

ROUTLEDGE HANDBOOK OF SEABED MINING AND THE LAW OF THE SEA

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IN MEMORIAM OF ROBERT MAKGILL

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Back in 2017, Robert's initial goal was to conceive the first book dedicated to seabed mining and the law of the sea and in doing so, to provide an original analysis of this topic which could be of use to a wider (and not necessarily academic) audience. The ambition of his vision obviously exceeded his availability, so Robert reached out to me to embark on this editorial adventure. Despite some obvious differences in our cultural backgrounds, we shared a passion for the law of the sea, an expertise in seabed mining and a unique experience from the 2011 advisory opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea. We also shared the same profession and I would say, more importantly, we shared a profound respect, love and admiration for the ocean through our surfer souls.

Since then, a lot has happened: the Covid-19 pandemic, many professional and personal highlights and challenges, as well as a busy international agenda (the ongoing negotiations on biodiversity beyond national jurisdiction) that we wanted to take into consideration. Robert and I therefore decided to change our goal from publishing the first book dedicated to seabed mining and the law of the sea to rather concentrate on the quality and uniqueness of this book. With the passing of time, Robert unfortunately had to step down as being the main editor and co-editor of this book, leaving me the reins to do what was necessary to achieve our vision and goals. As a result, this book remains deeply marked by his touch and direct contributions.

Robert left us in December 2022, leaving us without enough words to express our shock and our pain.

All of us friends and colleagues admired Robert's energy and personality, his capacity to face challenges and engage with passion in everything he was doing. We admired his cultural curiosity, his sharp mind, intellect and his good humour. Wherever there was laughter and joy, Robert was there, in the middle of it, speaking with his loud voice.

We shared countless souvenirs from our time together in Europe, Australia and New Zealand, engaging in fascinating discussions about the rule of law, environmental protection, Māori rights, seabed mining, a lawyer's life, our commitments to pro bono activities, but also surfing, travelling and design.

Robert was truly passionate about the ocean, living his passion to the fullest. Surfing, for Robert, was a way of life, a way to communicate with the ocean and to express his respect towards it. Many magical waves and ocean sunsets blessed the life of Robert, whether on the New Zealand shores or on the Atlantic ones in Biarritz ... a place that he deeply loved.

Robert was also a caring and kind friend and colleague, always generously offering his help ... he was always there for the people and the communities he cared for. He even sponsored Zen Wallis at the 2018 World Surfing Games in Japan! Robert exemplified the collegiality that we are all supposed to display.

We also admired him as a colleague, for his commitment to live the law from the inside and for not shying away from taking controversial stances. Robert was an immensely knowledgeable and conscientious environmental law expert who was well known in Aotearoa New Zealand. He was a respected barrister with 25 years' experience in public, environmental, property and international law. Never far from the ocean, Robert drew on his lived experience and deep academic knowledge in the practise of domestic and international environmental law.

Robert's passion for surfing and for the cutting edge of environmental law combined with his innovative thinking led to his being legal advisor (as an Auckland University LLM student) in gaining consent for New Zealand's first intentional artificial surfing reef. He subsequently led the legal arguments that resulted in the legal protection of New Zealand's top surfing breaks. Established as perhaps New Zealand's leading coastal and marine planning legal expert, Robert represented local communities in overturning a government Minister's decision to decline a marine reserve application in Akaroa Harbour. As a direct consequence, a marine reserve was subsequently approved.

Robert was also a leading player for Māori tribes in partially successful court challenges to the decision to leave the wreckage of the *Rena* on a reef of particular significance to Māori. Although coastal and marine planning law was his forte, Robert also provided the successful legal arguments that resulted in local authorities being able to make rules in plans creating GMO-free areas.

Robert was furthermore a dedicated counsel for the International Union for the Conservation of Nature (IUCN) and the World Commission on Environmental Law (WCEL), which led him to act as counsel in the International Tribunal for the Law of the Sea (ITLOS)'s advisory opinion proceedings on deep sea mining in 2010. His expertise in law of the sea also led him to assist with advising a party to the ITLOS advisory opinion proceedings on illegal, unreported and unregulated fishing in 2015, advise foreign governments on numerous issues, chair the International Seabed Authority's legal working group on Environmental Management of Deep Sea Mining in 2011, and be involved in the 2012 *Pacific-ACP States Regional Environmental Management Framework for Deep Sea Minerals Exploration and Exploitation*. He also facilitated the ISA working group on Ecosystem-Based Management and Deep Sea Mining in 2016.

Robert regularly and confidently appeared on environmental law matters before a range of New Zealand government bodies, tribunals and courts from first instance to the appellate level. He had a leading role in some of New Zealand's most high-profile environmental law cases, including most recently the landmark 2021 Supreme Court seabed mining case *Trans-Tasman Resources v Taranaki-Whanganui Conservation Board*.¹

In 2019, Robert completed his PhD on sustainable management, law of the sea and New Zealand State practice at Ghent University (Belgium),² giving his work a deep scholarly founda-

1 See the two chapters of Robert in this book: R. Makgill, A. Jaeckel and K. MacMaster, 'Implementing the precautionary approach for seabed mining: a review of State practice' in V. Tassin Campanella (ed) *Seabed mining and the law of the sea*, Routledge handbook collection, Routledge: London, 2023, chapter I.3 and R. Makgill and E. Macpherson, 'New Zealand and seabed mining' in V. Tassin Campanella (ed), *Seabed mining and the law of the sea*, idem, chapter VI.2.12.

2 R. Makgill, *Sustainable management of the sea: identifying a body of sustainable management jurisprudence composed of law of the sea doctrine and New Zealand state practice*, PhD Degree, Ghent University, 2019. Available online <https://biblio.ugent.be/publication/8634229> (accessed February 2023).

tion. The hallmark of his research and academic studies was always its application to the protection of nature.

There have been few, if any, in New Zealand who had Robert's depth of theoretical and practical knowledge of the law of the sea. Profoundly fascinated, committed and engaged in legal research and theory, Robert was actually often saying that he was too much of an academic to be a barrister, and too much of a barrister to be an academic. To us, Robert was simply the best example of being able to be the two.

Robert also consistently gave back to the legal and scholarly community through board positions, teaching appointments, mentoring junior colleagues, presenting at academic and professional development conferences, and publishing in a range of scholarly and practice-focused outlets, including his leading role in developing the foundations for this book. He had valued connections and trusted relationships throughout New Zealand and the world, including with other practitioners, industry, government, academia and Māori.

Familiar to the authors of this book and his friends and colleagues beyond, we are sure that this is just a small subset of Robert's wide-ranging accomplishments. He was an active and engaged advisory board member of the project on Law and Policy for Ecosystem-Based Management in the New Zealand Sustainable Seas National Science Challenge.³ He also chaired the Environment and Resource Management Law Committee of the Auckland District Law Society⁴ and insisted on the obligation of all practising and academic lawyers to drive change and improvements in environmental law and policy for the benefit of present and future generations. At the time of his death, he was an advisor to a national research project on implementing ecosystem-based management in New Zealand law and a Research Fellow at Lincoln University's Land Environment and People Research Centre.

Robert was a great force for precaution in international law, and a very strong advocate for evidence-based decision-making. We have been honoured to know him, learn from him and work by his side.

Robert, we hope that this book can uphold your legacy and honour your work and values. You are already immensely missed.

From the bottom of our hearts, with our tight throats and wet eyes, we express our sincerest condolences to Robert's family and to all his friends and colleagues around the world.

*Virginie Tassin Campanella together with friends and colleagues of Robert
from this book and beyond*

3 'Policy and Legislation for EBM', *Sustainable Seas National Science Challenge*. Available online <<https://www.sustainableseaschallenge.co.nz/our-research/policy-and-legislation-for-ebm/>> (accessed February 2023).

4 'Environment & Resource Management Law: ADLS' <<https://adls.org.nz/EnvironmentandResourceCommittee/>> (accessed February 2023).