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Announcements

Law of the Sea: Papers by Joanna Mossop, Associate Professor of Law, Victoria University of Wellington

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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"The Relationship between the Continental Shelf Regime and a New International Instrument for Protecting Marine Biodiversity in Areas Beyond National Jurisdiction"

Victoria University of Wellington Legal Research Paper No. 8/2018

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This is the pre-acceptance version of a paper that has subsequently been published: (2018) 75 ICES Journal of Marine Science 444-450. The published version is available at: https://doi.org/10.1093/icesjms/fsx111.

States have acknowledged that the new internationally legally binding instrument (ILBI) for the conservation and sustainable use of marine biodiversity beyond national jurisdiction must take account of the interests of coastal states in continental shelves that extend beyond 200 nautical miles. This article argues that the ILBI should go beyond repeating the existing legal position as set out in international treaties and customary international law. In particular, the concept of sedentary species is unhelpful in the context of a legal regime governing the use of marine genetic resources. The article makes a number of suggestions for possible inclusions in the ILBI to clarify the relationship between the continental shelf regime and the regime for biodiversity beyond national jurisdiction.

"The South China Sea Arbitration and New Zealand's Maritime Claims"

Victoria University of Wellington Legal Research Paper No. 9/2018

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This paper was published in (2017) 15 New Zealand Journal of Public and International Law 265-291.

The decision in the South China Sea arbitration in relation to the interpretation of art 121(3) of the United Nations Convention on the Law of the Sea has broad implications for states not party to the case. New Zealand, like many other countries, claims an exclusive economic zone and continental shelf from uninhabited islands, but no other state has objected to those claims. This article applies the South China Sea approach to art 121(3) to show that, if strictly followed, some maritime features that have been regarded as islands might be classified as rocks not capable of generating maritime zones. The article critiques the reasoning of the Arbitral Tribunal, and suggests that another tribunal might not follow its interpretation of art 121(3). In addition, in cases where coastal states such as New Zealand have long-standing claims from uninhabited features, it may be possible to argue that other states cannot challenge these claims based on acquiescence.

"Protests against Oil Exploration at Sea: Lessons from the Arctic Sunrise Arbitration"

The International Journal of Marine and Coastal Law 31 (2016) 60-87
Victoria University of Wellington Legal Research Paper No. 10/2018

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The decision of the Arbitral Tribunal in the Arctic Sunrise case between the Netherlands and Russia offers considerable guidance to coastal States on how to deal with protesters who violate the safety zone of installations under the Law of the Sea Convention. This article considers these lessons and applies them to another recent type of protest: against vessels conducting seismic surveys above the continental shelf. Some countries provide for a non-interference zone around these vessels to prevent protesters from getting close to the survey vessels. Although this was not directly at issue in the Arctic Sunrise case, the Tribunal's jurisprudence gives guidance as to whether these measures by coastal states to prevent interference are consistent with the Law of the Sea Convention.

"Protecting Marine Biodiversity on the Continental Shelf Beyond 200 Nautical Miles"

Ocean Development and International Law, Vol. 38(3) pp. 283-304, 2007
Victoria University of Wellington Legal Research Paper No. 11/2018

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States are expending significant effort to chart the extent of their continental shelves where these extend beyond 200 nautical miles. As more is understood about marine biodiversity on the outer continental shelf, states may wish to regulate the use of biodiversity for the purposes of conservation or for future exploitation. This article identifies potential threats to marine biodiversity on the continental shelf, explores whether conservation is a legitimate purpose for exercising coastal state rights over the outer continental shelf under the Law of the Sea Convention, and considers the various legal rules that coastal states may use to protect marine biodiversity. This article concludes that the continental shelf regime is undesirably vague in some instances but that coastal states have a legal basis for taking action to regulate activities that impact the marine biodiversity of the outer continental shelf.

"The Legal Framework for the Regulation of Safety and Environmental Issues on the Outer Continental Shelf"

Myron H Nordquist, John Norton Moore, Aldo Chircop, and Ronán Long (eds) The Regulation of Continental Shelf Development: Rethinking International Standards, Martinus Nijhoff, 2013

Victoria University of Wellington Legal Research Paper No. 12/2018

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To date, the Commission on the Limits of the Continental Shelf has issued 14 recommendations relating to the outer continental shelf of 15 states. As of 2010, there were in excess of 50 full submissions and 40 partial submissions that had been lodged with the Comission. If most (or all) of these submissions are upheld, then many states will have to consider how to appropriatley regulate activities on the continental shelf. The main complicating factor for the OCS is that, above the shelf, the freedoms of the high seas prevail. Article 78 establishes that the rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters. In addition, "the exercise of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States". This paper considers the implications of this legal framework for safety and environmental regulation of activities taking place on and above the OCS.

"Beyond Delimitation: Interaction between the Outer Continental Shelf and High Seas Regimes"

Joanna Mossop "Beyond Delimitation: Interaction between the outer Continental Shelf and High Seas Regimes" in Clive Schofield, Seokwoo Lee and Moon-Sang Kwon (eds) The Limits of Maritime Jurisdiction (Martinus Nijhoff Publishers, Leiden, The Netherlands, 2014) pp 753-768.
Victoria University of Wellington Legal Research Paper No. 13/2018

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This chapter considers the interaction between the high seas and outer continental shelf rights, which is complex. Some interference with high seas freedoms is permissible in order to protect coastal States' interests in the resources of the sea floor beyond 200 nautical miles. The chapter proposes a number of factors that coastal states must consider in order to determine if the interference is justifiable. These include the likelihood of interference with shelf resources, the level of harm to the shelf resources, the relative importance of the interests, the minimal interference, and the role of international or regional institutions and soft law instruments. The chapter then concludes that a consideration of these factors is likely to provide clearer justification for any interference in high seas freedom, but in reality there are bound to be disputes over this issue.

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Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachussetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official

buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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