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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES

VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

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Announcements

Collected Papers by the Right Honourable Sir Geoffrey Palmer QC
Part VIII International Law: International Dispute Resolution

The Palmer Series collects the papers of the Right Honourable Sir Geoffrey Palmer QC, Distinguished Fellow of the Victoria University of Wellington Law Faculty. The series is sponsored by an anonymous donor whom the Faculty gratefully acknowledges.

Table of Contents

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

"Settlement of International Disputes: The 'Rainbow Warrior' Affair"
Commonwealth Law Bulletin 585
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 33

SIR GEOFFREY PALMER QC, Victoria University of Wellington - Faculty of Law
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This was originally an address by Geoffrey Palmer to the University of Virginia School of Law, Virginia, on 3 November 1988. In May 1973 the New Zealand Labour Government commenced a case before the International Court of Justice against the French Government, seeking the end of atmospheric testing by France of nuclear weapons. Australia and New Zealand argued that the French nuclear testing programme was contrary to international law. New Zealand said that French Government tests in the South Pacific region that give rise to radioactive fallout constituted a violation of New Zealand's rights. The Court gave interim relief, indicating that pending further stays of the case France should cease testing. In December 1974 the Court held that since France had promised not to test nuclear weapons in the atmosphere and was bound by that promise, the proceedings no longer had any purpose and the Court did not need to decide them. France in 1974 moved to terminate its acceptance of the Court's jurisdiction. And they resumed testing underground in the same location.

The address covers the South Pacific Nuclear Free Zone Treaty and the nuclear theme which permeates the international disputes dealt with under the topic. It discusses the two quiet extraordinary issues which confronted New Zealand in the international legal sphere in the 1980s. Both involved countries which were traditional friends. These were the disagreement between New Zealand and the United States about the admission of nuclear armed ships to New Zealand ports, and the dispute between New Zealand and France flowing from the 'Rainbow Warrior' affair. Both issues were accompanied by high level political atmospherics on all sides.

Both problems involved significant legal issues. The Nuclear Ships disagreement is discussed with reference to New Zealand's deep abhorrence of nuclear weapons. The paper then turns to consider the second major international legal dispute – the Rainbow Warrior affair. This issue brought home to New Zealand in a very concrete way the painful truths which underlay analysis of the problems of small countries. On 10 July 1985 the civilian ship the Rainbow Warrior was covertly and illegally sunk at its moorings by French agents. Two days later, two agents of the French Directorate General of External Security were arrested and prosecuted for manslaughter and wilful damage. They were sentenced to ten years imprisonment each.

The address uses the Rainbow Warrior affair as one of several examples of the options open to smaller countries when confronted with the practical problem of how to settle an international legal dispute in a manner that is fair and equitable. Along with the Rainbow Warrior affair it mentions the Eichmann incident between Israel and Argentina when Israeli agents kidnapped a German war criminal from Argentina. It then considers the Israeli assassination of a Moroccan citizen believed to be a member of Black September in Oslo and the subsequent arrests of Israeli agents complicit in the assassination. What the three cases have in common is a serious violation of international law involving an act of force by military or para-military personnel by a friendly country. In terms of domestic law each case involved the commission of a serious crime. In two of the cases death was involved, and in the Rainbow Warrior affair, the victim was an entirely innocent civilian.

"Living History Interview"

Symposium: The United States Commitment to International Law, 1 Transnational Law and Contemporary Problems 241
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 34

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The Transnational Law and Contemporary Problems journal publishes a "Living History Interview" with a person of international accomplishment and renown who has experience in the specific area of transnational law that the symposium addresses. The purpose of the interview is to explore what impact the law has had in that subject area, how the law is actually implemented, and how the law should be changed as we move into the twenty-first century. Sir Geoffrey Palmer was chosen because of his experience in dealing with the United States on an inter-governmental level. As former Prime Minister of New Zealand, he is able to address the US commitment to international law from the most fundamental level. In addition, he is able to address the small States' concerns on US adherence to international law.

The interview includes the United States' commitment (or lack thereof) to international law and how it could improve its commitment in the future. A renewed commitment to the rule of law at the international level combined with a determination to improve the compulsory dispute settlement procedures at the international level would be a very welcome development from the United States. It discusses the conflict regarding New Zealand's nuclear-free policies and the difficulties that policy caused for the ANZUS treaty, as well as the issue of drift net fishing. Comparing the drift net and nuclear power episodes, Sir Geoffrey mentions the kinds of strategies and resources that small States must use when negotiating with large States. Small nations particularly need effective legal procedures for dispute settlement. They must also line up support for their points of view in the international forums of the world.

The interview turns to discussion of the Gulf War and the potential for revising the UN Charter to deal with some of the problems that have been ignored up to now, as well as a commitment to rebuilding the International Court of Justice. To deal effectively with international problems, compulsory dispute resolution is a must and an urgent matter. Sir Geoffrey raises the issue of the environment, stating that he believes it will be impossible to solve the global environmental crisis relating to the atmosphere unless we have two things: (1) a curtailing of the principle of sovereignty to some extent, and (2) compulsory dispute settlement mechanisms. We can no longer afford to be governed by the standards of the lowest common denominator.

"Adjudication, Politics and International Law"

17 Temple International and Comparative Law Journal 523, 2003
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 35

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The debated legality of armed intervention in Iraq, and the position the world finds itself concerning the Charter of the United Nations and the use of force, suggests that we are in the time of a paradigm shift of the type that led to the establishment of the United Nations in the first place. Yet rather than reaching out and finding new and positive ways of solving the terrible problems the world faces in wrestling with the challenges of achieving order, there seems to be a retreat from fashioning multilateral approaches to the development of solutions. But the day will come when the world will make a quantum leap forward; it is suggested that what will be required is something akin to the compulsory system of third-party adjudication that characterises most mature domestic legal systems. Advances are needed if international law is going to deliver a greater measure of order to a world that sometimes appears to be disintegrating.

The traditional nature of the international legal system is voluntarist, with international law progressing not in arenas characterised by third-party decision makers such as arbitrators and adjudicators, but in areas involving processes of unilateral determination followed by reciprocal responses. Third-party adjudication often develops only after diplomacy and direct bilateral negotiations have tried and failed. But it is hard to see a viable international legal order emerging unless the cause of third-party adjudication is advanced. At present, it exists only as one technique among many in resolving international disputes.

In discussing the development of third-party adjudication, the paper considers cases such as the dispute between France and New Zealand over the sinking of the Rainbow Warrior. It explains the political advantage to a decision reached by a respected neutral third party (albeit with secret negotiation) rather than negotiated openly and directly at a time when domestic opinion in both countries was highly charged. The author argues however that although third-party adjudication suits some political people some of the time, such a situation is not sufficient for a proper set of protections at the international level based on robust application of the rule of law. International adjudication will not be effective unless it can impose effective restraints upon the struggle for power at the international level. This creates conflict between State sovereignty and the necessities of third-party adjudication in international dispute resolution.

"The Difficulties of Third-Party Adjudication for Political People"

American Society of International Law, Proceedings of the 97th Annual Meeting, April 2-5, 2003
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 36

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The normative system of international law has implications for third-party adjudication at an international level. The nature and function of international law, and its qualities, differ from municipal law. The international legal system is traditionally voluntarist, with international law progressing not in arenas characterised by third-party decision makers such as arbitrators and adjudicators, but in areas involving processes of unilateral determination followed by reciprocal responses. Third-party adjudication often develops only after diplomacy and direct bilateral negotiations have tried and failed. But it is hard to see a viable international legal order emerging unless the cause of third-party adjudication is advanced. At present, it exists only as one technique among many in resolving international disputes.

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"Perspectives on International Dispute Settlement from a Participant"

(2012) 43 VUWLR
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 37

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The author uses a variety of examples to explore international dispute settlement processes and to provide some suggestions for improvement. These examples, drawing on the author's own career and New Zealand's developing role in the international community, include the Rainbow Warrior affair, nuclear testing issues, the Gaza Flotilla inquiry and experiences at the International Whaling Commission.

It is an important ingredient of preparation to think carefully about what precisely the dispute is about. How the subject matter of a dispute is framed or characterised and the avenues both legal and political available to resolve it can be critical. The framing often determines the law that applies to the dispute. Also relevant is whether the dispute endangers the maintenance of international peace and security. The hierarchy of methods with which to arrive at a resolution of the dispute is extensive – from negotiation to adjudication and every modern method of dispute settlement in between. The

Charter offers many dispute settlement menus that can be used with creativity where there is a desire to settle a dispute on the part of those engaged in it.

About this eJournal

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 Judicial 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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