Anton's Weekly Digest of International Law Scholarship*

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

Legal Means of Dispute Settlement in the Field of Collective Security: The Quasi-Judicial Powers of the Security Council

Matt Saul
Durham University
Nigel D. White
University of Nottingham

INTERNATIONAL LAW AND DISPUTE SETTLEMENT: NEW TECHNIQUES AND PROBLEMS, D. French, M. Saul, and N.D. White, eds., Hart, 2010

This chapter examines the role of and problems faced by the UN Security Council (SC) in relation to collective security and dispute settlement. The chapter is particularly interested in the effectiveness of the SC and how this could be improved. A central argument is that effectiveness is dependent upon legitimacy, which in large part includes respect for the canons of international law. Analysis is centred on the key dispute settlement functions undertaken by the SC: investigation, judgment, and implementation (enforcement). The focus is on the SC because it alone has the power to bind Member States, a power which is not shared by the UN General Assembly (GA), except in budgetary matters. This is not to suggest, of course, that the GA has no role in international dispute settlement, nor that it does not act in a quasi-judicial manner, but the absence of binding powers limits its impact. Similarly, mention of the SC as a legislature is only to the extent that a particular action is relevant for the analysis of its dispute settlement function.

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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.
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A Return to Koskenniemi; or the Disconcerting Co-Optation of Rupture

Paavo Kotiaho
Erik Castrén Institute of International Law and Human Rights; Finnish Yearbook of International Law

This paper consists of an exposition and study of the evolution of the scholarship of Martti Koskenniemi from his earlier From Apology to Utopia to his later calls for a culture of formalism. This brief study is inspired by an effort related to a broader project which seeks to discover the total aggregate of social and economic laws, which have and continue to (over)determine the conditions of the existence of much left-wing critical legal scholarship in the international law field. . . .

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The Diplomatic Channel

Michael Waibel
Lauterpacht Centre for International Law; University of Cambridge - Faculty of Law
THE LAW OF INTERNATIONAL RESPONSIBILITY, James Crawford and Alain Pellet, eds., Oxford University Press, 2010

Only a small subset of international disputes ever reaches international courts and tribunals. Despite the growing prominence of judicial and arbitral proceedings, adjudication is just the tip of the iceberg. Diplomacy still reigns supreme in settling international disputes, especially when confidentiality and flexibility matter. To this day, negotiations remain the predominant tool to manage and settle international disputes.

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A Consideration of International Law and its Enforcement

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affiliation not provided to SSRN

This short essay attempts to examine the nature, quality and characteristics of international law, a notion which has been derided by numerous authors. It also attempts to examine the principal mechanism(s) of enforcement of the doctrines of international law.

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Modernity and International Law: Mythological Materialism in the East-West Telos

Prabhakar Singh
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INTERNATIONAL LAW: CONTEMPORARY ISSUES AND FUTURE DEVELOPMENTS, Sanford Silverburg, ed., pp. 532-552, Westview Press, 2011

This monograph takes on "modern art" as the location of modernity. This subject, in my view, holds potential for a productive multi-logue and not just a dialogue, between three binary socio-cultural categories: child and adult, normal and mad, and colonisers and colonised. Modern art raises very interesting questions, and as an area that is often ignored in the analysis of law and science, it forms a powerful field for exploring both, as well as their intersections. Exploring the psychology of colonisation/domination is an important objective of this monograph. In order to get at it, the monograph imbibes Appadurai, Foucault, and Nandy as offering complementary stances on modernity and subsequent globalisation of intra- European relations after the industrial revolution. In doing so the author relates aspects of semiotic theory by looking at theories of myth. This monograph concludes by applying their relevance to the strategy of signification deployed by International law and relations.

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Six Minutes to Midnight – Can Intellectual Property Save the World?

Peter Drahos
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EMERGING ISSUES IN INTELLECTUAL PROPERTY, Kathy Bowrey, Michael Handler and Dianne Nicol, eds., Oxford University Press, 2011
Queen Mary School of Law Legal Studies Research Paper No. 70/2010

Can we harness intellectual property institutions for the purpose of innovating to save the world from the worst climate change scenarios? The standard optimization view of intellectual property suggests that intellectual property can play an important role. The paper argues that the standard view ignores real-world problems of opportunistic uses of intellectual property by private actors. Globalized intellectual property standards are a poor way in which to manage the nested complexity of climate change. The paper concludes by looking at the lessons of the Manhattan Project for climate change.

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Squaring the Circle? – International Humanitarian Law and Transnational Armed Conflicts

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RULES AND INSTITUTIONS OF INTERNATIONAL HUMANITARIAN LAW PUT TO THE TEST OF RECENT ARMED CONFLICTS (LES REGLES ET INSTITUTIONS DU DROIT INTERNATIONAL HUMANITAIRE A L'EPREUVE DES CONFLIS ARMES RECENTS), pp. 217-274, Michael J. Matheson, Djamchid Momtaz, eds., Martinus Nijhoff, 2007
Hague Academy of International Law, 2010

Even though the law of armed conflict traditionally recognizes only the dichotomy of international and non-international armed conflict applicable in the normative framework regulating armed hostilities, reality presents situations that do not readily fit into these categories. Foreign State involvement is almost habitual in contemporary conflicts and a significant number of conflicts rage between States and non-State actors not necessarily remaining within the confines of a country. The present paper attempts to examine the legal classification of 'transnational armed conflicts', i.e. armed hostilities with a transboundary character that involve non-State actors and thus seemingly escape the classic division of international and non-international armed conflict. After a perusal of legal doctrine and State practice, it concludes that contemporary international humanitarian law is capable of regulating such conflicts and calls for an overhaul of the present system are premature.

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Reimagining Human Rights Law: Toward Global Regulation of Transnational Corporations

Rachel J. Anderson
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Denver University Law Review, Vol. 88, 2010

. . . This article takes a new look at a perennial question of human rights: how to prevent corporate-related human rights abuses and provide remedies for victims. It argues that transnational corporations require specialized and targeted regulations and laws, and that the conflation of human rights law and international human rights law should be reversed to allow the advancement of other forms of human rights law. It makes two proposals. First, reimagine human rights law and international human rights law as separate categories. Specifically, classify international human rights law as a sub-category of human rights law. This distinction highlights the need to encourage the development of other forms of human rights law, for example, global human rights law and national human rights law. Second, establish global human rights law as a sub-category of human rights law. Specifically, create a new global human rights regime with three main elements: a Global Law Commission, global laws and regulations, and universal civil jurisdiction.

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State Sovereignty and International Human Rights

Anush Hayrapetyan
affiliation not provided to SSRN

The research focuses on human rights and state sovereignty issues very often contradicting one another in current international relations.

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State-Building, the Social Contract, and the Death of God

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Future of Statebuilding: Ethics, Power and Responsibility in International Relations Conference, October 2009
NYU School of Law, Public Law Research Paper

In the past decade, "state-building" has moved from the margins to the mainstream. Bold experiments in East Timor and Kosovo have led to the creation of the independent state of Timor-Leste and the embryonic Republic of Kosovo. Less successful experiments continue in Afghanistan and Iraq. In each instance, many people assumed - wrongly - that it was the first time anything like this had ever happened, and the last time it ever would happen. Now a cottage industry of grants and conferences offers endless opportunities to revisit a senior official's epithet on UN policy planning: "No wheel shall go un-reinvented." This essay considers the past and the future of efforts to build or rebuild institutions of the state in fragile and conflict affected countries, focusing on the difficulty of balancing the need for local ownership against the imperatives that led to foreign intervention in the first place.

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Finding a Durable Solution for West Papuan Refugees in Papua New Guinea: A Role for Australia?

Savitri Taylor
La Trobe University - School of Law

Human Rights Defender, Vol. 19, No. 3, pp. 17-19, 2010

Abstract:
This article describes the situation of 10,000 West Papuan refugees living in Papua New Guinea and considers the role Australia could play in finding durable solutions for them.

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State of Play: Changing Climate at Copenhagen

Cymie R. Payne
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American Society of International Law Insight, Vol. 13, No. 24, December 8, 2009

Behind the current drama of climate change politics, international and domestic law play a key role, both facilitating and inhibiting progress on the Bali Action Plan. This article (published just before the Copenhagen climate conference) describes some of the hurdles to be overcome in reaching a legally binding international climate change agreement and suggests possible solutions.

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Harmonizing Climate Change and International Investment Law: Threats, Challenges and Opportunities

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This chapter responds to a chorus of commentary about the potential for conflict between the international investment law regime and an array of national and international actions being undertaken to mitigate and adapt to global climate change. Contrary to conventional wisdom, while some climate-friendly regulations may indeed be facially incompatible with the obligations imposed on states by typical international investment agreements (IIAs), many climate policies – especially those related to climate finance and technology transfer – involve principles common to foreign investment law and are largely compatible with that regime. Moreover, pending the unlikely negotiation of a single global agreement on climate change, states are initiating a host of national, bilateral and regional initiatives to encourage certain kinds of foreign direct investment (FDI) flows in the hope of catalyzing low-carbon growth. These sorts of strategies will benefit from a flexible and responsive set of rules governing climate-friendly FDI, something the international investment law regime is uniquely positioned to provide. Meanwhile, international investment law is itself undergoing a transformation of sorts, as more serious consideration is given to the environmental and social impacts of foreign investment and as global capital flows become increasingly multidirectional, calling into question longstanding distinctions between FDI host countries and the home countries of investors. Rather than signaling conflict, recent trends in climate policy and international investment law indicate that both regimes are entering a new phase characterized by coordination, harmonization, and mutual learning. This chapter maps this emerging territory and identifies key opportunities to shape the interaction between the two disciplines.

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Transnational Corporations and the Disjoint of Traditional Structures of Liability to Victims

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For as long as they have been on the scene, transnational corporations ('TNCs') have been a persistent problem for legal scholars at both the theoretical and practical level. In practical terms, the underdevelopment of legal rules applicable to the TNC in a jurisdiction in which it operates, legal inaction or complicity in wrongful acts on the part of state authorities, and the rise of dispersed corporate governance models, have allowed the TNC a great measure of freedom and consequent irresponsibility in choosing legal and judicial regimes which avoid the imposition of protective legal rules and help maximise profit by condoning mass cost externalizations. Theoretically, this situation has generated a great deal of uncertainty as to the place of the Corporation as an actor at the international or transnational level, or as to its relationship with local populations in the places in which it does business. A plethora of concepts exists, which is often invoked to justify particular approaches towards regulation of TNCs or transnational trade and investment generally; of this, justice and party autonomy stand apart as two of the most controversial and misunderstood, used by both sides on the debate to defend often diametrically opposing positions. This paper presents, in very brief outline, some of the main features of the existing legal landscape in respect of TNC - third-party legal relations.

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The Practice of Tying Development Aid: A Critical Appraisal from an International, WTO and EU Law Perspective

Gianluca Serra
The Law and Development Review: Vol. 4 : No. 1, Article 1

Tied aid consists in tying development aid to the purchase of products from the donor country. Under a tied aid regime a developed country grants funds to a developing partner country on condition that the donation is spent by the latter through procurement procedures in which only companies established in former are able to tender. Is such practice compatible with the "right" to development as currently defined in international law? Moreover, what are the implications of tied aid on the principles of free trade and competition as affirmed in WTO and EU law? Leaving aside the ongoing debate on aid effectiveness and the harmonization of donors' practices, this study attempts to provide plausible answers to these not extensively researched legal questions.

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The Backlash Against Investment Arbitration: Perceptions and Reality

Michael Waibel
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Asha Kaushal
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Kwo-Hwa Chung
affiliation not provided to SSRN
Claire Balchin
Allen & Overy

THE BACKLASH AGAINST INVESTMENT ARBITRATION, Michael Waibel, Asha Kaushal, Kyo-Hwa Chung & Claire Balchin, eds., Kluwer Law International, March 2010

Commentators increasingly question whether a backlash against the foreign investment regime is underway. This book, the outgrowth of a conference organized by the editors at Harvard Law School on April 19, 2008, aims to uncover the drivers behind the backlash against the current international investment regime. A diverse set of contributors reflect on the current state and the future direction of the international investment regime, and offer some tentative solutions for improvement: academics, practitioners, government officials and civil society. Contributors assess whether the current regime of investment arbitration is in crisis. They take a step back to look at the long-term prospects of investment arbitration, including reforms that could bring substantial improvements to the investment arbitration process. . . .

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Understanding the Behaviour of International Courts: An Examination of Decision-Making at the Ad Hoc International Criminal Tribunals

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Journal of International Law and International Relations, Vol. 6, No. 1, pp. 1-34, 2010

This article seeks to contribute to the literature on the behaviour of international courts (ICs) by focusing on the internal dynamics of decision-making processes within them and by drawing on both strategic and attitudinal models of judicial behaviour developed for domestic courts. The main contention advanced is that the ideas and interests of judges in ICs account for variations in their decision-making. In order to test competing models for understanding the behaviour of ICs, this article includes the first study to examine the decision-making of the ICTR Trial Chambers and of the ICTY and ICTR Appeals Chamber using quantitative methods. The similarities and differences between these ICs have created a rich empirical environment rife with natural experiments. A comparison of decision-making in the ICTY and ICTR Appeals Chambers suggests that the same judges in these two ICs evince stable patterns of judicial behaviour reflecting their attitudinal commitments regarding international law and their conception of the judicial role. A comparison of decision-making between the ICTY and ICTR suggests that judges within these two ICs evince divergent patterns of judicial behaviour in terms of sentencing practices, reflecting dissimilarities in their environments. These results tend to show that both ideas and interests can account for

variations in the decision-making of ICs and that while external interests influence judicial decisions, they do so because they have a basis in the ideas and interests of judges.

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Millennium Development Goal 6 and the Right to Health: Conflictual or Complementary?

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Sur - International Journal on Human Rights, Vol. 7, No. 12, p. 122, June 2010

The MDGs are the world's biggest promise on how to reduce global poverty and human deprivation. Formulated as goals to be implemented at national level and based on result-oriented outcomes, they appear devoid of all human rights commitments. This paper explores how MDGs fit into an international law framework, and how MDG 6 on combating HIV/AIDS, malaria, and tuberculosis can be integrated into the right to health. The discussion determines whether the MDG 6 can be re-cast or readjusted to foster real participation, non-discrimination as well as equality, accountability, and access to health. Can the leading proponents from both sides chart a new route that could integrate rights and anti-poverty strategy through the MDGs?

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Realization of the International Human Right to Health in an Economically Integrated North America

Eleanor D. Kinney
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American Journal of Law, Medicine & Ethics, Winter 2009

During World War II, the Allies created the United Nations and its associated international institutions to stabilize the post-war world. The Allies envisioned a coordinated world in which human rights for all were respected, economic and social progress for all promoted, and global warfare prevented. This was a phenomenally fantastic vision that seemed unattainable in the wake of the most devastating global war in history. Today, the world is witnessing some of the fruits of these mid-20th century events and aspirations, especially since the collapse of Communism in 1989. Economic integration and free trade has become much more prevalent as exemplified by astounding developments such as the European Union. And there is a greater appreciation of human rights, including the international human right to health. This article examines the evolution of trade policy and the impact of free trade policies on the health care sectors of the three countries of North America and the realization of the human right to health in North America.

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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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Gender and the Judiciary in South Africa: A Review of the Documentary Film Courting Justice

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Yale Journal of International Affairs, Forthcoming
MSU Legal Studies Research Paper No. 9-01

Despite an explicit constitutional commitment to address the gendered and racialized aspects of the South African judiciary, as of 2008, only eighteen percent of the judges on the South African Superior Courts were women. The documentary film Courting Justice, created by Ruth B. Cowan, features the individual and collective stories of seven of these judges. It reveals the power of the court as an instrumental agent of change in the post-apartheid era and examines how these judges fit into this framework. The film offers a profound contribution to the global study of law and gender and to an important body of work on women in the world's legal professions, a field that has not traditionally focused on South Africa as a site of exploration.

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The European Court of Human Rights, the Right to Life and Armed Conflicts (La Protection Européenne Du Droit À La Vie Lors Des Conflits Armés) (in French)

Hélène Tigroudja
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LA JURISPRUDENCE DE LA COUR EUROPÉENNE DES DROITS DE L'HOMME SUR LE DROIT À LA VIE, F. Sudre et M. Levinet, ed., Bruxelles: Bruylant, coll. Droit & Jutice, 2010

Based on the jurisprudence of the ECrHR (Russian cases, Varnava case v. Turkey...), the Article aims at pointing out the relationship between European Protection of the Right to Life (Article 2 of the ECHR) and International Humanitarian Law. One of the key-question deals with an potential emerging "normative unicum" in the field of protection of peoples during armed conflicts.

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

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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.1 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. For example, the Administration reaffirmed NATO obligations that require U.S. adherence to the policy of nuclear deterrence, which does not represent a significant change from past policy. Nevertheless, strategic developments in treaty commitments with both NATO allies and former Cold War opponents imply a closer approximation with international law standards regarding the threat and use of nuclear weapons. Therefore, while 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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Water Property Models as Sovereignty Prerogatives: European Legal Perspectives in Comparison

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Dario Casalini
University of Turin - Faculty of Economics
Water, No. 2, pp. 429-438, 2010

Water resources in European legal systems have always been vested in sovereign power, regardless of their legal nature as goods vested in State property or as res communes omnium not subject to ownership. The common legal foundation of sovereign power over water resources departed once civil law jurisdictions leveled the demesne on ownership model, by introducing public ownership in the French codification of 1804, while common law jurisdiction developed a broader legal concept of property that includes even the rights to use res communes. The models led respectively to the establishment of administrative systems of water rights and markets of water rights. According to the first, public authorities' power to manage and preserve water resources is grounded in a derogatory regime, whereby water rights, grounded on licenses or concessions, are neither transferable nor tradeable. On the contrary, environmental and social concerns in water market schemes must be enforced by means of regulation, thus limiting private property rights on water, in compliance with the constitutional and common law constraints set out to protect the minimum content of property as a fundamental human right.

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Creditor Protection in International Law

Michael Waibel
Lauterpacht Centre for International Law; University of Cambridge - Faculty of Law
Pieter Bekker, Rudolf Dolzer, Michael Waibel, MAKING TRANSNATIONAL LAW WORK IN THE GLOBAL ECONOMY: ESSAYS IN HONOUR OF DETLEV VAGTS, Cambridge University Press, 2010

The chapter analyses the scope of protection for creditor claims in international law. This chapter reviews some of the decisions of international courts and tribunals on creditor claims, and indicates general tendencies on the protection of creditor claims in international law. The first part looks at the protection of creditor claims domestically, especially in constitutional law. The second part reviews the historical evolution of creditor protection in international law, while the third part examines the

protection of creditor claims before national claims settlement institutions. The fourth, and final chapter, looks at creditor protection in international law, especially under modern investment treaties.

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Human Rights and Employment

Winston P. Nagan
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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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Decentralization, Integration and Transposition: Three Models of Consultation in the Global Legal Order

Gianluca Sgueo
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Indian Yearbook of International Law and Policy, Vol. 1, pp. 252-297, 2009

. . . [T]his article has three purposes. The first is purely descriptive: three different global consultative models adopted in the supranational legal arena will be briefly described. The choice is not arbitrary; rather, the models have been selected having regard to the functions and the relevance of the institutions in the global legal order. The World Trade Organization model, which operates through decentralized management and shared responsibilities, will be explored for first. Next, the integration model, which is well represented by the World Bank Group, will be examined. Finally, the "transposition" model, provided by the Aarhus
Convention, will be taken into account. The second goal of the paper is to provide a comparative analysis of the three models, emphasising both the differences and the similarities, with a view, ultimately, to drawing out the possible consequences of each for the democratic development of the global legal order. Lastly, on the basis of the foregoing analysis, this article will set out the various problems confronting each model of consultation, and suggest some potential ways in which they can be progressively developed.

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Legitimizing Global Economic Governance Through Transnational Parliamentarization: The Parliamentary Dimensions of the WTO and the World Bank

Markus Krajewski
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TranState Working Paper No. 136

This paper discusses the potential contribution of parliamentary institutions and networks to the democratization of global economic governance. It places the analysis in the context of the larger debate on the democratic deficit of international economic institutions, in particular the WTO. On a theoretical level, the paper distinguishes different notions of legitimacy and democracy in order to identify which aspects of democratic legitimacy of global economic governance can be addressed through transnational parliamentarization. It is argued that national parliaments must react to the emergence of global economic governance in a multi-level system through new forms of transnational parliamentarization. In its empirical part, the paper assesses the Parliamentary Conference on the WTO (PCWTO) and the Parliamentary Network on the World Bank (PNoWB) as two examples of such transnational parliamentarization. Drawing on the theory of deliberative democracy the paper argues that the contribution of these settings to democratic global governance should not be measured on

the basis of their formal decision-making power but with regard to their role as fora for transnational discourses and on their potential to empower national parliamentarians.

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Combating Exclusion: Why Human Rights are Essential for the MDGs

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Sur - International Journal on Human Rights, Vol. 7, No. 12, p. 54, June 2010

. . . This article outlines some of the aspects in which the MDG framework, while covering areas where states have clear obligations under international human rights law such as food, education and health, fails to reflect these standards. It focuses on three main issues - gender equality (Goal 3), maternal health (Goal 5) and slums (Goal 7) - as illustrative examples of the gaps between MDG commitments and human rights standards. It argues that this gap is also one of the main factors behind the lack of equitable progress on the MDGs. The article stresses the importance of ensuring that all efforts towards all the MDGs are fully consistent with human rights standards, and that non-discrimination, gender equality, participation and accountability are at the heart of all efforts to tackle poverty and exclusion.

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Imperial Policy, Colonial Government and Indigenous Testimony in South Australia and New Zealand in the 1840s

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LAW AND POLITICS IN BRITISH COLONIAL THOUGHT - TRANSPOSITIONS OF EMPIRE, pp. 229-248, Shaunnagh Dorsett, Ian Hunter, eds., Palgrave, New York, 2010

In the 1830s and 1840s proposals to allow indigenous testimony were part of broader disputes about the shape of colonial government and attempts to use courts to "civilize" indigenous peoples. In 1840, the English law officers concluded that any potential witness in a common law court had to perceive future moral or religious consequences of giving false testimony. Where an appropriate oath or other ceremony related to this belief could be identified, the witness might be sworn. If not, the witness lacked the legal capacity to give evidence. The law officers considered these rules to be fundamental elements of "British jurisprudence" which colonial legislatures could not amend. On this basis, a New South Wales ordinance allowing "unsworn" Aboriginal testimony was disallowed. In 1843, however, the imperial Parliament authorized colonial legislatures to pass their own ordinances on unsworn indigenous testimony. South Australia and New Zealand passed legislation allowing indigenous testimony as part of assimilationist policies, but the significance of ordinances in each colony was markedly different. The shifting political significance of the admissibility of indigenous testimony across time and place suggests the importance of considering particular institutional configurations of colonial law and government. Indigenous testimony points to the importance of legislation to colonial legal systems and to the significance of the administration of law in creating patterns of colonial government.

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On Tyranny and Economic Greed: The NCP and the Disintegration of the Sudanese Nation

Professor Issam A.W. Mohamed
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The present paper is part of unpublished book divided into three interrelated manuscripts that analyze the collapse of the Sudan. The current paper conclude that the decision of the International Criminal Court to arrest President Bashir triggered a process for the disintegration of an unprecedented tyrannical regime that embezzled the Sudanese nation under the pretext of imposing Islamic Sharia Laws. However, there is a pronounced prominent conflict manifested here which is the

question whether it was a real Islamic laws, or was it only a powerful tool to control the country. The dogma imposed hegemonic regime that extracted all economic surplus, sequestered civil rights and committed genocide in all the country's regions. The result is that the country has been de facto division and disintegration process. Moreover, a vacuum of institutional interregnum was generated because of failed state.

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Toward a More Individualized Assessment of Changed Country Conditions for Kosovar Asylum-Seekers

Christian Alfred Fundo
Cornell Law Review, Cornell International Law Journal
Cornell International Law Journal, Vol. 43, No. 3, 2010

. . . Many claims of these Kosovar asylum applicants fail to establish a well-founded fear of future persecution. Although claims of past persecution are often found credible, Department of Homeland Security attorneys have often succeeded in rebutting the presumption of a well-founded fear of future persecution through evidence of "changed country conditions." The evidence most often used to show "changed country conditions" are U.S. Department of State Reports on Human Rights Practices for the particular country. This evidence is often applied generally and mechanically, without an individualized assessment of how the purported changed country conditions affect the asylum eligibility of the applicant. With Kosovo's declaration of independence, Kosovar asylum applicants run the risk of having their claims for asylum denied on a general assessment of Kosovo's "changed" status. . . . I argue that a mechanical application of U.S. State Department reports in determining "changed country conditions" is the wrong approach when assessing the complex claims of Kosovar asylum-seekers. While U.S. State Department reports are often used as the only available evidence of country conditions, in the case of Kosovo these reports are not fully accurate and misstate the actual conditions in Kosovo. This part also compares the Kosovar claims to those of Albanian asylum-seekers that feared the communists. . . . I argue that adjudicators should use a new framework for analyzing asylum claims of Kosovar asylum-seekers, and advocate for a framework that pits the evidence of past persecution at the hands of Albanian extremists against the U.S. Department of State reports in determining whether Kosovo's conditions have changed meaningfully for the particular asylum applicant. . . .

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Two Decades Lost: Reinvigorating the Weak Cousin of WTO Law

Michael Waibel
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Selected Papers from ESIL Proceedings, Vol. 3, 2011

This chapter argues that current international financial law is largely toothless and dangerously underdeveloped. The sea change in international finance since 1990 seems to have bypassed the public international law of finance and international financial lawyers. Despite dazzling growth in global capital markets, international financial law has barely changed over the last decades. Because of close interrelation between the international trade and monetary sphere, international financial law is the weak cousin of WTO law.

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Fear's Legal Dimension: Counterterrorism and Human Rights

Andrea Bianchi
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Inquiry into the legal relevance of collective psychological states to law making processes in the area of counter-terrorism.

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Assessing the Effectiveness of the UN Security Council's Anti-Terrorism Measures: The Quest for Legitimacy and Cohesion

Andrea Bianchi
Graduate Institute of International and Development Studies

European Journal of International Law, Vol. 17, pp. 881-919, 2006

This article aims to assess the effectiveness of the Security Council's anti-terror measures against the background of the Member States' practices of implementation. This survey is based primarily on the national reports submitted by states, pursuant to the relevant SC resolutions. Other issues, such as the legitimacy of the SC's actions and the encroachment of anti-terror measures on fundamental human rights, are also broached in so far as they may have an impact on the effectiveness of the implementation process. Finally, the article attempts to evaluate, primarily from the perspective of legal interpretation, how to reconcile the predominant security concerns underlying anti-terror measures with the cohesion of the international legal system.

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Looking Ahead: International Law's Main Challenges

Andrea Bianchi
Graduate Institute of International and Development Studies

ROUTLEDGE HANDBOOK OF INTERNATIONAL LAW, D. Armstrong, ed., Routledge, pp. 39-409, 2009

This concluding chapter identifies seven major challenges – or opportunities – faced by international law in the near future. These are the fight for inclusion as subjects with international legal personality by non-state actors, the need for suitable processes of lawmaking, the shifting boundaries of normativity, and associated questions about whether interstitial norms or soft law fully qualify as legal norms, the continuing problems raised by the absence in international law of the same kinds of enforcement mechanisms as may be found in domestic law, developments in the area of accountability mechanisms, including those applying to individuals and transnational corporations, whether the increasing complexity, specialization, and judicial fragmentation of international law place the system under strain or may be seen as a sign of maturity, and, finally, the similar questions raised by the fragmentation of theoretical discourse in international law.

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The International Regulation of the Use of Force: The Politics of Interpretive Method

Andrea Bianchi
Graduate Institute of International and Development Studies

Leiden Journal of International Law, Vol. 11, pp. 651-676, 2009

The difficulty in identifying the contours of the international regulation of the use of force is not merely the product of the highly politicized character of this area of international law, let alone of the divide between theory and practice. This paper submits that the problem rather lies in the fact that the interpretive community that produces the official discourse on the use of force is no longer able to agree on the way in which legal categories and interpretive techniques should be used to identify the applicable law. A reflexive consideration, by all actors involved, of the method by which the discourse on the use of force is formed seems to be necessary in order to establish or restore, within that interpretive community, the societal consensus needed to provide the international community with a common understanding of the extant regulatory framework and its scope of application.

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California, Climate Change and the Constitution

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Environmental Law Forum, Vol. 25, No. 4, July/August 2008

While the United States has of yet not passed meaningful legislation that addresses climate change, several U.S. states are taking steps to reduce the carbon footprints of their industries and citizens. As it has in the past, California is leading the way. But are its actions legal?

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Textual Interpretation and (International) Law Reading: The Myth of (in) Determinacy and the Genealogy of Meaning

Andrea Bianchi
Graduate Institute of International and Development Studies
MAKING TRANSNATIONAL LAW WORK IN THE GLOBAL ECONOMY - ESSAYS IN HONOUR OF DETLEV VAGTS, pp. 34-56, P. Bekker, Cambridge: Cambridge University Press, 2010

Critical appraisal of textual (in)determinacy theses. Social consensus as basis for interpretation.

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The Alliance of International Law and Civilization between Scylla and Caribdis - The Extremely Brief Story of a Legal Anachronism (La Alianza De La Civilización y el Derecho Internacional Entre Escila y Caribdis o de la Brevísima Historia De Un Anacrónismo Jurídico)

Ignacio de la Rasilla del Moral
Harvard Law School; Royal Complutense College in Harvard
CIVILIZACIONES, DERECHO INTERNACIONAL Y NACIONALISMOS, Gamarra, Y., ed, Institución Fernando el Católico, 2011

Probably, the first ever-published work that explores in Spanish language the contemporary school of international legal thought known as the Third World Approaches to International Law (TWAIL), this paper examines in historical perspective the evolution of the standard of civilization in international law taking as its starting point Detlev Vagts's classic "International Law in the Third Reich".

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Rise of the Drones: Unmanned Systems and the Future of War

Kenneth Anderson
Written Testimony Submitted to Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform, US House of Representatives. Subcommittee Hearing. March 23, 2010. 111th Cong., 2nd sess. 2010.

This document is written testimony submitted to the Subcommittee on National Security and Foreign Affairs, for a hearing under the general title of "Rise of the Drones: Unmanned Systems and the Future of War." The hearing covered military, strategic, technological, and economic issues related to

unmanned aerial vehicles in military, intelligence, and civilian commercial use. This written testimony addressed certain international law and legal policy issues raised by the use of drones as a means of projecting force. It is primarily addressed to the question of the CIA campaign of drone attacks in Pakistan and beyond, rather than the use of drones as an alternative form of air support on active battlefields in, for example, Afghanistan.

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Targeted Killing in U.S. Counterterrorism Strategy and Law

Kenneth Anderson

In Legislating the War on Terror: An Agenda for Reform, edited by Benjamin Wittes, 346-400. Washington, DC: Brookings Institution Press, 2009.

This chapter originally appeared as a Working Paper of the Series on Counterterrorism and American Statutory Law, a project of the Brookings Institution, the Georgetown University Law Center, and the Hoover Institution.

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Review and Revocation of Anti-Dumping Measures

Sangharsh Pandey

Hidayatullah National Law University

In today's globalised economy dumping is one of the most controversial issues. The Anti-Dumping Agreement of the WTO contains provisions relating anti-dumping measures. This article deals with provisions for review and revocation of Anti-dumping measures before the Uruguay Round and the Changes brought after the Uruguay Round. It also classifies the review of anti-dumping measures into Interim review, Sunset review and New Comer review. It discusses various issues which are at the helm of the affairs of the Anti-dumping with the help of relevant case-laws. The Article also examines in brief the provisions relating to review of Provisional measures and review of Price-Undertaking. It communicates in detail the Sunset Review of the 2004 Oil Country Tubular Goods Case. The Article argues the Draft Amendment to WTO Anti-Dumping Agreement and provides suggestions for improving the efficiency of current provisions. In the end, the conclusion emphasizes on the preservation of Balance of interest among WTO members. It addresses the need to settle and remove the ambiguities which gives unguided and uncontrolled discretion.

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The Applicability of GATT Jurisprudence to the Interpretation of the TRIPS Agreement

Susy Frankel

Victoria University of Wellington

RESEARCH HANDBOOK ON THE INTERPRETATION AND ENFORCEMENT OF INTELLECTUAL PROPERTY UNDER WTO RULES: INTELLECTUAL PROPERTY IN THE WTO, pp. 3-23, Carlos M. Correa, ed., Edward Elgar, 2010

It has been almost 15 years since the TRIPS Agreement came into force and its relationship with the GATT has developed in that time. The relationship between the agreements has been discussed in dispute settlement and in negotiations in the TRIPS Council. As the role of TRIPS has become more widely understood, it has become clear that its relationship with other trade agreements may not be what it should be. While the GATT and GATS agreements have as their overall goal the liberalisation of trade, the protection of intellectual property is a different goal that sometimes works as a trade barrier, rather than a liberalising tool. This feature of intellectual property was known when the TRIPS Agreement was completed, but the rhetoric that intellectual property protection, within the WTO, was necessary to prevent counterfeiting in the global world won the day. Also, there continues to be concerns over the impact of the TRIPS Agreement on innovation and technology transfer, particularly in developing countries.The flexibilities in the TRIPS Agreement have not produced results that really assist in development of local innovation and technology transfer. This chapter discusses the differences between GATT, GATS and the TRIPS Agreement and whether GATT and GATS

jurisprudence is relevant to the interpretation of the TRIPS Agreement. The chapter concludes, amongst other things, that GATT principles may also be applicable to the interpretation of some TRIPS Agreement exceptions, particularly where those exceptions require external sources to give them a meaning in the TRIPS Agreement context. However, the applicability of GATT principles seems to vary according to what is at issue. As yet it is not clear that there is a consistent approach to the use of GATT principles in the interpretation of the TRIPS Agreement.

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Globalization and Knowledge Spillover: International Direct Investment, Exports and Patents

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Sung-Po Chen
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Michael McAleer
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This paper examines the impact of the three main channels of international trade on domestic innovation, namely outward direct investment, inward direct investment (IDI) and exports. The number of Triadic patents serves as a proxy for innovation. The data set contains 37 countries that are considered to be highly competitive in the world market, covering the period 1994 to 2005. The empirical results show that increased exports and outward direct investment are able to stimulate an increase in patent output. In contrast, IDI exhibits a negative relationship with domestic patents. The paper shows that the impact of IDI on domestic innovation is characterized by two forces, and the positive effect of cross-border mergers and acquisitions by foreigners is less than the negative effect of the remaining IDI.

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Compensation for Indirect Expropriation in International Investment Agreements: Implications of National Treatment and Rights to Invest

Aisbett, Emma; Karp, Larry; and McAusland, Carol
Journal of Globalization and Development: Vol. 1 : Iss. 2, Article 6 (2010)

International investment agreements allow investors to bring compensation claims when their investments are hurt by new regulations. This requirement that host governments compensate for indirect expropriation helps solve post-investment moral hazard problems such as hold-ups, thereby helping to prevent inefficient over-regulation and encouraging foreign investment. However, when the social or environmental harm of a project is uncertain pre-investment, compensation requirements can interact with National Treatment clauses in a manner that reduces host government welfare and makes them less likely to admit investment. A police powers carve-out from the definition of compensable expropriation can be Pareto-improving and increase foreign investment.

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Collective Responsibility and Transnational Corporate Conduct

Sara L. Seck
University of Western Ontario
ACCOUNTABILITY FOR COLLECTIVE WRONGDOING, Tracy Isaacs, Richard Vernon, eds., Cambridge University Press, 2011

The merits of corporate criminal liability as opposed to individual liability for corporate wrong-doing have been frequently debated at the domestic level in many jurisdictions and regulatory contexts. In international human rights law recent debates have focused upon whether corporations can bear

direct obligations for violations of international law. This is particularly contentious where the conduct at issue falls short of violating the egregious norms of international criminal law. This chapter first examines legal and philosophical debates over collective responsibility of corporate entities in the domestic context. Next, the 2008 UN Protect, Respect, Remedy Framework for Business and Human Rights is presented, which identifies both the state duty to protect rights and the corporate responsibility to respect rights as two of three differentiated but complementary pillars. The chapter concludes by suggesting that any study of collective responsibility for transnational corporate conduct must consider both the collective responsibility of corporations and the collective responsibility of states. By drawing upon insights from other contributors to this volume, the chapter reveals the blind spots of international law that shield the collective responsibility of home states, despite the significance of their role as institutional agents of the global economic order.

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Do On-Shore Asylum Seekers Have Economic and Social Rights? Dealing with the Moral Contradiction of Liberal Democracy

Savitri Taylor
La Trobe University - School of Law
Melbourne Journal of International Law, Vol. 1, pp. 71-98, 2000

This article examines the work entitlements and social assistance available to asylum seekers in Australia, and demonstrates that Australia is in breach of its ICESCR obligations in relation to these asylum seekers. It proceeds to explain, in terms of the political morality of liberal democratic states, why this situation has arisen. Finally, it puts the case for Australia respecting and protecting the ICESCR rights of asylum seekers, and specifies exactly what such respect and protection would involve in practical terms.

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Of Life and Torture: Differences in the 'Mistreatment-Threshold' for the Invocation of Article 2 and 3 of the European Convention on Human Rights

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Council of Europe
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L. Joseph Howard
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Through an extensive analysis of the European Court of Human Rights' case law, this paper intends to answer the question, "what distinguishes the conduct as exercised against the personal integrity of a victim so as to invoke either Article 2 of the ECHR, Article 3, both, or neither?" It clarifies the applicability of these Articles rationae materiae, and develops various 'tools' which can be used to understand the perspective of the Strasbourg Court in its examination of facts before it in order to determine the Articles' applicability. Numerous qualifiers, i.e. applicability criteria which the Court has considered, have been distilled and comparatively analyzed to find reoccurring patterns that are used to phrase guiding questions. Despite any conclusion that the Court's approach appears ambiguous, which may arise from its desire to avoid any protection gaps, some general patterns are identified. The paper suggests the differences in the Court's approach to examining various conduct is best described by applying a 'Survival vs. Suffering' hypothesis; the Court's leading question in deciding whether a case comes within the ambit of Article 2 is whether the victim has died or could have died, whereas for Article 3 it asks whether the victim suffered, regardless of any potential terminal impact. Other relevant hypotheses are 'Scars vs. Scars and Tears', 'Victims vs. Relatives' for cases of disappearance, and partially 'Objective vs. Mixed Approach'. Lastly, the paper draws upon inconsistencies in the identified case law to offer recommendations on how to address the Court's apparent ambiguities in judicial lawmaking.

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Indefinite Detention Under the Laws of War

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Eric Talbot Jensen
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Stanford Law & Policy Review, Forthcoming

The recent acquittal of the first Guantanamo Bay detainee to stand trial in U.S. federal court on all but one of the 286 charges he faced stemming from the 1998 bombings of two U.S. embassies in Africa has reinvigorated the discussion on indefinite detention under the laws of war. While the issue has been raised in the past, the discussion hasn't extended beyond stating that the law of war, or law of armed conflict (LOAC) as it is often called, provides a legal basis for detention, including detention for the duration of hostilities. In fact, the Obama Administration has made it clear that some detainees will be held indefinitely "under the laws of war" but has provided no clear guidance as to what that detention would look like. This article seeks to extend the dialogue to substantive consideration of whether the LOAC rules on detention are sufficiently flexible and comprehensive to provide worthwhile and meaningful individual protections the United States could apply to those who are detained indefinitely. . . .

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A Delicate Balance: Building Complementary Customary and State Legal Systems

Leigh T. Toomey

The Law and Development Review: Vol. 3 : No. 1 (2010)

Development assistance programs in the law and justice sector have traditionally focused on reforming state legal institutions to the exclusion of customary legal systems. This is often because of host country pressure to achieve quick results, limited familiarity of foreign lawyers with the concepts of customary law, and donor reluctance to support customs that substantively or procedurally violate human rights norms. Yet, rule of law practitioners deployed to developing and post-conflict countries are increasingly confronted with the reality that customary legal systems are the preferred and, for the foreseeable future, the only viable means of dispute resolution available to the vast majority of people. Given the empirical evidence on the high level of recourse to customary law, this paper argues that customary legal systems are integral to development, and that both customary and state legal systems have a role to play in a functional justice sector. However, there is little systematic guidance for practitioners in the field, many of whom have had no previous exposure to customary law, on exactly what options are available to engage both systems and the issues that different types of interventions raise. This paper sets out a framework of policy options for programs that seek to harness the respective strengths of customary and state legal systems, giving examples of initiatives that have attempted to do this. The paper concludes by proposing good practices for rule of law practitioners to follow in supporting customary and state legal systems that co-exist in a manner which advances peace, economic growth and sustainable development.

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Conceptualizing the Home State Duty to Protect Human Rights

Sara L. Seck
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CORPORATE SOCIAL AND HUMAN RIGHTS RESPONSIBILITIES: GLOBAL LEGAL AND MANAGEMENT PERSPECTIVES, Karin Buhmann, Lynn Roseberry, Mette Morsing, eds., Macmillan, 2010

The state duty to protect human rights from abuses by non-state actors including business is one of the three differentiated but complementary pillars that make up the UN Protect, Respect, Remedy Framework for Business and Human Rights. Yet the jurisdictional scope of the duty to protect is disputed. This chapter explores both the permissibility of home state regulation under jurisdictional

principles of public international law and the existence of home state obligations to regulate and adjudicate transnational corporations to prevent and remedy human rights violations. Properly understood, the state duty to protect applies to all executive, legislative and judicial organs of government that are involved in creating and supporting the global economic order and thus the conduct of transnational corporations. The chapter concludes by briefly evaluating whether mandating compliance with the United Nations Principles of Responsible Investment could serve to fulfill the state duty to protect.

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Exit Law, Enter Politics: The Foundations and the Legacy of the Contested Independence of Kosovo

Simone Florio
University of Granada - Facultad Ciencias Políticas y Sociología
Revista de Paz y Conflictos, No. 4, 2011

The way Kosovo is achieving independence has been welcomed with antithetical opinions in the international community, especially with respect to international law. This paper attempts to shed light on the legal trajectory which brought Kosovo on the way to statehood. After determining that Kosovo has not, prima facie, any positive right to independence, its de facto statehood is contrasted with a few doctrines that could contribute to support it, namely self-determination, remedial secession theory, and international dispositive powers. The analysis finds that Kosovo independence might be legally justifiable under a collective recognition theory, possibly supported with remedial arguments. Having further enquired over the effectiveness and the legitimacy of its independent status (statehood criteria), this article contends that such turn of developments in Kosovo is better explained through more genuine political reasoning. The validity of independence as a solution is not debated in itself, but on the basis of the whole process the negative effects of reaching such outcome by the way of a one-sided decision are discussed.

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Global Ecological Integrity and Third World Approaches to International Law

Sara L. Seck
University of Western Ontario
GLOBALISATION AND ECOLOGICAL INTEGRITY IN SCIENCE AND INTERNATIONAL LAW, Laura Westra, Klaus Bosselmann, eds., 2011

International law divides global ecological issues into different categories of harm depending on the spatial dimensions of the problem. This chapter explores the problem of transnational ecological harm, that is, cases where despite the "activity and physical damage" all occurring within a single host state, there is a clear "transnational involvement" due to the export of capital from a state of origin or home state. While the work of scholars who draw upon the natural law tradition would support home state obligations to protect intra-territorial ecological integrity of host states, reliance upon the natural law tradition is troubling due its history as a tool used by colonial powers to suppress the uncivilized "other". This chapter explores whether insights from scholars who adopt Third World Approaches to International Law (TWAIL) could serve to supplement a natural law analysis of transnational ecological integrity problems.

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Kenya's Credible Commitment to Keep its Date with the ICC

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Louis Moren O'Campo, the ICC Prosecutor has named six Kenyans suspected of committing crimes against humanity. He seeks to have an ICC Pre-Trial Chamber confirm these planned indictments early in 2011. Subsequently, the Kenyan Parliament voted to have Kenya withdraw from the Rome

Statute. . . . This short article argues that there is perhaps no better example exemplifying one of the most credible theories of compliance with international law than the Kenyan government's commitment to cooperate with the ICC, (that is notwithstanding the aforesaid Parliamentary vote), since credible domestic prosecutions are a near impossibility. In short, weak domestic institutions are anchored or backed up by international institutions as an alternative. The only other possible explanation is that when Kenya ratified the Statute of the ICC, it did not believe that its own leading politicians would land before the ICC. Yet, the evolving scenario so far suggests that the intended prosecutions not only make up for the inability of Kenya to have its own credible ones, but will also likely help Kenya avoid future violence and to consolidate a durable peace. Clearly, there are outcomes that cannot easily be achieved in the absence of treaties and it seems Kenya's ratification of the ICC statute, Parliament's subsequent enactment of implementing legislation and the incorporation of international law as a source of Kenyan law in the widely ratified 2010 Constitution, clearly foreswore Kenya to resort to the ICC in the event of the kind of post-election violence following the 2007 General Election.

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Towards an Effective Access to the ICC? Analysis of the ICC Decision of 17 Jan. 2006 (Vers Un Accès Effectif À La Cour Pénale Internationale? Analyse De La Décision Du 17 Janvier 2006)

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This working paper aims at analyzing the legal reasoning of the ICC to interpret provisions of its Status in favour of a wide participation of victims during the proceedings before it. Especially, the quotation of the case-law of the ECHR and the ACHR and the concrete and practical consequences of the decision are discussed. The "victim-oriented" position of the ICC as an sign of the influence of the International Human Rights Law is underlined, even if the the legal reasoning can be critized.

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Achieving the U.N.'S Millenium Development Goal in Combating HIV and AIDS: The Malaysia Scenario

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Asian Journal of WTO & International Health Law and Policy, Vol. 5, No. 2, pp. 427-448, September 2010

HIV is the most common notifiable communicable disease in Malaysia after Tuberculosis, with a staggering 8,000 or more cases per year detected in recent years. As at 2009, we have a cumulative figure of 87,701 HIV cases and 15,317 AIDS cases. HIV/AIDS related death totaled 13,394 cases. The majority of cases have remained among the drug-using sub-population but, twenty years into its progression, the epidemic has now begun to reveal a diversion in its course – that of increasing heterosexual transmission and, what is termed an increasing feminisation of the epidemic. That is, more people are becoming infected through heterosexual transmission and, increasingly, more women are now living with HIV. . . . Due to . . . education, prevention, treatment and rehabilitative programs, incidence of HIV has decreased over the past years but more efforts are needed to halt HIV, malaria and other infectious diseases by year 2015 in the country.

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Constructive Anti-Dumping Actions – A Legal Analysis

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International Conference on WTO, India and Trade Strategy, December 26-27, 2008

The anti-dumping actions are the most widely used trade restrictions under the WTO regime since its inception. The reason may be in two fold – on the one hand it is easy to avail than any other protective remedies and it allows wide discretion to the member states. on the other hand the agreement is not clear and it contains elastic provisions stretchable through interpretations. However, in both cases it facilitates the member states to take anti-dumping actions on fictitious grounds and in constructed circumstances. This paper seeks to address five of the constructive anti-dumping methods, which are frequently used by the member states in their trade relations. . .. Further the paper addresses the issue of 'lack of precedential value' of the WTO case laws and its problems i.e. use of the above methods in subsequent situations even after their prohibition, by the WTO DSB, in the previous disputes. . . . The central theme of the paper is that thought the developed countries preach the concept of free trade, they do not fallow the same in practice and they are the frequent innovators of these constructive methods to protect their domestic producers against the global competitiveness of the developing countries. If they are not checked, it will leads to the exploitation of vulnerable economic position of the developing by the developed.

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Health or Trade? A Critique of Contemporary Approaches to Global Health Diplomacy

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Asian Journal of WTO & International Health Law and Policy, Vol. 5, No. 2, pp.355 -380, September 2010

This article offers a three-pronged critique of contemporary approaches to "global health diplomacy". The author argues that while the related concepts of "global health governance" and "globalization of public health" aptly captures the dynamic governance landscape of public health in an inter-dependent world, "global health diplomacy" remains an omnibus concept that merely re-invents the wheel of age-old international health cooperation between nation-states. While the author identified three limbs of this critique, the article focused on the third limb, and argues that the major drivers of global of health diplomacy are the developments at the World Trade Organization (WTO) that impact markedly on public health globally. Focusing on three agreements enforced by the WTO – TRIPS, SPS and GATS, the author argues that that exponents of global health diplomacy should think of the relevant policy toolbox that brings health and foreign policy into a symbiotic and harmonious relationship. Anything short of this will continue to subject public health to trade, and the WTO will emerge as the undisputed norm-setting center not only for trade but health issues as well.

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Palestinian Statehood: A Secessionist Dialogue

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Miskolc Journal of International Law (Hungary), Vol. 7, 2010
Thomas Jefferson School of Law Research Paper No. 1729425

Given Israel's long-term de facto sovereign control over the Occupied Territories, one may assess the presumptive 2011 Palestinian declaration of de facto statehood in terms of a secessionist dialogue. One thing that many Palestinians and Israelis would agree on, is that Israel is not a mother State. But Israel's resumption of West Bank and East Jerusalem Jewish settlement construction (in violation of the Fourth Geneva Convention) exemplifies Israel's complete de facto sovereignty. . . . Given the absence of a multilateral treaty on secession, one must continue to rely on Customary International Law (in the absence of an authoritative international judicial opinion on point) to speculate about the

legitimacy of future secessions. In July 2010, the International Court of Justice issued an advisory opinion on the legitimacy of the secession of Kosovo. The majority opinion was flawed for two reasons: the majority (1) avoided answering the real question asked, and (2) failed to assess and apply the leading national case on point: the Canadian Supreme Court's Quebec Secession case. . . .

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Reimagining Human Rights Law: Toward Global Regulation of Transnational Corporations

Rachel J. Anderson
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Denver University Law Review, Vol. 88, 2010

Existing human rights law, the body of law that delineates the contours of legal protections for human rights, does not do enough to prevent or provide remedies for corporate-related human rights abuses. . . . This article takes a new look at a perennial question of human rights: how to prevent corporate-related human rights abuses and provide remedies for victims. It argues that transnational corporations require specialized and targeted regulations and laws, and that the conflation of human rights law and international human rights law should be reversed to allow the advancement of other forms of human rights law. It makes two proposals. First, reimagine human rights law and international human rights law as separate categories. Specifically, classify international human rights law as a sub-category of human rights law. This distinction highlights the need to encourage the development of other forms of human rights law, for example, global human rights law and national human rights law. Second, establish global human rights law as a sub-category of human rights law. Specifically, create a new global human rights regime with three main elements: a Global Law Commission, global laws and regulations, and universal civil jurisdiction.

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Some International and Domestic Antidumping Issues

Mitsuo Matsushita
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Asian Journal of WTO & International Health Law and Policy Vol. 5, No. 2, pp 249-268, September 2010

Antidumping: antidumping has become an important issue not only among those developed WTO members but also among those developing WTO members. To address the issue, the author begins describing different types of anti-circumvention measures. Like antidumping, anti-circumvention is a necessary trade remedy but it can be easily abused. Automatic extension of antidumping duties is another trade remedy related to antidumping. The paper further describes one of the most controversial issues regarding antidumping in the past decade: zeroing, a way to determine dumping margin, the validity of which still hasn't been completely resolved. In addition, the author discusses the relationship between antidumping and trade in services where bailment contracts are involved. The author ends the article with a discussion about the U.S. 1916 Antidumping Act and its aftermath.

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The Use and Abuse of International Law: Choice of Applicable Criminal Law in Post-Conflict East Timor

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Hebrew University of Jerusalem Faculty of Law Research Paper No. 06-10

. . . This article concerns an incident in which the Court of Appeal of East Timor invoked international legal principles relating to the consequences of illegal annexation when determining the domestic law of East Timor under UN administration and after independence, without due regard to their implications in the field of human rights. Rather than enhance the post-conflict reconstruction, this invocation risked destabilizing the emerging political and legal apparatus. While this attempt to bring

about this change was thwarted by the objection of the legal community and the legislature, the incident demonstrates that the recourse to international law must be discriminatory so that it does not subvert the very purpose for which this law is invoked. The article describes the dilemma concerning the choice of applicable law in post-conflict East Timor, and the intended and unintended roles that international law has had in shaping that choice, noting the implications for domestic law of unqualified reliance on certain branches of international law. It also places the East Timorese experience in a wider context of post-conflict determinations of applicable law in light of international legal principles.

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Foreign Investment In and Out of Japan: Economic Backdrop, Domestic Law, and International Treaty-Based Investor-State Dispute Resolution

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Luke R. Nottage
University of Sydney - Faculty of Law; University of Sydney - Australian Network for Japanese Law

Sydney Law School Research Paper No. 10/145

This paper provides the first-ever detailed analysis of the dispute resolution provisions contained in Japan's burgeoning international investment treaties (BITs and FTAs or EPAs). That development is also located in the context of Japan's inbound and outbound flows in foreign investment and the background domestic law limiting or protecting foreign investment, as well as an overview of the process by which the Japanese government negotiates these treaties. The paper concludes that the considerable diversity in treaty provisions (especially regarding investor-state arbitration or ISA) increases transaction costs for governments and investors, but leaves scope to develop some innovative provisions (eg on Arb-Med or transparency of proceedings) at a time of considerable debate over the pros and cons of ISA.

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The Impact of Environmental Liabilities on Privatization in Central and Eastern Europe: A Case Study of Poland

Randall S. Thomas
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U.C. Davis Law Review, Vol. 28, No.1, Fall 1994

The Central and Eastern Europe (CEE) countries are breaking up their centrally planned economies at a record pace by selling formerly state-owned industrial enterprises to private sector investors. Privatization is expected to create more profit-oriented and efficient industries, a predicate for sustained long term economic growth. This transformation from public to private ownership presents tremendous challenges to these new democracies as they struggle to create market economies and democtratic institutions.

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Retaliating Against Exchange-Rate Manipulation Under WTO Rules

Michael Waibel
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THE US-SINO CURRENCY DISPUTE: NEW INSIGHTS FROM ECONOMICS, POLITICS, AND LAW, pp. 133-138, Simon J. Evenett, ed., VoxEu.org and Centre for Economic Policy Research, 2010

What legal basis is there for retaliating against China's exchange-rate policy? This column says that IMF rules are likely inadequate to rule against China, while its policy does not constitute a WTO-punishable export subsidy. It argues that exchange-rate conflicts should be handled by a proposed IMF dispute settlement mechanism, not the WTO.

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The Use of Non-Official Data in Imputations/Estimations of International Organizations

Hubert Escaith
World Trade Organization (WTO); DEFI: Centre de recherche en developpement economique et finance internationale

In a globalized world, more and more decisions taken by public and private agents are based, directly or indirectly, on international statistics. By putting the national data into perspective and/or complement them with additional indicators, data produced and disseminated by international statisticians are more than the sum of the parts published by the respective national statistical systems. The production of this "public good" has to adapt to the changing world, as demand for data evolves with the needs of human societies. In such a situation, the treatment of non-official data sources by international statisticians should be regarded as a potential source for supplementary value-added. The paper, which revisits a background document prepared for the Committee for the Coordination of Statistical Activities in 2009, opens the debate by reviewing some of the technical and institutional issues. Rejecting any pretence of defining "best practices", it concludes that the decision and modalities depend upon the corporate culture and business model of each international organization.

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Access to European Energy Networks: The relation between Third Party Access and Refusal to Deal Concepts

Michael D. Diathesopoulos
University of Cambridge - Faculty of Law; University of Glasgow - School of Law; University of Leicester - Faculty of Law; Lancaster University - Law School

In this paper, we will analyse further the issue of concurrence between competition and sector rules regarding European Energy Networks Regulation and the relation between parallel concepts within the two different legal frameworks, by focusing on the issue of Access to these Networks. We will specifically examine Third Party Access - as a concept of Energy Sector Regulation - in relation to essential facilities doctrine and refusal of access - as a concept of Competition Law - and we will identify the common points and objectives of these concepts and the extent to which they provide a context to each other's implementation. Moreover, we will examine which concept provides the best framework for an efficient energy market with respect to both long-term and short-term competition objectives and to which extent each concept should offer its own elements to the final framework for the regulation of access to energy networks.

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The ECJ Decision in Spector Photo Group and the Presumption of Use of Inside Information: A Blessing for the Administrative Enforcement of Market Abuse in the EU?

Michel Tison
Universiteit Gent - Financial Law Institute
Elke Vandendriessche
Ghent University - Financial Law Institute
Financial Law Institute, Working Paper 2010-17

In its Spector judgment, the Court of Justice of the EU held that a primary insider is presumed to have used inside information as soon as he has effected a securities transaction while in possession of inside information. This presumption can however be rebutted under circumstances where, in view of the purposes of the Market Abuse Directive, the transaction does not constitute an unfair use of inside information. In this contribution, we analyse the implications of the Spector judgment for the enforcement of the insider dealing prohibition. Furthermore, we highlight the difficulties raised by the practical application of the conditions under which the ECJ allows to rebut the presumption of use of

inside information. We illustrate this with reference to the operation of stock option plans in listed companies.

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Comparative Corporate Responsibility in the United States and France for Human Rights Violations Abroad

Anna F. Triponel
Public International Law & Policy Group

GLOBAL LABOR AND EMPLOYMENT LAW FOR THE PRACTICING LAWYER, pp. 59-158, Andrew P. Morriss and Samuel Estreicher, eds., Kluwer Law International, 2010

. . . By juxtaposing the United States, a common law system that has a unique statute in this area, the Alien Tort Claims Act, with France, a civil law country that is increasingly influenced by European Union regulations, this chapter's aim is threefold. First, the chapter sets forth the current status of the law in the area which, as evidenced by numerous recent evolutions, is in constant movement. Second, by analyzing how legal concepts have been applied in practice in both countries, this chapter enables a comparison of the opportunities available to, and hurdles faced by, plaintiffs in each country. Similarly, it enables a comparison of the legal standards applicable to companies incorporated in both countries. Finally, this chapter seeks to inform the ongoing work of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises by indicating how areas such as extraterritorial regulation and complicity are addressed differently in the United States and France; and by illustrating the importance of other less obviously related concepts, such as standing to sue and other procedural restrictions.

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Foreign Law and the Birth of Comparative Law

M. C. Mirow
Florida International University (FIU) - College of Law

RATIO DECIDENDI: GUIDING PRINCIPLES OF JUDICIAL DECISIONS, Vol. 2, S. Dauchy, W.H. Bryson, and M.C. Mirow, eds., Duncker & Humblot, 2010
Florida International University Legal Studies Research Paper

These concluding comments to a volume on the problem of the use of foreign law in judicial decisions address two related aspects of the contributions. First, using the the work of the contributors, this chapter assesses the historiographical and methodological challenges presented by the idea of "foreign law." Second, the chapter posits that when jurists recognize a source as foreign, they must bring out special interpretive tools to apply the source to the legal question. This intellectual act, as the comparative legal moment, is the birth of comparative law. This concluding chapter places the contributions to the book into this framework.

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North-South Technology Transfer in Unionised Multinationals

Kjell Erik Lommerud
University of Bergen - Department of Economics; Centre for Economic Policy Research (CEPR); CESifo (Center for Economic Studies and Ifo Institute for Economic Research)
Frode Meland
University of Bergen - Department of Economics
Odd Rune Straume
University of Minho - Economic Policies Research Unit (NIPE); CESifo (Center for Economic Studies and Ifo Institute for Economic Research)

CESifo Working Paper Series No. 3273

We study how incentives for North-South technology transfers in multinational enterprises are

affected by labour market institutions. If workers are collectively organised, incentives for technology transfers are partly governed by firms' desire to curb trade union power. This will affect not only the extent but also the type of technology transfer. While skill upgrading of southern workers benefits these workers at the expense of northern worker welfare, quality upgrading of products produced in the South may harm not only northern but also southern workers. A minimum wage policy to raise the wage levels of southern workers may spur technology transfer, possibly to the extent that the utility of northern workers decline. These conclusions are reached in a setting where a unionised multinational multiproduct firm produces two vertically differentiated products in northern and southern subsidiaries, respectively.

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Voracious Intellectual Property Hunting Traditional Knowledge

Vipin Sandu
Rajiv Gandhi National University of Law (RGNUL)

Problems experienced by indigenous peoples in trying to protect their traditional knowledge under intellectual property laws stem mainly from the failure of traditional knowledge to satisfy requirements for intellectual protections. Alternatively, where intellectual property protection could potentially apply to such knowledge, the prohibitive costs of registering and defending a patent or other intellectual property right may curtail effective protection. There has been a clear bias in the operation of these laws in favor of the creative efforts of corporations, for example, pharmaceutical and other industries in industrialized nations. Within the context of scientific progress, modern intellectual property laws have allowed these industries to monopolize the benefits derived from their use of indigenous knowledge with disregard for the moral rights and material (financial) interests of indigenous peoples themselves. Many incompatibilities between traditional knowledge and IPRs have begun to surface with the rapid global acceptance of Western concepts and standards for intellectual property. These incompatibilities appear when ownership of traditional knowledge is inappropriately claimed or traditional knowledge is used by individuals or corporations that belong to local communities, primarily in developing countries. An important purpose of recognizing private proprietary rights is to enable individuals to benefit from the products of their intellect by rewarding creativity and encouraging further innovation and invention. But in many indigenous world-views, any such property rights, if they are recognized at all, should be extended to the entire community. They are a means of maintaining and developing group identity as well as group survival, rather than promoting or encouraging individual economic gain.

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Asia's Participation in Global Health Diplomacy and Global Health Governance

David P. Fidler
Indiana University Maurer School of Law
Asian Journal of WTO & International Health Law and Policy, Vol. 5, No. 2, pp. 269-300, September 2010

This article provides a framework for thinking about Asian approaches to and impact on global health diplomacy and governance that might contribute to more sophisticated analyses on Asia in global health politics, diplomacy, and governance. First, the article examines the "rise of Asia" and "rise of health" as overlapping but unconnected developments in international relations. Second, it analyzes how the shift of power and influence towards Asia, largely caused by China's and India's emergence as great powers, affects global health politics and potential Asian contributions to global health diplomacy and governance in the future. Third, the article looks at normative ideas that characterize Asian approaches to international cooperation and how these ideas affect Asian participation in global health diplomacy and governance. Fourth, the article considers Asian practices on international health cooperation, which include bilateral relations, regional activities, and participation in multilateral organizations. The article ends with conclusions about Asian conceptualizations of and contributions to global health diplomacy and governance.

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Trade, Travel and Disease: The Role of Law in Pandemic Preparedness

Terry Carney
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Belinda Bennett
University of Sydney - Faculty of Law

Asian Journal of WTO & International Health Law and Policy, Vol. 5, No. 2, pp. 301-330, September 2010

In 2009 the world experienced an influenza pandemic caused by the H1N1 virus. While the pandemic was milder then expected, it nonetheless provided the world with an opportunity to do real-time testing of pandemic preparedness. This paper examines the threats to human health posed by infectious diseases and the challenges for the global community in development of effective surveillance systems for emerging infectious diseases. In 2005 a new revised version of the International Health Regulations (IHR) was adopted. The requirements of the IHR (2005) are outlined and considered in light of the constraints facing resource-poor countries. Finally, the paper addresses the role of domestic law-making in supporting public health preparedness and articulates a number of ethical principles that should be considered when developing new public health laws.

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Health or Trade? A Critique of Contemporary Approaches to Global Health Diplomacy

Obijiofor V. Aginam
Carleton University - Department of Law

Asian Journal of WTO & International Health Law and Policy, Vol. 5, No. 2, pp.355 -380, September 2010

This article offers a three-pronged critique of contemporary approaches to "global health diplomacy". The author argues that while the related concepts of "global health governance" and "globalization of public health" aptly captures the dynamic governance landscape of public health in an inter-dependent world, "global health diplomacy" remains an omnibus concept that merely re-invents the wheel of age-old international health cooperation between nation-states. While the author identified three limbs of this critique, the article focused on the third limb, and argues that the major drivers of global of health diplomacy are the developments at the World Trade Organization (WTO) that impact markedly on public health globally. Focusing on three agreements enforced by the WTO – TRIPS, SPS and GATS, the author argues that that exponents of global health diplomacy should think of the relevant policy toolbox that brings health and foreign policy into a symbiotic and harmonious relationship. Anything short of this will continue to subject public health to trade, and the WTO will emerge as the undisputed norm-setting center not only for trade but health issues as well.

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The Convergence of the European Legal System in the Treatment of Third Country Nationals in Europe: The CJEU and ECtHR Jurisprudence

Sonia Morano-Foadi
Oxford Brookes University - School of Social Sciences and Law
Stelios Andreadakis
Oxford Brookes University

This paper, based on a broader project, focuses on the interaction between the two European Courts (the Court of Justice of the European Union – CJEU and the European Court of Human Rights – ECtHR) and uses the specific area of expulsion/deportation of third country nationals (non-EU nationals) from the European territory as a case study. The work examines the CJEU and ECtHR divergent approaches in this area of law and it then provides some preliminary reflections on the potentiality of the Charter of Fundamental Rights and the EU's accession to the ECHR to achieve a

more harmonious and convergent human rights system in Europe. It finally argues that the post-Lisbon era has the potential to enhance the protection of fundamental rights within the continent.

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Transnational Legal Practice 2009

Laurel S. Terry
Penn State Dickinson School of Law
Carole Silver
Indiana University Maurer School of Law
Ellyn S. Rosen
American Bar Association

International Lawyer, Vol. 44, No. 1, p. 563, 2010
The Pennsylvania State University Legal Studies Research Paper No. 38-2010

This article identifies some of the most important U.S. and international developments in transnational legal practice and provides citations for further research. The article begins by briefly reviewing the impact of the recession on legal services. The second section focuses on international developments. It identifies some of the ongoing efforts to implement the 2007 U.K. Legal Services Act, including the issuance of the influential Hunt and Smedley reports. It also provides information about law reform initiatives in France, Scotland and Korea. This section of the article also provides information about Canadian and Australian developments regarding admission of foreign applicants and proposed changes to the Qualified Lawyers Transfer Test used in England and Wales. The U.S. developments cited in this article include the Conference of Chief Justices' discipline cooperation agreements with the CCBE and with the Law Council of Australia, various developments related to admission of foreign applicants in U.S. states, important legal education and admission developments, new state adoptions of foreign legal consultant and temporary practice rules, and the creation of the ABA Commission on Ethics 20/20, which has been asked, inter alia, to consider the impact of globalization on the legal profession and lawyer regulation. This article also surveys various trade developments related to legal services, including the 2009 "Legal Services Initiative" of the Asia Pacific Economic Cooperation (APEC). The U.S. is a member of APEC, which represents approximately forty percent of the world's population, fifty-four percent of world GDP, and forty-three percent of world trade.

II. Books

The Evolution of the European Convention on Human Rights
From Its Inception to the Creation of a Permanent Court of Human Rights
(Oxford Univ. Press)
Ed Bates

The European Convention on Human Rights is probably the most effective system of international human rights control created. This book examines the story of the evolution of the Convention over its first 50 years. It explains how the Convention system grew up and how it came to exert such an important influence on the States which subscribe to it.
Hardback | 608 pages
23 December 2010 | 978-0-19-920799-2

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The Philosophical Foundations of Extraterritorial Punishment
(Oxford Univ. Press)
Alejandro Chehtman

The principle of extraterritorial punishment, which enables national courts to exert jurisdiction over crimes committed abroad by nationals of other states, has become increasingly accepted. This book

provides a normative account and critique of this form of jurisdiction, exploring its links to globalization, transnational crime, and terrorism.
Hardback | 208 pages
9 December 2010 | 978-0-19-960340-4

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Competition Law and the Enforcement of Article 102
(Oxford Univ. Press)
Federico Etro and Ioannis Kokkoris

With incisive and thought-provoking contributions from leading international academics and practitioners, this book addresses in detail the EU approach to antitrust and abuse of dominance, and considers in particular the Commission's guidelines for enforcing Article 102 of the EC Treaty.
Hardback | 248 pages
2 December 2010 | 978-0-19-958618-9

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Extradition and Mutual Legal Assistance Handbook
(Oxford Univ. Press)
Edited by John R W D Jones and Rosemary Davidson

The *Extradition and Mutual Legal Assistance Handbook* is a comprehensive guide to extradition under the Extradition Act 2003, and mutual legal assistance, two important processes in international criminal law.
Hardback | 648 pages
16 December 2010 | 978-0-19-957404-9

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The Roman Foundations of the Law of Nations
Alberico Gentili and the Justice of Empire
(Oxford Univ. Press)
Edited by Benedict Kingsbury and Benjamin Straumann

This book explores ways in which both the theory and the practice of international politics was built upon Roman private and public law foundations on a variety of issues including the organization and limitation of war, peace settlements, embassies, commerce, and shipping.
Hardback | 400 pages
9 December 2010 | 978-0-19-959987-5

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The International Law Commission 1999-2009
Volume IV: Treaties, Final Draft Articles and Other Materials
(Oxford Univ. Press)
Michael Wood, KCMG, QC and Arnold Pronto

This book contains the work of the United Nations International Law Commission (ILC) during the period 1999-2008, brining up to date the three-volume series on the work of the Commission edited by Sir Arthur Watts. Each text is accompanied by an introduction, a concise description of the negotiation process and a carefully selected bibliography.
Hardback | 896 pages
16 December 2010 | 978-0-19-957897-9

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Third Parties in International Commercial Arbitration
(Oxford Univ. Press)
Stavros Brekoulakis

Third Parties in International Commercial Arbitration addresses the role and the interests of third parties in international arbitration. Through a clear overview and in-depth critical commentary, the book explores existing case law and its related academic literature as well as offering an insight into more practical concerns.
Hardback | 336 pages
23 December 2010 | 978-0-19-957208-3

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International Law
Cases and Materials with Australian Perspectives
Donald Rothwell, Stuart Kaye, Afshin A-Khavari, Ruth Davis, eds.
(Cambridge, November 2010)

With a strong focus on Australian practice and interpretation of international law, this comprehensive cases and materials textbook will provide students with a contemporary understanding of an area of law that has seen major changes in recent years. Written by a team of pre-eminent experts, International Law: Cases and Materials with Australian Perspectives is unique in reflecting the Australian context, perspectives and values on international law. Each chapter covers a substantive area of the law with specialist topics on human rights, law of the sea, and international environmental law. Students will be able to readily identify the key principles, rules and distinctive learning points and will benefit from the clear exposition of state practice in the field, how it has contributed to the development of the law, and how Australian governments have viewed and interpreted international law.

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Principles of Counter-Terrorism Law
(West, 2011)
Geoff Corn & Jimmy Gurule

The book examines the military and law enforcement responses to international terrorism. Subjects include the legal authority to use military force; determining when the law of armed conflict comes into force; the law of targeting and how this authority is applied to terrorist operatives; preventive detention; prosecution of terrorists by military commission; the legal framework for gathering counter-terrorism intelligence information; prosecuting terrorists and their sponsors; freezing terrorist assets; and civil liability for personal injury or death caused by acts of international terrorism.

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The Responsibility to Protect and International Law
(Martinus Nijhoff Publishers 2011)
Alex J. Bellamy, Sara E. Davies & **Luke Glanville**

- Alex J. Bellamy, Sara E. Davies & Luke Glanville, Introduction
- Edward C. Luck, Sovereignty, Choice and the Responsibility to Protect
- Ekkehard Strauss, A Bird in the Hand is Worth Two in the Bush – On the Assumed Legal Nature of the Responsibility to Protect
- Jutta Brunnée & Stephen J. Toope, The Responsibility to Protect and the Use of Force: Building Legality?
- Alex J. Bellamy & Ruben Reike, The Responsibility to Protect and International Law
- Dorota Gierycz, The Responsibility to Protect: A Legal and Rights-based Perspective

- Jennifer M. Welsh & Maria Banda, International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities?
- Hilary Charlesworth, Feminist Reflections on the Responsibility to Protect
- Sheri P. Rosenberg, Responsibility to Protect: A Framework for Prevention
- Michael Contarino & Selena Lucent, Stopping the Killing: The International Criminal Court and Juridical Determination of the Responsibility to Protect
- Alex J. Bellamy, Sara E. Davies & Luke Glanville, Conclusion

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International Commercial Arbitration
An Asia-Pacific Perspective
Simon Greenberg, Christopher Kee & J. Romesh Weeramantry

There has been an exponential rise in the use of ICA for resolving international business disputes, yet international arbitration is a scarcely regulated, specialty industry. International Commercial Arbitration: An Asia Pacific Perspective is the first book to explain ICA topic by topic with an Asia Pacific focus. Written for students and practising lawyers alike, this authoritative book covers the principles of ICA thoroughly and comparatively. For each issue it utilises academic writings from Asia, Europe and elsewhere, and draws on examples of legislation, arbitration procedural rules and case law from the major Asian jurisdictions. Each principle is explained with a simple statement before proceeding to more technical, theoretical or comparative content. Real-world scenarios are employed to demonstrate actual application to practice. International Commercial Arbitration is an invaluable resource that provides unique insight into real arbitral practice specific to the Asia Pacific region, within a global context.

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Judicial Creativity at the International Criminal Tribunals
(Oxford Univ. Press 2011)
Shane Darcy & Joseph Powderly

- Joseph Powderly, Judicial Interpretation at the ad hoc Tribunals: Method from Chaos?
- Fabián Raimondo, General Principles of Law, Judicial Creativity and the Development of International Criminal Law
- William A. Schabas, Judicial Activism and the Crime of Genocide
- L.J. van den Herik, Using Custom to Reconceptualize Crimes Against Humanity
- Shane Darcy, The Reinvention of War Crimes by the International Criminal Tribunals
- Niamh Hayes, Creating a Definition of Rape in International Law: the Contribution of the International Criminal Tribunals
- Robert Cryer, The ad hoc Tribunals and the Law of Command Responsibility: A Quiet Earthquake
- Mohamed Shahabuddeen, Judicial Creativity and Joint Criminal Enterprise
- Gideon Boas, Omission Liability at the International Criminal Tribunals - A Case for Reform
- Caroline Fournet, The Judicial Development of the Law of Defences by the International Criminal Tribunals
- Gillian Higgins, The Development of the Right to Self Representation before the International Criminal Tribunals
- Wayne Jordash & John Coughlan, The Right to be Informed of the Nature and Cause of the Charges: A Potentially Formidable Jurisprudential Legacy
- Göran Sluiter, Procedural Lawmaking at the International Criminal Tribunals
- Hakan Friman, Trying Cases at the International Criminal Tribunals in the Absence of the Accused?
- Fidelma Donlon, The Role of the Judges in the Definition and Implementation of the Completion Strategies of the International Criminal Tribunals

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The Evolution of the European Convention on Human Rights: From Its Inception to the Creation of a Permanent Court of Human Rights
(Oxford Univ. Press 2011)
by Ed Bates

The European Convention on Human Rights underwent a spectacular evolution over the first fifty years of its life. In recent times the European Court of Human Rights has been compared to a quasi-constitutional court for Europe in the field of human rights, and for some time the Convention has been viewed as a European Bill of Rights. The 'coming of age' of the ECHR system in the late 1990s was marked by the entry into force of Protocol 11, creating a new, full time Court.

By contrast those who first proposed a European human rights guarantee were driven by an ambition to put in place a collective pact to prevent the re-emergence of totalitarianism in 'free' Europe. They were motivated by grisly memories of human rights abuse associated with World War Two, and the protection of 'human rights' was seen in that light. When the Convention was opened for signature in 1950 it was viewed by many with scepticism and disappointment. The Convention system took many years to get established. In the mid-1960s doubts were expressed as to whether the Court had a future and in the 1970s the Convention system of control faced a number of serious challenges.

This book examines the story of the evolution of the Convention over its first 50 years (1948-1998). It reflects on the Convention's origins and charts the slow progress that it made over the 1950s and 1960s, before, in the late 1970s, the European Court of Human Rights delivered a series of landmark judgments which proved to be the foundation stones for the European Bill of Rights that we know today.

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State of the World 2011: Innovations that Nourish the Planet
(Jan. 12, 2011)
Worldwatch Insitute

The 2011 edition of our flagship report is a compelling look at the global food crisis, with particular emphasis on global innovations that can help solve a worldwide problem. *State of the World 2011* not only introduces us to the latest agro-ecological innovations and their global applicability but also gives broader insights into issues including poverty, international politics, and even gender equity.

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BURMA OR MYANMAR? THE STRUGGLE FOR NATIONAL IDENTITY
(World Scientific Books, Jan. 2011)
edited by Lowell Dittmer

Burma, also known as Myanmar, strategically located between China and India, is one of the largest and most richly endowed states in Southeast Asia. Yet it remains both economically and politically underdeveloped. Why is this so? We argue that much of the reason has to do with an ongoing struggle for national identity. This struggle involves not only whether the state should be authoritarian or democratic, but how Burma's myriad ethnic minorities should be accommodated within it, what external reference national reference groups the country should identify and align with, and how it should move forward. Identity formation normally occurs much earlier in the national developmental process, but Burma has had unusually intransigent problems that were never successfully resolved during the colonial period and have simply been suppressed by force since then. This protracted divisiveness has stunted the nation's modernization and growth.

III. Journals (some entries edited to avoid duplication)

PUBLIC INTERNATIONAL LAW eJOURNAL
Vol. 6, No. 3: Jan. 5, 2011
ALAN O'NEIL SYKES, EDITOR

Regulating War: A Taxonomy in Global Administrative Law
Daphné Richemond-Barak, Radzyner School of Law, Interdisciplinary Center Herzliya

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

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*

New Developments in the Interaction between International Investment Law and EU Law
Nikos Lavranos, European University Institute (EUI)

International Law in China: The Xiamen Academy of International Law
Najman Alexander Aizenstatd, Universidad Rafael Landivar

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
The Complementary Faces of Legitimacy in International Law: The Legitimacy of Origin and the Legitimacy of Exercise
Jean d'Aspremont, University of Amsterdam
Eric De Brabandere, Leiden University - Leiden Law School

Russia's 'Orthodox' Foreign Policy: The Growing Influence of the Russian Orthodox Church in Shaping Russia's Policies Abroad
Robert C. Blitt, University of Tennessee College of Law

The Two Liberalisms of International Criminal Law
Darryl Robinson, Queen's University (Canada) Faculty of Law

Who May Be Held? Military Detention Through the Habeas Lens
Robert Chesney, University of Texas School of Law

Internal Review of EU Environmental Measures. It's True: Baron Van Munchausen Doesn't Exist! Some Remarks on the Application of the So-Called Aarhus Regulation
Gertjan Harryvan, Department of Administrative Law & Public Administration, Faculty of Law, University of Groningen
Jan H. Jans, University of Groningen - Department of Administrative Law and Public Administration, Faculty of Law
Human Genetic Manipulation and the Right to Identity: The Contradictions of Human Rights Law in Regulating the Human Genome
Norberto Nuno Gomes de Andrade, European University Institute - Law Department

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PUBLIC INTERNATIONAL LAW eJOURNAL
Vol. 6, No. 2: Jan. 4, 2011
ALAN O'NEIL SYKES, EDITOR

Statehood after 1989: 'Effectivités' between Legality and Virtuality
Anne Peters, University of Basel - Faculty of Law

From Nothing to Having it All?: The Importation of Identity Theft by the UE
Marta Muñoz de Morales Romero, Institute of European and International Criminal Law (UCLM)

All Done and Dusted? Reflections on the EU Standard of Judicial Protection Against UN Blacklisting after the ECJ's Kadi Decision
Franz Christian Ebert, *affiliation not provided to SSRN*
Valentina Azarov, *affiliation not provided to SSRN*

What's so Special About Jus Cogens? On the Disinction between the Ordinary and the Peremptory International Law
Ulf Linderfalk, Faculty of Law, Lund University

Developing U.S. Nuclear Weapons Policy and International Law: The Approach of the Obama Administration
Winston Percival Nagan, Levin College of Law (University of Florida)
Erin K. Slemmens, *affiliation not provided to SSRN*

A Policy Framework for Trans-Boundary Wastewater Issues Along the Green Line, the Israeli-Palestinian Border
Rashed M.Y. Al-Sa'ed, Birzeit University - Institute of Environmental and Water Studies, Birzeit University - Faculty of Engineering
The International Court of Justice on Kosovo: Missed Opportunity or Dispute 'Settlement'?
Daphné Richemond-Barak, Radzyner School of Law, Interdisciplinary Center Herzliya

Introduction: Comparative Criminal Law
Kevin Jon Heller, Melbourne Law School
Markus D. Dubber, University of Toronto - Faculty of Law

No Sirve Continued: Mexico Modifies its Declarations to the Hague Service Convention
Charles B. Campbell, Faulkner University, Jones School of Law

Sex Representation on the Bench and the Legitimacy of International Criminal Courts
Nienke Grossman, University of Baltimore School of Law

The 'Inaction' Controversy: Neglected Words and New Opportunities
Darryl Robinson, Queen's University (Canada) Faculty of Law

Finance and Corporate Governance for New Decade in Korea Considering 2000/2003 World Bank/IMF Reports
Young-Cheol David K. Jeong, Yonsei Law School

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PUBLIC INTERNATIONAL LAW eJOURNAL
Vol. 6, No. 1: Jan. 3, 2011
ALAN O'NEIL SYKES, EDITOR

Towards Greater Doctrinal Clarity in Investor-State Arbitration: The CMS, Sempra, and Enron Annulment Decisions
Andreas von Staden, University of Saint Gallen

Palestinian Statehood: A Secessionist Dialogue
William R. Slomanson, Thomas Jefferson School of Law

Whitney R. Harris
John Q. Barrett, Saint John's University - School of Law, Robert H. Jackson Center

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

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

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*

Redesigning the Map of Eritrea and Ethiopia
Simon M. Weldehaimanot, Notre Dame Law School

Transnational Law Comprises Constitutional, Administrative, Criminal and Quasi-Private Law
Anne Peters, University of Basel - Faculty of Law

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
Legislative Evaluation and Rationality in European (and National) Criminal Law (In Spanish)
Marta Muñoz de Morales Romero, Institute of European and International Criminal Law (UCLM)

The Communicative Construction of Legitimacy Spillovers: The Strategic Use of Legitimacy Associations between the UN Global Compact and its Corporate Signatories
Patrick Haack, Faculty of Business Administration
Andreas Georg Scherer, University of Zurich - Institute of Organization and Administrative Science

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LAW & SOCIETY: INTERNATIONAL & COMPARATIVE LAW eJOURNAL
Vol. 6, No. 3: Jan. 5, 2011
CHRISTIANA OCHOA, EDITOR

Article IX's Principle of Due Regard and International Consultations: An Assessment in Light of the European Draft Space Code-of-Conduct
Michael C. Mineiro, McGill University Faculty of Law

Determining Defeat: The PRC, the ICCPR, and the Interim Obligation
Nicholas Hernandez, *affiliation not provided to SSRN*

Dynamics of Enforcement and Infringement of Intellectual Property Rights and Implications for the Incentive Function
Sebastian Derwisch, *affiliation not provided to SSRN*
Birgit Kopainsky, University of Bergen

U.S. Monitoring of Detainee Transfers in Afghanistan International Standards and Lessons from the UK & Canada
Naureen Shah, Human Rights Institute, Columbia Law School

Global Procurement Law in Times of Crisis: New Buy American Policies and Options in the WTO Legal System
John Linarelli, University of La Verne College of Law

How SMEs Exploit Their Intellectual Property Assets: Evidence from Survey Data
Gaétan de Rassenfosse, University of Melbourne

Consumer Finance and Insolvency Law in India: A Case Study
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JN: Religion and Human Rights
PD: 2011
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PG: 105-108(4)
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TI: General characteristics of civil forfeiture
AU: Nikolov, Nikolay
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PD: 1 January 2011
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NO: 1
PG: 16-31(16)
PB: Emerald Group Publishing Limited
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PD: 1 January 2011
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PG: 60-78(19)
PB: Emerald Group Publishing Limited
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AU: Rahman, Noor Aisha Abdul
JN: Journal of Islamic Studies
PD: 29 January 2011
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