

**Anton's Weekly Digest of
International Law Scholarship***

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I. SSRN Legal Scholarship Network/bepress Legal Repository/NELLCO Legal Scholarship Repository/Publishers Advances

(Abstracts in this Bulletin have been significantly edited for brevity)

Outcasting: Enforcement in Domestic and International Law

Oona Hathaway and Scott Shapiro
Hauser Globalization Colloquium Fall 2010

We argue that the Modern State Conception reflects a woefully incomplete understanding of how law really is enforced. It errs by insisting that law may only be enforced in the same way that modern states enforce their law. First, it demands that the law be enforced internally, i.e., by the regime itself. Second, it requires that the law be enforced violently, i.e., through the threat and exercise of physical force. This narrow vision of law enforcement ignores regimes that delegate law enforcement to external parties. We argue that, contrary to the Modern State Conception, as long as some party is tasked with using coercion in order to ensure compliance with the rules, the regime itself need not perform the role. We call this externalized enforcement. Moreover, we argue that the coercion used to enforce the law need not involve the threats and exercise of violence. Rather, it may involve the threat of social exclusion, or as we call it, outcasting. Disobedience need not be met with the law's iron fist – it may simply involve denying the disobedient the benefits of communal belonging and social cooperation. We make our case in four Parts.

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* Donald K. Anton, The Australian National University College of Law. This digest draws on independent research together with information gleaned from the RSS feeds of a host of international law publishers, law libraries, and blogs, especially Jacob Katz Cogan's [International Law Reporter](#) and Lawrence Solum's [Legal Theory Blog](#).

Utopian Thought and the Law of Nations

Stas Getmanenko

affiliation not provided to SSRN

Thomas More in his conversation with Raphael Hythloday agreed with Plato that "nations will be happy, when either philosophers become kings, or kings become philosophers." Some five hundred years following More's sojourn to the New Isle of Utopia, the "philosophers" remain in search of a societal order that would appropriately reflect and encompass the humanity's best social and political contrivances. Inasmuch as humanity remains governed by law, and "[a]ll laws are promulgated for this end, that every man may know his duty," the quest for a modern Utopia is then appropriately placed in the purview of jurisprudence. This legal essay does not make any grandiose attempts to devise a utopian or messianic scheme for a new world order. Instead, it compiles for the reader a collage of thoughts on this subject from the past. Additionally, the author presents the reader with a brief overview of certain historical events as they pertain to the ideas of utopian thought and the law of nations. When examined together, the historical events provide grounding context to otherwise abstract world of thought. This essay also attempts to establish a meaningful connection between the study of the law of nations and the study of utopian thought. . . .

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After Copenhagen: The Impossibility of Carbon Trading

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Durham Law School, Durham University

Matthias Klaes

Keele University; SCHEME

Christopher Bignell

Benjamin N. Cardozo School of Law

LSE Legal Studies Working Paper No. 22/2010

The attempt to develop international cap and trade markets for anthropogenic greenhouse gas emissions, ultimately aiming to determine a global price for carbon, is the most extensive attempt ever made to use market-mimicking mechanisms to deal with an environmental externality. Addressed to the problem of climate change, it is an exercise in the adjustment of the social welfare function on a global scale, and it envisages expenditures which will run into trillions of dollars. Focusing on the operation of the Clean Development Mechanism, the most important of the three flexible mechanisms for carbon trade established under the Kyoto Protocol, it will be argued that carbon trading which will reduce emissions in line with any of the targets set for avoiding dangerous anthropological interference is impossible. Climate change negotiations have completely failed to place a cap on global emissions; indeed, they have given a legal permission to increase them. Reflecting the fatal shortcomings of the Kyoto Protocol, the operation of the CDM so far has not merely failed to secure reductions, but in all likelihood has actually increased the absolute level of emissions.

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Keeping Negotiations in the Dark: Environmental Agreements Under Incomplete Information

Ana Espinola-Arredondo

Washington State University - School of Economic Sciences

Felix Munoz-Garcia

Washington State University - School of Economic Sciences

This paper investigates the role of uncertainty as a tool to support cooperation in international environmental agreements. We consider two layers of uncertainty: one where only the follower is uninformed about the leader's environmental concern, which we refer as "unilateral uncertainty," and another where both leader and follower are uninformed about each others' concerns, denoted as

"bilateral uncertainty." We show that under unilateral uncertainty treaties become successful with positive probability in the signaling game, even under parameter conditions for which no agreement is reached under complete information. Under bilateral uncertainty, a separating equilibrium emerges where the leader participates in the treaty only when its environmental concerns are high. Hence, we show that the agreement is signed for larger sets of parameter values under unilateral than bilateral uncertainty. We then evaluate the welfare properties of these equilibria, showing that further layers of uncertainty might enhance social welfare under certain conditions.

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Human Rights: China's Historical Perspectives in Context

[Xiaohui Wu](#)

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Journal of the History of International Law, Vol. 4, pp. 335–373, 2002

This article examines what the PRC's official views on international human rights has been historically. It is suggested that the sources of the PRC's human rights discourse have deep roots, both theoretical and practical, in Marxism and Leninism. Within the parameters of Marxism-Leninism, much can be understood about China's changing human rights discourse. The Chinese discussion about international human rights is not only a matter of contingent policy, but finds a very solid and coherent foundation in a series of traditional PRC understandings on the essential values of society, on the relationship between the State and the individual, between the international community and the State, and between international and domestic law.

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The Complementary Faces of Legitimacy in International Law: The Legitimacy of Origin and the Legitimacy of Exercise

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[Eric De Brabandere](#)

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[Fordham International Law Journal, Vol. 34, pp. 101-145, 2010](#)

Global governance rests on the exercise of public authority by a myriad of actors. In the international order, the more powers and influence these actors acquire, the more their legitimacy proves to be controversial. It is submitted here that the legitimacy of international, regional, and domestic actors that partake in global governance - those considered here as global actors - must be appraised from a two-fold standpoint. Their legitimacy can first be gauged through the lens of the origin of their powers. This is what this Article calls the legitimacy of origin. The origin of the power may often prove an insufficient indicator of an actor's legitimacy. For this reason, legitimacy is also evaluated in light of the way in which the actor exercises its power. This is what this Article calls the legitimacy of exercise. This Article is based on the assumption that failing to recognize this dual character of legitimacy of actors involved in global and regional governance can undermine any endeavor to grasp the contemporary complexity of the latter. . . .

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Why Should it Matter that Others Have More? - Poverty, Inequality and the Potential of International Human Rights Law

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London School of Economics and Political Science - Centre for the Study of Human Rights/Law Department

[LSE Legal Studies Working Paper No. 15/2010](#)

A concern with ensuring minimum standards of dignity for all and a doctrine based on the need to secure for everyone basic levels of rights have traditionally shaped the way in which international

human rights law addresses poverty. Whether this minimalist, non-relational approach befits international law objectives in the area of world poverty begs consideration. This paper offers three justifications as to why global material inequality – and not just poverty – should matter to international human rights law. The paper then situates requirements regarding the improvement of living conditions, a system of equitable distribution in the case of hunger, and in particular obligations of international cooperation within the post-1945 international effort at people-centred development. The contextual consideration of relevant tenets serves to demonstrate that positive international human rights law can be applied beyond efforts at poverty alleviation to accommodate a doctrine of fair global distribution.

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International Law in China: The Xiamen Academy of International Law

Najman Alexander Aizenstatd

Universidad Rafael Landivar

The International Law Quarterly, Vol. XXV, No. 2, Fall 2010

General thoughts on China, International Law and the Xiamen Academy of International Law.

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The Local Impact of 'UN-Accountability' under International Law: The Rise and Fall of the UNMIK Human Rights Advisory Panel

Aleksandar Momirov

Erasmus University Rotterdam (EUR) - Erasmus School of Law

Serbian Yearbook of International Law

This article examines the increasingly local impact of gaps in the accountability regime governing the activities of the United Nations. More in particular, the article looks at the accountability deficit of the UN administration of Kosovo in terms of its impact on the local legal order, as designed by United Nations Security Council Resolution 1244 (1999). Part I sets out the main premises which shape the peculiar legal order in Kosovo. Part II goes on to describe how accountability of the United Nations administration is regulated and considers the insufficiencies of the accountability regime. Part III introduces the Human Rights Advisory Panel, a sui generis body established with the aim to improve the accountability record of the United Nations mission in Kosovo. Main institutional and procedural features are discussed. Finally, Part IV reflects on the strained relationship between the United Nations administration and the Human Rights Advisory Panel and the ultimate demise of the human rights oversight body. The article concludes with some final observations regarding the adverse effects of the described developments, on the ground and with respect to the United Nations in general.

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The Pluralism Problem in Cross-Border Reproductive Care

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Human Reproduction, Vol. 25, pp. 2939-2943, 2010

Outlawing well established forms of assisted reproduction places obstacles in the path of couples who wish to attain their reproductive goals with medical assistance. One effect of restrictive reproductive laws that has received widespread attention is cross-border reproductive travel. In Europe, such travel is permitted by the policy of free movement of persons that is a cornerstone of the democratic and economic stability of the European Union. Cross-border reproductive travel fails to promote moral and political pluralism in democratic states for three primary reasons. First, the opportunity for patients to go abroad for treatment tempers organized resistance to the law and allows government to pass stricter regulations than it otherwise might. Second, cross-border reproductive care has been shown to have deleterious extraterritorial effects that undermine the articulated rationales behind

restrictive reproductive laws. Third, laws that generate demand for cross-border reproductive care often fail to satisfy the standard of proportionality that restrictions on human reproduction must meet.

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Foreign Aid, the Rule of Law, and Economic Development in Africa

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Foreign aid has failed to bring about any significant development results in the poor countries of Africa in over sixty years of existence. The failure of aid is due to the fact that development planning faces an insurmountable calculation problem. Attempting to salvage aid by making it more selective does not address this problem, and will not make aid effective. Aid by its very nature causes waste, corruption, politicization, privilege seeking, and statism, all of which are detrimental to economic development. Instead of relying on aid, African economies should occupy themselves with creating legal institutions that are commensurate with the protection of private property and the Rule of Law, which are foremost among the institutions necessary for sustainable, long run economic growth.

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Less than a State, More than an International Organization: The Sui Generis Nature of the European Union

Marek Hlavac

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In this paper, I show that the European Union (EU) is less than a state, but more than an international organization. Although it possesses some characteristics of both, the European Union is, I argue, a sui generis project: Although the EU wields extensive influence in some policy areas (such as competition policy or international trade regulation), its institutions' powers are quite limited in many areas that remain firmly within the grasp of its Member States' governments (such as security, justice, tax or redistribution policies). The European Union's supranational elements – especially the EU laws' supremacy over the laws of individual Member States – distinguish it, furthermore, from international organizations, such as the United Nations or the World Trade Organization. I conclude that the European Union is really a sui generis project that has not been attempted anywhere else: As such, it could be regarded as a useful case study, or perhaps even a "pilot project," for regional integration projects elsewhere.

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The Curious Case of Corporate Liability under the Alien Tort Statute: A Flawed System of Judicial Lawmaking

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[Virginia Journal of International Law, Vol. 51, p. 353, 2010](#)

[Hofstra Univ. Legal Studies Research Paper No. 0-43](#)

This article challenges the widely held view that the Alien Tort Statute (ATS) imposes liability on private corporations for violations of customary international law. I lay out the modern origins and development of this cause of action in U.S. federal courts and argue that doctrine rests on shaky, indeed illusory, analytical and jurisprudential foundations. Despite the absence of a well defined norm of customary international law that imposed liability upon private corporations, courts, when they even considered the validity of the claims, built a consensus around the fact that no norm existed forbidding the imposition of liability on private corporations. This doctrinal approach was particularly questionable in light of the Supreme Court's position that recognition of causes of action under the ATS be limited to situations involving violations of norms that are specific, universal, and obligatory. Finally, I argue that the rise of this flawed consensus reveals that our system of federal courts is

particularly ill-suited to the type of independent lawmaking that modern ATS doctrine has enabled up to this point. These developments indicate that courts should adopt a restrictive approach to corporate liability under the ATS going forward.

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**Revisiting the External Dimension of the Environmental Policy of the European Union:
Some Challenges Ahead**

del Castillo, Teresa Fajardo

Journal for European Environmental & Planning Law, Volume 7, Number 4, November 2010 , pp. 365-390(26)

This article reviews the legal dimension of the EU external environmental policy and its progress as a normative green power promoting compliance with international environmental law. It discusses the changes brought about by the Lisbon Treaty and the creation of the EU External Action Service and its future possible developments.

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The Effect of Content on Global Internet Adoption

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Cheung Kong Graduate School of Business

Nicholas Economides

New York University - Stern School of Business

NET Institute Working Paper No. 10-24

NYU Law and Economics Research Paper No. 10-55

We test the effect of content availability on Internet adoption across countries. Controlling for the endogeneity of content with respect to the installed base of Internet users and a host of demographic, economic and infrastructure factors, content has a statistically and economically significant effect. Since content is more easily and quickly altered than these other factors, our results suggest that policies promoting content creation will positively affect Internet diffusion even in the short run. Our results also suggest that, given its ubiquity, Internet content is a useful tool to affect social change across countries. Content has a greater effect on adoption in countries with more disparate languages, consistent with its use to overcome linguistic isolation, and in countries with international Internet gateways, suggesting the importance of infrastructure to deliver content.

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**A Sui Generis Regime for Traditional Knowledge: The Cultural Divide in Intellectual
Property Law**

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University of Pittsburgh - School of Law

Marquette Intellectual Property Law Review, Winter 2011

U. of Pittsburgh Legal Studies Research Paper No. 2010-12

Traditional knowledge can be protected, to some extent, under various intellectual property laws. However, for the most part, there is no effective international legal protection for this subject matter. This has led to proposals for a sui generis right for traditional knowledge. The precise contours of the right are yet to be determined, but a sui generis right could include perpetual protection. It could also result in protection for historical communal works and for knowledge that may be useful but that is not inventive according to the standards of intellectual property law. Developing countries have been more supportive of international protection for traditional knowledge than developed countries. At the same time, developing countries have been critical of the impact of intellectual property rights on various social issues such as access to medicines and educational materials. In light of developing country concerns about the negative effects of strong global intellectual property rights, this paper

uses a development focused instrumentalist approach to assess the implications of a sui generis traditional knowledge right. It concludes that some of the measures sought may not achieve the desired outcome. Although intellectual property can play a role in protecting traditional knowledge, creating a sui generis intellectual property style right may hinder the equity-oriented goals of some traditional knowledge holders.

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The Protection of Trade Secrets: A Conceptual Analysis Along with a Comparative Study on the Laws of Various Nations

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. . . The basis of the law of trade secrets are certain contractual obligations and the doctrines of fiduciary relationship and unjust enrichment, and the evolution of the trade secrets protection can be traced back to the year 1851, in England and in the year 1868, in the US. Even the TRIPs agreement has mandated the protection of 'trade secrets' and definite attempts have been made worldwide, like the Economic Espionage Act (1996), of the US, in addition to the earlier, Uniform Trade Secrets Act, the Japanese law of unfair competition, and the Personal Information protection and Electronic Documents Act of Canada, in India, unfortunately, there is no statutory break through in this regard, and the country is still lagging behind in the protection of trade secrets. This Paper is an attempt to conceptually analyze trade secrets and various issues involved with the protection of trade secrets, and to study comparatively, the laws practiced in various other developed countries, for their protection.

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The Image of God: Rights, Reason, and Order

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New York University (NYU) - School of Law

[NYU School of Law, Public Law Research Paper No. 10-85](#)

The idea that humans are created in the image of God is often cited as a foundation for human rights theory. In this paper, this use of imago dei is surveyed, and while the paper is basically favorable to this foundation, it draws attention to some difficulties (both theological and practical) that using imago dei as a foundation for human rights may involve. Also it explores the suggestion that the image of God idea may be more apt as a foundation for some rights rather than others. Its use in relation to political rights is specifically explored. The moral of the discussion is that foundations do make a difference. We should not expect that, if we simply nail this idea onto the underside of a body of human rights theory as a foundation, everything in the theory will remain as it is.

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Transnational Perspective on Human Genetics and Property Rights Mobilizations of Indigenous Peoples

[Andrea Boggio](#)

Bryant University

PROPERTY RIGHTS AND NEOLIBERALISM: CULTURAL DEMANDS AND LEGAL ACTIONS, W. V. McIntosh, L. J. Hatcher, eds., Ashgate Publishing, 2010

The political, economic, and cultural tensions associated with patenting biological material are problematic. This chapter looks at indigenous opposition to various biotech and genetics research initiatives in the context of a political environment highly inspired by neoliberal ideals. Indigenous peoples' mobilization and resistance against assignment of IPRs offers a remarkable opportunity to uncover some of the contradictions in neoliberalism, particularly of the way patent law rubs against communal understandings of ownership. In particular, the book chapter discusses the following questions: What form of resistance did indigenous people use to mobilize against neoliberal

intellectual property rights (IPRs) regimes? In what ways did the colonial context shape these mobilizations, particularly with regard to DNA sampling? What is the significance and impact of indigenous mobilization against biotech initiatives?

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Exporting Subjects: Globalizing Family Law Progress Through International Human Rights

Cyra Akila Choudhury

Florida International University College of Law

[Michigan Journal of International Law, Vol. 32, No. 1, 2011](#)

This article examines the global export of domestic U.S. legal projects and strategies in the realm of family law and gender justice to South Asia. While such projects have undoubtedly achieved substantial gains for women in the U.S., there have also been costs. . . . The aim of the article is to highlight the difficulties of exporting notions of personhood and progress and to argue for a reorientation of transnational feminism in a manner that adopts the priorities of local women in the Global South and not just their elites.

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Three Transnational Discourses of Labor Law in Domestic Reforms

Alvaro Santos

Georgetown University Law Center

[University of Pennsylvania Journal of International Economic Law, Vol. 32, No. 2010](#)

[Georgetown Public Law Research Paper No. 10-72](#)

[Georgetown Law and Economics Research Paper No. 10-22](#)

Current labor law debates, in the United States and elsewhere, reflect entrenched discursive positions that make potential reform seem impossible. This Article identifies and examines the three most influential positions, which it names the "social," "the neoliberal," and the "rights-based" approach. It shows that these discursive positions are truly transnational in character. In contrast with conventional wisdom, which accepts the incompatibility of these positions, this Article creates a conceptual framework that productively combines elements from each to enrich the debates over labor law reform and to foster institutional imagination. . . .

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Effects of International Legal Regimes and Policy Measures Aimed at the Protection of Human, Animal or Plant Life or Health on Animal Genetic Diversity

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[NCCR Trade Regulation Working Paper No. 2010/09](#)

The value of livestock diversity for food security is increasingly acknowledged. Previous studies have found evidence that resistance or tolerance of animals to diseases is related to genetic variation. This study asks whether international zoo sanitary and food safety regimes affect the diversity of animal genetic resources for food and agriculture (AnGRFA) or diversity of livestock, and, if so, whether measures to mitigate these impacts are desirable. The research is based on three case studies: the

outbreak of highly pathogenic avian influenza (HPAI) in Asia (2003-2005); the outbreak of foot and mouth disease (FMD) in the United Kingdom (2002); and a study on the possible impacts of zoo sanitary and food safety measures on creation of export markets for products of breeds at risk. We find no clear answer to the question. However, we conclude that, given the global nature of the risk, the burden of risk prevention measures should also be shared. This calls for a stronger commitment of the developed countries. We make recommendations for the elaboration of emergency, containment and prevention strategies and plans; for mitigating the indirect impacts of standards on trade in animal products; and information and capacity building on measures for the conservation of AnGRFA.

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Breeding Business. The Future of Plant Breeding in the Light of Developments in Patent Rights and Plant Breeder's Rights

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Wageningen University and Research Center

[Hans Dons](#)

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[Geertrui Van Overwalle](#)

Leuven University; Tilburg University

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affiliation not provided to SSRN

[Anthony Arundel](#)

Maastricht Economic Research Institute on Innovation and Technology (MERIT)

[Derek Eaton](#)

affiliation not provided to SSRN

[Annemiek Nelis](#)

Radboud University Nijmegen

Netherlands Ministry of Agriculture, Nature and Food Quality (LNV), Wageningen, Centre for Genetic Resources (CGN) – Wageningen University and Research Centre, December 2009

Upon request of the Netherlands Minister of Agriculture, Nature and Food Quality a study has been conducted into the future of plant breeding in the light of developments around plant breeder's rights and patent rights. . . . The study comprised an investigation into relevant trends in the plant breeding sector and a number of semistructured interviews with stakeholders. This report describes the major trends, analyses these trends in the light of the questions above, and formulates recommendations based on a number of normative points of departure for arriving at conclusions. . .

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The Invention of the Public Interest: About Public Health, Sustainable Development and Patent Law (De Uitvinding van het Algemeen Belang: Over Volksgezondheid, Duurzame Ontwikkeling en Octrooirecht) (Dutch)

[Geertrui Van Overwalle](#)

Leuven University; Tilburg University

LIBER AMICORUM LUDOVIC DE GRUYSE, pp. 321-330, Brigitte Dauwe, Bruno De Gryse, Eric De Gryse, Bruno Maes, Kristien Van Lint, eds., Larcier, 2010

Traditionally, economic progress is considered to be one of the common interpretations of public interest. Recently, consensus has grown that public interest also includes public health objectives. The present paper examines to what extent the concept of public interest can be understood to encompass sustainable development goals in the framework of climate change as well.

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Subsidizing Carbon Capture and Storage Demonstration through the EU ETS New Entrants Reserve: A Proportionality Test

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University of Groningen

Carbon and Climate Law Review, pp. 215-218, No. 3/2010

Abstract:

Upon its adoption in the Directive revising the European Greenhouse Gas Emission Trading Scheme (Directive 2009/29), Article 10(a)8 was heavily criticized by a number of environmental organizations and legal scholars for disturbing the EU ETS' market mechanism. Article 10(a)8 provides for the possibility to co-finance the up to 12 planned European Carbon Capture and Storage (CCS) demonstration projects as well as innovative renewable energy demonstration projects through the EU ETS new entrants reserve. The criticism of Article 10(a)8 raises doubts as to the article's consistency with the EU ETS (and its overarching goals) as such and, in essence, questions the measure's proportionality. It is not unthinkable that the EU law principle of proportionality will in future be used to challenge the validity of Article 10a(8). This article argues that it is in that case unlikely that the Court of Justice of the European Union would declare Article 10a(8) to infringe the principle of proportionality.

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International Human Rights Law and the Determination of Cultural Identity (L'Identité Culturelle À L'Épreuve du Droit International des Droits de L'Homme) (French)

[Julie Ringelheim](#)

University of Louvain (Belgium) - Center for Philosophy of Law

As a consequence of the development of minority protection, indigenous peoples' rights and the right not to be discriminated against based on race or ethnicity, there has been a multiplication of situations where legal institutions are called upon making a decision on the cultural, ethnic or religious identity of an individual. Whereas there has been ample discussion in the international human rights literature on how to define minority and indigenous groups, much less attention has been paid to the question how to assess an individual's affiliation with a group. This is the subject of this paper. . . .

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International Law and the U.S. Common Law of Foreign Official Immunity

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[Supreme Court Review, Forthcoming](#)

In *Samantar v. Yousuf*, 130 S. Ct. 2278 (2010), the U.S. Supreme Court unanimously held that the Foreign Sovereign Immunities Act does not apply to lawsuits brought against foreign government officials for alleged human rights abuses. The Court did not necessarily clear the way for future human rights litigation against such officials, however, cautioning that such suits "may still be barred by foreign sovereign immunity under the common law". At the same time, the Court provided only minimal guidance as to the content and scope of common law immunity. Especially striking was the Court's omission of any mention of the immunity of foreign officials under customary international law ("CIL"). In this Article, we explain why, notwithstanding the Supreme Court's inattention in *Samantar* to the international law backdrop of the case, CIL immunity principles are likely to be relevant to the development of the post-Samantar common law of immunity. . . .

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European Legal Education, or: How to Prepare Students for Global Citizenship?

[Jan M. Smits](#)

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Maastricht European Private Law Institute (M-EPLI) Working Paper No. 2011/02

Legal education is gradually moving away from the teaching of national law towards a more European, transnational, or even 'global' way of teaching. This paper seeks to explain why an international legal education is to be preferred to a national curriculum and what this means for how law is taught and how law schools are ideally organised. The arguments for an international legal education lie in the increasing plurality of legal sources, the desire to attract students from a larger pool, and the need to give students not only a specialised professional training but also to prepare them for global citizenship. It is claimed students should be exposed to alternative ways of achieving justice, thus creating a dialogue with otherness. This can be done by a focus on the arguments behind the choices made by the relevant authorities and not on the doctrinal intricacies of national legal systems. . . .

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The Controversial Status of International Law and Comparative Law in the United States

Martha Minow

[52 Harv. Int'l L.J. Online 1 \(2010\)](#)

In recent years, I have watched the swirling debate over whether the United States courts should consult international or comparative law. As a law professor, the debate has puzzled me, for international and comparative legal materials have always appeared in the sources consulted by American lawyers and judges. So this article is really a search for the roots of the contemporary controversy. Why is there a controversy? And what can we learn from it? I will suggest three conjectures to explain the fact of the contemporary debate over the proper role of international law within the United States: (1) a basic concern emphasizes that we risk being taken over, or losing what we are by engaging with others; (2) a second worry stresses that the United States is exceptional and thus faces politically motivated attacks as the last superpower; (3) a third very specific trepidation arises from the unusual nature of "customary international law."

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From Enlightened Positivism to Cosmopolitan Justice: Obstacles and Opportunities

[Steven R. Ratner](#)

University of Michigan Law School

FROM BILATERALISM TO COMMUNITY INTEREST: ESSAYS IN HONOUR OF JUDGE BRUNO SIMMA,
Oxford: Oxford University Press, 2011

This paper explores the possibilities for linkages between various forms of positivism accepted by many international lawyers and various forms of cosmopolitanism advocated by scholars of global justice. Building on Bruno Simma's conception of "enlightened positivism," it identifies areas in which cosmopolitan trends have already seeped into the fabric of international law and the key gaps between positivist and cosmopolitan visions of international law and the international community. Emphasizing the contributions that philosophical inquiry can add to international legal scholarship, and vice-versa, it concludes with some thoughts on further integration of cosmopolitan thinking into positivist methodologies.

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What's so Special About Jus Cogens? On the Disinction between the Ordinary and the Peremptory International Law

[Ulf Linderfalk](#)

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International lawyers distinguish between jus cogens and ordinary international law. This language raises questions about the distinguishing quality of jus cogens norms. What, exactly, is it about jus cogens that distinguishes it from ordinary international law? In attempting to answer this question, international lawyers usually resort to the "the Legal-Consequences-as-Criterion Theory": while ordinary international law can be rebutted or modified in accordance with the duly expressed will of states, jus cogens norms will permit no derogation and will allow modification only by the creation of a new norm having the same character. Due to the matter explained, this Theory has a very strong influence on the understanding of the international legal system; this is why the present essay submits it to analysis and assessment. Part I inquires into the relationship between the Legal-Consequences-as-Criterion Theory and the general definition of jus cogens reflected in Article 53 of the 1969 Vienna Convention on the Law of Treaties. As argued, Article 53 is entirely reliant upon the validity of the Legal-Consequences-as-Criterion Theory. Part II inquires into the soundness of this same Theory. As argued, the Theory does not provide good reasons for the distinction between jus cogens and ordinary international law.

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The Vulnerable Subject and the Responsive State

[Martha Albertson Fineman](#)

Emory University School of Law

[Emory Law Journal, Vol. 60](#)

[Emory Public Law Research Paper No. 10-130](#)

Since there is also no U.S. constitutional guarantee to basic social goods, such as housing, education, or health care, the anti-discrimination, sameness-of-treatment approach to equality prevalent in the United States is particularly problematic. The discourse of human rights that supports claims to such goods in European and other countries does not exist in America. We have not ratified many of the international agreements, including those associated with economic rights, as well as CEDAW and CRC. The courts are little help. In fact, attempts to apply human rights ideals internally - to American practices and laws - have been met with resistance, if not outright rejection. . . . My development of the concept of vulnerability and the idea of a vulnerable subject began as a stealthily disguised human rights discourse, fashioned for an American audience. The concept has evolved from those early articulations, and I now think it has some significant differences as an approach, particularly in that a focus on vulnerability is decidedly focused on exploring the nature of the human part, rather than the rights part, of the human rights trope. Importantly, consideration of vulnerability brings societal institutions, in addition to the state and individual, into the discussion and under scrutiny. Vulnerability is posited as the characteristic that positions us in relation to each other as human beings and also suggests a relationship of responsibility between state and individual. The nature of human vulnerability forms the basis for a claim that the state must be more responsive to that vulnerability and do better at ensuring the "All-American" promise of equality of opportunity.

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International Law and Religion in Latin America: The Beagle Channel Dispute

[M. C. Mirow](#)

Florida International University (FIU) - College of Law

[Suffolk Transnational Law Review, Vol. 28, p. 1, 2004](#)

This article examines the role of religion and the Vatican in resolving the Beagle Channel dispute between Argentina and Chile in the late 1970s.

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How to Take Climate Change into Account: A Guidance Document for Judges Adjudicating Water Disputes

[Carolyn Brickey](#)

affiliation not provided to SSRN

[Kirsten H. Engel](#)

University of Arizona - James E. Rogers College of Law

[Katharine Jacobs](#)

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[Environmental Law Reporter, Vol. 40, No. 11215, December 2010](#)

[Arizona Legal Studies Discussion Paper No. 10-47](#)

Climate change issues are being raised and increasingly considered in water litigation and in environmental policy more generally. This document notes the escalating importance for water management of the "climate change/hydrologic cycle" link and sketches implications for courts. The general problem climate change presents to courts in water disputes is how to deal with decision-making in light of greater uncertainty. The report, written by experts in water law, climate science, and environmental law surveys several tools judges can use to understand the new science of climate change, and some of the options for resolving water disputes in ways that reflect a more rapidly changing and uncertain world.

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Necessity Knows No Law: On Extreme Cases and Un-Codifiable Necessities

[Alon Harel](#)

Hebrew University of Jerusalem - Faculty of Law

[Assaf Sharon](#)

affiliation not provided to SSRN

This paper examines a case in which the German Constitutional Court declared a provision authorizing the downing of a plane in cases in which the plane is used as a weapon unconstitutional. We examine the possibility of analyzing the case from a consequentialist perspective and from the perspective of deontology and threshold deontology as currently understood by moral theorists. We argue that none of these perspectives is satisfactory.

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ECHR: 'Investment Protection - Adieu...!'

[Alexander J. Belohlavek](#)

affiliation not provided to SSRN

CZECH YEARBOOK OF INTERNATIONAL LAW, Vol. 1, pp. 332-340, Alexander Belohlavek and Nadezda Rozehnalova, eds., JurisPublishing, Inc., 2010

Judgment Rendered by European Court of Human Rights (ECHR), Fifth Section, in Strasbourg on 15 October 2009 in Consolidated Matter pursuant to Applications Nos. 32921/03, 28464/04 and 5344/05 Re (i) Mr. Bruno Kohlhofer (Austrian national, as "the first applicant") & (ii) Mr. Roman Minarik

(German national, as "the second applicant") & (iii) Ms. Susanne Minarik (German national, as "the third applicant") v. Czech Republic. All three Applications subject to the decision were lodged with the ECHR under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"). Neither the Austrian nor the German Governments exercised their right to intervene on behalf (Rule 44, Section 1(b)) of their citizens as claimants in the matter.

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Courts and Climate Policy: Now and in the Future

Kirsten H. Engel

University of Arizona - James E. Rogers College of Law

GREENHOUSE GOVERNANCE: ADDRESSING AMERICAN CLIMATE CHANGE POLICY, Barry G. Rabe, ed., 2010

[Arizona Legal Studies Discussion Paper No. 10-43](#)

What can the courts offer to the development of policy on climate change? In this chapter, part of a larger multi-author work on climate change governance, Kirsten Engel argues that the judiciary can depoliticize climate change by filtering issues, such as climate science, that have become highly contentious in the public debate, bring the issue of climate change "home" to persons by identify real and highly sympathetic victims of climate change, demonstrate the need, or lack thereof, for new regulatory frameworks for climate change, and provide feedback to industry and regulators on the magnitude of the liability risk being faced by private parties for greenhouse gas emissions. Engel examines how the courts have already influenced climate policy, discussing its role in unleashing EPA regulation of greenhouse gas emissions under the Clean Air Act, for example, as well as the institutional characteristics that limit the ability or willingness of the courts to go out ahead of the political branches on an issue such as which industries have an obligation to reduce emissions and by how much. The chapter concludes with a look at alternative frameworks for federal climate legislation, such as cap-and-trade and cooperative federalism, and how Congress's choice of structure may influence the future role of the courts in climate policy.

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Law Applicable to the Merits of International Arbitration and Current Developments in European Private International Law: Conflict-of-Laws Rules and the Applicability of the Rome Convention, Rome I Regulation and Other EU Law Standards in International Arbitration

Alexander J. Belohlavek

affiliation not provided to SSRN

CZECH YEARBOOK OF INTERNATIONAL LAW, pp. 25-46, A. Belohlavek & N. Rozehnalova, eds., JurisPublishing, Inc., 2010

The determination of the applicable law may never exceed the limits of the contract entered into by the parties and their expectations and legal certainty. This criterion is to be understood as the main dogma. The global financial and economic crisis only confirmed that commercial practices became extremely brutal, and the current global situation confirms that any arbitral or choice-of-forum clause, i.e., an authorisation of the tribunal to choose any law or rules or even principles of law, does not indicate a greater willingness of the parties to settle potential disputes in a fair manner. The tribunals have to determine the applicable law as a legal system of a particular country using standard conflict-of-laws methods and conflict-of-laws rules as prescribed by applicable lex arbitri or (if authorised by lex arbitri and/or by the parties themselves) to first determine the relevant choice-of-law methods and rules. They have to reflect on the contract as well as potentially applicable lex arbitri if these contain binding instruction for conflict-of-laws resolution. In respect to the applicability of the Rome I Regulation in arbitration, the author's opinion is that the tribunals must apply it at once if they have to apply particular conflict-of-laws rules (as adapted by a number of national lex arbitri rules) and such conflict-of-laws rules are those of a country bound by the Regulation. The refusal to apply it would endanger certainty and foreseeability. Nevertheless, the arbitrators might do so, and they often

have to find a more rational and commercially practical approach in interpreting the Regulation. In addition, they often determine the limits of the parties' autonomy, which in EC law are in fact (de iure) rather broad. And this occurs even though EU administrative structures usually attempt to subordinate arbitration conducted in EU countries under the ECJ (EU Tribunal) adjudicated standards, which are (in contrast to the Rome I Regulation itself) not binding for the arbitrators if determining substantial law issues.

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Satisfaction and Guarantees of Non-Repetition in the Practice of the Inter-American Court of Human Rights (Satisfaction Et Garanties de Non-Répétition Dans La Pratique de la Cour Interaméricaine des Droits de L'Homme) (French)

[Hélène Tigroudja](#)

University of Artois - Law School; Magna Carta Institute; Université Libre de Bruxelles (ULB) - Perelman Center for Legal Philosophy

RÉPARER LES VIOLATIONS GRAVES ET MASSIVES DES DROITS DE L'HOMME: LA COUR INTERAMÉRICAINNE, PIONNIÈRE OU MODÈLE? E. Lambert-Abdelgawad & K. Martin-Chenut, eds., Société de Législation Comparée, May 2010

Overview of the specificities of the practice of the Inter-American Court of Human Rights on the ground of reparation and especially, the so-called "non-pecuniary measures" ordered to States that have breached the ACHR. Specificities compared to the European practice and to General International Public Law.

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Sex Representation on the Bench and the Legitimacy of International Criminal Courts

[Nienke Grossman](#)

University of Baltimore School of Law
International Criminal Law Review, Forthcoming 2011

This essay examines the relationship between legitimacy and the presence of both male and female judges on international criminal court benches. It argues that sex representation – an approximate reflection of the ratio of the sexes in the general population – on the bench is an important contributor to legitimacy of international criminal courts. First, it proposes that sex representation affects normative legitimacy because men and women bring different perspectives to judging. Consequently, without both sexes, adjudication is inherently biased. Second, even if one rejects the proposition that men and women "think differently", sex representation affects sociological legitimacy because sex representation signals an impartial bench and capacity to do justice to constituencies involved in the shaping of international criminal adjudication. The essay concludes by raising questions for further study.

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The Trademark Tower of Babel – Dilution Concepts in International, US and EC Trademark Law

[Martin Senftleben](#)

VU University Amsterdam, Faculty of Law
International Review of Intellectual Property and Competition Law, Vol. 40, No. 1, pp. 45-77, 2009

Dilution is one of the most controversial and complex phenomena which modern trademark law seeks to regulate (section I). Against the background of international, US and EC anti-dilution systems, conceptual inconsistencies can be identified even with regard to basic notions, such as the definition of subject matter eligible for protection (section II) and the preservation of distinctiveness and repute as main purposes of protection (section III). Not surprisingly, these conceptual difficulties have repercussions on the relation between protected subject matter and the purposes of anti-dilution protection (section IV). An attempt to clarify matters, however, sheds light on a further conceptual

challenge. On its merits, the unanswered question posed by the dilution doctrine is whether trademark rights should be expanded to property rights in gross (concluding section V).

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Language, Legal Origins, and Culture before the Courts: Cross Citations between Supreme Courts in Europe

Martin Gelter

Fordham University School of Law; European Corporate Governance Institute (ECGI)

Mathias M. Siems

University of East Anglia (UEA) - School of Law; University of Cambridge - Centre for Business Research

[Fordham Law Legal Studies Research Paper No. 1719183](#)

Should courts consider cases from other jurisdictions? The use of foreign law precedent has sparked considerable debate in the United States, and this question is also controversially discussed in Europe. In this paper and within the larger research project from which it has developed, we study the dialogue between different European supreme courts quantitatively. Using legal databases in Austria, Belgium, England and Wales, France, Germany, Ireland, Italy, the Netherlands, Spain, and Switzerland, we have hand-collected a dataset of transnational citations between the highest courts of these countries, in total searching 636,172 decisions decided between 2000 and 2007. In the present paper we show that citation of foreign law by supreme courts is not an isolated phenomenon in Europe, but happens on a regular basis. . . . [K]nowledge of the language of the cited court appears to be a more important factor driving cross-citations than legal traditions, culture or politics. Thus, to facilitate a transnational market of legal ideas, it can be suggested that courts should strive to make their decisions available in languages that possible readers understand.

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A Welfare Model for a Global Carbon Market Under Uncertain Information

Arnaud Leconte

Université de Nice Sophia Antipolis

Tiziana Pagano

Technofi

[USAEF-IAEF Working Paper No. 10-062](#)

. . . This paper presents a Welfare model in the context of a global carbon market with uncertain information. The objective is to analyse whether a global carbon market could achieve a fair distribution of resources and risks This paper highlights the need to move away from the current barter system to a global exchange system, and shows how such an exchange system could achieve a fair welfare distribution between firms, households and an independent public institution. When the market is not constrained Pareto efficient, an active and dynamic carbon policy can make all players better-off. In this framework the carbon market is likely to be a key driving force of future energy policies and strategies.

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Human Rights and Employment

Winston P. Nagan

Levin College of Law (University of Florida)

CADMUS, Vol. 1, No. 1, p. 49, 2010

This short piece addresses the types of labor and employment standards that have developed under international law as a matter of human rights, and the threshold considerations that must be taken into account.

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**Australian Capital Territory Economic, Social and Cultural Rights Research Report
(December 2010)**

Andrew Byrnes, Hilary Charlesworth, Renuka Thilagaratnam, and Katharine G Young
University of New South Wales Faculty of Law Research Series. University of New South Wales
Faculty of Law Research Series 2010. Working Paper 71.

This Report presents the findings and recommendations of a research project established to examine whether the ACT Human Rights Act 2004 (HRA) should be amended to include explicit guarantees of economic, social and cultural rights (ESCR) and, if so, what impact this was likely to have on governance in the ACT. The project was funded under the Australian Research Council Linkage Project Scheme; the academic project partners were the Regulatory Institutions Network (RegNet) in the College of Asia and the Pacific of The Australian National University and the Australian Human Rights Centre, Faculty of Law, The University of New South Wales, while the Partner Organisation was the ACT Department of Justice and Community Safety.

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**Developing U.S. Nuclear Weapons Policy and International Law: The Approach of the
Obama Administration**

Winston P. Nagan

Levin College of Law (University of Florida)

Erin K. Slemmens

affiliation not provided to SSRN

Tulane Journal of International and Comparative Law, Vol. 19, 2010

Prior U.S. presidential administrations have developed and adhered to the nuclear weapons policy of nuclear deterrence. This policy was largely conditioned by the Cold War and the fact that the U.S. Cold War adversary was a major threat to U.S. security because of its nuclear capability. The policy of nuclear deterrence worked on the principle of mutually assured destruction. It appears to have had the effect of discouraging recourse to nuclear weapons as instruments of war. It has also been generally perceived as a position that has an uneasy relationship with conventional international law. Even before entering office, President Obama suggested the need for a new perspective in nuclear weapons control: regulation and possible abolition. It was therefore with much anticipation that public opinion awaited the Obama Nuclear Posture Review (NPR). However, the report did not quite measure up to the public's expectations. . . . [W]hile current U.S. policy generates an expectation regarding the threat or use and abolition of nuclear weapons, it still retains an element of nuclear deterrence in its strategic posture, which, as indicated, seems to be in tension with international law. U.S. security strategy straddles a delicate balance between unilateral action and action consistent with promoting and defending international law in the national interest.

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**Bioprospecting and Indigenous Cultural Rights: Creating Authorship, Agency,
Empowerment and the Next Generation of Biopirates?**

Jocelyn E. Getgen

Cornell University - School of Law

The term bioprospecting refers to the pharmaceutical industry's practice of collecting "traditional knowledge" and medicinal plants to "discover," develop, and market new drugs. Although the practice of collecting pre-dates the time of Linnaean botany, pharmaceutical companies have recently renewed an interest in bioprospecting and, as a result, have also raised moral, legal and ethical questions in the scientific, intellectual property, human rights, and distributive justice communities. More specifically, the power relations and bargaining among actors as to whom the potential benefits of these practices and their subsequent uses belong spring debates in multiple areas of the international arena. Interestingly, these new relationships built on promises of patents and benefit-sharing also coincide with current developments and regime shifts in international intellectual

property lawmaking. The 1992 U.N. Convention on Biological Diversity (CBD) and recent discourse of the Doha Round challenging the 1994 Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPs) demonstrate these shifts and present new opportunities and challenges for communities in developing nations.

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Is the Future of International Human Rights Law Transnational?

[Ludovic Hennebel](#)

Perelman Center for Legal Philosophy; Magna Carta Institute

While some authors have outlined the emergence of transnational human rights litigation, to date, the literature does not offer a comprehensive study confronting a "transnational human rights law model" to the international human rights law. This paper suggests that the emergence of the transnational human rights law model can be conceived as a relevant alternative to the classic international human rights law model. The classic human rights model founded on the state-centric paradigm is ill equipped to ensure the access to justice for the majority of the victims of human rights abuses. The paper argues that transnational human rights law may compensate some of these flaws and contributes to build on a valid venue for global justice.

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Human Rights' Limitations in Patent Law

[Geertrui Van Overwalle](#)

Leuven University; Tilburg University

INTELLECTUAL PROPERTY AND HUMAN RIGHTS: A PARADOX, pp. 236-271, Willem Grosheide, ed., Edward Elgar Publishing, June 2010

The relationship between human rights and intellectual property (IP) rights has been undertheorized for a long period. IP rights have remained a "normative backwater" in the burgeoning post-World War II human rights movement. Only over the last decade, human rights discourse has gained wider attention and commentators have started to explore the relationship between IP and human rights in more detail. Two major approaches can be witnessed. A first school of thought takes the view that human rights and IP are in fundamental conflict. Strong IP protection is undermining, and therefore incompatible with, a broad spectrum of human rights obligations, especially in the area of economic, social and cultural rights. This approach can be witnessed in Resolution 2000/7, which stipulates that "Actual or potential conflicts exist between the implementation of the TRIPs Agreement and the realisation of economic, social and cultural rights." Resolving this conflict lies in the recognition of the primacy of human rights law over IP law and in viewing IP as instruments designed to fulfill human rights objectives. A second way of thinking claims that human rights and IP are essentially compatible and can coexist. Indeed, human rights and IP focus on the same fundamental question and share the same goal. Both human rights and IP rights aim at enhancing welfare and the benefit for society. Both legal regimes equally try to define appropriate scope of private rights, while safeguarding public interest. A clear exponent of this attitude is reflected in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The present paper aims at exploring the delicate relationship between the human rights pantheon and the patent framework in more depth.

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A Policy Framework for Trans-Boundary Wastewater Issues along the Green Line, the Israeli-Palestinian Border

[Rashed M.Y. Al-Sa'ed](#)

Institute of Environmental and Water Studies; Birzeit University

International Journal of Environmental Studies, Vol. 67, No. 6, pp. 937-954, 2010

The annual discharges of municipal wastewater across the Green Line (the Israeli-Palestinian border) are causing a bi-national conflict with political, environmental, and economic dimensions. This paper

surveys the current scope of wastewater facilities in Palestinian communities and discusses the immense challenges to achieving sustainable wastewater treatment facilities. Current Israeli water policy hinders effective regional solutions to trans-boundary wastewater issues. This paper proposes a less confrontational approach to solve common problems. The better management of bi-national wastewater resources could establish sustainable trans boundary sanitation facilities. This would bring a range of benefits to health, the environment, and socio-economic life.

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Regulating War: A Taxonomy in Global Administrative Law

Daphné Richemond-Barak

Radzyner School of Law, Interdisciplinary Center Herzliya

This Article examines the intersection – so far under-explored – between the private security and military industry and the emerging framework of global administrative law (“GAL”). I explore in this Article one aspect of this intersection, namely the use of GAL to create a taxonomy of the industry’s regulatory schemes. The industry is characterized by a fragmented and decentralized regulatory framework, which has yet to be presented in a complete and orderly fashion. This Article fills the gap by applying GAL’s methodology to the private security and military industry. Using the industry as a case study in GAL, I identify (1) international formal administration (the United Nations Working Group on Mercenaries); (2) distributed domestic administration (contract and domestic legislation); (3) hybrid modes of administration (multi-stakeholder initiatives); and (4) private modes of administration (industry associations and codes of conduct). . . .

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The Criticism of the Third-World Debt and the Revision of Legal Doctrine

Tamara Lothian

Columbia University - Center for Law and Economic Studies

[Wisconsin International Law Journal, Vol. 13, p. 421, 1995](#)

[Columbia Law and Economics Working Paper No. 389](#)

This piece develops a normative moral and political argument in favor of constraints on to duty to repay sovereign debt under circumstances in which full repayment is incompatible with the practical conditions of individual and collective self-determination. I develop the argument in the context of the international debt crisis of the 1980s. But both the substantive ideas and the method of argument should have value for the sovereign debt controversies of today, following the worldwide economic and financial crisis of 2007-2009.

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Which Ethical Regulations Should Liberal-Democratic Governments Impose Upon Offshored Medicine Tests?

Roland Pierik

University of Amsterdam

One of the more worrying trends in globalization is the emerging practice of relocating medicine tests by western commercial enterprises to impoverished countries in Eastern Europe, Asia and Africa. A recent survey shows that at least one third of trials submitted to the FDA are being conducted solely outside of the US. Most of these tests concern medicines developed by western commercial enterprises and are targeted at Western markets, since they are prohibitively expensive for the average citizen of impoverished countries. Pharmaceutical companies offshore such trials primarily for reasons of convenience: they can be carried out faster, at a lower cost, with a more abundant population of eligible test subjects and under less governmental scrutiny. Ultimately pharmaceutical corporations make the decision to relocate medicine tests or not. However, western liberal-democratic governments shape the legal context in which these companies operate and can thus affect these

decisions. This paper analyses the question which ethical regulations liberal-democratic governments should impose upon offshored medicine tests in order to curtail their exploitative effects. . . .

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The Potential Role of the Human Right to Water in the Management of Indonesia's Water Resources

Mohamad Mova Al 'Afghani

affiliation not provided to SSRN

Jakarta, a city with 9 million populations is suffering from acute water and sanitation problems. Only half of Jakarta's population is connected to the network and the rate of non revenue water is almost 50%. With only 1.9% of the population is connected to sewerage, Jakarta's rivers and canals is the regular dumping site of daily wastes. Groundwater is polluted with pathogens. Jakarta has 13 major rivers, in which only 1 (one) is healthy. On the upstream, riverbanks are occupied by settlers, farming and industry. Upstream catchment areas are deforested and occupied by villas, causing flood to Jakarta during monsoon rains. Experts warn that unsustainable abstraction of groundwater alone (not combined with climate change threats and upstream deforestation) would be able to draw Jakarta further into the sea by 2025. Can the Human Right to Water fill in the gap on the existing effort in mitigating this disaster or, on the contrary, will act as an impediment towards an ongoing reform? This paper will start by elaborating the concept of the human right to water and its linkages with water quality. It will then evaluate the legal and regulatory framework of water resources management in Indonesia. The expected result is a constructive criticism of the legal and regulatory framework on water resources management – from a human rights perspective.

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The International Court of Justice on Kosovo: Missed Opportunity or Dispute 'Settlement'?

Daphné Richemond-Barak

Radzyner School of Law, Interdisciplinary Center Herzliya

This article analyzes the reasons why the International Court of Justice chose to significantly narrow the scope of its advisory jurisdiction in its Kosovo opinion and, arguably, missed an opportunity to opine on important questions of international law (in particular, matters of recognition, secession, and self-determination). I argue that the Court's approach was driven by a desire to avoid exacerbating tensions between the two most interested parties, namely Kosovo and Serbia. Although the opinion was overwhelmingly perceived as pro-Kosovo in its immediate aftermath, a more thorough analysis suggests that the Court sought a delicate compromise between the positions of the two entities. By working towards an equitable solution, the Court positioned itself more as a means of dispute settlement than as a legal advisory body. The Court succeeded, in the sense that it created a favorable climate for talks between Belgrade and Pristina, though at the cost of a lost opportunity for the development of international law and some confusion of its contentious and advisory roles.

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Australia's Extended Continental Shelf: What Implications for Antarctica?

Alan D. Hemmings

Gateway Antarctica Centre for Antarctic Studies and Research, University of Canterbury

Tim Stephens

University of Sydney - Faculty of Law

Public Law Review, Vol. 20, No. 1, pp. 9-16, 2009

[Sydney Law School Research Paper No. 10/140](#)

In 2008 the United Nations Commission on the Limits of the Continental Shelf (CLCS) recognised the vast bulk of Australia's submission concerning the outer limits of its continental shelf. Around half of the Australian continental shelf beyond 200 nm as approved by the CLCS is in the Southern Ocean in

the Antarctic, including a large area projecting southwards into the Antarctic Treaty Area from Australia's small sub-Antarctic islands, Heard and McDonald Islands. This comment considers how Australia should manage this sizeable new area of seabed estate within the letter and spirit of the Antarctic Treaty System, particularly in relation to prospecting for potentially valuable biological resources.

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Institutionalizing Counterterrorism: A Review of Legislating the War on Terror: An Agenda for Reform Edited by Benjamin Wittes

[Adam Ross Pearlman](#)

affiliation not provided to SSRN

Engage: The Journal of the Federalist Society's Practice Groups, Vol. 11, No. 3, pg. 107

Late last year, Benjamin Wittes compiled a series of ten essays that offer a range of suggestions for congressional action with respect to U.S. counterterrorism policies. He means for the text not to be taken as a fluid whole, but rather as a series of independent observations and examinations of the broad, complex swath of legal and policy issues encompassing the once-called War on Terror. . . . What follows will read more like a book report than a book review, but, with a modicum of commentary interspersed throughout, it offers an outline of the key points of each chapter, with the goal of piquing the reader's interest in this interesting compilation.

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Does Microfinance Cause or Reduce Suicides? Policy Recommendations for Reducing Borrower Stress

[Arvind Ashta](#)

Burgundy School of Business (ESC Dijon), France - CEREN

[Saleh Khan](#)

Burgundy School of Business

[Philipp E. Otto](#)

European University Viadrina Frankfurt (Oder)

At a time when suicides by microfinance borrowers in Andhra Pradesh are extensively discussed, this paper makes an initial tentative exploration into the impact of microfinance on suicides. Does MF reduce or increase suicides? Data limitations imply methodological limitations and provisional conclusions. The literature review of research on suicides brings out the importance of psychological factors, divorce and unemployment. We study time series data on suicides and microfinance in India. A global cross-sectional correlation analysis validates the relationship between suicides and divorce rates and brings out new relationships with poverty parameters. Regression analysis of 31 countries (weakly) indicates that microfinance penetration is a causal factor for suicides. Three related questions are put into context. First, do rapid growth and sustainability aims make MFis forget the human angle? Second, is social pressure necessary to make people repay? Third, does Microfinance incite, reduce or delay suicides, and is this impact more on women or on men due to changing roles? Based on these, we tentatively propose policy recommendations.

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Courts and Climate Policy: Now and in the Future

[Kirsten H. Engel](#)

University of Arizona - James E. Rogers College of Law

GREENHOUSE GOVERNANCE: ADDRESSING AMERICAN CLIMATE CHANGE POLICY, Barry G. Rabe, ed., 2010

[Arizona Legal Studies Discussion Paper No. 10-43](#)

What can the courts offer to the development of policy on climate change? In this chapter, part of a larger multi-author work on climate change governance, Kirsten Engel argues that the judiciary can

depoliticize climate change by filtering issues, such as climate science, that have become highly contentious in the public debate, bring the issue of climate change "home" to persons by identify real and highly sympathetic victims of climate change, demonstrate the need, or lack thereof, for new regulatory frameworks for climate change, and provide feedback to industry and regulators on the magnitude of the liability risk being faced by private parties for greenhouse gas emissions. Engel examines how the courts have already influenced climate policy, discussing its role in unleashing EPA regulation of greenhouse gas emissions under the Clean Air Act, for example, as well as the institutional characteristics that limit the ability or willingness of the courts to go out ahead of the political branches on an issue such as which industries have an obligation to reduce emissions and by how much. The chapter concludes with a look at alternative frameworks for federal climate legislation, such as cap-and-trade and cooperative federalism, and how Congress's choice of structure may influence the future role of the courts in climate policy.

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Ocean Acidification: A Litmus Test for International Law

[Rachel Baird](#)

University of Southern Queensland – School of Law

[Meredith Simons](#)

University of Sydney – Faculty of Law

[Tim Stephens](#)

University of Sydney – Faculty of Law

Carbon and Climate Law Review, No. 3, pp. 459-471, 2009

[Sydney Law School Research Paper No. 10/139](#)

Ocean acidification, the changing chemistry of the oceans as a result of the absorption of carbon dioxide from the atmosphere, is caused by the atmospheric pollutant that is also the main driver of anthropogenic climate change, having effects on the marine environment as serious as other pollutants entering the oceans. However there is no discernible pressure for a new regime to address the problem specifically, given the extensive body of law already in existence that could potentially be applicable. This article assesses the two main environmental regimes that appear to have obvious application – the climate change regime and the marine pollution regime. It is argued that while the phenomenon is partially regulated by both of these regimes, it is addressed wholeheartedly by neither. Ocean acidification therefore exists in an international legal twilight zone, a regrettable position given the serious threat it presents to the ecological integrity of the world's oceans. By reference to international relations scholarship relating to regime complexity, it suggests a possible way forward in addressing ocean acidification as a cross-cutting environmental challenge.

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A Man of Flowers: A Reflection on Plant Patents, the Right to Food and Competition Law

[Geertrui Van Overwalle](#)

Leuven University; Tilburg University

Technology and Competition, pp. 355-372, J. Drexler, et al., eds., Larcier, 2009

The present paper explores the multi-layered relationship between plant patents, the right to food and competition law. The present contribution takes the view that the growing tendency to appropriate agricultural crops through intellectual property (IP) – thereby making a pivotal shift from plant breeder's rights to patents – has possibly led to hampering effects on the access to food by poor and disadvantaged groups, particularly in low-income countries. Human rights, in particular the right to food, might act as a welcome instrument to restore the balance between the private demand for a fair reward and the public interest in sustainable food supply. However, when making a human rights approach more exacting, and when translating the right to food into IP mechanisms facilitating access to food, competition law might come into play, adding a layer of complexity and uncertainty to this delicate balancing act.

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Subsidizing Carbon Capture and Storage Demonstration through the EU ETS New Entrants Reserve: A Proportionality Test

[Marijn Holwerda](#)

University of Groningen

Carbon and Climate Law Review, pp. 215-218, No. 3/2010

Upon its adoption in the Directive revising the European Greenhouse Gas Emission Trading Scheme (Directive 2009/29), Article 10(a)8 was heavily criticized by a number of environmental organizations and legal scholars for disturbing the EU ETS' market mechanism. Article 10(a)8 provides for the possibility to co-finance the up to 12 planned European Carbon Capture and Storage (CCS) demonstration projects as well as innovative renewable energy demonstration projects through the EU ETS new entrants reserve. The criticism of Article 10(a)8 raises doubts as to the article's consistency with the EU ETS (and its overarching goals) as such and, in essence, questions the measure's proportionality. It is not unthinkable that the EU law principle of proportionality will in future be used to challenge the validity of Article 10a(8). This article argues that it is in that case unlikely that the Court of Justice of the European Union would declare Article 10a(8) to infringe the principle of proportionality.

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Defining and Defending the Human Right to Water and its Minimum Core: Legal Construction and the Role of National Jurisprudence

[George S. McGraw](#)

United Nations Mandated University for Peace

This article attempts to contribute to the ongoing academic dialogue surrounding water and its centrality to human life. Its purpose is to provide insight into what may be the most notable water management innovation in human history: the universal human right to water. Specifically, this essay seeks to outline the source and content of the right to water and that right's "minimum core" – both concepts that have reached the level of positive international law. It will then summarize the recent work of numerous national courts "giving content" to the human right to water, addressing the ways in which the international legal norm is strengthened or challenged by this jurisprudence. Without an international body capable of enforcement, the human right to water depends on this activity of national courts to make its philosophical "universality" a matter of legal fact.

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The Right of Self-Determination: Legal and Human Rights Dimension of the Palestinian-Israeli Conflict

[B. N. Mehrish](#)

University of Mumbai

The IUP Journal of International Relations, Vol. 4, No. 4, pp. 7-13, October 2010

The principle of self-determination enshrined in Woodrow Wilson's 14 Points after World War I, generated controversy and resulted in the break-up of empires and states in Europe. An attempt is made to analyze the legal and human rights dimension of the Palestinian-Israeli conflict and the various processes to resolve the conflicts and dynamics of the Palestinian society characterized by factionalism and gang violence as a result of the emergence of Islamic fundamentalism. The basic question is how to reconcile the seeming demands for access to power, government and territory. This requires compromises on the issues of equality, sovereignty, territorial integrity and recession. These issues are discussed in the context of the Palestinians' demand for the right of self-determination as most of the territories of Palestine are under Israeli occupation. In 1947, Palestine was partitioned into the Jewish state of Israel and the Arab state of Palestine which resulted in several wars between the Jewish state of Israel and Palestine. So far the Palestinian-Israeli conflict has not been resolved. There are many hurdles and obstacles in the way of resolving the conflict

through negotiations for peace and stability in the Middle East. The US foreign policy under various Presidents and their diplomatic initiative for dialogue for peaceful negotiation has been examined.

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Globalization of Judgment: Transjudicialism and the Five Faces of International Law in Domestic Courts

[Reem Bahdi](#)

University of Windsor

[George Washington International Law Review, Vol. 34, 2002](#)

This Article identifies and explores the justifications or rationales offered by national court judges in support of their references to international human rights law. It does not analyze the extent to which judges invoke international law; rather, it examines the reasons offered by judges to explain their references to international law. The focus is on leading decisions rendered by higher courts in the United States and Commonwealth jurisdictions where the international norms do not bind decision-makers because they have not been made part of domestic law through an act of incorporation, the relevant treaty has not been ratified, or the ratifying state has filed a reservation limiting a treaty's domestic effect. . . .

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Statehood after 1989: 'Effectivités' between Legality and Virtuality

[Anne Peters](#)

University of Basel - Faculty of Law

Proceedings of the European Society of International Law, Vol. 3, 2010

The period since 1989 has seen both statehood at its peak, and at its low point. On the one hand, a quasi-colonial (soviet) empire dissolved, and numerous new states emerged. Moreover, secessionist movements all over the world seek to become independent states. On the other hand, the globalisation of markets and the emergence of global problems have, especially in the 1990s, led to the perception of a weakening or even decline of the nation state. Global governance, the strengthening of transnational or even supranational regimes, large scale privatisation and the rise of "non-state actors" have been both a cause and effect of this trend. The concomitant international legal discourses have been those on secession and ethno-nationalism on the one hand, and those on the transformations or disaggregation of states, on transnational networks and multilevel governance, on the other hand. The paper brings together these discourses.

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Transnational Law Comprises Constitutional, Administrative, Criminal and Quasi-Private Law

[Anne Peters](#)

University of Basel - Faculty of Law

MAKING TRANSNATIONAL LAW WORK: LIBER AMICORUM DETLEV VAGTS, pp. 154-173, Pieter Bekker, Rudolf Dolzer, Michael Waibel, eds., Cambridge: Cambridge University Press, 2010

After describing traditional international law as private law 'writ large', this paper addresses these ambiguities. The paper then argues – and this is its thesis – that international (or transnational or global) law has started to go through a process of structural differentiation which complements the differentiation along issue-areas. It concludes by discussing the problems and merits of the suggested new structural order of international law.

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The Communicative Construction of Legitimacy Spillovers: The Strategic Use of Legitimacy Associations between the UN Global Compact and its Corporate Signatories

[Patrick Haack](#)

University of Zurich - Institute for Organization and Administrative Science

[Andreas Georg Scherer](#)

University of Zurich - Institute of Organization and Administrative Science

Drawing on an institutional perspective, we argue that the formation of the Global Compact's legitimacy depends on the legitimacy of corporate signatories. The proclaimed interdependence of legitimacy objects implies that increasing numbers of best practice examples in the corporate sector are likely to raise the legitimacy of the Global Compact, constituting a positive legitimacy spillover for the initiative. By the same token, corporate misuse and disregard of the Compact's principles and its aggravation by mass-mediated scandalization discredit the Global Compact as a vital instrument for private governance, entailing a negative spillover for the initiative. By content-analyzing public communications patterns of both Global Compact advocates and critics we identify an active and passive approach in the strategic use of the spillover phenomenon. The active approach aims at activating spillover construction and draws on affect-laden frames of responsibility and effectiveness vs. frames of genuineness and moral purity. The passive approach is centered on the attenuation or isolation of spillover effects. The paper discusses implications for the Global Compact organization and other comparable corporate citizenship initiatives, and elaborates prospects of transnational legitimation more generally.

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International Crimes and the Principle 'Nullum Crimen, Nulla Poena Sine Lege' (Crimes de Droit International et Principe 'Nullum Crimen, Nulla Poena Sine Lege') (French)

[Hélène Tigroudja](#)

University of Artois - Law School; Magna Carta Institute; Université Libre de Bruxelles (ULB) - Perelman Center for Legal Philosophy

Critical Overview of the jurisprudence of the European Court of Human Rights dedicated to Article 7 of the ECHR in cases of prosecutions of war crimes, crimes against humanity and genocide (Kononov case).

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The Advisory Jurisdiction of the Inter-American Court of Human Rights (La Compétence Consultative de la Cour Interaméricaine des Droits de L'Homme) (French)

[Hélène Tigroudja](#)

University of Artois - Law School; Magna Carta Institute; Université Libre de Bruxelles (ULB) - Perelman Center for Legal Philosophy

La Fonction Consultative des Juridictions Internationales, 2009

Analysis of the advisory activities of the Inter-American Court of Human Rights (examples of implementation, aims and missions pursued by the 20 advisory opinions delivered by the Court).

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The Right to Be Tried within a Reasonable Time and the Restoration of the Party's 'Presumptive' Prejudice

[Evita Ioannis Salamoura](#)

affiliation not provided to SSRN

Within the framework of the 50th Anniversary celebrations of the European Court of Human Rights reference should be made to the delays in the administration of justice. This is an issue of fundamental importance that has caused deep concern at an international level and the treatment of this issue is the subject of ongoing discussion and research. A large number of applications inundate

the EctHR on a daily basis; the overwhelming majority of these concern the violation of the right to be tried within a reasonable time. The present study focuses on the right to be tried within a reasonable time and an attempt will be made to: a) present the guiding principles of this right, developed by the rich jurisprudence of the EctHR, b) demonstrate the effect that the length of proceedings has on the fairness of the trial, c) determine what constitutes "just satisfaction" under Article 41 of the ECHR in relation to the violation of this right, and finally, d) set out the opportunities available, concerning appropriate measures that could eliminate or mitigate the adverse effects suffered by parties due to the excessive length of proceedings.

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Foreign State Immunity and Foreign Government Controlled Investors

[David Gaukrodger](#)

Investment Division, Directorate for Financial and Enterprise Affairs, OECD
OECD Working Papers on International Investment, 2010/2

Discussions at the "Freedom of Investment" Roundtables, hosted by the OECD Investment Committee, have stressed that increased investments by foreign State-controlled investors can bring significant benefits to home and host societies, but have also noted that they can raise concerns. This paper examines two principal issues concerning foreign State-controlled investors: whether the doctrine of foreign state immunity may make it difficult for private parties to pursue legitimate claims against them and whether that doctrine creates regulatory enforcement gaps for host countries. Although the restrictive approach to immunity is now widely recognized, important issues, such as whether the financial investment activities of a sovereign wealth fund are commercial or sovereign acts, remain uncertain. In the area of regulation, the paper analyses state policies in the area of tax, competition law and criminal law, and notes key factors that may influence immunity in such cases.

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Gone with the Wind? The Potential Tragedy of the Common Wind

[Yael Lifshitz-Goldberg](#)

affiliation not provided to SSRN

UCLA Journal of Environmental Law & Policy, Vol. 28, 2009

This note aims to explore the property interests in the wind, and particularly the potential tendency to overuse the wind resources. By looking at the typical characteristics of the "Tragedy of the Commons," this note argues that the potential tragic tendency to overuse might occur regarding wind resources. Being such a unique, fugitive asset, wind entails a complex property regime, combining both private property interests and public ones. In addition, despite the initial intuition, wind is not entirely endless. Over time it can be exhausted, or at least significantly changed. This note therefore argues that the combination of these factors may lead to an excessive use of the resource, causing notable changes in the wind currents over time. This note then briefly discusses two possible ways to protect the valuable wind resources and prevent their exhaustion, both on a private level and as a public interest.

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Is There Third World Approaches to International Law?

[Prabhakar Singh](#)

Jindal Global Law School (JGLS)

Modern critical legal thinking is pivoted on the critique of universalism. The critique of international law's universalism has been done through theoretical workouts. Consequently, the new international legal scholarship is able to accommodate novel movements and intellectuals. TWAIL is such a movement. It has focused on capturing the relation between international law and the production of disadvantage for the subalterns of diverse geographies. However, self-satisfaction of legal scholars aside, is social-science-type discourse seeding the various parts – economic, human rights and

humanitarian law – of positive international law? After all, how many judgments of the International Court of Justice (ICJ), the World Trade Organisation (WTO) and the European Court of Justice (ECJ), among other international courts, have ever mentioned “thinkers”? Given that all these international institutions operate with a treaty based constitutional mandate, lawyers have begun to think international law in constitutional terms. I will use Chimni’s scholarship to introduce the idea of TWAIL and Žižek’s “suspension of the law” to evaluate TWAIL’s criticality.

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Two Steps Forward, One Step Back: The 2010 Report by the UN Special Representative on Business and Human Rights

[Jernej Letnar Cernic](#)

European University Institute - Department of Law (LAW)

German Law Journal, Vol. 11, pp. 1264-1280, 2010

The relationship between human rights law and business has emerged in recent years as one of the most topical to be discussed and put on the agenda almost worldwide. The activities of corporations in this globalized environment have often served as the catalyst for human rights violations; due to the lack of institutional protection, some corporations are able to exploit regulatory lacunae and the lack of human rights protection. On 9 April 2010 Professor John Ruggie, the United Nations Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises, submitted his fifth Report under the title “Business and Human Rights: Further steps toward the operationalization of the 'protect, respect and remedy' framework.” The objective of this article is to examine his 2010 report and to establish whether this Report has contributed to clarifying standards in the field of human rights and business.

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Jus Ad Bellum: Comparing the 1979 Soviet-Afghan and 2003 US-Iraq Wars

[Hassan Ahmad](#)

Osgoode Hall Law School - York University

Although separated by almost 25 years, the 1979 Soviet Union invasion of Afghanistan and the 2003 US invasion of Iraq both contravened International Law of War and Armed Conflict (ILWAC) rules and principles. Both wars were illegitimate according to the customary international law principles and UN Charter provisions of Security Council authorization, self defence and humanitarian intervention. Both wars signify ILWAC's relative meakness in comparison to the economic and political aspirations of the world's most powerful nations, who are able to ignore ILWAC provisions for their desired goals.

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International Tribunals and the Right to a Speedy Trial: Problems and Possible Remedies

[David Tolbert](#)

affiliation not provided to SSRN

[Fergal Gaynor](#)

affiliation not provided to SSRN

Law in Context, Vol. 27, p. 33, 2009

This article is a constructive analysis of the reasons underlying one the most significant shortcomings of international criminal tribunals: lengthy detention periods prior to, during and after trial. The authors, who have extensive experience working in international criminal tribunals, argue that the breadth of the indictment cannot be the principal focus of criticism for lengthy proceedings. They advocate a more holistic approach, and examine causes and possible remedies for delay in the pre-trial, trial and post-trial periods. With an eye towards improving the speed of proceedings in other international criminal courts, the authors identify a number of areas for reform, including improvements in the selection process of judges; largely dispensing with oral direct examination; more rigorous training in statement-writing for investigators and lawyers; greater use of investigators

from the region where the crimes were committed; judicial mechanisms to restrict unnecessary cross-examination; taking judicial notice of adjudicated facts wherever possible; admitting documents in evidence other than through witnesses; improved training of defence counsel; a requirement to deliver judgement within a defined period after the end of trial; restricting self-representation; and empowering international courts to deal summarily with instances of contempt. With these steps, international courts and tribunals will move closer to protecting the fundamental right to a fair and expeditious trial.

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Member States Liability for Legislative Injustice. National Procedural Autonomy and the Principle of Equivalence; Going Too Far in Transportes Urbanos?

Carmen Plaza

Universidad de Castilla-La Mancha

[Review of European and Administrative Law, Vol. 3, No. 2, pp. 27-51, 2010](#)

This article analyses the impact that case Transportes Urbanos might have in the thorny scenario of State liability for legislative injustice, particularly in Spain. After giving an overview of the legal context that triggered this ECJ preliminary ruling, it analyses the answer given by the ECJ to the Spanish Supreme Court in terms of the principle of equivalence, and also addresses the question of whether an in-depth analysis of the very different positions that the Constitution and EU law have in the Spanish legal order could have justified a different solution. Finally, it considers to what extent the conjugation of the ECJ judgment and the Spanish Supreme Court doctrine on State liability for damages caused by the legislature give rise to spill-over effects and to new difficulties and dilemmas.

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Security Council Resolution 1325: Practice and Prospects

Reem Bahdi

University of Windsor

Refuge: Canada's Periodical On Refugees, Vol. 21, No. 2, pp. 41-51, 2003

United Nations Security Council Resolution 1325 calls for a more active role for women in the prevention and reconciliation of conflicts. Focusing on the Palestinian Right of Return and the work of a feminist organization called the JerusalemLink, this paper examines Resolution 1325's premise that women can make a unique contribution to peace building.

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The Principle of Proportionality Under International Humanitarian Law and Operation Cast Lead

Robert Perry Barnidge Jr.

University of Reading - School of Law

NEW BATTLEFIELDS/OLD LAWS, William C. Banks, ed., Columbia University Press, September 2011

This chapter critically examines the principle of proportionality under international humanitarian law and contextualizes its vulnerabilities by looking at Israel's actions during Operation Cast Lead in the Gaza Strip between December 27, 2008, and January 18, 2009. It begins by providing a black letter law overview of the principle. Although widely accepted, the proportionality principle suffers from significant shortcomings that impact its usefulness as a predictable tool for distinguishing between the lawful and the unlawful, particularly in the context of asymmetrical warfare. These shortcomings exist at both a theoretical level, in the abstract, and at a practical level. To focus these discussions, the second half of this chapter looks at the largely negative international reaction to Israel's actions during Operation Cast Lead. This reaction, which was, and has been, typically couched with a feigned certainty that belies and leaves unanswered the theoretical shortcomings of the principle of proportionality, suggests that, more often than not, proportionality acts as the ultimate exemplar of law used instrumentally, as a tool to further a particular politics and paradigm of power.

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Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development

[Amanda Perry-Kessaris](#)

SOAS, University of London; University of London, School of Oriental & African Studies - School of Law

International Journal of Law in Context, Forthcoming

This paper explores the influence of economics on the demand for, and deployment of, indicators in the context of the World Bank's investment climate campaign. This campaign is characterised by an emphasis on marketization, mathematization and quantification, which are respectively the normative, analytical and empirical approaches-of-choice in mainstream economics. The paper concludes that economics, and indicators in particular, has brought a certain discipline and energy to the field of law and development. But this 'progress' has often been at the expense of the non-economic values and interests, and even of our ability to mourn their loss.

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What Have the Poorest Countries to Gain from the Doha Development Agenda (DDA)?

[James Scott](#)

University of Manchester

[Rorden Wilkinson](#)

Brooks World Poverty Institute

This paper sets out to examine the likely benefits accruing to developing countries from the Doha Development Agenda (DDA) as it currently stands. In pursuit of this aim, the paper draws from the insights of both the economic and the political economy literatures in pursuit of a more fulsome account of the likely results of the DDA for poor countries. The paper begins with a review of the projected aggregate gains accruing to developing countries from a concluded DDA. It then marries this aggregate picture with an exploration of the progress in the negotiations to sharpen an insight into just how poor the results of a concluded DDA are likely to be for the least developed. In so doing, the paper reviews progress in the negotiations generally as well as more specifically in the area that has emerged as the core 'development content,' namely agriculture (focusing on the issues of food security, import surges and the Special Safeguard Mechanism (SSM)). The paper concludes that a review of both the aggregate projections of the likely results of the DDA and progress in the negotiations highlights more precisely just how poor, and problematic, the outcome of the Doha Round will be for the least developed.

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Military Occupation and the Rule of Law: The Legal Obligations of Occupying Forces in Iraq

[Ben M. Clarke](#)

University of Notre Dame Australia

Murdoch University Electronic Journal of Law, Vol. 8, 2005

The invasion and occupation of Iraq has attracted significant legal interest. A year after Coalition forces invaded Iraq, debate over the legality of that use of force shows no sign of abating. Coalition forces also face intense scrutiny over their obligations as occupying powers. This paper explores the powers and duties of occupiers under international law. The nature and scope of these norms is assessed by reference to a variety of sources of international law including (i) the classic treaties on occupation, (ii) customary law, (iii) applicable UN resolutions and (iv) relevant domestic law. . . .

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The Juridical Status of Civilian Resistance to Foreign Occupation under the Law of Nations and Contemporary International Law

[Ben M. Clarke](#)

University of Notre Dame Australia

The recent invasion and occupation of Iraq focused attention on a host of international law issues. Many fall within the ambit of the laws and customs of war, a subset of public international law which has distinct components: the *jus ad bellum* (the right to resort to the use of force); and the *jus in bello* (rules which apply during armed conflict). This paper explores a law of war issue that has been debated for centuries: whether and in what circumstances local inhabitants may wage war against foreign occupation. While a strict separation is maintained between the two components of the laws of war, resolution of the issue under discussion necessarily involves recourse to both. The present contribution does not offer an exhaustive contribution to the subject. Instead it focuses on the historical development of the norms of lawful belligerency and the law of occupation. Particular attention is paid to Palestinian lawyer and scholar Karma Nabulsi's study on the impact of three 19th century traditions of war upon the development of the laws of war and occupation. Her contentious and important thesis is critiqued in the context of a broader discussion of the following questions: Was civilian participation in armed resistance to enemy occupation of the homeland a recognized norm of 19th century customary law? If so, has this norm survived the codification of the laws of war?

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The Implementation of the Rome Statute in Russia

[Anna Ogorodova](#)

affiliation not provided to SSRN

[Sergey Vasiliev](#)

University of Amsterdam - Amsterdam Center for International Law
Finnish Yearbook of International Law, No. XVI, 2005

The paper evaluates the prospects of the ratification of the ICC Statute by the Russian Federation from a legal perspective. It examines the Russian constitutional law, criminal law and procedure with a view to identifying potential inconsistencies with the ICC Statute that would need to be addressed in the course of implementation. The paper concluded that none of the supposed legal hurdles which are believed to be capable of seriously complicating implementation or actually blocking ratification are insurmountable. Contrariwise, the ratification would certainly be beneficial for the development of Russian criminal law, particularly in part of the definitions of international crimes.

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Evolving U.S. Efforts to Support Domestic Accountability

[Michael A. Newton](#)

Vanderbilt Law School

[Vanderbilt Public Law Research Paper No. 10-46](#)

American Society of International Law Discussion Paper

During the review conference of the International Criminal Court in Kampala, Uganda, the large and well prepared United States delegation announced a new policy of "principled engagement" with the Court. The American Society of International Law commissioned eight expert papers on the direction that engagement should take, with particular focus on four topics: fostering state cooperation with the Court, developing complementarity between national and ICC jurisdiction, strengthening the impact of the Court on victims and witnesses, and shaping the Court's jurisdiction over the crime of aggression. This essay was written as part of the ASIL report and proposes a series of specific recommendations designed to strengthen the principle of complementarity, which in practice may be the fulcrum supporting the long term legitimacy and effectiveness of the ICC as an apolitical arbiter of justice. . . .

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Measuring Human Rights: Reflections on the Practice of Human Rights Impact Assessment and Lessons for the Future**James Harrison**

University of Warwick - School of Law

[Warwick School of Law Research Paper No. 2010/26](#)

This paper critically evaluates the current practice and future potential of human rights impact assessment (HRIA) as a tool for measuring human rights. It comprehensively maps out existing practice regarding HRIAs in a wide variety of different fields including, health, business, trade, child rights and development. It emphasizes the potential of HRIAs for engaging in policy fields in which human rights have traditionally had significant barriers to meaningful engagement. But it also highlights some fundamental methodological issues which are undermining current practice. The paper argues that the increasing number of business and governmental actors undertaking assessments also creates the need for increased shared understanding of what constitutes a valid HRIA process. . . .

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When 'Common Interests' are Not Common: Why the 'Global Basic Structure' Should Be Democratic**Andreas Follesdal**

University of Oslo

[Indiana Journal of Global Legal Studies, Vol. 16, No. 2, pp. 585-604, 2009](#)

The global constitution – the fundamental international norms and structures that serve constitutional functions - should include mechanisms of democratic contestation and accountability. This central claim of 'Global Constitutionalism' is defended against three objections extrapolated from arguments by Andrew Moravcsik and Giandomenico Majone, in debates about the democratic deficit of the European Union. A) that this global constitution only regulates issues of low salience for citizens; B) that fickle democratic control is explicitly counter to the self binding that international regulations aim to provide; and C) that the track record of the EU suggest that democratic control at the international level may not be necessary to ensure congruence between voters' preferences and actual regulations. These objections miss the profound impact of the global constitution and the complexity of the 'common goods' that multilevel regulations are meant to secure. They also overlook some of the reasons we have to value democratic deliberation and contestation, as mechanisms to enhance the trustworthiness of institutions and authorities.

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Legal Pluralism and International Development Agencies: State Building or Legal Reform**Julio Faundez**

University of Warwick - School of Law

[Warwick School of Law Research Paper 2010/12](#)

Legal Pluralism and Development Policy Workshop, World Bank - Justice for the Poor Programme, Washington, April 19-20, 2010

This paper welcomes the interest that International Development Agencies (IDAs) have recently shown in legal pluralism and, more specifically, on Non-State Justice Systems (NSJS). Its objective is to remind development practitioners that NSJS are complex institutions that should be approached with great caution. Although formally NSJS are not part of the official state apparatus, they are not entirely outside the prevailing framework of governance. As a consequence, attempts to engage NSJS inevitably risks disturbing finely tuned governance arrangements which are not always easy to uncover or conceptualise using orthodox notions drawn from modern legal, political or economic theory. The materials discussed in this paper, drawn from Latin America and Africa, suggest that any

successful engagement with NSJS requires a deep understanding of both local state structures and political processes. It also requires an in-depth understanding of the state and community within which NSJS operate. Indeed, as this paper shows, successful engagement should be seen as part of a continuing process of state building. Unless IDAs are willing to take a wider and more political approach to their involvement with NSJS, they will not achieve meaningful progress in rule of law and governance projects.

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Japanese Civil Society as a Public Actor and International Human Rights Law

Joelle Sambuc Bloise

affiliation not provided to SSRN

This article explores how international human rights law has influenced relations between organized civil society and the State in Japan. More specifically, it analyzes whether global norms on human rights have had any broad influence on the role of civil society as a public actor, or on the contrary a more restrictive one, concerning only organizations dealing with human rights issues. . . .

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Regulatory Strategies in Environmental Liability

Michael G. Faure

University of Maastricht – Faculty of Law, Metro; Erasmus University Rotterdam (EUR) – Erasmus School of Law

THE REGULATORY FUNCTION OF EUROPEAN PRIVATE LAW, pp. 129-187, Cafaggi, F., Watt, H. Muir, eds., Cheltenham, Edward Elgar, 2009

This paper analyses the possibilities of private law in remedying environmental damage. The preventive role of tort law is discussed as well as its relationship to regulation. Attention is also paid to the necessity to combine liability and regulation and to the environmental liability directive. Conditions for the insurability of environmental harm are discussed and attention is paid to alternative compensation mechanisms for environmental harm such as environmental damage insurance and compensation funds. Also, arguments in favour of harmonization of environmental liability are critically discussed.

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China's Policies on its Borderlands and the International Implications

Yufan Hao

University of Macau

Bill K.P. Chou

University of Macau - Social Sciences & Humanities

CHINA'S POLICIES ON ITS BORDERLANDS AND THE INTERNATIONAL IMPLICATIONS, World Scientific Publishing, 2010

This book examines the interplay of two sets of policies: the Chinese government's policies to its borderlands and international relations. It proposes a conceptual framework and argues that China's policymakers fail to make complete use of the opportunities in the borderlands for accomplishing foreign policymakers' agenda to strengthen China's relations with other countries, neighboring ones in particular. As a result, these foreign policies reflect the political elites' inadequate consideration of the negative impact of these policies on the borderlands, and underscore their worry for territorial disintegration. Therefore these policies center on the pursuit of central control through exercising administrative-military coercion, making the borderlands economically dependent, standardizing the cultural identity, and indoctrinating CCP-defined ideology. The challenges of the borderlands to the national integration are exaggerated so much that political elites pursued control and standardization at the expense of the identification of many people in borderlands with the regime, China's international image and the relations with its neighbouring countries.

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Multiculturalism, Europhilia and Harmonization: Harmony or Disharmony?[Ruth Sefton-Green](#)

Université Paris I Panthéon-Sorbonne

[Utrecht Law Review, Vol. 6, No. 3, p. 50, 2010](#)

This paper examines the difficulties of reconciling the values promoted by multiculturalism with the objectives of harmonization. In the event of conflict, examples from English and French law show that harmonization of private law rules does not always achieve its aim of approximating national laws but, on the contrary, often backfires. The question of whether and why these divergences produce Europhile or Eurosceptic positions amongst Member States is addressed. It appears that when maximum harmonisation clashes with multiculturalism this can lead to legal nationalism, whereas minimum harmonization has less negative effects and can stimulate legal experimentation. It is suggested that harmonization requires a mutual listening and learning process in order to accommodate the multiculturalism of Member States and enable Europhilia to flourish in the European Union.

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Introduction: Mapping 21st Century International Legal Positivism[Jörg Kammerhofer](#)

University of Erlangen-Nuremberg, Department of Law

[Jean D'Aspremont](#)

University of Amsterdam

INTERNATIONAL LEGAL POSITIVISM IN A POST-MODERN WORLD, Jean d'Aspremont, Jörg Kammerhofer, eds., Forthcoming

This paper will form the introductory chapter of a research project the authors are presently directing, entitled International Legal Positivism in a Post-Modern World. . . . The core idea of the project is that positivism as family of theoretical approaches to international law has radically transformed itself in the 21st century, not least because of the critique leveled at 'classical' forms of international legal positivism. This 'post-modern' positivism is different, because it takes into account the arguments of inter alia the Critical Legal Studies movement while departing from it with respect to its own constructive project. The project introduced here will seek to carry out an in-depth scholarly study of where the positivist approach to international legal scholarship stands at the end of the first decade of the 21st century and whether it can be sustainable. This means taking a hard look at whether positivism remains a cogent approach for the future of international legal scholarship, and, if so, what forms it is, can be, or ought to be taking. We will enquire whether the current state of the international society and of international legal scholarship calls for a profound renewal of the paradigms of international legal positivism and what this renewal looks like.

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Liberal Political Philosophy: The Role of Non-State Actors and Considerations of Global Justice[Roland Pierik](#)

University of Amsterdam

[Geoffrey Gordon](#)

VU University Amsterdam

THE ASHGATE RESEARCH COMPANION TO NON- STATE ACTORS, pp. 133-146, Bob Reinalda, ed., Ashgate, 2011

Liberal theories of political philosophy inform the practice and tradition of non-state actors and non-governmental organizations (together, 'non-governmental actors'). Aspirations for global justice or a democratic peace, among other things, arise out of liberal thought from John Locke and Immanuel

Kant to Jürgen Habermas and John Rawls. Their work underscores an enduring role for private actors in the public sphere as a necessary element for progressive political development. This paper analyses the role of non-governmental actors in liberal political philosophy from Kant to Rawls.

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The Strange Death of the International Liberal Order

Kanishka Jayasuriya

University of Adelaide

(2010) Economic and Political Weekly. 55(23): 75-85

The paper provides a historical context for recent changes in global and national governance in terms of the various models of social citizenship or what I call social constitutionalism. Using Hobsbawm's notion of the 'short twentieth century' we argue that the twentieth century was not so much a struggle between different state forms but rather needs to be understood in the way these state forms reflect differing responses to the underlying social conflicts stemming from the development of capitalism and the emergence of working class and socialist movements. We argue that the post war liberal order can be identified in terms of a form of social constitutionalism that reflected twin social settlements: within advanced industrial countries and within the structures of the global multilateral system. The end of these two twin settlements has ushered in more coercive and regulatory global order and in this context the death of the post war liberalism can only be understood in terms of the collapse of the broader project of social democratisation that marked the short twentieth century.

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WikiLeaks, Secrets, and Lies

Simon Chesterman

New York University - School of Law, Singapore Programme; National University of Singapore - Faculty of Law

Project Syndicate, December 2, 2010

The latest information dump from WikiLeaks offers fascinating insights into the workings of the US State Department that will keep foreign policy wonks and conspiracy theorists busy for months. Much of what has been reported is not "news" in the traditional sense, of course, but a series of embarrassing gaffes: truths that were never meant to be said aloud. Underlying these various, and often banal, tidbits of information – it should be no surprise that Americans found Italian Prime Minister Silvio Berlusconi "vain," or regarded Zimbabwe's Robert Mugabe as a "crazy old man" – is the larger question of whether governments should be able to keep secrets. WikiLeaks founder Julian Assange argues that the answer is no, and that greater transparency "creates a better society for all people." This raises the question of why governments keep secrets at all, and whether those reasons are justified.

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Civilizing Civil War: Writing Morality as Law at the ICTY

Alexander Zahar

Macquarie University - Macquarie Law School

THE LEGACY OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, Bert Swart, Göran Sluiter, Alexander Zahar, eds., Oxford University Press, 2011

International law governing international armed conflict has grown since 1945 to include many crimes for which individuals may be held criminally liable. The ICTY and its supporters claim that much of this law has been extended to non-international armed conflict. Nevertheless, states have resisted the extension. The two domains of war are too different, legally and politically, for any simple extension of the law. What, really, has caused the rapid growth of internal-armed-conflict law at the ICTY? The answer given in this paper is that it has been accomplished by an ICTY moral philosophy masquerading as method. The tribunal's judges, free from state or legislative oversight, proceeded

almost immediately after the institution's establishment to create a legal code for non-international armed conflict. They were well aware that the majority of states - which ultimately decide the substance of international law - were, as late as 1977, opposed to or had doubts about, such expansionism. Under a veneer of legality, a humanitarian sentiment that had been blocked by states at the diplomatic conferences convened by the ICRC found an opening with the establishment of the ICTY. Some of the very people who had been most vocal about the moral deficiency of the states' position obtained senior appointments at the new tribunal. In the name of a kinder and fairer world for victims of civil war, what had been a regulatory desert in international law was systematically populated with criminal-law rules transposed from the field of international humanitarian law. Can the ICTY's law survive in the long term against the power of sovereign interest? I consider this question in the light of the United States' critique of the ICRC's 2005 customary-law study.

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The Worldwide Governance Indicators: Methodology and Analytical Issues

[Daniel Kaufmann](#)

The Brookings Institution

[Aart Kraay](#)

World Bank – Development Research Group (DECRG)

[Massimo Mastruzzi](#)

World Bank Institute

[World Bank Policy Research Working Paper No. 5430](#)

Abstract:

This paper summarizes the methodology of the Worldwide Governance Indicators (WGI) project, and related analytical issues. The WGI cover over 200 countries and territories, measuring six dimensions of governance starting in 1996: Voice and Accountability, Political Stability and Absence of Violence/Terrorism, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption. The aggregate indicators are based on several hundred individual underlying variables, taken from a wide variety of existing data sources. The data reflect the views on governance of survey respondents and public, private, and NGO sector experts worldwide. The WGI also explicitly report margins of error accompanying each country estimate. These reflect the inherent difficulties in measuring governance using any kind of data. Even after taking these margins of error into account, the WGI permit meaningful cross-country and over-time comparisons.

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U.S. Corporations in China: An Intellectual Property Report

[Raheel Rashad Daureeawo](#)

affiliation not provided to SSRN

With the current state of the economy if a corporation needs to be profitable one has to know how to utilize its resources in the best possible manner and the only way to do that is to look towards the emerging markets. China opened the gates for business to the international community for some time now. All the big giants in the corporate world now want their Intellectual Property before they launch their businesses there. This article gives us an understanding on current intellectual property laws in China and US and how the companies going into China can benefit from that market. We shall discuss how we are going to understand the shortcomings of the intellectual Property of China and making it work for us. It is next to impossible to explain intellectual property of a country in an article however my attempt is give the reader a basic understanding of the law and its complexities. . . .

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Use and Misuse of Evidence Obtained During Extraordinary Renditions: How Do We Avoid Diluting Fundamental Protections?

[Victor Hansen](#)

New England Law | Boston

[NSU Shepard Broad Law Center Research Paper](#)

This article considers and questions the ways in which grand schemes of rights infringement such as extraordinary rendition can translate into specific but also corrosive questions of accommodation in the law of evidence. This article enables us to see the extents to which questions considered to be either 'grand' or 'minor' in the context of counter-terrorism and human rights protections are, in fact, inter-connected. The article focuses on the use of information obtained from detainees who were subjected to extraordinary rendition. The article examines how the information obtained during these periods of extraordinary rendition might be used in any subsequent criminal prosecutions of the detainees. The article explores the rules in both U.S. Federal Court and the Military Commissions which govern the admissibility of evidence obtained during extraordinary renditions and questions whether evidence obtained under this practice should be admissible in any subsequent prosecutions of the detainees. The paper examines the likely corrosive impact that the use of this evidence could have on fundamental due process protections and concludes that while the admissibility of this evidence is problematic in any forum, trying these suspects in federal court is the best option available.

II. Books

[Gender and Climate Change: An Introduction](#)

(Earthscan, October 2010)

Edited By Irene Dankelman

'This book gives a profound and informative introduction and presents a wide range of case studies that will inform and inspire scholars, policymakers, advisors and students about the relevance of the interlinkages between gender and climate change. Moreover, it guides us towards appropriate policies and calls us to action.' Dr. Nafis Sadik, Former Head of the United Nations Population Fund (UNFPA), UN Special Envoy for HIV/AIDS Asia and Pacific.

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[Climate Change Adaptation and International Development: Making Development Cooperation More Effective](#)

(Earthscan, November 2010)

Edited By Ryo Fujikura and Masato Kawanishi

'Adaptation to climate change is nothing straightforward or simple, but it is necessary. This book offers food for thought for how development cooperation can most effectively do its part to put poor countries on the track toward sustainable development in a changing climate.' Lisa Schipper, Senior Research Fellow, Stockholm Environment Institute, Thailand

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[Moral Movements and Foreign Policy](#)

(Cambridge Univ. Press 2010)

Joshua W. Busby

Why do advocacy campaigns succeed in some cases but fail in others? What conditions motivate states to accept commitments championed by principled advocacy movements? Joshua W. Busby sheds light on these core questions through an investigation of four cases - developing-country debt relief, climate change, AIDS, and the International Criminal Court - in the G-7 advanced industrialized

countries (Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States). Drawing on hundreds of interviews with policy practitioners, he employs qualitative, comparative case study methods, including process-tracing and typologies, and develops a framing/gatekeepers argument, emphasizing the ways in which advocacy campaigns use rhetoric to tap into the main cultural currents in the countries where they operate. Busby argues that when values and costs potentially pull in opposing directions, values will win if domestic gatekeepers who are able to block policy change believe that the values at stake are sufficiently important.

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Human Rights in the Commonwealth: A Status Report 2010

(Commonwealth Publications, Dec. 2010)

Edited by Dr Purna Sen with research by Jena Patel

Human Rights in the Commonwealth 2010 presents a survey of the state of human rights, as indicated by each country's formal engagement with the main international standards and norms, across the fifty-four member countries of the association. For each country the report details the human rights instruments ratified, together with information on the main human rights institution in the country.

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**Making Global Economic Governance Effective:
Hard and Soft Law Institutions in a Crowded World**

(Ashgate, Jan. 2011)

John J. Kirton, Marina Larionova & Paolo Savona, eds.

Today's world is crowded with international laws and institutions that govern the global economy. This post-World War II accumulation of hard multilateral and soft plurilateral institutions by no means constitutes a comprehensive, coherent and effective system of global economic governance. As intensifying globalization thrusts many longstanding domestic issues onto the international stage, there is a growing need to create at the global level the more comprehensive, coherent and effective governance system that citizens have long taken for granted at home. This book offers the first comprehensive look at this critical question of international relations. It examines how, and how well, the multilateral organizations and the G8 are dealing with the central challenges facing the contemporary international community, how they have worked well and poorly together, and how they can work together more effectively to provide badly needed public goods. It is an ideal reference guide for anyone interested in institutions of global governance.

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From Transnational Relations to Transnational Laws: Northern European Laws at the Crossroads

(Ashgate, Jan. 2011)

This book approaches law as a process embedded in transnational personal, religious, communicative and economic relationships that mediate between international, national and local practices, norms and values. It uses the concept "living law" to describe the multiplicity of norms manifest in transnational moral, social or economic practices that transgress the territorial and legal boundaries of the nation-state. Focusing on transnational legal encounters located in family life, diasporic religious institutions and media events in countries like Norway, Sweden, Britain and Scotland, it demonstrates the multiple challenges that accelerated mobility and increased cultural and normative diversity is posing for Northern European law. For in this part of the world, as elsewhere, national law is challenged by a mixture of expanding human rights obligations and unprecedented cultural and normative pluralism enhanced by expanding global communication and market relations. As a consequence, transnationalization of law appears to create homogeneity, fragmentation and ambiguity, expanding space for some actors while silencing others. Through the lens of a variety of

important contemporary subjects, the authors thus engage with the nature of power and how it is accommodated, ignored or resisted by various actors when transnational practices encounter national and local law.

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The International Criminal Court and National Courts: A Contentious Relationship

(Ashgate, February 2011)

Nidal Nabil Jurdi

This book analyzes the position of the ICC in relation to national court systems. The research illustrates that what seemed to be a straight forward relationship between the ICC and national courts under the complementarity mechanism, proves to be much more complex in practice. Using the referrals of Uganda and Darfur, the book demonstrates ways in which it might be possible to prosecute for crimes currently not prosecuted by the ICC and brings to light possible solutions to overcome the gaps in law and practice in the jurisdictional relation between the ICC and national systems. It will be of value to academics, students and policy-makers working in the area of international law, international organizations, and human rights.

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Globalization and International Organization

(Asgate, August 2011)

The last few years have witnessed several significant developments in respect of international organizations, most of which are best encapsulated in the word "change". In particular, international organizations have moved from their traditional role of facilitator of the activities of their members, to that of director of their own activities. As a result, there is increased scrutiny over issues relating to the governance, control, accountability and the privileges and immunities of international organizations. These subjects are all the focus of this book. Edward Kwakwa has collected together the best published work by leading authorities in the field on subjects of crucial importance and relevance to international organizations, particularly in the context of today's ever-increasing globalization. This book is of interest to scholars and students of law, as well as government and non-government practitioners and international civil servants.

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Globalisation and the Quest for Social and Environmental Justice: The Relevance of International Law in an Evolving World Order

(Routledge 2010)

Shawkat Alam, Natalie Klein & Juliette Overland

There are few topics as controversial as globalisation. It is meant to bring economic growth and solve a range of social, cultural and humanitarian problems. However, there are significant debates in relation to the extent that the reality of globalisation reflects this idealized vision. . . . The book is an exploration of the intricate nexus that emerges as a result of globalisation, inextricably linking together issues of international law, human rights, environmental law and international trade law. Bringing together a number of experts in the field, the book focuses on the areas of social justice and environmental justice, and explores the links that exists between the two and the effect of globalisation on these areas. A variety of topics are addressed throughout the chapters of this book – including biodiversity, the law of the sea, biotechnology, child labour, the rights of women, corporate social responsibility, terrorism and counter-terrorism, water resources, intellectual property rights and the role of non-government organisations. As globalisation has many facets and actors, the contributions to the book engage with interdisciplinary research to deal with the various challenges identified, and critically explore both the potential of globalisation as a vehicle of sustainable and equitable development.

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Proceedings of the Third International Humanitarian Law Dialogs

(American Society of International Law, 2010)

Elizabeth Andersen & David M. Crane, eds

This volume provides a record of the proceedings of the third annual meeting of the international prosecutors at the Chautauqua Institution on August 31-September 1, 2009. Joined by an impressive group of experts, the international prosecutors discussed the important impact of women in international criminal law as well as the complexities of prosecuting gender-based crimes. Included are speeches and commemorative papers analyzing the sacrifices and contributions of women from Nuremberg to the present day. The Third Chautauqua Declaration is also included.

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Transborder Governance of Forests, Rivers and Seas

(Earthscan, October 2010)

Edited by Wil de Jong, Denyse Snelder and Noboru Ishikawa

Natural resources often stretch across borders that separate modern nation states. This can create conflict and limit opportunities for regulated consumption of their goods and services, but also provide opportunities for joint multinational efforts that exceed single country capabilities. This book illustrates the diversity of transborder natural resources, the pressures that they experience or the opportunities that exist for multinational regulatory regimes, monitoring and enforcement. It presents ten case studies of transborder natural resources that are of interest to two or more neighboring countries, and that are subject to, or in need of bilateral or multinational coordinated management. Case studies are drawn from across the globe, including Western Europe, the Western Amazon, the Mekong region of South-East Asia, Central Africa, Japan, South-East Asia and Australia.

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Governance, Natural Resources, and Post-Conflict Peacebuilding

(Earthscan, February 2011)

Edited by Carl Bruch, Wm. Carroll Muffett, and Sandra S. Nichols

When the guns are silenced, people affected by conflict need food, water, shelter, and a means to earn a living. They also require a government that can meet these needs and sustain peace. While natural resources are essential to sustaining people and peace in post-conflict countries, governance failures often jeopardize these objectives. This book examines experiences in post-conflict governance, natural resource management, and peacebuilding from more than forty countries. It highlights the centrality of natural resource management in rebuilding governance and the rule of law, combating corruption, improving transparency and accountability, engaging disenfranchised populations, and building confidence following conflict. The book interweaves this analysis with an exploration of how these lessons may be applied to the formulation and implementation of effective governance interventions. It provides a concise theoretical and practical framework for policymakers, researchers, practitioners, and students.

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International Sustainable Development Law (3 vols)

(EOLSS Publishers Co Ltd)

A.F. Munir Maniruzzaman, Aaron Schwabach, Arthur John Cockfield, A. Dan Tarlock, John C. Dernbach, Gabriela Maria Kytting, eds.

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Margins of Conflict. The ECHR and Transitions to and from Armed Conflict

(Intersentia, Nov. 2010)

Antoine Buyse, ed.

The European Convention on Human Rights was drafted in the wake of World War II. The dark shadows of war have never fully receded from Europe however. Armed conflict has resurged time and again, from Northern Ireland to Cyprus and Turkey, and from the former Yugoslavia to the Caucasus. This book focuses on the margins of conflict: human rights aspects of transitions from peace to armed conflict and vice versa. Firstly, it seeks to explore what limits human rights put on European societies which are on the brink of armed conflict. Secondly, it surveys the consequences of human rights violations committed during the armed conflict by looking at the aftermath of war. In a stimulating way, experts in their field offer food for thought on a broad range of material and especially procedural issues such as the territorial scope of the Convention, states of emergency, freedom of expression and conflict escalation, obligations relating to enforced disappearances, interim measures, and pilot judgments. Taken together, they reflect both the potential and limitations of human rights in the run-up to conflicts and their aftermath.

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Refugees, Women, and Weapons: International Norm Adoption and Compliance in Japan

(Stanford Univ. Press 2009)

Petrice R. Flowers

In a world dominated by considerations of material and security threats, Japan provides a fascinating case for why, and under what conditions, a state would choose to adopt international norms and laws that are seemingly in direct conflict with its domestic norms. Approaching compliance from within a constructivist framework, author Petrice R. Flowers analyzes three treaties—addressing refugee policy, women's employment, and the use of land mines—that Japan has adopted. *Refugees, Women, and Weapons* probes how international relations and domestic politics both play a role in constructing state identity, and how state identity in turn influences compliance. Flowers argues that, although state desire for legitimacy is a key factor in norm adoption, to achieve anything other than a low level of compliance requires strong domestic advocacy. She offers a comprehensive theoretical model that tests the explanatory power of two understudied factors: the strength of nonstate actors and the degree to which international and domestic norms conflict. Flowers evaluates how these factors, typically studied and analyzed individually, interact and affect one another.

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'Armed Attack' and Article 51 of the UN Charter: Evolutions in Customary Law and Practice

(Cambridge Univ. Press 2010)

Tom Ruys

This book examines to what extent the right of self-defence, as laid down in Article 51 of the Charter of the United Nations, permits States to launch military operations against other States. In particular, it focuses on the occurrence of an 'armed attack' - the crucial trigger for the activation of this right. In light of the developments since 9/11, the author analyses relevant physical and verbal customary practice, ranging from the 1974 Definition of Aggression to recent incidents such as the 2001 US intervention in Afghanistan and the 2006 Israeli intervention in Lebanon. The notion of 'armed attack' is examined from a threefold perspective. What acts can be regarded as an 'armed attack'? When can an 'armed attack' be considered to take place? And from whom must an 'armed attack' emanate? By way of conclusion, the different findings are brought together in a draft 'Definition of Armed Attack'.

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Water Rights and Social Justice in the Mekong Region

(Earthscan, Feb. 2011)

Edited by Kate Lazarus, Nathan Badenoch, Nga Dao, and Bernadette P. Resurreccion, eds.

This book reviews the issues faced by people living in the Mekong River region, in South East Asia, who are increasingly being marginalised and under-represented by the big businesses, planners and politicians – the powerful elite – influencing and deciding the trajectories of development in the region. It also shows how complex human- and nature- induced developments in the Mekong Region are increasingly widening existing gaps in wealth, resource access and power. Fair and equal fields for decision-making and governance are needed to strengthen not only the rights but also the resilience of vulnerable groups and communities against uncertainty, particularly for climate-related changes. The authors show how vitally important it is that water governance is democratised to allow a more equitable sharing of water resources and counteract the pressures of economic growth.

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The Handbook of Comparative Criminal Law

(Stanford Univ. Press 2010)

Kevin Jon Heller & Markus D. Dubber

This handbook explores criminal law systems from around the world, with the express aim of stimulating comparison and discussion. General principles of criminal liability receive prominent coverage in each essay—including discussions of rationales for punishment, the role and design of criminal codes, the general structure of criminal liability, accounts of mens rea, and the rights that criminal law is designed to protect—before the authors turn to more specific offenses like homicide, theft, sexual offenses, victimless crimes, and terrorism.

This key reference covers all of the world's major legal systems—common, civil, Asian, and Islamic law traditions—with essays on sixteen countries on six different continents. The introduction places each country within traditional distinctions among legal systems and explores noteworthy similarities and differences among the countries covered, providing an ideal entry into the fascinating range of criminal law systems in use the world over.

III. JOURNALS

PUBLIC INTERNATIONAL LAW eJOURNAL

Vol. 5, No. 165: Dec 15, 2010

ALAN O'NEIL SYKES, EDITOR

(articles already digested omitted)

The Concepts and Methods of Reasoning of the New Public Law: Legitimacy

Carol Harlow, London School of Economics - Law Department

Violence-Focus of the International Human Rights Discourse: Blind Spots, Tunnel Vision, and Distorted Versions

Aparna Chandra, National Law School of India University

An Armenian Manifesto Circa 1923: Dashnagtzoutiun Has Nothing to Do Anymore

Arnold Reisman, Reisman and Associates

Civilizing Civil War: Writing Morality as Law at the ICTY

Alexander Zahar, Macquarie University - Macquarie Law School

By the Book: Bush's Memoirs and the Rule of Law

Ian Hurd, Dept. of Political Science, Northwestern University

General Framework of Administrative Convergence Provided by the Reforms of National Public Administrations in South Eastern Europe States

[Ani I. Matei](#), National School of Political Studies and Public Administration (NSPSPA)

[Lucica Matei](#), National School of Political Studies and Public Administration (NSPSPA)

[Oana Stoian](#), affiliation not provided to SSRN

[Tatiana-Camelia Dogaru](#), affiliation not provided to SSRN

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PUBLIC INTERNATIONAL LAW eJOURNAL

Vol. 5, No. 164: Dec 14, 2010

[ALAN O'NEIL SYKES, EDITOR](#)

(articles already digested omitted)

Unity in Diversity as Europe's Vocation and Conflicts Law as Europe's Constitutional Form

[Christian Joerges](#), European University Institute - Department of Law (LAW)

Human Rights and Intellectual Property: Mapping the Global Interface

[Laurence R. Helfer](#), Duke University - School of Law

[Graeme W. Austin](#), University of Arizona - James E. Rogers College of Law

The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope and Enforcement Challenges

[Allehone Mulugeta Abebe](#), University of Bern

Theories of Poverty/The Poverty of Theory

[Barbara J. Stark](#), Hofstra University - School of Law

'Liable to Tax' and Company Residence under Tax Treaties

[Richard J. Vann](#), Sydney Law School

Canada's Refugee Determination System and the International Norm of Independence

[Gerald Heckman](#), University of Manitoba

Global Regulation of the Knowledge-Based Economy: The Rise of Standards in Educational Services

[Jean-Christophe Graz](#), University of Lausanne

[Eva Hartmann](#), affiliation not provided to SSRN

Evolving U.S. Efforts to Support Domestic Accountability

[Mike A. Newton](#), Vanderbilt Law School

The Johor-VOC Alliance and the Twelve Years Truce: Factionalism, Intrigue and International Diplomacy, C.1606-1613

[Peter Borschberg](#), Department of History, National University of Singapore

The Zero Years of Spanish International Law 1939-1953

[Ignacio de la Rasilla del Moral](#), Harvard Law School, Royal Complutense College in Harvard

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PUBLIC INTERNATIONAL LAW eJOURNAL

Vol. 5, No. 163: Dec 13, 2010

ALAN O'NEIL SYKES, EDITOR

(articles already digested omitted)

Harmonization of International Investment Law: Illustrations from the Case of Suez, Sociedad General de Aguas de Barcelona S.A., Vivendi Universal S.A. and AWG Group v Argentine RepublicJames Harrison, University of Edinburgh - School of Law**What Place for Conflict-of-Law Rules in the Construction of European Community Law?**Anne-Julie Kerhuel, Georgetown University Law Center**The Follower Phenomenon: Implications for the Design of Monopolization Rules in a Global Economy**A. Jorge Padilla, affiliation not provided to SSRNMichal S. Gal, University of Haifa - Faculty of Law, New York University**Taking Constitutionalization One Step Too Far? The Need for Revision of the Rheinmühlen Case Law in the Light of the Ag Opinion and the ECJ's Ruling in Elchinov**Chris Backes, University of Maastricht - Public LawM. Eliantonio, University of Maastricht - Public Law**Basel Accord and the Failure of Global Trust Bank: A Case Study**Jahar Bhowmik, Jadavpur UniversitySoumasree Tewari, IBRAD School of Management and Sustainable Development**The Criticism of the Third-World Debt and the Revision of Legal Doctrine**Tamara Lothian, Columbia University - Center for Law and Economic Studies

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Vol. 5, No. 162: Dec 10, 2010

ALAN O'NEIL SYKES, EDITOR

(articles already digested omitted)

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The Regulation of Inchoate Technologies

[Daniel J. Gervais](#), Vanderbilt Law School

The Joint Action and Learning Initiative on National and Global Responsibilities for Health

[Lawrence O. Gostin](#), Georgetown University Law Center - O'Neill Institute for National and Global Health Law

[Gorik Ooms](#), Institute of Tropical Medicine (ITM)

[Mark Heywood](#), Section27

[John-Arne R  ttingen](#), Norwegian Knowledge Center for the Health Services

[Just Haffeld](#), University of Oslo

[Sigrun M  gedal](#), Global Health Workforce Alliance

[Harald Siem](#), Norwegian Directorate of Health

[Eric Friedman](#), Physicians for Human Rights

More than Words: The Introduction of Internationalised Domain Names and the Reform of Generic Top-Level Domains at ICANN

[Daithi Mac Sithigh](#), University of East Anglia (UEA) - Norwich Law School

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Vol. 5, No. 106: Dec 15, 2010

[CHRISTIANA OCHOA, EDITOR](#)

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What Place for Conflict-of-Law Rules in the Construction of European Community Law?

[Anne-Julie Kerhuel](#), Georgetown University Law Center

Human Rights Limitations in Patent Law

[Geertrui Van Overwalle](#), Leuven University, Tilburg University

A Path Not Taken: Hans Kelsen's Pure Theory of Law in the Land of the Legal Realists

[D.A. Jeremy Telman](#), Valparaiso University School of Law

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Vol. 5, No. 105: Dec 14, 2010

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The Arms Trade: No Cause for a Treaty

[Tony Rock](#), affiliation not provided to SSRN

Scientific and Critical Editions of Public Domain Works: Another Example of European Copyright Law (Dis)Harmonization

[Thomas Margoni](#), University of Western Ontario - Faculty of Law

The Right to Be Tried within a Reasonable Time and the Restoration of the Party's 'Presumptive' Prejudice

[Evita Ioannis Salamoura](#), affiliation not provided to SSRN

Defining and Defending the Human Right to Water and its Minimum Core: Legal Construction and the Role of National Jurisprudence

[George S. McGraw](#), United Nations Mandated University for Peace

Application of Foreign Law in French Law - Litigation System

[Samuel Lemaire](#), affiliation not provided to SSRN

[Daniel Rojas](#), affiliation not provided to SSRN

Uncorking Trade Secrets: Sparking the Interaction between Trade Secrecy and Open Biotechnology

[Geertrui Van Overwalle](#), Leuven University, Tilburg University

Two Steps Forward, One Step Back: The 2010 Report by the UN Special Representative on Business and Human Rights

[Jernej Letnar Cernic](#), European University Institute - Department of Law (LAW)

Of Thickets, Blocks and Gaps: Designing Tools to Resolve Obstacles in the Gene Patents Landscape

[Geertrui Van Overwalle](#), Leuven University, Tilburg University

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LAW & SOCIETY: INTERNATIONAL & COMPARATIVE LAW eJOURNAL

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Vol. 5, No. 104: Dec 13, 2010

[CHRISTIANA OCHOA, EDITOR](#)

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Penetrating the Silence in Sierra Leone: A Blueprint for the Eradication of Female Genital Mutilation

[Chi Mgbako](#), Fordham University - School of Law

[Meghna Saxena](#), affiliation not provided to SSRN

[Anna Cave](#), affiliation not provided to SSRN

[Helen Shin](#), Fordham Law Review

[Nasim Farjad](#), affiliation not provided to SSRN

Book Review: 'Migration and Human Rights. The United Nations Convention on Migrant Workers' Rights', Edited by R. Cholewinski, P. De Guchteneire and A. Pécoud

[Vincent Chetail](#), Graduate Institute of International and Development Studies

'Entrenched Customs Die Hard...' Can Harmful Traditional Practices Be Justified by Cultural Relativism of Human Rights? Case Study of FGM

[Aleksandra Nędzi](#), University of Sarajevo - Center for Interdisciplinary Postgraduate Studies

Exporting Subjects: Globalizing Family Law Progress Through International Human Rights

[Cyra Akila Choudhury](#), Florida International University College of Law

An Insecure Climate for Human Security? Climate-Induced Displacement and International Law

[Jane McAdam](#), University of New South Wales (UNSW) - Faculty of Law

[Ben Saul](#), University of Sydney - Faculty of Law

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LAW & SOCIETY: INTERNATIONAL & COMPARATIVE LAW eJOURNAL**Sponsored by: Indiana University Maurer School of Law**

Vol. 5, No. 103: Dec 10, 2010

CHRISTIANA OCHOA, EDITOR

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'Circumcision' or 'Mutilation'? Revisiting Ethical and Legal Perspectives on Female Genital Rituals[Obiajulu Nnamuchi](#), Loyola University Chicago School of Law - Beazley Institute for Health Law & Policy**Harmonization of International Investment Law: Illustrations from the Case of Suez, Sociedad General de Aguas de Barcelona S.A., Vivendi Universal S.A. and AWG Group v Argentine Republic**[James Harrison](#), University of Edinburgh - School of Law**What Have the Poorest Countries to Gain from the Doha Development Agenda (DDA)?**[James Scott](#), University of Manchester[Rorden Wilkinson](#), Brooks World Poverty Institute**Preparing for the Global Law Practice: The Need to Include International and Comparative Law in the Legal Writing Curriculum**[Susan DeJarnatt](#), Temple University - James E. Beasley School of Law[Mark Rahdert](#), Temple University - James E. Beasley School of Law**Use and Misuse of Evidence Obtained During Extraordinary Renditions: How Do We Avoid Diluting Fundamental Protections?**[Victor Hansen](#), New England Law | Boston**Forced Eviction and Resettlement in Cambodia: Case Studies from Phnom Penh**[Chi Mgbako](#), Fordham University - School of Law[Rijie Ernie Gao](#), affiliation not provided to SSRN[Elizabeth Joynes](#), affiliation not provided to SSRN[Anna Cave](#), affiliation not provided to SSRN[Jessica Mikhailevich](#), affiliation not provided to SSRN**Crafting the Nuclear World Order (1950-1975): The Dynamics of Legal Change in the Field of Nuclear Nonproliferation**[Gregoire Mallard](#), Northwestern University - Department of Sociology

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LAW & SOCIETY: INTERNATIONAL & COMPARATIVE LAW eJOURNAL**Sponsored by: Indiana University Maurer School of Law**

Vol. 5, No. 102: Dec 09, 2010

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(select articles)

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JN: Archiv des oeffentlichen Rechts

PD: October 2010

VO: 135

NO: 4

PG: 498-540(43)

PB: Mohr Siebeck

IS: 0003-8911

URL: <http://www.ingentaconnect.com/content/mohr/aoer/2010/00000135/00000004/art00002>

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AU: Lavranos, Nikos

JN: The Law and Practice of International Courts and Tribunals

PD: 2010

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PB: Martinus Nijhoff Publishers

IS: 1569-1853

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PD: 2010

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AU: Churchill, Robin

JN: The International Journal of Marine and Coastal Law

PD: October 2010

VO: 25

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PG: 457-482(26)

PB: Martinus Nijhoff Publishers

IS: 0927-3522

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PD: October 2010

VO: 25

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TI: The Best Interests of the Child Principle: Literal Analysis and Function

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PD: November 2010

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PG: 483-499(17)

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URL: <http://www.ingentaconnect.com/content/mnp/chil/2010/00000018/00000004/art00002>

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TI: Revisiting the External Dimension of the Environmental Policy of the European Union: Some Challenges Ahead

AU: del Castillo, Teresa Fajardo
JN: Journal for European Environmental Planning Law
PD: November 2010
VO: 7
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PG: 365-390(26)
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IS: 1613-7272
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PD: November 2010
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TI: The State of Nature and Commercial Sociability in Early Modern International Legal Thought
AU: Kingsbury, Benedict; Straumann, Benjamin
JN: Grotiana
PD: November 2010
VO: 31
NO: 1
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IS: 0167-3831
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VO: 31
NO: 1
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IS: 0167-3831
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PB: Oxford University Press

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JN: Journal of International Economic Law

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PG: 623-643(21)

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PD: 1 September 2010
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JN: European Business Review
PD: 1 February 2002
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NO: 1
PG: 7-19(13)
PB: Emerald Group Publishing Limited
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TI: International complications
AU: Seadle, Michael
JN: Library Hi Tech
PD: 1 September 1999
VO: 17
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PG: 326-332(7)
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