience as past Jessupers, served as an invaluable source of support and fortitude to the Team.

The Final of the Australian national competition was held, as always, in Courtroom 1 of the High Court. One of the judges was Professor Hilary Charlesworth, a member of the Journal’s Honorary Advisory Board and headline contributor to the 2007 MJIL. International Humanitarian Law Symposium volume 8(2) in her think piece ‘Law After War’.

The Journal looks forward to continuing the longstanding tradition of a collaborative friendship with the Melbourne Law School Jessup Moot Team.

Claire Leslie
MJIL Case Note Editor 2008
Jessup Moot Team Member 2008

Jessup Members Nawaar Hassan, Julienne Hortle, Preethi Vergis and Dimitri Ternovski.

2009 WTO AND JESSUP MOOT TEAMS ANNOUNCED

The Editors would like to congratulate the following Melbourne Law School students on their appointment to the 2009 WTO Moot Team:

Christopher Tran
Erica Leaney (MJIL General Member)
Laura Bellamy (MJIL Book Review Editor)
Rudi Kruse

Congratulations are also extended to the following Melbourne Law School students recently appointed to the 2009 Jessup Moot Team:

Dave Heaton
Felicity Ryburn
Seamus Coleman
Sienna Merope (MJIL General Member)
Sonja Zivak
WORLDMUN CONFERENCE REPORT: 
*MJIL MEMBERS ATTEND WORLD MODEL UNITED NATIONS IN MEXICO*

Over the recent Easter break (24–28 March) we joined the Australian delegation in Puebla, Mexico, for the 17th Harvard World Model United Nations (WorldMUN). In addressing the Conference, Secretary-General Ban Ki-moon recognised the year 2008 to be a unique one, providing both unparalleled opportunities and daunting challenges, with a number of developments aligning to make this so: the 60th anniversary of the *Universal Declaration of Human Rights*; the midpoint in the work to reach Millennium Development Goals and the high-level meeting on financing for development; the climate change negotiations; and the unprecedented peacekeeping operation in Darfur.

In the modern global context, the UN is no doubt uniquely placed to lead efforts in serving the needs of such vast international agenda, expanding the possibility for collective action by states and people. Thus, particularly in the rapid changing world of study, it is important for students such as ourselves to build a better understanding of the UN — what it is, what it does and what it can do.

The 2008 WorldMUN Conference gave us the perfect opportunity to do just that: with over 1650 university students from over 42 different countries worldwide, the committees at WorldMUN this year included a diverse mix of delegates, allowing for professional debate of ideas within committees and an honest exchange of unique opinions outside of it.

We were both assigned to represent Kenya’s position in the World Trade Organization (‘WTO’). This year, the WTO committee chose to discuss the issue of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (‘TRIPS’) and its impact on Global Health. During a week-long series of committee sessions serving as a venue for diplomacy, we debated, advocated, and ultimately collaborated with fellow delegates from across the globe to produce a comprehensive resolution. Importantly, the WorldMUN experience enhanced our consciousness on issues of global importance and strengthened our appreciation of the responsibilities and benefits of global citizenry.

Outside of formal committee sessions, we were treated to elaborate nightly events, such as Global Village, on the first night, where each delegation set up stands showcasing the flavours of the world, and cultural acts performed by delegates at an exclusive hall in Puebla. These events each night gave us the chance to make friends from all over the world as we shared engaging conversations, no doubt creating memories that will last a lifetime!

Simin Ngan  
*MJIL Production Editor*  
Calina Ouliaris  
*MJIL General Member*
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Anna Dorevitch and Michelle Foster

Fragmentation in Two Dimensions: The ICJ’s Flawed Approach to Non-State Actors and International Legal Personality
Fergus Green

Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict
Janet Halley

To What Extent Does the ICCPR Support Procreation and Parenting by Lesbians and Gay Men?
Aleardo Zanghellini

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Australia’s Interests under TRIPS Dispute Settlement: Trade Negotiations by Other Means, Multilateral Defence of Domestic Policy Choice, or Safeguarding Market Access?
Antony Taubman

Carbon Footprints, Food Miles and the Australian Wine Industry
Vicki Waye

Book Review
Law, War and Crime: War Crimes Trials and the Reinvention of International Law by Gerry Simpson
Edwin Bikundo
As a leading centre for international law scholarship and teaching, The University of Melbourne 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 …


- Hina Jilani, Special Representative of the UN Secretary-General on Human Rights Defenders, presented ‘Defending Human Rights’ on 1 April 2008. In this lecture, Ms Jilani discussed the role of human rights defenders in protecting human rights and promoting the international framework.

- Devika Hovell, University of Oxford, UK, former Lecturer and Director of the International Law Project at the University of New South Wales and Judge’s Associate at the International Court of Justice, presented ‘Legal Conceptualization of Security Council “Sanctions” at the Institute for International Law and the Humanities on 3 April 2008. This presentation explored recent criticisms of the Security Council relating to procedural fairness in its decision-making processes on sanctions.

- Dr Andrew Mitchell and Dr Tania Voon, Senior Lecturers at the Melbourne Law School, and other scholars presented ‘The Future of the Multilateral Trade System – Centre for Public Policy Symposium’ on 7 April 2008. Held by the Centre for Public Policy at the Melbourne Business School, the symposium reflected upon key challenges faced by the WTO.


And coming up …

- On 30 June 2008, Professor Michael Joachim Bonell (University of Rome I), the Hon Justice Paul Finn (Federal Court of Australia), Associate Professor Fred Ellingham (Melbourne Law School) will address the Private Law Seminar ‘The UNIDROIT Principles of International Commercial Contracts’.

- On 1 July 2008, Associate Professor Balakrishnan Rajagopal will conduct an IILAH Twilight Seminar on the Rule of Law in Post-Conflict Rebuilding.

- On 21 August 2008, Professor Philippe Sands QC, Professor of Law, of University College, London, will present the Allen Hope Southey Memorial Lecture: ‘The Torture Team: The Responsibility of Lawyers for Abusive Interrogation’. Professor Sands will discuss the human rights abuses sanctioned by senior lawyers in the Bush Administration, and the consequences of participation in policy abuse.


- On 3 October 2008, the Centre for Comparative Constitutional Studies will be hosting a National Conference on an Australian Bills of Rights, 2008 Protecting Human Rights Conference.

**ADVISORY AND HONORARY ADVISORY BOARD APPOINTMENTS**

We would like to warmly welcome to the MJIL Advisory Board the Dean of the Melbourne Law School, Professor James C Hathaway, Dr Michelle Foster, Professor Stuart Kaye, Associate Professor Andrew Kenyon, Professor Gerry Simpson and Dr Tania Voon. We are also pleased to announce the appointment of Professor Geoffrey Lindell to the Honorary Advisory Board, in recognition of his long standing contribution to both legal scholarship and the Journal.

Our grateful thanks go to those retiring from our Advisory Board this year: Mr Julian Burnside QC, Mr Colin Fenwick, Professor Richard Garnett and Professor Ian Malkin, whose support and encouragement have been instrumental in laying the foundations for MJIL’s growth and success over the past nine years.

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MJIL would like to thank its sponsors for their generous support

Allens Arthur Robinson

Blake Dawson

Mallesons Stephen Jaques

RioTinto
ALUMNI PAGE

Chian Kee

After editing the Journal in 2006, Chian set out wholeheartedly in 2007 to fill the vacuous expanse of free time left in the wake of leaving MJIL. Highlights included proposing to the love of his life, getting married, buying a house (and thereby learning first hand what ‘extreme mortgage stress’ means), being on Melbourne Uni’s inaugural WTO moot team and winning said moot, getting a refereed article published, completing his Law/Computer Science degree and commencing articles at Blake Dawson. As for the rest of the time that had been liberated post-MJIL, he most probably wasted it surfing the net.

Dora Banyasz

After completing her LLB in 2007, Dora commenced her Articles this year with Allens Arthur Robinson. She describes her most cherished memory from her time at the Journal as ‘those crazy International Citation Co-ordinator meetings that descended into absolute hilarity in the discussion of the most random footnotes, and which everyone took so seriously’.

She hopes to be in Melbourne in 2009, ‘hopefully doing something I enjoy and find interesting’.

Magda Wysocka

Shortly after completing her combined Bachelor of Arts/Bachelor of Laws/Diploma of Modern Language studies in 2004, Magda commenced Articles at the immigration law firm of Clothier Anderson & Associates, where she gained experience in all areas of Australian immigration and refugee law. After completing her Articles, Magda continued working at the firm as an employee Solicitor. In 2006, she also returned to volunteering at the Refugee and Immigration Legal Centre (‘RILC’), where she had previously volunteered from 2002 until 2004.

In May 2007, Magda travelled to Nauru as part of a team of five lawyers representing RILC, in order to provide legal assistance to several of the Sri Lankan asylum seekers that were being detained at Australia’s detention centre on the island.

In August 2007, Magda embarked upon a Masters of International and European Law, specialising in Public International Law, at the University of Amsterdam. During the past several months, not only has she broadened her knowledge of international law, she has also had the opportunity to ride her bicycle through rain, hail and light snow flurries, host a couple of former MJIL Editors at her home, provide research assistance to Defence Counsel before the ICTY and travel.

Magda plans to complete her degree in July 2008, after which she hopes to travel for a few months before probably returning to Australia.

Although Magda was only involved with MJIL for a relatively short amount of time, she has fond memories of editing footnotes and proofreading, and generally enjoying herself with fellow MJILers.

Do You Have Any Alumni News?

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

<law-mjil@unimelb.edu.au>

If you would like to be featured in Alumni Pages in the next edition of Ad Hoc, we would be delighted to hear from you.
GENERAL ANNOUNCEMENTS

NEW APPOINTMENTS TO MJIL

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

Executive Board:

Tahlia Brysha-Pullen (Events Manager)
Tim Farhall (Assistant Editor)
Hannah Foster (Events Manager)
Chris Hibbard (Commentaries Editor)
Celeste Leong (Submissions Coordinator)
Claire Leslie (Case Note Editor)
Jeremy Leung (Submissions Coordinators)
Errol Lloyd (Citation Coordinator)

General Members:

Tessa D’Abbs  Erica Leaney
Edwina Dohle  Sienna Merope
Alejandra Duschatsky  Catherine Newton
Nick Elias  Katherine Payne
Susan Howell  Tiong Tjian Saw
Liz Kofoed  Verena Tan
Hannah Kotzman  Suzanne Zhou

MJIL HONOURS GRADUATES

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

Kamillea Aghtan  Sarah Kemeny
Dora Banyasz  Lauren Knight
Neil Cannon  Mai Kuroda
Edwina Chin  Zach Meyers
Allen Clayton-Greene  Belinda Parker
Eli Court  Bronwyn Reddan
Sylvia Gaston  Brinsley Saw
Jonathan Gomez  Natasha Sung
Fergus Green  Robert Walker
Chian Kee  Yau Yau
Emily Zhang

VOLUME 9(2): CALL FOR SUBMISSIONS

The closing date for submissions to volume 9(2) of the Journal is fast approaching. For inclusion in the second edition of the Journal for this year, submissions are required by 30 June 2008. These can be submitted in soft copy to <law-mjil@unimelb.edu.au>.

ACCESSING THE JOURNAL

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CONTACT US

Melbourne Journal of International Law
Melbourne Law School
185 Pelham St
University of Melbourne
Victoria 3010 AUSTRALIA
Tel: +61 3 8344 7913
Fax: +61 3 8344 9774
Email: <law-mjil@unimelb.edu.au>

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