

NEW ZEALAND CENTRE FOR PUBLIC LAW  
Te Wānanga o ngā Kaupapa Ture ā Iwi o Aotearoa

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SPECIAL SYMPOSIUM ISSUE: INTERNATIONAL  
ORGANISATIONS AND THE RULE OF LAW:  
PERILS AND PROMISE

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THIS ISSUE INCLUDES CONTRIBUTIONS BY

José E Alvarez

Róisín Burke

Treasa Dunworth

Carolyn M Evans

Amelia Keene

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TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI



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# INTERNATIONAL ORGANISATIONS AND THE RULE OF LAW: PREFACE

*Campbell McLachlan\* and Guy Fiti Sinclair\*\**

The articles published in this collection were first presented at a Symposium held at Victoria University of Wellington Faculty of Law in December 2015. When planning the Symposium, we were acutely aware of several significant anniversaries: 20 years since the launch of the World Trade Organization; 70 years since the creation of the United Nations; and, going back even further, 200 years since the Final Act of the Congress of Vienna, which established the Central Commission for the Navigation of the Rhine, which in turn served as a model for other river commissions created over the following decades. The two centuries since that Congress – and more especially since the end of the Great War, whose centenary we are now commemorating – have seen a veritable explosion of international organisations, both universal and regional in scope. Today, hundreds of intergovernmental organisations across the globe address the full range of issues arising in national and transnational governance, from the high politics of peace and security to so-called technical matters concerning economic development, environmental protection, trade and finance, and much more. Without doubt, many of these organisations have made positive contributions to human well-being and flourishing; with good reason, international organisations have come to be seen as representing some of humanity's highest hopes for a more just and peaceful world order.

The theme of the Symposium, the relationship between international organisations and the rule of law, has preoccupied international lawyers for over a century. A distinguishing feature of the river commissions and international public unions of the 19th century, noted at the time, was their basis in legal instruments, multilateral treaties. Moreover, jurists observed, the bureaux of international unions served to facilitate, on the one hand, the reciprocal commitment of states to "common rules",<sup>1</sup> and on the other hand, the reform of domestic laws.<sup>2</sup> Finally, scholars turned to consider the application of the rule of law to international organisations themselves, most notably in Paul Reinsch's conception

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1 Gustave Moynier *Les Bureaux internationaux des unions universelles* (Fishbacher, Paris, 1892) at 7.

2 Louis Renault "Les unions internationales: leurs avantages et leurs inconvénients" (1896) 3 *Revue générale de droit international public* 14 at 17.

of an "international administrative law", defined as "that body of laws and ordinances created by the action of international conferences or commissions which regulates the relations and activities of national and international agencies with respect to those material and intellectual interests which have received an authoritative international organization".<sup>3</sup> Since then, international lawyers have striven to erect a common framework of laws and principles to guide the activities of international organisations, whether under the rubric of international administrative law, international constitutional law, the law of international organizations, international institutional law, or, more recently, global constitutionalism, international public authority, and global administrative law.

This latter agenda – the application of the rule of law to the activities of international organisations – has acquired added urgency in recent years, and is the dominant concern of the five articles in the present collection. The opening article, by José Alvarez, presents a far-reaching survey of the range of rule of law concerns that have arisen in relation to international organisations in recent years; in doing so, Alvarez introduces, draws upon, and weaves together the arguments made in all ten papers presented at the December 2015 Symposium. The remaining four articles in the collection then explore particular aspects of the theme. Treasa Dunworth considers the potential role of civil society organisations in ensuring the accountability of international organisations working in the field of disarmament, such as the Organisation for the Prohibition of Chemical Weapons. Amelia Keene revisits the advisory jurisdiction of international courts, especially the International Court of Justice, as a means of holding international organisations to account. Róisín Burke addresses the thorny problem of holding United Nations peacekeepers to account for sexual exploitation and sexual abuse. Finally, Carolyn Evans offers a proposal for making the United Nations Security Council more accountable through the voting power of elected Council members.

Our own involvement aside, the Symposium benefitted from the participation and support of numerous individuals, whose contributions we would like to acknowledge here. Apart from those published in this collection, papers were presented by Alison Duxbury (Melbourne), Dai Tamada (Kobe), Anna Hood (Auckland), Tan Hsien-Li (Singapore), and Ben Keith (Wellington). The discussions were enriched by an excellent set of commentators and participants, including Lisa Yarwood, Jana Stein, Sir Kenneth Keith, Colin Keating, Elana Geddis, Alberto Costi, José Alvarez, and John Adank. Finally, we would like to acknowledge the generous support of the New Zealand Centre for Public Law and the New Zealand Law Foundation.

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3 Paul S Reinsch *Public International Unions: Their Work and Organization; A Study in International Administrative Law* (Ginn and Company, Boston and London, 1911) at 130.