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## Announcements

### Victoria University of Wellington Student and Alumni Sub-Series Part 8: International Arbitration

International Arbitration is the eighth in 2019 of several issues of the Student/Alumni Sub-Series of the Victoria University of Wellington Legal Research Paper Series.

The Student/Alumni Sub-Series was launched in 2015. It distributes a selection of Honours and Postgraduate papers from Victoria University of Wellington Law School. The Sub-Series includes both general and thematic issues.

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

["A 'Stick' in the World of 'Sunshine and Carrots': Using Binding Arbitration in Global Framework Agreements to Regulate Labour Standards and Multinational Corporations in Global Supply Chains"](#)   
[Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 28/2019](#)

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Many multinational corporations now use global supply chains to produce goods and services. Multinational corporations at the top of global supply chains exert significant control over actors lower in the chain, and thereby contribute to low labour standards in the companies they source goods from. The contractual structures in global supply chains make the multinational corporations that enjoy this control appear to be mere commercial buyers. Global supply chains make it difficult for states to effectively regulate labour standards and enforce them against the multinational corporations. Therefore a regulatory gap currently exists in which multinational corporations contribute to low labour standards within their global supply chains free from the controls of public labour regulation.

This paper examines attempts to fill the regulatory gap. It analyses attempts to regulate global supply chain labour standards through state level public law, private mechanisms (codes of conduct and global framework agreements), and international frameworks, and finds that these have failed to fill the regulatory gap. The paper proposes that global framework agreements that include binding arbitration clauses have the potential to hold multinational corporations legally responsible for contributing to low labour standards within global supply chains, therefore filling the regulatory gap. The Bangladesh Accord, the only existing agreement of this form, is shown to demonstrate this potential. The paper concludes that global framework agreements including binding arbitration clauses should be utilised, in combination with attempts to strengthen domestic law labour regulations and enforcement capabilities, to remedy the problem of low labour standards in global supply chains. The International Labour Organisation is shown to have potential to assist this approach.

["The Admissibility of Environmental Counterclaims in Investment Arbitration"](#)   
[Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 29/2019](#)


[MOLLY ANNING](#), Victoria University of Wellington, Faculty of Law, Student/Alumni

The admissibility of environmental counterclaims in investment arbitration is untouched academic territory. The Ecuadorian counterclaims of Perenco and Burlington were the impetus of this analysis. As the first successful environmental counterclaims in investment arbitration, the tribunals' failure to inquire into admissibility warrants further attention. This paper provides an in-depth examination of the gap in this area of investment arbitration. It draws upon international jurisprudence in an attempt to redefine the admissibility inquiry. It concludes that traditional approaches to admissibility will not exclude environmental counterclaims. Requiring a legal connection is an unreasonable and restrictive approach which denies the reality of investment treaties. The asymmetry of such instruments lend host states to rely upon alternative sources of environmental obligations. This should not be fatal to a host State's environmental claim. The nature of environmental claims, including the implication of public policy should not be an impediment for a tribunal to exercise its jurisdiction. So long as an environmental counterclaim has a temporal and geographical connection to the principal claim or arises directly from the investment, there is no reason for it to be inadmissible. In reaching this conclusion, this paper also yields some insight into how host states can increase the receptivity of investment arbitration to environmental matters.

["Peace Through Arbitration: Using International Arbitration to Solve Intra-State Conflicts"](#)   
[Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 30/2019](#)

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Since World War II, intra-state conflict has been on the rise. The international community has struggled to prevent and resolve intra-state conflicts. Disputants often sign peace agreements, but peace then fails at the implementation phase. This is, in part, due to a lack of effective mechanisms for resolving disputes between states and sub-state entities. To fill this gap, the United Nations has begun to promote the use of mediation as a dispute resolution mechanism in conflict situations. However, mediation is not the only option. International arbitration is available. Arbitration has been used to resolve intra-state territorial disputes, following conflicts, in two cases: in the Brčko arbitration, in Bosnia- Herzegovina and the Abyei arbitration, in the Sudans. In light of these arbitrations, this paper suggests that arbitration might be an equally useful, if not better, dispute resolution tool for resolving disputes following intra-state conflicts. International arbitration may lead to more lasting peace. In making this argument, this paper attempts to fill a lacunae in the legal literature. Much legal scholarship discusses the general advantages and disadvantages of different dispute resolution mechanisms. However, there is little, if any, scholarship devoted to determining the most appropriate dispute resolution mechanism for use following intra-state conflicts or critically engaging with the UN's preference for mediation.

["Segmentation and Side Letters: New Zealand's Experience with ISDS in the CPTPP"](#)   
[Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 31/2019](#)

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Following the United States withdrawal from the Trans-Pacific Partnership (TPP) in 2017, the remaining states agreed to suspend a number of provisions and conclude the agreement between themselves. The new agreement was renamed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and was signed in March 2018. One of the most controversial aspects of the agreement is the investor-state dispute settlement mechanism (ISDS), which allows investors to bring arbitration claims against contracting states. At the time the agreement was signed, New Zealand agreed to five bilateral 'side- letters' with certain member states agreeing to limit the application of the ISDS clause.

This paper explores New Zealand's shift from a bilateral approach to international investment agreements to a multilateral approach, then back to a form of bilateralism within the multilateral CPTPP. The side letters can be characterised as subsequent agreements which modify a multilateral agreement between some of the parties, under art 41 of the Vienna Convention on the Law of Treaties. While this paper concludes that the mechanism is legally valid, the practical effectiveness is undermined by New Zealand's overlapping previous agreements, the possibility of treaty shopping and the prospects of further countries acceding to the CPTPP.

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## About this eJournal

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 Massachusetts 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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