

The World of Small States

Volume 1

Series editors

Petra Butler

Wellington, New Zealand

Caroline Morris

London, United Kingdom

More information about this series at <http://www.springer.com/series/15142>

Petra Butler • Caroline Morris
Editors

Small States in a Legal World

 Springer

Editors

Petra Butler
Faculty of Law
Victoria University of Wellington
Wellington, New Zealand

Caroline Morris
School of Law
Queen Mary University of London
London, United Kingdom

The World of Small States

ISBN 978-3-319-39365-0

ISBN 978-3-319-39366-7 (eBook)

DOI 10.1007/978-3-319-39366-7

Library of Congress Control Number: 2017937531

© Springer International Publishing AG 2017

This work is subject to copyright. All rights are reserved by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, express or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publisher remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

Printed on acid-free paper

This Springer imprint is published by Springer Nature

The registered company is Springer International Publishing AG

The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Preface

The World Bank Group defines small states as ‘as countries that . . . have a population of 1.5 million or less. . .’.¹ Of the world’s 195 commonly recognised sovereign states, 40 countries, or 21% of the total number of states, come within this definition.² Small states can be found in all corners of the world. However, most small states are found in the Pacific, the Caribbean, and the African Indian Ocean. Reflecting their global distribution, they are diverse in culture, geography, history, land area, levels of income, and economy. The majority of small states are island states. Some are isolated; others are landlocked or neighbours of much larger states. Many of them have been under colonial rule and have transplanted or mixed legal systems that reflect their colonial experience and heritage. A few are high-income countries; however, the majority are middle- or low-income countries. Some have fragile governance and are conflict-affected; others have lived under stable rule for centuries. Some small states are commodity exporters, while others have service and tourism-based economies.

Because of their size, small states face a set of common challenges including a vulnerability to external economic impacts such as changing trade regimes; many also have restricted ability to diversify their economic activity. They have generally limited public and private sector capacity. In particular, they face challenges in providing a complete legal and judicial infrastructure. They have an enhanced need for regional co-operation to combat any pressure international law and globalisation exert on them. Small island states are also particularly vulnerable to climate change.

¹Operations Policy and Country Services, The World Bank (2016), p. ix. The series editors note that the definition is not uncontested. See Maass (2009), pp. 65–83.

²For the purpose of this series, the series editors include some territories within the definition of small states that are not classified as states as a matter of international law. These territories are geographically and culturally distinct entities that share the characteristics of small states, including the British Crown Dependencies of the Isle of Man, Jersey, and Guernsey and British Overseas Territories such as Gibraltar and the Pitcairn islands.

However, small states provide us with a unique opportunity to understand and gain insights not only into the experiences of larger states³ but also, and more generally, concepts of governance, economics, cultural studies, sociology, and many other disciplines. They are often sites of social development and innovation since they are able to react more flexibly and more rapidly to challenges. They often have an influence in the world disproportionate to their size.

Despite the opportunities small states present in regard to the research and the study of pressing global problems, such as climate change, and also long-standing questions relating to ethics, legal pluralism, and colonialism, and international relations, scholarship, particularly legal scholarship, is relatively scarce. There are individual books on issues relating to small states,⁴ and articles focusing on one or more small states can be found in general journals;⁵ but small states research was in need of an interdisciplinary series devoted to showcasing and disseminating scholarship on small states. *The World of Small States* series, under the general editorship of Petra Butler and Caroline Morris, co-director of the Centre for Small States at Queen Mary University of London, is committed to publishing monographs and edited collections addressing small states issues in the areas of law, economics, politics, and international relations. We also welcome approaches from scholars in other disciplines.

The first volume of this series, *Small States in a Legal World*, is dedicated to some of the fundamental legal issues faced by small states. The volume begins with Geoffrey Palmer exploring the question whether a dystopian future for small island states and their unique culture can be avoided given the disproportional impact of climate change on them in ‘Small Pacific Island States and the Catastrophe of Climate Change’.⁶ The chapter explores that question by examining the likelihood of inundation from the sea and its consequences, by analysing whether the Paris Agreement will assist small island states and what the consequences of failure are. The chapter further discusses some of the human rights and the security issues that arise in regard to climate change in particular for small island states. The chapter is complemented by Alberto Costi and Nathan Jon Ross’ chapter on ‘The Ongoing Legal Status of Low-Lying States in the Climate-Changed Future’.⁷ The authors discuss the consequences of climate change and the disappearance of small island states on the status of states under international law.

In Part II, *Small States: Challenges and Adventures in Law*, the reader can become acquainted with the diversity of issues that can be examined through the lens of the small state. In ‘Competition Law and Policy in Small States’, Lino

³Veenendaal and Corbett (2014), pp. 527–549.

⁴See, for example, Angelo (2014), Berry (2014), Briguglio (2014), Farran and Forsyth (2015), Corrin and Bamford (2015), and Thorhallsson (2000).

⁵It has to be noted some journals are, by virtue of their location, predominantly dealing with small states research and issues, such as the *Journal of South Pacific Law* or the *Caribbean Law Review*.

⁶Chapter 1, pp. 3–20.

⁷Chapter 6, pp. 101–138.

Briguglio of the Islands and Small States Institute shows, using Malta as a case study, that there are many factors associated with a small domestic market that have a bearing on competition law and policy.⁸ Baldur Thorhallsson of the Centre for Small State Studies in ‘Small States in the UNSC and the EU: Structural Weaknesses and Ability to Influence’ investigates the methods and tools that small states can use to influence decision-making in the European Union and the United Nations Security Council.⁹ ‘The Impact of EU Law in Luxembourg: Does Size Matter?’ by Michèle Finck¹⁰ provides a case study for Thorhallsson’s observations and an example, as Finck argues, of a state whose relationship with the EU can be viewed through the framework of size. Thorhallsson’s observations are again tested in ‘The Taxation of Small States and the Challenge of Commonality’¹¹ where Ann Mumford argues that by asserting a commonality of interest, smaller states may be able to perform beyond expectations in the international tax sphere and influence negotiations to the same extent as larger states. A common claim in studies of small states polities is that small size increases social cohesion and reduces the distance between citizens and their politicians. Therefore, small states should be model democracies. Derek O’Brien in his chapter ‘Small States, Colonial Rule and Democracy’ tests this perception by examining the state of democracy in the Caribbean and the reasons for it.¹² Tamasailau Suaalii-Sauni in ‘Legal Pluralism and Politics in Samoa: The Faamatai, Monotaga and the Samoa Electoral Act 1963’ examines the importance of being able to read cultural nuance in these socio-political reports and events and its relevance to understanding custom, the potential negative effects caused by the ambiguities created by the ad hoc blending of Samoa’s fa’amatai (chiefly) and parliamentary democratic systems, and the lack of attention that theology has received in examinations of legal pluralism in the Pacific.¹³

The final part, *The Legal Profession in Small States: Education, Practice, and Regulation*, discusses aspects of the legal profession in the Pacific, Malta, Jersey, the Seychelles, and Cyprus. Trust in the legal system, in particular in its independent and ethical operation, is one of the cornerstones of a democratic state. In small societies, those issues are particularly pertinent. Since investment will more readily flow if a state has a robust legal profession and judiciary, the issues arising in regard to legal education and legal practice in small states are also one of economic development. The problems faced by the legal profession across the small states of the South Pacific and the various regulatory models that may be adopted to deal with ethical and other breaches of professional standards are examined by Nilesh Bilimoria in ‘Choices for the South Pacific Region’s Bar Associations and Law

⁸Chapter 2, pp. 23–34.

⁹Chapter 3, pp. 35–64.

¹⁰Chapter 4.

¹¹Chapter 5.

¹²Chapter 7, pp. 139–163.

¹³Chapter 8, pp. 165–187.

Societies?’¹⁴ Nikitas Hatzimihail in ‘On Law, Legal Elites and the Legal Profession in a (Biggish) Small State: Cyprus’ explores the question of how size is impacting on the role—and functions—of law and lawyers in a small state that has a mixed legal system.¹⁵ Seán Donlan, David Marrani, Mathilda Twomey, and David Zammit in ‘Legal Education and the Profession in Three Mixed/Micro Jurisdictions: Malta, Jersey, and Seychelles’ explore legal education and training and the legal profession in three mixed/micro jurisdictions: Malta, Jersey, and Seychelles.¹⁶ The chapter considers how insiders in these jurisdictions look abroad to jurists and doctrine, judges and jurisprudence, and legislators and legislation, as well as foreign-trained practitioners, to orient their studies and practice. The effect of such external influences in small jurisdictions, the authors argue, is profound, especially in explicitly mixed traditions.

The general editors would like to thank all those involved in bringing the first volume of *The World of Small States* to fruition: the authors; the anonymous peer reviewers; Laura James and Niall Rand, LLB (Hons) graduates of Queen Mary University of London, who tirelessly and meticulously did a considerable part of the formatting, cite-checking, and additional research; and, finally, the team at Springer, especially Brigitte Reschke and Manuela Schwietzer, who responded enthusiastically to the series proposal and provided invaluable guidance along the way.

Wellington, New Zealand
London, UK
November 2016

Petra Butler
Caroline Morris

References

- Angelo T (2014) Seychelles Digest. Law Publications, Seychelles
 Berry D (2014) Caribbean integration law. Oxford University Press, Oxford
 Briguglio L (ed) (2014) Building the resilience of small states: a revised framework. Commonwealth Secretariat, London
 Corrin J, Bamford D (2015) Courts and civil procedure in the South Pacific. Intersentia, Cambridge
 Farran S, Forsyth M (2015) Weaving Intellectual Property Policy in small island developing states. Intersentia, Cambridge
 Maass M (2009) The elusive definition of the small state. *Int Polit* 46(1):65–83
 Operations Policy and Country Services, The World Bank (2016) World Bank Group engagement with small states: taking stock. World Bank, Washington DC, p ix
 Thorhallsson B (2000) The role of small states in the European Union. Ashgate, Aldershot
 Veenendaal W, Corbett J (2014) Why small states offer important answers to large questions. *Comp Polit Stud* 48(4):527–549

¹⁴Chapter 11, pp. 245–264.

¹⁵Chapter 10, pp. 213–244.

¹⁶Chapter 9, pp. 191–212.

Contents

Part I 2015 Keynote Lecture

- 1 Small Pacific Island States and the Catastrophe of Climate Change** 3
Geoffrey Palmer

Part II Small States: Challenges and Adventures in Law

- 2 Competition Law and Policy in Small States** 23
Lino Briguglio
- 3 Small States in the UNSC and the EU: Structural Weaknesses and Ability to Influence** 35
Baldur Thorhallsson
- 4 The Impact of EU Law in Luxembourg: Does Size Matter?** 65
Michèle Finck
- 5 The Taxation of Small States and the Challenge of Commonality** 87
Ann Mumford
- 6 The Ongoing Legal Status of Low-Lying States in the Climate-Changed Future** 101
Alberto Costi and Nathan Jon Ross
- 7 Small States, Colonial Rule and Democracy** 139
Derek O'Brien
- 8 Legal Pluralism and Politics in Samoa: The Faamatai, Monotaga and the Samoa Electoral Act 1963** 165
Tamasailau Suaalii-Sauni

Part III The Legal Profession in Small States: Education, Practice and Regulation	
9	Legal Education and the Profession in Three Mixed/Micro Jurisdictions: Malta, Jersey, and Seychelles 191
	Seán Patrick Donlan, David Marrani, Mathilda Twomey, and David Edward Zammit
10	On Law, Legal Elites and the Legal Profession in a (Biggish) Small State: Cyprus 213
	Nikitas E. Hatzimihail
11	Choices for the South Pacific Region’s Bar Associations and Law Societies? 245
	Nilesh N. Bilimoria

About the Contributors

Nilesh Bilimoria is an assistant lecturer in the School of Law at the University of the South Pacific. He was formerly a senior legal officer with the Fiji Human Rights Commission and is currently a PhD candidate in the Faculty of Law at Queensland University of Technology.

Dr Lino Briguglio is professor of economics in the Faculty of Economics, Management and Accountancy at the University of Malta. He is the director of the Islands and Small States Institute and the Gozo Centre at the University of Malta. He has represented the Maltese government in many United Nations meetings, including the UN Global Conference on the Sustainable Development of Small Island States and the World Summit for Sustainable Development.

Alberto Costi is an associate professor in the Faculty of Law, Victoria University of Wellington, New Zealand. He is also the secretary-general of the International Law Association, New Zealand Branch, and vice president of the New Zealand Association for Comparative Law.

Dr Seán Donlan is associate professor and deputy head of school in the School of Law at the University of the South Pacific. He is a founding member of the micro jurisdictions research network *Nexus* and president emeritus of *Juris Diversitas*.

Dr Michèle Finck is a fellow in the Department of Law at the London School of Economics and a lecturer in EU law at Keble College, University of Oxford. She was formerly a visiting research scholar at New York University.

Dr Nikitas Hatzimihail is associate professor and vice-chair of the Department of Law at the University of Cyprus. He is also an affiliated senior researcher at the Université Libre de Bruxelles. He has served as advisor to the government of Greece on the Aegean and Islands Policy.

Dr David Marrani is the director of the Institute of Law in St Helier, Jersey, and a founding member of the micro jurisdictions research network *Nexus*.

Dr Ann Mumford is a reader in taxation law at the Dickson Poon School of Law at King's College London. She is a founding member of the *FemTax* network of international, feminist tax law professors.

Dr Derek O'Brien is a reader in law at the School of Law and a member of the Small Jurisdictions Service at Oxford Brookes University. He has served in the attorney general's chambers of the Cayman Islands and has advised the Foreign and Commonwealth Office and the Inter-American Development Bank on the provision of legal services in the British Overseas Territories and the independent countries of the Commonwealth Caribbean.

Sir Geoffrey Palmer QC is a distinguished fellow of the New Zealand Centre for Public Law and the Law Faculty at Victoria University of Wellington, New Zealand. He has served as attorney general, minister of justice, leader of the house, deputy prime minister, and prime minister of New Zealand. He was made a member of the Global 500 Roll of Honour by the United Nations Environment Programme. For eight years, he was New Zealand's commissioner to the International Whaling Commission.

Nathan Ross is a research fellow in international law and PhD candidate at Victoria University of Wellington, New Zealand, and a barrister and solicitor of the High Court of New Zealand.

Dr Tamasailau Suaalii-Sauni is an associate professor in the Department of Sociology at the University of Auckland, New Zealand. She regularly advises on Pasifika issues to numerous New Zealand bodies, including the Ministry of Health, the NZ Families Commission, and the Alcohol Advisory Council of NZ.

Dr Baldur Thorhallsson is professor and head of the Faculty of Political Science at the University of Iceland. He is also Jean Monnet chair in European Studies and Programme and research director at the Centre for Small States Studies at the University of Iceland.

Dr Mathilda Twomey is the chief justice of the Supreme Court of Seychelles. She is admitted to the Bar of England and Wales and practised as an attorney-at-law in Seychelles. She was a member of the Constitutional Commission of Seychelles which drafted the present Constitution of Seychelles in 1993.

Dr David Zammit is a senior lecturer and head of the Department of Civil Laws in the Faculty of Laws at the University of Malta. He is a fellow of the Royal Anthropological Institute and executive editor of the *Mediterranean Journal of Human Rights*.