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"When is a Whale Sanctuary Not a Whale Sanctuary? Japanese Whaling in Australian Antarctic Maritime Zones"

36 *VUWLR* 757-773 (2005)

Victoria University of Wellington Legal Research Paper No. 89/2015

JOANNA MOSSOP, Victoria University of Wellington - Faculty of Law

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This article concerns the case of Humane Society International v Kyodo Senpaku Kaisha Ltd, in which the Humane Society, a nongovernmental organisation, attempted to sue a Japanese company conducting whaling in the Southern Ocean in an area claimed as an exclusive economic zone by Australia. The Humane Society failed to convince the Federal Court to allow it to serve proceedings on the Japanese company outside Australia, after the judge agreed with the arguments provided by the Australian Attorney-General. These submissions included the possibility of an embarrassing international incident that could arise if a Japanese company were to be served with proceedings enforcing a law that Japan considers to be inconsistent with the freedom of navigation on the high seas. Underpinning the whole case was the issue of sovereignty over Antarctica, which Australia and other countries have disputed for many decades. The author evaluates Australia's claim to an exclusive

economic zone around its Antarctic territorial claim, and its use of the Environment Protection and Biodiversity Conservation Act 1999 to declare a whale sanctuary in that part of the world. The author suggests that it might be possible for the Australian courts to read the whale sanctuary legislation in line with international law, potentially relying on the New Zealand Sellers case, to exclude overseas companies from the effects of the legislation. However, the author concludes it would not be desirable for the Australian Government to rely on such a possibility to avoid potential international repercussions from its domestic legislation.

"Opposing Japanese Whaling in the Southern Ocean: The International Law Implications of Contrasting Approaches"

11 Asia Pacific Journal of Environmental Law, 3 & 4 at 221, 2008
Victoria University of Wellington Legal Research Paper No. 90/2015

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This article examines the international law consequences of the very different actions taken by two non-governmental organisations, the Humane Society International and the Sea Shepherd organisation, in an attempt to persuade Japan to end its scientific whaling programme in the Southern Ocean. The Humane Society International sought to require Australia to enforce domestic legislation imposing a whale sanctuary in waters off Antarctica to which Australia has a claim. Although the prospect of claimant states exercising jurisdiction over non nationals in Antarctica and the Southern Ocean might be superficially attractive, the potential consequences for the Antarctic Treaty System are severe. New Zealand's approach to legislating in respect of maritime zones in Antarctica is more restrained than Australia, and is to be preferred for its deference to the Antarctic Treaty System. In contrast, the Sea Shepherd organisation has acted outside any domestic legal system and arguably in violation of international law rules relating to safety of shipping.

"The Security Challenge Posed by Scientific Permit Whaling and its Opponents in the Southern Ocean"

Hemmings (ed), Rothwell (ed) and Scott (ed) Antarctic Security in the Twenty-First Century Legal and Policy Perspectives (Routledge, Oxon, 2012) 307.
Victoria University of Wellington Legal Research Paper No. 91/2015

JOANNA MOSSOP, Victoria University of Wellington - Faculty of Law
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Despite a ban on commercial whaling, since 1987 Japan has undertaken whaling in the Southern Ocean under an exception for scientific purposes. In recent years, political protest groups have physically confronted the Japanese whaling ships leading to concerns about human and environmental consequences of the whaling and the protests. This chapter focuses on the consequences these activities for the Antarctic Treaty System. In particular, it considers the security challenges posed by scientific permit whaling, whether the legal regulations in place are adequate for dealing with these challenges and finally the political responses to the whaling in the Antarctic Treaty System. The chapter concludes with a consideration of the options for managing security risks in the future.

"A Victory for Whales: Sir Geoffrey Palmer QC Explains Aspects of the ICJ Decision"

New Zealand Law Journal, p. 124, May 2014
Victoria University of Wellington Legal Research Paper No. 92/2015

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In this article, Sir Geoffrey Palmer QC discusses the International Court of Justice finding against Japan in Whaling in the Antarctic (Australia v Japan, New Zealand intervening). The discussion examines the rigorous standard of review taken by the ICJ in assessing whether Japan's scientific whaling programme was within the boundaries of the article of the International Convention for the Regulation of Whaling allowing whaling for the purposes of scientific research. The decision against Japan was unexpected in the view of many governments and is encouraging for international environmental law. The article considers Japan's future options for their scientific whaling programmes, as well as the implications of the reasoning and decision for the IWC.

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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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