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## Announcements

Special Issue: Indigenous Rights: Selected Papers by Catherine J. Iorns Magallanes

This issue collects together 7 papers by Catherine Iorns on Indigenous Rights, from 1998 to 2010.

They have all been published after quality-assurance and have been well-received. Most are book chapters which are not easily found by electronic search methods. Thus, this SSRN e-journal collection makes the writing much more readily available to modern researchers.

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

["Land Conflicts in Southeast Asia: Indigenous Peoples, Environment and International Law"](#)

Catherine J. Iorns Magallanes & Malcolm Hollick, eds, (Bangkok: White Lotus Press, 1998), pp. 1-19, 181-240, 273-305

[Victoria University of Wellington Legal Research Paper No. 44/2012](#)

[CATHERINE J. IORNS MAGALLANES](#), Victoria University of Wellington - Faculty of Law

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[MALCOLM HOLLICK](#), *affiliation not provided to SSRN*

This material was originally published as three chapters in the book (now out of print) of the same name. The book examines a representative range of conflicts of land and resources in Southeast Asia, and standards and laws that the international community has devised which could be relevant to their resolution. It emphasises in particular relevant standards concerning human rights and environmental protection. This excerpt contains the Introduction, the chapter by Catherine Iorns on international law, and the book's Conclusion.

The Introduction outlines the then current conflicts over land and resources in Southeast Asia, factors which lead to their internationalisation, the relevance of international laws, and the analytical framework that the various contributors in the book use in order to discuss the conflict case studies.

The chapter on international law outlines the international legal framework in relation to ownership and use of land and resources within states. It discusses state sovereignty and limitations on it that are relevant to the matters raised in the book. It discusses the rights of indigenous peoples to land and resources, as conflict over these was a feature common to several of the case studies. It also discusses relevant aspects of international environmental law.

The Conclusion utilises the analytical framework to make comments across the case studies about the levels at which disputes arise and the use of international dispute resolution mechanisms. It makes comments about the relevance and utility of international law for such disputes. And it makes suggestions for non-violent action at national and international levels for prevention and resolution of such domestic conflicts.

["International Human Rights and Their Impact on Domestic Law on Indigenous Peoples' Rights in Australia, Canada and New Zealand"](#)

Chapter 8 in Indigenous Peoples' Rights in Australia, Canada and New Zealand, P Havemann, ed. (Auckland: Oxford University Press, 1999), 235-276

[Victoria University of Wellington Legal Research Paper No. 45/2012](#)

[CATHERINE J. IORNS MAGALLANES](#), Victoria University of Wellington - Faculty of Law

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Beginning in the 1970s, international law on indigenous rights has rejected the assimilationist goals of

earlier standards and recognised the right of Indigenous peoples to exist as distinct, separate peoples with their own cultural identity. This chapter summarises the evolution of indigenous human rights standards in international law, particularly 1975-1997. It then examines their influence on the domestic laws and politics of Australia, Canada and New Zealand. As members of the Anglo-Commonwealth, these three countries share similar colonial and cultural backgrounds and similar laws and procedures with respect to incorporating international law in their domestic laws. Yet they have incorporated these international human rights standards at different rates and to a different extent, depending on domestic circumstances. I suggest that one crucial difference is the relative strength in each country of the Aboriginal voice.

["Indigenous Political Representation: Identified Parliamentary Seats as a Form of Indigenous Self-Determination"](#) 

Unfinished Constitutional Business? Rethinking Indigenous Self-determination, Barbara A Hocking, ed., (Canberra: Aboriginal Studies Press, 2004), 106-117

E Law - Murdoch University Electronic Journal of Law, Volume 10, No. 4 (December 2003)

[Victoria University of Wellington Legal Research Paper No. 46/2012](#)

[CATHERINE J. IORNS MAGALLANES](#), Victoria University of Wellington - Faculty of Law

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This paper focuses on the relevance of self-determination for indigenous political representation. It first considers arguments for separate political representation within shared government as a form of self-determination. It summarises the history and operation of the New Zealand/Aotearoa system of separate Maori parliamentary seats. It then briefly describes the system of indigenous delegates in Maine, United States of America, and contrasts it with that in New Zealand. From such comparisons, it identifies basic issues to be discussed in the establishment (or review) of any system of separate political representation for indigenous peoples. Most notable is that different definitions of self-determination will often lead to different aims and objectives of any system of representation. These can (and should) thus lead to different features incorporated within such systems of representation. The examples in this paper illustrate such features.

["Resource and Marine Management Issues in the 2004 New Zealand Foreshore and Seabed Legislation"](#) 

Maori Property Rights in the Foreshore and Seabed: The Last Frontier, Erueti & Charters, eds., (Wellington: Victoria University Press, 2007), 119-142

[Victoria University of Wellington Legal Research Paper No. 47/2012](#)

[CATHERINE J. IORNS MAGALLANES](#), Victoria University of Wellington - Faculty of Law

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In 2004, New Zealand enacted the Foreshore and Seabed Act in order to provide a regime for Maori to claim and exercise customary rights in relation to the foreshore and seabed. The legislation was drafted and enacted extremely quickly for such a significant piece of legislation. This paper arose out of a presentation in December 2004 to a conference that was called in order to consider various issues arising out of the legislation.

A key element of the foreshore and seabed regime is the interface between the new provisions and the existing resource management regime in the coastal marine area. This paper focuses on that interface. It explains the then existing resource management regime and how it provided for Maori interests. It examines the resource management origins of the original dispute which led to the legislative package: namely the tussle over marine farming permits and reform of the permitting regime. It then describes the evolution of the resource management provisions in the foreshore and seabed legislation. Finally, it comments on selected aspects of those provisions, primarily from the perspective of environmental protection, but also in terms of the Treaty partnership in resource management decision-making.

["Reparations for Maori Grievances in Aotearoa/New Zealand"](#) 

[Victoria University of Wellington Legal Research Paper No. 48/2012](#)

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The colonisation of Aotearoa New Zealand was facilitated by the signing of the 1840 Treaty of Waitangi between Maori and the British Queen. However, as is the case in other settler countries worldwide, this treaty was breached, which has caused many long-standing grievances among Maori, and for which they have made many calls for reparations.


Since the 1970s a comprehensive attempt at reparations has been embarked upon in New Zealand. This attempt has entailed the creation of an independent body to inquire into Maori grievances, has enabled the courts to adjudicate on some breaches of indigenous rights, and has negotiated reparations settlements for a wide range of grievances.

This paper describes both the grievances and the methods of reparations used in New Zealand. To understand Maori grievances, the paper first describes the background to the signing of the Treaty of Waitangi, the texts and different understandings of the treaty itself, and various breaches of the Treaty.

The three modern reparations mechanisms are then discussed: (1) the Waitangi Tribunal inquiries into Maori grievances and its reports; (2) the role the courts have played; and (3) the negotiated reparations settlement packages. The negotiated settlement packages described include those in relation to the more traditional, historical, kin-based grievances as well as three examples of pan-Maori settlements: commercial fisheries, commercial forests, and broadcasting.

The paper finally addresses possible lessons to be learnt from these attempts at reparations. These lessons range from what has worked to what could be improved, from matters of process to matters of substance, from internal Maori governance issues to New Zealand's constitutional law.

This paper was originally published as a chapter in *Reparations for Indigenous Peoples: International and Comparative Perspectives*, Federico Lenzerini, ed, (Oxford: Oxford University Press, 2008), 523-564 (20,000 words).

["Report on the Treaty of Waitangi"](#)   
[Victoria University of Wellington Legal Research Paper No. 49/2012](#)

[CATHERINE J. IORNS MAGALLANES](#), Victoria University of Wellington - Faculty of Law  
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This paper briefly describes the Maori grievances for breaches of the 1840 Treaty of Waitangi. It then discusses three modern reparations mechanisms for such breaches: (1) the Waitangi Tribunal inquiries into Maori grievances and its reports; (2) the role the courts have played; and (3) the reparations settlement packages negotiated with the government. It finally addresses possible lessons to be learnt from these attempts at reparations.

This paper was the author's contribution to the work of the International Law Association's Committee on the Rights of Indigenous Peoples for its commentary on the Declaration on the Rights of Indigenous Peoples. The author was a member of the Sub-Committee on Treaties, which wrote Chapter 9 of the Committee's Interim Report on Treaty Rights.

["ILA Interim Report on a Commentary on the Declaration of the Rights of Indigenous Peoples"](#)   
[Victoria University of Wellington Legal Research Paper No. 50/2012](#)

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The author was a member of the International Law Association's Committee on the Rights of Indigenous Peoples. Chair: Prof Siegfried Wiessner; Rapporteur: Dr Federico Lenzerini. The Committee was tasked

with drafting a legal commentary on the status and content of the rights contained in the Declaration of the Rights of Indigenous Peoples. In 2010 it released its Interim Report. The author contributed 2 sections to this report (on Definition and on New Zealand in the chapter on Treaty Rights), and assisted, with other members in formulating and reviewing the whole report.

The Report contains chapters on:

1. Introduction, Methodology, Background and Legal Status of the Declaration
2. Understanding the Term “Indigenous Peoples”
3. Self-determination
4. Autonomy or Self-Government
5. Cultural Rights and Identity
6. Land Rights
7. Education and Media
8. Social and Economic Improvement Rights
9. Treaty Rights
10. Development and International Cooperation
11. Reparations, Redress and Remedies
12. Rights of Indigenous Peoples under Customary International Law

The Committee’s final report was released in August 2012. It, however, only addressed developments since the 2010 report which might modify its findings, and filled gaps in the 2010 report in relation to language rights and cultural heritage. Thus, the sections of the Interim Report relating to issues which are not discussed in the final Report are considered as final.

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## **Solicitation of Abstracts**

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 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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