

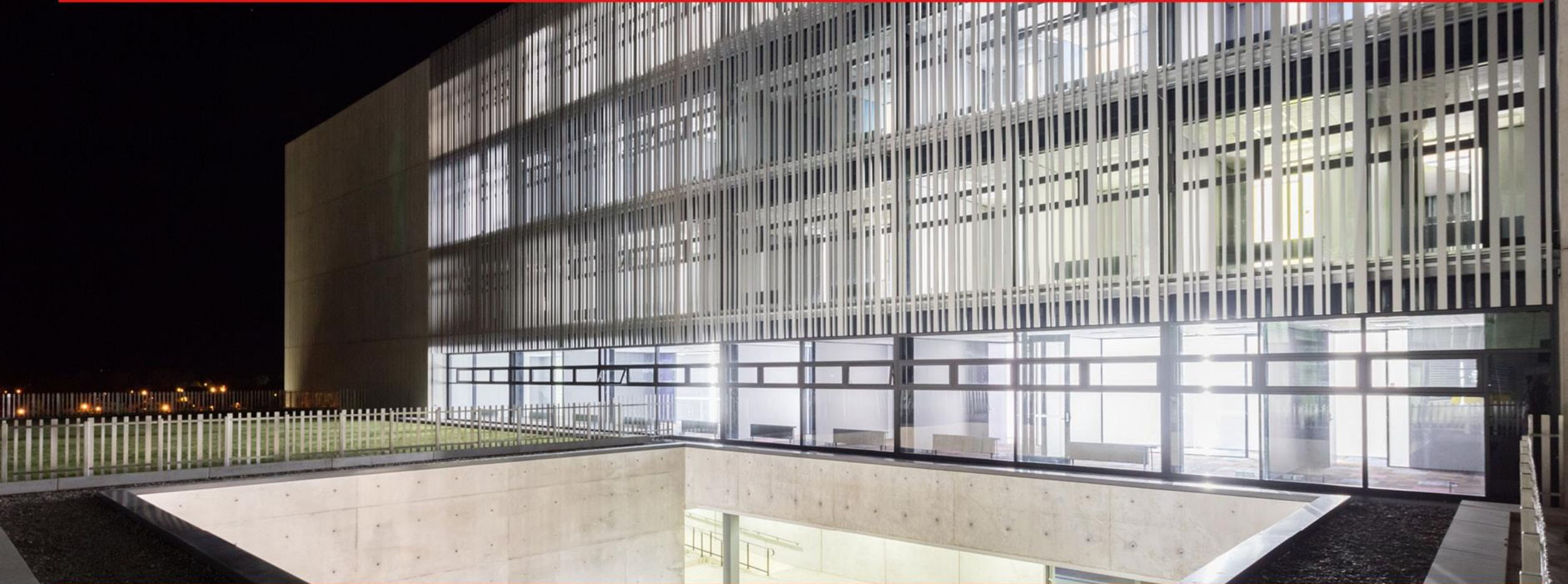
Personality and Antarctica

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WHERE THE WORLD IS GOING

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Ross Dependency

- New Zealand and Antarctica
 - Ui Te Rangiora – first person to see icebergs of Antarctica 650AD
 - Maori settlement of Antipodes Islands 13th and 14th centuries
 - Transfer of United Kingdom claim accepted “on behalf of the Empire as a whole” 1923
 - Washington Conference 1959 – surrendering claims to provide for “a more adventurous” trusteeship approach

Durvillaea antarctica

- Rimurapa or Bull kelp (*Durvillaea antarctica*) is a taonga or treasured species for Ngai Tahu, the iwi of New Zealand's South Island



- **Rimurapa or Bull kelp**
- Taonga species described in Ngai Tahu Claims Settlement Act 1998, Schedule 97
- Special *cultural, spiritual, historic, and traditional* association with taonga species acknowledged, s288
- Species management plans required, s293
 - Consultation regarding protection, management, and conservation policies
 - Participation in species recovery plans

Procedural duties

- Procedural duties (e.g. environmental impact assessment) are easier to develop to change decisions that threaten ecosystems
 - Convention on Biological Diversity, Art 14
 - Law of the Sea Convention, Art 206
 - Rio Declaration, Principle 17
 - Madrid Protocol on Protection of the Antarctic Environment
- Dan Tarlock, “Ecosystems” in *Oxford Handbook of International Environmental Law* (2007)

- **Kaitiakitanga**
 - Exercise of **guardianship** by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources
 - Includes the ethic of **stewardship**
 - Matter that all persons must have **particular regard** to in achieving sustainable management
- Resource Management Act 1991, s2, s7(a) – merely declaratory of common law

- **Principle 22**

- Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.
- Resource Management Act 1991, s6(e)
 - Must **recognize and provide for** the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga

- Te Awa Tupua (Whanganui River Claims Settlement) Act 2017
 - Te Awa Tupua is a **legal person** and has all the rights, powers, duties, and liabilities of a legal person, s14
 - Legal effect of declaration binding on statutory decision-makers, 15
 - Exercised by Te Pou Tupua (**guardians**) who *act and speak for and on behalf of* the river, and have a duty to *promote and protect the health and well-being* of the river, s19

- Rio Declaration, **Principle 2**
 - States have ... the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.
- But *no harm* rule requires clear evidence of damage and causal link between State activities and damage

Indirect protection

- World Heritage Convention
 - *Commonwealth v Tasmania* (1983) 46 ALR 625 (Franklin Dam)
 - New Zealand Sub-Antarctic Islands (inscribed 1998)
- Antarctica - common heritage of mankind
 - Madrid Protocol on the Protection of the Antarctic Environment
 - Convention on the Conservation of Antarctic Marine Living Resources

Stewardship sovereignty

- Stewardship sovereignty
 - Grotian idealism – international social contract or universal moral code
 - Environmental science
- Limited sovereignty
 - *Commonwealth v Tasmania* (1983) 46 ALR 625 (Franklin Dam)
- Core consensus building principles
 - Intergenerational equity
 - Environmentally sustainable development
 - Precautionary approach (Rio Declaration, Principle 15) (adaptive management)
- Dan Tarlock, “Ecosystems” in *Oxford Handbook of International Environmental Law* (2007)

Legislating for humanity

- A global trust for the environment
 - Extraterritorial legislation to regulate global “bads”
 - Eyal Benvenisti, *Legislating for Humanity* (2013)
- Fiduciary duties
 - “sovereignty should be regarded as embedded in a more encompassing global order, which is a source not only of powers and rights, but also of obligations that essentially require sovereigns to exercise their authority in ways that promote global goods”
 - Eyal Benvenisti, *The normative basis for the law regulating Global Governance Institutions* (2014)

- John Salmond
 - A legal person is any subject-matter to which the law attributes a merely legal or fictitious personality. This extension, for good and sufficient reasons, of the conception of personality beyond the limits of fact – this **recognition of persons who are not men** – is one of the most noteworthy feats of the legal imagination.
- *Jurisprudence* (7th edn Sweet & Maxwell, London, 1924)

- *Smith v Fonterra Co-operative Group Ltd* [2020] NZHC 419
 - Duty of care to cease emitting direct and indirect GHGs by 2030
 - Causation attributes responsibility for harm but does not preclude value judgments or policy considerations
 - *Urgenda Foundation v Netherlands* – obligation to reduce GHG emissions despite contribution to climate change was small
- Kaitiakitanga – ethic of stewardship or guardianship over natural resources
 - *Ellis v R* [2020] NZSC Trans 19 – applying tikanga Maori to the wider community

- Recognizing legal personality for the Ross Dependency
 - Consistent with political notions of global trusteeship
 - Based on tikanga Maori relationships
 - Engages guardianship and stewardship via Kaitiakitanga
 - Provides foundation for regulating global “bads” however small generated within New Zealand or by nationally related juridical persons abroad
 - Catalyst for new universal approach to protecting Antarctica consistent with the neutral Treaty system



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