Anton's Weekly Digest of International Law Scholarship*

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Contents (*click on heading to navigate*)

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

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

Opting Out of the Law of War: Comments on 'Withdrawing from International Custom'

David J. Luban
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Yale Law Journal, Vol. 120, p. 151, 2010
Georgetown Public Law Research Paper No. 11-12

This paper is a response to Curtis A. Bradley & Mitu Gulati, Withdrawing from International Custom, Yale Law Journal, Vol. 12'8 p. 202 (2017, which argues against the Mandatory View (according to which states are bound by customary international law with no possibility of opting out), and in favor of a Default View which permits states to opt out of international custom unilaterally. My response offers the following arguments: (1) Currently, the most significant contested issue about customary international law in US discourse concerns the laws of war - a topic that Bradley and Gulati treat only briefly and incidentally. Their proposal would make it possible for the United States to withdraw unilaterally from customary law-of-war limitations. (2) Part of Bradley and Gulati's case for the Default View is that it actually represents the historical norm until the twentieth century. I argue that their sources don't adequately support this claim. Their main source, Vattel, thought that states can opt out only of a customary rule that is indifferent in itself - a category that excludes many important rules of customary international law, including the jus in bello rules of the law of war. I discuss other sources as well. (3) Bradley and Gulati believe that the Mandatory View was a colonialist invention to lock new nations into old rules, but I argue that the history they cite does not support this diagnosis. (4) Turning from history to policy, permitting states to opt out of the law of war would likely have immediate dangerous effects on the ground as the US military rewrites its manuals and retrains

* 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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officers and troops to respond to changes in law. The result of a US opt-out is more likely to be an unraveling of the law of war than a helpful revision leading to better rules.

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Climate Change, Fragmentation, and the Challenges of Global Environmental Law: Elements of a Post-Copenhagen Assemblage

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University of Pennsylvania Journal of International Economic Law, Vol. 32, No. 2, p. 457, Fall 2010
University of Colorado Law Legal Studies Research Paper No. 11-01

. . . Although much of the post-Copenhagen commentary has correctly identified various problems, even fatal flaws, with the process, very little has been particularly helpful in marking out a constructive way forward. This Article takes some steps in that direction, offering a partial re-conceptualization of the nature and possibilities of global climate governance in the post-Copenhagen era. It starts from the premise that any realistic approach to climate governance must begin with the facts of globalization, legal pluralism, and fragmentation rather than the view that climate change is a particular kind of global problem that can only be solved through a top-down, supra-national regime aimed at managing the Earth system. . . . This Article maps several key elements of post-Copenhagen climate governance through an analysis of efforts to bring reduced emissions from deforestation and forest degradation ("REDD") into climate policy. Although deforestation, nearly all of which occurs in the tropics, accounts for some fifteen percent of global carbon dioxide emissions, it has only recently become a major focus of climate policy, emerging as one of the few areas of consensus in the international climate negotiations. As a new paradigm for land use that implicates multiple legal and institutional orders at multiple levels, the REDD experience illustrates both the opportunities and the challenges of constructing climate governance through the complex articulation between distinctively global projects and particular national and sub-national institutions. Approaching climate governance from this perspective provides a basis for some more general claims regarding the possibilities of global environmental law in the context of a plural, fragmented international legal order.

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Naming a State: Disputing Over Symbols of Statehood at the Example of 'Macedonia'

Michael Ioannidis
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Max Planck Yearbook of United Nations Law, Vol. 14, pp. 507-561, 2010

This contribution addresses the questions arising from the choice of a state name from an international law perspective. Although usually not problematic, the symbols chosen by a state to represent it in its international affairs have a great potential and might create international controversy. The most prominent example of such tension is the dispute between Greece and the 'former Yugoslav Republic of Macedonia' over the name of the latter. The main thesis of the article is that the choice of the name of a state can have an importance that exceeds the boundaries of the named entity and affect the interests of other international actors. In such cases, the question of naming a state should not be addressed as a simply domestic matter, but rather from an international perspective. In short, under some conditions, the name of a state is not only a matter of self-representation, but a genuinely international affair. Thus, the relevant decisions should address the legitimate interests of other international actors and be subject of some kind of international regulation. . . . The author argues in sum, that a state choosing a name should not be understood as exercising an unfettered freedom. This freedom has limits that can be defined with reference to international practice, theoretical arguments and the interpretation of relevant legal concepts.

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Human Rights and Root Causes

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The Modern Law Review, Vol. 74, Issue 1, pp. 57-78, 2011

The human rights movement has traditionally focused on documenting abuses, rather than attempting to explain them. In recent years, however, the question of the 'root causes' of violations has emerged as a key issue in human rights work. The present article examines this new (or newly insistent) discourse of root causes. While valuable, it is shown to have significant limitations. It foreshortens the investigation of causes; it treats effects as though they were causes; and it identifies causes only to put them aside. With these points in mind, the article counterposes an alternative approach in which the orienting concept is not root causes, but 'planned misery'.

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Beyond Fragmentation

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NEW DIRECTIONS IN INTERNATIONAL ECONOMIC LAW – IN MEMORIAM THOMAS WÄLDE, CMP Publishing, 2011

The fragmentation of international law is in some ways an embarrassment of riches, with multiple tribunals creating jurisprudence in particularized areas. This richness leads also to complexity and to the phenomenon that Marti Koskiennemi has so accurately termed "fragmentation." Our purpose in this essay is to look "beyond fragmentation" given that the status quo of multiple discrete nuclei developing in isolation from one another is unsatisfactory and, we argue, stands in the way of the continuing relevance of international law in modern times. The international investment arena, with its myriad ad hoc tribunals and legal doctrines enshrined in treaties that either codify or build on customary international law, offers an excellent laboratory in which to theorize about communication between the nuclei and when such communication is appropriate. We have suggested an inter-nuclei communication model for use when tribunals are obliged to give content to treaty norms that are inherently vague or to fill lacunae in treaties. This approach takes advantage of the positive aspect of fragmentation – the development of specialized jurisprudence in particular areas of the law. Yet this does not mean that all expertise is freely transferable. A specialized doctrine deeply embedded in a complex treaty might be a poor candidate for transfer to another regime in which the analogous doctrine operates in an altogether different context. For this reason we have suggested a cautious approach to inter-nuclei communication characterized by a willful awareness by tribunals in one sphere of international law of what goes on in other related spheres, and an exercise of canvassing the views expressed by other tribunals in these related spheres for guidance to inform, or test, one's own analysis. We test our propositions by reference to two recurring issuing in international investment arbitration – the principle of denial of justice and the doctrine of necessity.

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Why Soft Law Dominates International Finance - And Not Trade

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Journal of International Economic Law, Vol. 13, No. 3, pp. 623-643

International financial law is in many ways a peculiar instrument of global economic affairs. Unlike international trade and monetary affairs, where global coordination is directed through formal international organizations, international financial law arises through inter-agency institutions with ambiguous legal status. Furthermore, the commitments made by regulatory officials participating in such forums are non-binding. This divergence is perplexing, especially when comparing international

financial law to international trade. Both trade and finance comprise key areas of 'international economic law' and their rules have important distributive consequences for global markets and market participants. This article suggests that in order to understand soft law's value as a coordinating mechanism, an institutional assessment of the way that law is enforced is necessary. Under close inspection, international financial law departs from traditional public international law notions of informality and can in fact be 'harder' than its soft-law quality suggests. This feature helps explain why international financial rules, though technically non-binding, are often relied upon. The predominance of international soft law in finance does not, however, imply that it is without flaws, and this article highlights important structural deficiencies that the World Trade Organization, a more mature legal regime, largely avoids.

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Democracy, Human Rights, and Intelligence Sharing

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Texas International Law Journal, Vol. 46, 2010

In this Article, the author explores the networks used by intelligence agencies to share intelligence and conduct joint operations with foreign counterparts worldwide. Understanding how these intelligence networks operate, the author argues, is imperative both for effective intelligence gathering and for a democratic society. . . . [A]s this Article shows, few democratically elected officials are aware of intelligence sharing; and virtually no mechanism, other than self-regulation, provides oversight or accountability for any intelligence agency's transnational activities. As a result, through their network ties, intelligence agencies that are expected to serve democratic interests have undermined foreign policy and circumvented safeguards established by domestic law and international treaties. The author argues that this serious gap in the rule of law must be filled and posits ways to render intelligence agencies more accountable to the democracies they purport to serve.

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Environmental Protection and Human Rights: An Overview of Current Trends

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This paper sets out to examine the nexus between the environment and human rights, particularly environmental degradation and the protection, enforcement and realization of fundamental rights of the citizens. The enquiry is to highlight the interrelatedness and interconnections between the two international concepts and concerns, and to advocate for a synergic approach to the understanding and appreciation of the concepts in order to further their effectiveness and efficiency in global discourse.

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National Courts Review of Transnational Private Regulation

Eyal Benvenisti and George Downs

Tel Aviv University Legal Working Paper Series. Tel Aviv University Law Faculty Papers. Working Paper 125 (January 2011)

Transnational private regulatory bodies (TPRs) composed of either private actors or a hybrid of public and private actors are increasingly replacing direct governmental regulation or have begun to regulate areas that have never been subject to governmental oversight. Such privately-ordered, informal arrangements typically facilitate coordination without entailing long-term commitments, rigid rules that might constrain state executives, or more than minimal public scrutiny. By increasing the information asymmetries among the various (domestic and global) stakeholders, and by evading or rendering obsolete traditional constitutional checks and balances and other oversight mechanisms,

TPR threatens to exacerbate the already existing regulatory oversight deficit that globalization is widely believed to have created in many democratic states. In this essay we discusses the prospect that national courts (NCs) will take it upon themselves to directly or indirectly review these TPRs and address some of the challenges that the TPRs potentially raise with respect to economic efficiency, democracy, and equality. We describe some of the tools that NCs they have developed over the years in response to privatized regulation at the domestic level and examine the constraints that NCs face in applying similar such tools to TPRs, and assess the potential and limits of NC regulation.

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The Kelsen/Schmitt Controversy and the Evolving Relations between Constitutional and International Law

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Ratio Juris, Vol. 23, Issue 4, pp. 493-504, 2010

The article examines Hans Kelsen's and Carl Schmitt's lines of thought concerning the relationship between constitutional and international law, with the aim of ascertaining their respective ability to capture developments affecting that relationship, even those of a contradictory nature. It is significant that, while the rise of wars of humanitarian intervention in the post-Cold War era has evoked Schmitt's concept of the bellum iustum, the evolution in the direction of the constitutionalisation of international law has drawn attention to Kelsen's theoretical approach. However, these assumptions rely heavily on the opposing objectives that the two authors claimed to pursue, such as, respectively, the search for the ultimate seat of political power and a pure theory of law. Things are more complicated, both because these objectives by no means exhaust Kelsen's and Schmitt's lines of thought, and because the conception of sovereignty as omnipotence, at the core of the Weimar controversy, is now behind us.

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Accountability, Liability, and the War on Terror - Constitutional Tort Suits as Truth and Reconciliation Vehicles

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Florida Law Review, Vol. 63, No. 1, 2011
Boston College Law School Legal Studies Research Paper No. 216

This Article examines the role of civil suits in providing accountability for the Bush administration's conduct of the "war on terror." . . . These suits often fail at the threshold. This Article examines the specific reasons for these failures-including the Bivens doctrine, qualified immunity, and the state secrets privilege-and explores their underlying causes. It identifies both a systemic hesitation to use the tort suit as a vehicle for questioning government policy and an enhanced hesitation when the policy involves national security, an area of high judicial deference to the government. In addition to these problems, the Article concludes that the suits, like the commission proposal, suffer from the same retributive motivation and premises. The legal climate that reverse war on terror suits face may become more receptive. Perhaps, however, the goal of accountability should be re-examined and sought through other means.

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The Humanity of Advocacy

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Loyola University Chicago Law Journal, Vol. 42, No. 1, 2010

This paper considers three ways in which advocacy is related to what it means to be "human." The first is grounded in the nature of legal disputes, and in our expectations as a society of how those

disputes are to be resolved in a way that is fair and just. The second arises from the fundamentally human character of the lawyer-client relationship, and the act of sharing expert legal knowledge, judgment and advice with another human being in need of those things. The third way advocacy has to do with humanity relates to the activity itself, which has to do with persuasion. Whether in a legal context or not, persuasion is a quintessentially human activity. It is this third aspect that forms the focus of the paper's exploration of the ways in which legal advocacy has to do with what it is to be human.

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The Study of EU Foreign Policy: Between International Relations and European Studies

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Professor

The European Union's foreign policy is an ongoing puzzle encompassing a number of paradoxes. The membership of the enlarging European Union has set itself ever more ambitious goals in the field of foreign policy-making, yet at the same time each member state continues to guard their ability to conduct an independent foreign policy. As far as the EU□s ambitions are concerned, basic foreign policy co-operation led first to co-ordination, and later the goal of creating a "common" foreign policy. However, behind each raised level of ambition was an unsatisfying reality of continuing policy incoherence and ineffectiveness. Similarly, early ambitions that Europe should develop a single foreign policy "voice" have been supplanted by aspirations to create a common security and defence policy – even as the Union□s voice continues to be often fragmented and frequently tentative in its expression. Moreover, while the desire to maintain the national veto over decision-making within the "second pillar" of the Common Foreign and Security Policy (CFSP) remains, it is increasingly challenged by the realisation that without extended use of qualified majority voting a common policy may prove illusory.

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The Proliferation of International Criminal Law Courts: Multiple Standards or Different Angles of International Criminal Law?

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Whereas in 1920 there was the solitary Permanent Court of International Justice (PCIJ), today there is a multitude of international tribunals. . . . This paper seeks to examine the extent to which international human right law is included and implemented in newly created courts, specifically the international criminal tribunals for the former Yugoslavia and Rwanda and the International Criminal Court. This paper will discuss whether the same standard of human rights can or should be applied by each or whether justice is more adequately served for the individual or group depending on the court that hears the case. In instances of international criminal law, where can an individual or a group take their claim to redress injustices and criminal human rights failures? Moreover, has such a proliferation allowed a more relevant and precise method of judicial recourse for such parties or has it rather blurred the lines of what constitutes an international crime?

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Challenges to the Realization of a Global Right to Democracy

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The halcyon days of democratization have ended. The Third Wave of democracy that started on the Iberian Peninsula in 1974, swept the globe as the Cold War collapsed, and produced the much discussed euphoria of the "end of history" slowed and even suffered setbacks in the first decade of

the new millennium. For two decades, with the optimism bred of assured inevitability, western governments and international organizations (IGOs) mobilized resources for democratic nation-building in failed states, countries in transition, and in what former UN Secretary-General Boutros Boutros-Ghali called "states-at-risk." Unfortunately, experience has not matched the earlier vision and unexpected obstacles threaten to reverse the march toward a universal democratic order. The universalism of the idealist project ran up against quite practical obstacles, leaving open the question of whether democracy could become the common template of national government in an era of globalization, even whether all people have a "right" to a democratic political system.

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Egalitarianism and International Investment

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Shalom H. Schwartz
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Journal of Financial Economics (JFE), Forthcoming

This study identifies how country differences on a key cultural dimension - egalitarianism - influence the direction of different types of international investment flows. A society's cultural orientation toward egalitarianism is manifested by intolerance for abuses of market and political power and a desire for protecting the weak and less powerful actors. We show egalitarianism to be based on exogenous factors including social fractionalization, dominant religion circa 1908 and war experience from the 19th century era of state formation. Controlling for a large set of competing explanations, we find a robust influence of egalitarianism distance on cross-national investment flows of bond and equity issuances, syndicated loans, and mergers and acquisitions. An informal cultural institution largely determined a century or more ago, egalitarianism exercises its effect on international investment via an associated set of consistent contemporary policy choices. But even after controlling for these associated policy choices, egalitarianism continues to exercise a direct effect on cross-border investment flows, likely through its direct influence on managers' daily business conduct.

From Berlin to Bonn to Baghdad: A Space for Infinite Justice

Vasuki Nesiah
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Harvard Human Rights Journal, Vol. 17, 2004

This Article examines how legitimacy is sought in contemporary approaches to international engagement through proposed legal and normative distinctions between military offensives and humanitarian intervention. Production of legitimacy through the concept of humanitarian intervention is often contrasted with the imperial interventions. Thus, concepts such as "humanitarian intervention," "cosmopolitan humanitarianism," and "the responsibility to protect" are championed by liberal internationalists, who seek ethical and legal foundations for military force addressing humanitarian concerns in contrast to imperial, military objectives. However, this article shows that humanitarianism functions not only in opposition, but also as a complement to militarism. It looks at how efforts to fortify the ramparts of humanitarianism against the grasp of imperial interventionists may prove futile. Indeed, looking back on the rise of humanitarian militarism over the last decade, important questions arise about humanitarians' own complicity in enabling the linkage between humanitarian and militarist arguments in some contexts, even as that linkage is resisted in others.

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NGOs Fighting Corruption: Theory and Practice

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Since the last decade of the twentieth century corruption has caught the attention of international community which has resulted in the adoption and wide acceptance regional and international anti-corruption treaties. Many of these treaties expect non-governmental organisations (NGOs) to play an important role in combating corruption. As yet, there is no empirical study, to our knowledge, on the strategies adopted by the various NGOs in respect of the anti-corruption drive or the nature of their interaction with other stakeholders such as the public, businesses and the state and their contribution to policy-making and the drafting of codes of conduct. In order to address this gap the authors used a postal questionnaire to provide, as part of a larger project on corruption in international business, an insight into the ways in which NGOs operate, both with respect to their strategies and stakeholder engagement and their views on the various anti-corruption regulatory approaches. This article, the main aim of which is to provide the findings of the survey, consists of three sections. . . .

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Taking War Seriously: A Model for Constitutional Constraints on the Use of Force, in Compliance with International Law

Craig Martin
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Brooklyn Law Review, Vol. 76, No. 2, 2011

This article develops an argument for increased constitutional control over the decision to use armed force or engage in armed conflict, as a means of reducing the incidence of illegitimate armed conflict. In particular, the Model would involve three elements: a process-based constitutional incorporation of the principles of international law relating to the use of force (the jus ad bellum regime); a constitutional requirement that the legislature approve any use of force rising above a de minimus level; and an explicit provision for limited judicial review of the decision-making process. The Model is not designed with any one country in mind, but address issues raised in recent debates and calls for reform of executive war powers in various liberal democracies. . . .

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Liability for Environmental Harm and Emerging Global Environmental Law

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. . . This paper reviews the historical development of liability standards for environmental harm and their haphazard incorporation into public international law. It discusses evolving national standards of liability and the obstacles that have made it difficult for victims of environmental harm to hold polluters liable under domestic law. It then examines initiatives to overcome these obstacles in certain countries by relaxing traditional causation requirements and shifting burdens of proof, as illustrated by the United States's "Superfund" law, China's new tort law and Japan's motor vehicle air pollution litigation. The paper also explores how climate change is spawning new litigation strategies that seek to hold polluters liable for global harm as well as the growth of private litigation to recover against multinational enterprises for the harm their actions cause in foreign countries. It concludes that as globalization continues to blur traditional distinctions between international and domestic law and between private and public law, liability standards for global harm are emerging more from "bottom up," private initiatives than from the negotiation of multilateral treaties. . . .

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Liability for Global Environmental Harm and the Evolving Relationship between Public and Private Law

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No Liability Without Feasibility: International Law and the Problem of Punishing the Innocent

Adam Schulman
affiliation not provided to SSRN

Georgetown Journal of Law and Public Policy, Vol. 8, No. 2, 2010

Much ink has been spilt in attempt to justify the legal force of international law as a theoretic matter. This paper explores the more often overlooked critique of international law, namely that imposing sanctions at the state level yields undeserved punishment at the citizen level. Parts I presents normative arguments against collective punishment and parts II and III demonstrate the international and domestic disinclination toward collective punishment. Part IV analyzes the problem of collective punishment as applied to the mechanisms of international. Parts V and VI are rejoinders that an advocate of international law might proffer. Part VII suggests a few methods for resolving the problem.

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To Transfer or Not to Transfer: Identifying and Protecting Relevant Human Rights Interests in Non-Refoulement

Vijay M. Padmanabhan
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Cardozo Legal Studies Research Paper No. 319

Human rights law imposes upon States an absolute duty not to transfer an individual to another State where there are substantial grounds for believing he or she will be tortured or subjected to cruel, inhuman or degrading treatment. . . . In recent years the obligation to provide non-refoulement protection has run into conflict with the State's obligation to protect its public from aliens suspected of involvement in terrorism. . . . This Article argues that human rights law should recognize the important clash of human rights duties that arises in these transfer situations: the State's duty to protect aliens from post-transfer mistreatment clashes with its duty to protect members of the public from rights violations committed by dangerous private persons within society. Human rights law has in recent years recognized a duty on the part of States to take reasonable operational measures to protect the public from private person harms where the State knows or should know of the risk. In the case of dangerous aliens, these operational measures would presumably include expulsion. By depriving the State of the ability to expel dangerous aliens, non-refoulement protection places the human rights of dangerous aliens and the public into direct conflict. . . .

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International Law, Governance and Global Children's Health

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TEXTBOOK ON GLOBAL CHILD HEALTH, Forthcoming
Wayne State University Law School Research Paper No. 10-17

From a medical perspective, we already know the leading causes of child mortality: acute respiratory infections, diarrheal diseases, and neonatal infections. For the vast majority of cases, we also know the appropriate medical treatments. The difficult challenge and tragedy of global children's health lies in applying proven solutions to known problems. In the State of the World's Children 2008: Child Survival, United Nations Children's Fund (UNICEF) identifies the "[u]nderlying and structural causes of

maternal and child mortality." Among other factors, the report lists "[p]oorly resourced . . . health and nutrition services;" "[l]ack of hygiene and access to safe water or adequate sanitation;" and exclusion from essential health services "due to poverty and geographic or political marginalization." . . . This Chapter examines the role of international law and governance in the service of children's health. It explores the role and limits of classic international law. It argues for the need to shift from nations to networks as the effective unit of analysis, as well as the need to expressly recognize the role of law in creating and facilitating "frameworks of cooperation" that can ultimately connect the global-to-the-local. Governance must also be built from the grassroots up and not just from the top down.

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International Law, Public Health and Addiction

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PRINCIPLES OF ADDICTIONS AND THE LAW, Norman S. Miller, ed., Academic Press, 2010
Wayne State University Law School Research Paper No. 10-16

What is the relationship between international law, public health and addiction? This chapter addresses three straightforward questions: (1) what is international law; (2) how does international law relate to addiction; and (3) why is international law relevant to domestic practitioners struggling with the legal, medical and policy dimensions of addiction? The notion of practitioner is intentionally left vague. It includes research scientists studying addiction and physicians treating addiction. It includes lawyers and judges dealing with the legal aspects of addiction. It also includes social workers, community activists and policymakers confronting the problems of addiction and thinking creatively about law reform. The focus on practitioners reflects a deeper interest in the ways that members of global civil society are playing an increasingly important role in shaping the contours of international law.

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Privatizing the Adjudication of International Commercial Disputes: The Relevance of Organizational Form

Kevin E. Davis
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NYU Law and Economics Research Paper No. 11-01

What role should for-profit organizations play in governing commercial transactions? Recent scholarship on the privatization of commercial law has advocated expanding the role of for-profits. This essay tests the merits of that proposal in a context where the case for relying on for-profits seem particularly strong, namely the adjudication of international commercial disputes. Both theory and evidence suggest that there is a role for providers of dispute resolution services that take a variety of organizational forms, including for-profits, not-for-profits, international organizations and various kinds of hybrid organizations.

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The Unpredictable Presumption Against Extraterritoriality

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Southwestern University Law Review, Forthcoming
Wake Forest University Legal Studies Paper No. 1739967

In its 2010 decision in Morrison v. National Australia Bank Ltd., the Supreme Court reaffirmed a strict presumption against the extraterritorial application of federal statutes on the ground that the presumption provides "a stable background against which Congress can legislate with predictable effects." In fact, the presumption has been anything but stable, and Morrison, which overturned forty

years of circuit court precedent on the geographic reach of federal securities law, does nothing to make it more predictable. In a previous article, I argued that the Court should reject a strict presumption against extraterritoriality in favor of a renewed version of an older canon: a presumption against the extension of statutes beyond limits set by the international law of legislative jurisdiction, or a presumption against extrajurisdictionality. In this article, I explain how Morrison exacerbates the confusions inherent in the Court's unmoored jurisprudence on the extraterritorial application of statutes, and describe how the circuit court decisions it rejected actually illustrate the virtues of a presumption against extrajurisdictionality.

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A Trade Agreement Creating Barriers to International Trade? ACTA Border Measures and Goods in Transit

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American University International Law Review, Spring 2011
Society of International Economic Law (SIEL), Second Biennial Global Conference University of Barcelona, July 8-10, 2010
Max Planck Institute for Intellectual Property, Competition & Tax Law Research Paper No. 10-10

By its title, the Anti-Counterfeiting Trade Agreement (ACTA) considers itself a trade agreement. The negotiating parties, as well as its main proponents, emphasise the importance of strong intellectual property (IP) enforcement standards for international trade in IP protected goods. At the same time, the border measure rules in the ACTA draft text carry the potential to create significant barriers to international trade, especially in generic medicines. The controversy over transhipments of generic drugs from India to various developing countries seized while in transit through ports of EU member states demonstrates this potential: Merely on the basis of alleged patent infringements in the transit country, custom authorities seized several shipments of generic drugs - although the drugs did not violate any patents in the country of origin or the country of destination. Against the background of the EU transit seizure cases and the recent initiation of WTO dispute settlement proceedings by India and Brazil against the EU, this article examines the ACTA provisions on border measures. It focuses on the consistency of the ACTA rules with the existing international standards on IP enforcement and free trade under the WTO Agreement on Trade related Aspects of Intellectual Property Rights (TRIPS). Although primarily perceived as setting a floor of minimum standards only, some TRIPS provisions contain maximum standards or 'ceilings' for IP protection and enforcement beyond TRIPS standards. This in turn raises the question how ACTA rules relate to TRIPS standards, in particular those on border measures, as a matter of international law.

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Regulatory States in the South: Can They Exist and Do We Want Them? The Case of the Indonesian Power Sector

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Lee Kuan Yew School of Public Policy Research Paper No. LKYSPP10-11

In the rush for development, the regulatory state has assumed the mantle of the new panacea: the instruments and mechanisms necessary for better government, better governance, and better lives. In this paper I pose two basic questions in response to the rise of the regulatory state and its increasing diffusion into the Global South. First, can regulatory states exist in the south or, more accurately, can effective regulatory states emerge and hope to function in a manner similar to their counterparts in the Global North and deliver the types of benefits and outcomes they promise? And second, would we in fact want regulatory states in the Global South, by which I mean do they offer the most effective modalities for delivering developmental outcomes and enhanced social well being? By unpacking the concept of the regulatory state and addressing its underlying assumptions and implicit normative values, I suggest that the modalities of governance entailed in the regulatory state

model may not in fact be well suited to developing countries, hurting rather than enhancing governance outcomes. These issues are explored in relation to the Indonesian energy sector, specifically the upstream electricity generation, transmission and distribution sectors, and the machinations involved in governing the sector.

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Recent Developments to Promote Transparency and Public Participation in Investment Treaty Arbitration

James Harrison
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U. of Edinburgh School of Law Working Paper No. 2011/01

In the past, concerns have been expressed about the secrecy of international treaty arbitration. This paper attempts to show how the investment treaty arbitration system has responded to these criticisms. It starts by reviewing the arguments in favour of transparency and what different forms transparency can take in the context of investment treaty arbitration. The paper then sketches out the main developments in relation to transparency and highlights key issues that still remain to be resolved. In conclusion it is noted that the extent of publicity and public participation in a particular arbitration will depend on the instrument under which the claim is being brought. Whilst a small number of states have sought to promote the transparency agenda in their investment treaties, much more could be done by the majority of states.

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The Hybrid State-Corporate Enterprise and Violations of Indigenous Land Rights: Theorizing Corporate Responsibility and Accountability Under International Law

Lillian Aponte Miranda
Florida International University College of Law

Lewis & Clark Law Review, Vol. 11, No. 1, 2007
Florida International University Legal Studies Research Paper No. 11-01

Despite the significant achievements of the contemporary indigenous rights movement, the protection of indigenous peoples'' land rights continues to pose a challenge at the operational level. This challenge is due, in part to the corporate interests that impact indigenous land rights yet bear little accountability to the indigenous peoples involved. This Article seeks to set forth the analytical foundation for developing approaches to corporate responsibility and accountability in the context of indigenous land rights. Part II evaluates the primary developments in contemporary conceptualizations of indigenous land rights that raise implications for theorizing corporate responsibility and accountability. Part III analyzes both the limitations and possibilities of grounding a theory of corporate responsibility and accountability within the discourse of human rights. Part IV suggests and evaluates three specific approaches for imposing responsibilities on corporate actors and for guaranteeing compliance with such responsibilities: a voluntarist approach, a state-centered approach, and a hybrid state-corporate approach. This Article proposes that there are possibilities within the framework of human rights for designing a regime of corporate responsibility and accountability that specifically addresses the protection of indigenous peoples'' land rights. It ultimately concludes that a hybrid state-corporate approach potentially offers the more effective means of operationalizing indigenous peoples'' land rights vis-à-vis corporate actors.

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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

THE WTO REGIME ON GOVERNMENT PROCUREMENT: CHALLENGE AND REFORM, S. Arrowsmith, R. D. Anderson, eds., Cambridge University Press, 2011

This is a draft chapter for the forthcoming Sue Arrowsmith & Robert D. Anderson (eds.), The WTO Regime on Government Procurement: Challenge and Reform (Cambridge University Press, 2011). What should governments do to protect their citizens in a global economic crisis? National economies are interdependent and economic risk is systemic on a global scale, but economic policy remains pervasively national in scope. Fiscal policy has not been the subject of much in the way of collective action at the global level, and if it has, states accomplish it in ad hoc political (as opposed to legal) arrangements in response to particular crises. . . .

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Our 'Jack Bauer' Culture: Eliminating the Ticking Time Bomb Exception to Torture

Kate Kovarovic
American University - Washington College of Law

Florida Journal of International Law, Vol. 22, No. 2, 2010

After eight successful seasons on the air, Americans have come to trust Jack Bauer of 24 to get the job done. Regardless of the circumstances, Jack always succeeds where most men cannot; Jack can always find a way to break a terrorist suspect and obtain the exact information he needs to save the world. Because of this unrealistic portrayal of the successes of torture, Americans have also come to expect that Jack Bauer is not the exception, but the norm. The War on Terror has introduced a new legal theory to the American consciousness: that of the ticking time bomb exception. Despite the country's pledge to uphold the principles of the ICCPR and the Convention against Torture, more and more Americans are rallying around the ticking time bomb exception, which permits government officials to torture a suspect who might possess critical information regarding an imminent security threat. This paper seeks to convey that the ticking time bomb exception is strictly prohibited under national and international law, and to place the ticking time bomb exception in a more realistic context for the American public.

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The European Court of Human Rights, Dual Functionality, and the Future of the Court after Interlaken

Fiona De Londras
University College Dublin-School of Law

Irish Human Rights Law Review, Forthcoming

The existence of the European Court of Human Rights is generally considered to be central to the success of the European Convention on Human Rights. For that reason, there is ongoing and significant concern about the future of the Court; a future that is characterised by fragility emanating from a number of sources not least of which are increased political antipathy towards the Court from a variety of member states and enormous volumes of applications resulting in serious logistical difficulties. Taking the fragility of the Court's future into account, this paper asks whether the dual functions that we expect the Court to perform — a constitutionalist function and an adjudicatory function — can be sustained or whether, in fact, that dual functionality contributes to the Court's fragility. . . .

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Foreign Investment Contracts: Unexplored Mechanisms of Environmental Governance

Kyla Tienhaara
Regulatory Institutions Network

Scholars have observed that non-state actors are increasingly taking on new and significant roles in the development, implementation, and enforcement of international rules. New forms of private and hybrid (public-private) governance are emerging in a multitude of issue areas. However, one important governance mechanism significantly predates novel developments such as reporting and

certification schemes and yet remains relatively unexplored in the global governance literature. Foreign investment contracts (FICs), also referred to as host government agreements or state contracts, are agreements made between a foreign investor (often a multinational corporation) and a government or state-owned entity acting on behalf of its government. FICs govern the relationship between a private actor and a state, imposing rights and obligations on both parties. In many cases they supplant national regulation. They also have complicated legal interactions with certain intergovernmental agreements (e.g. bilateral investment treaties) and may affect the implementation of others (e.g. human rights treaties, multilateral environmental agreements). Disputes that arise under FICs are often delegated to international arbitration. These issues are discussed with reference to several FICs governing large-scale investments in developing and transition economies. A particular focus is given to the implications of these agreements for environmental governance in these states.

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Guide to Geographical Indications: Linking Products and Their Origins (Summary)

Daniele Giovannucci
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Estey Centre for Law and Economics in International Trade

Geographical Indications present significant opportunities for differentiating products or services that are uniquely related to their geographic origin. While they can offer many positive economic, social, cultural, and even environmental benefits, they can also be problematic and therefore caution is warranted when pursuing them. The publication distills the relevant lessons that could apply, particularly to developing countries, from a review of more than 200 documents and a number of original Case Studies. It presents a groundwork to better understand the costs and the benefits of undertaking Geographical Indications by outlining the basic processes, covering the pros and cons of different legal instruments, and offering insights into the important factors of success. It reviews and presents current data on the key issues of global GIs such as: economic results, public and private benefits; and market relevance.

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Egalitarianism and International Investment

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Amir N. Licht
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Shalom H. Schwartz
Hebrew University of Jerusalem - Department of Psychology
Journal of Financial Economics (JFE), Forthcoming

This study identifies how country differences on a key cultural dimension - egalitarianism - influence the direction of different types of international investment flows. A society's cultural orientation toward egalitarianism is manifested by intolerance for abuses of market and political power and a desire for protecting the weak and less powerful actors. We show egalitarianism to be based on exogenous factors including social fractionalization, dominant religion circa 1908 and war experience

from the 19th century era of state formation. Controlling for a large set of competing explanations, we find a robust influence of egalitarianism distance on cross-national investment flows of bond and equity issuances, syndicated loans, and mergers and acquisitions. An informal cultural institution largely determined a century or more ago, egalitarianism exercises its effect on international investment via an associated set of consistent contemporary policy choices. But even after controlling for these associated policy choices, egalitarianism continues to exercise a direct effect on cross-border investment flows, likely through its direct influence on managers' daily business conduct.

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Reaching Beyond the State: Judicial Independence, the Inter-American Court of Human Rights and Accountability in Guatemala

Edward H. Warner and Jeffery Davis

Journal of Human Rights 6, no. 2 (2007): 233-255. Reprinted in International Law: Contemporary Issues and Future Problems, edited by Sanford R. Silverburg. Boulder, CO: Westview Press, forthcoming 2011.

The authors examine the role of the Inter-American Court of Human Rights in its efforts to impose accountability for human rights violations in Latin America. They suggest that because domestic enforcement mechanisms are irreconcilably deficient in this task, accountability must emanate from beyond the state. They test this contention by examining one of the most challenging nations in the region – Guatemala.

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Mineral Investment and the Regulation of the Environment in Developing Countries: Lessons from Ghana

Kyla Tienhaara

Regulatory Institutions Network

International Environmental Agreements: Politics, Law and Economics, Vol. 6, pp. 371-394, 2006

This article examines the relationship between foreign direct investment in the mineral sector and environmental regulation in developing countries. It argues that two major trends in global mineral investment have emerged in recent years: increased competition amongst developing countries to attract mineral investment, and the development and proliferation of a standard set of legal protections for mineral investors including access to international arbitration, prohibitions of expropriation without compensation, and commitments to stability of the regulatory regime. Both of these trends may have implications for environmental policy, which are examined in the paper both in general terms and in the context of a detailed case study concerning mineral exploitation in Ghana's forest reserves.

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The Intellectual Property Regime: Are There Lessons for Climate Change Negotiations?

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Does the evolution of the intellectual property regime hold any lessons for the climate change regime? The paper argues that the architecture of the intellectual property regime recognizes the complexity of free riding behaviour and divides the problem amongst a number of treaties. The integration of intellectual property trade standards into the trade regime provides plaintiff states with a way to inflict both political and economics costs on free riders. Perhaps the most important lesson relates to the way in which a highly coordinated international business network was able to shift intellectual property into the multilateral trade regime and obtain standards most countries at the time did not really want because they were net intellectual property importers.

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Third-Party Participation in Investment-Environment Disputes: Recent Developments

Kyla Tienhaara
Regulatory Institutions Network

RECIEL, Vol. 16, No. 2, 2007

This article outlines recent developments in investor – State dispute settlement related to the participation of third parties in arbitration. A particular focus is given to third party participation in disputes with a clear public interest based on the relevance of the cases to the protection of the environment, or sustainable development more generally. The benefits and drawbacks of third party participation and the relationship of participation to broader issues of transparency are also briefly discussed.

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What You Don't Know Can Hurt You: Investor-State Disputes and the Protection of the Environment in Developing Countries

Kyla Tienhaara
Regulatory Institutions Network

Global Environmental Politics, Vol. 6, No. 4, 2006

Foreign direct investment (FDI) is the most important source of external finance in developing countries because it is more stable than portfolio investments and bank lending, and far more available than Official Development Assistance. In order to attract FDI, countries have increasingly offered certain forms of legal protection to foreign investors, including recourse to international arbitration mechanisms in the event of a dispute. These protections can be found in national laws and bilateral investment treaties (BITs) (now numbered at over 2300), as well as in numerous regional treaties and many state contracts. Recent years have witnessed an explosion of investor-state arbitration. Concerns have been raised, particularly in the wake of several controversial investor-state disputes, that in some instances the protection offered to investors may limit the ability of governments to regulate investment for the protection of the environment, natural resources and other social goods, and to ensure that foreign investment contributes to overall national development goals. Some authors have also suggested that the threat of an investor-state dispute could have a chilling effect on government policy, though they note that
there is little evidence to substantiate such a claim.

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Nordic Constitutionalism and European Human Rights - Mixing Oil and Water?

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Scandinavian Studies in Law, Vol. 55, pp. 101-124, 2010

This article seeks to make sense of why the ECtHR's interpretation techniques are problematic from the point of view of Nordic legal culture and especially from the viewpoint of Nordic sovereignty of people flavoured version of constitutionalism. Especially, the dynamic and evolutive approach used in interpretation by the ECtHR is looked at in more detail; it is likely the most controversial interpretation technique of the Court, which causes troubles with national understandings of constitutionalism. The aim of this article is to shed light on the nature of the collision between international and national versions of constitutionalism in the sphere of human constitutional rights. Chapter 1 explains the starting point and aims, chapter 2 deals with the Nordic legal culture in general and specifically Nordic understanding of constitutionalism, and chapter 3 explains the position of the ECHR and the ECtHR and then goes on to define the dynamic and evolutive interpretation used by the Court. Chapter 4 takes few illustrative example cases and with the help of these tries to show how dynamic and evolutive interpretation actually takes shape in illustrative cases which have Nordic connections. Last

chapter (5.) concludes that there are difficulties with judicial activism by the ECtHR and the way constitutionalism is conceived in Nordic legal mentality.

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Globalisation, Neoliberalism and the Exercise of Human Agency

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International Journal of Politics, Culture & Society, Vol. 28, Nos. 1-4, pp. 85-101, January 2008

Globalization as a development model is generally now regarded as the sine qua non for development policy with little room for alternative theorising on capitalist development. Neoliberalism, as the supporting ideology of globalization, inflates the social significance of the market and mystifies human relations. It therefore, gives a distorted view of reality, how people are living and their agential capacity to improve their lives. Critical to human agency is it the way it is exercised - does it reduce inequality or does it exacerbate inequality? How is this human agency exercised by different groups of people? The paper provides a discussion on the relationship between neoliberal ideology, globalization and the exercise of human agency. It examines the social reality of globalization and neoliberalism and how this affects the agential capacity of human beings to direct their development, as individuals, communities and as nations.

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The U'Wa and Occidental Petroleum: Searching for Corporate Accountability in Violations of Indigenous Land Rights

Lillian Aponte Miranda
Florida International University College of Law

American Indian Law Review, Vol. 31, No. 2, 2007
Florida International University Legal Studies Research Paper No. 11-02

Corporate actors significantly impact indigenous peoples" domestically and internationally recognized land rights. . . . Ultimately, challenges to the observance of indigenous peoples" land rights may persist where corporate actors are able to obviate any meaningful accountability to indigenous peoples. . . . Broadly, the following questions could serve to frame further analyses of such an accountability gap across the domestic-international divide. First, who are the actors and what are the interests that contribute to the existing accountability gap with respect to corporate activity that violates indigenous peoples" recognized land rights? Second, what possibilities exist for assigning meaningful corporate accountability for such activity within existing domestic accountability frameworks? Third, could the international system constitute an effective site for the assignment of corporate accountability in this context? This essay undertakes a representative case study of the U"wa peoples" resistance to oil activities by Occidental Petroleum, and through such a case study, provides a focused analysis of corporate accountability for violations of indigenous peoples" land rights across the domestic-international divide. . . .

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The First Amendment in Trans-Border Perspective: Toward a More Cosmopolitan Orientation

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Boston College Law Review, Forthcoming
William & Mary Law School Research Paper No. 09-65

This Article examines the First Amendment's critical trans-border dimension – its application to speech, association, press and religious activities that cross or occur beyond territorial borders. Judicial and scholarly analysis of this aspect of the First Amendment has been limited, at least as compared to consideration of more domestic or purely local concerns. The Article identifies two basic

orientations with respect to the First Amendment – the provincial and the cosmopolitan. The provincial orientation, which is the traditional account, generally views the First Amendment rather narrowly – i.e., as a collection of local liberties or a set of limitations on domestic governance. First Amendment provincialism does not fully embrace or protect trans-border speech, press and religious activities, views certain foreign ideas, influences, and ideologies with suspicion or hostility, and envisions a rather minimal extraterritorial domain. First Amendment cosmopolitanism, which the Article offers as an alternative orientation, takes a more global perspective. It embraces and protects cross-border exchange and information flow; preserves citizens' speech and other First Amendment interests at home and abroad, while at the same time respecting foreign expressive and religious cultures; and expands the First Amendment's extraterritorial domain. The Article critiques provincialism on various grounds. It offers a normative defense of First Amendment cosmopolitanism, which is both consistent with traditional First Amendment principles and better suited to twenty-first century conditions and concerns. The Article demonstrates how a more cosmopolitan approach would concretely affect trans-border speech, association, press and religious liberties.

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The TLT (Trademark Law Treaty) and the Challenge for the Superintendence of Industry and Commerce, as the National IP Authority (El Tlt (Trademark Law Treaty) Y Los Retos Para La Superintendencia De Industria Y Comercio Como Oficina Nacional De Propiedad Industrial)

María Carolina Corcione Morales
affiliation not provided to SSRN
La Propiedad Inmaterial, No. 14, 2010

The Superintendence of Industry and Commerce, acting as the National IP Authority, will have to implement several changes to its actual trademark law system once the Trademark Law Treaty is accepted by the Colombian government. For the National IP Authority, having for the first time a multi-class filing system, imposes procedural, technical and human challenges that have to be well managed in order to guarantee the treaty's success.

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The European Convention on Human Rights, Non-Discrimination and Social Security: Great Scope, Little Depth?

Mel Cousins
Glasgow Caledonian University
Journal of Social Security Law, Vol. 16, No. 3, pp. 120-138, 2009

This article examines the non-discrimination provisions of the European Convention on Human Rights in relation to social security law. There is a now a broad power of review under the ECHR as most social security payments fall within the scope of the Convention. There is also a more flexible approach to the grounds upon which discrimination can be challenged under Article 14. However, it is suggested that the European courts may need to adopt a more nuanced (or proportionate) approach to equality review rather than a binary approach.

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The US-Dolphin II ('Dolphin Safe Labeling') Case: A Net of Parallel and Contradictory Commitments?

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This paper takes an interest in a current trade dispute between the United States and Mexico known as the US-Dolphin II case. The case is still pending before the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) and raises procedural questions of utmost importance for the settlement of disputes pertaining to the jurisdiction of the DSB and the mechanisms of dispute

settlement of Free Trade Areas (FTAs). The object of this paper is precisely to shed light on these thorny procedural aspects. First, the legal basis of the complaint introduced by the United States will be reviewed to outline the procedural obligations under NAFTA and assess the contending claims. Second, obligations under the WTO will be analyzed to broaden the picture of obligations related to the settlement of disputes involving competition with the dispute settlement mechanism of a FTA. The willingness of the parties will be articulated with its translation into practice by studying how analogous cases have been previously addressed by the DSB. This step will provide tools for assessing the compatibility between NAFTA and WTO obligations regarding trade dispute settlement. As it will be shown, there are tremendous tensions between these obligations. Thus, a third time will be devoted to determining whether positive international law provides rules allowing to resolve such potential conflicts between parallel and contradictory obligations.

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Global Governance in the 21st Century: Rethinking the Environmental Pillar
Maria Ivanova

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One Spark Can Set a Fire: The Role of Intent in Incitement to Genocide
Kate Kovarovic
American University - Washington College of Law

The world was introduced to an entirely new method of warfare during World War II: that which was fought with words. Hitler mastered the art of media manipulation, and the world struggled to overcome his capacity to influence the German people. After the war, the international community felt compelled to restrict the type of conduct that had enabled Hitler to so easily gain control of his audiences. However, legal scholars struggled to balance this need with the protection of free speech. Eventually, the Genocide Convention was drafted to explicitly prohibit direct and public incitement to genocide, but not mere hate speech. However, international tribunals were left to interpret the difference between hate speech and incitement to genocide based solely on those cases that came before the court. These courts have identified the speaker's intent as the distinguishing factor between hate speech and incitement, but have failed to establish a set of guidelines that reliably speak to a person's intent. This paper seeks to address this deficiency by synthesizing past court decisions and legal articles to provide a clearer definition of intent to incite genocide.

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The Public-Private Dualities of International Investment Law and Arbitration
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EVOLUTION IN INVESTMENT TREATY LAW AND ARBITRATION, Chester Brown and Kate Miles, eds., Cambridge University Press, 2011
University of Cambridge Faculty of Law Research Paper

In recent years, the thousands of international investment treaties have given rise to hundreds of investor-state arbitrations. International investment law has thus become a topic of great practical importance, and one which has received significant attention in both arbitral awards and academic literature. International investment law, however, appears to possess inherent 'dualities' – analogous to an optical illusion, a single image or object which may appear strikingly different to different viewers or from different perspectives. The dualities of international investment law are presented in some of the most fundamental questions concerning its nature and purpose. This chapter explores the ideas or influences which lead analysis of the subject in conflicting directions and invite these seemingly contradictory viewpoints, by focusing on the 'public-private' distinctions or conceptions which lie at its contested foundations. These public-private dualities thus form a kind of conceptual lens through which international investment law may be viewed, and through which its different appearances or representations can be examined.

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Jurisdictional Discovery in Transnational Litigation: Extraterritorial Effects of United States Federal Practice

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Journal of Private International Law, Vol. 7, 2011
University of Missouri School of Law Legal Studies Research Paper No. 2011-01

Jurisdictional discovery is a largely unknown, uniquely American device that combines two of the more internationally problematic aspects of United States civil procedure, namely an exceptionally broad view of extraterritorial jurisdiction and an expansive approach to pre-trial discovery. The mechanism – which is widely available and often used in cases where the defendant challenges the jurisdiction of the court – comes into play before the court's jurisdiction over the defendant is even established and allows plaintiffs to ask defendants to produce a vast array of documents and information that can be used to justify the plaintiff's claim that jurisdiction in this court is proper. This article describes the device in detail, distinguishing it both practically and theoretically from methods used in other common law systems to establish jurisdiction, and discusses how recent US Supreme Court precedent provides international actors with the means of limiting or avoiding this potentially burdensome procedure.

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The International Law of the Sea

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Tim Stephens
University of Sydney - Faculty of Law

The International Law of the Sea, Hart Publishing: Oxford, 2010
Sydney Law School Research Paper No. 11/02

The law of the sea provides for the regulation, management and governance of the ocean spaces that cover over two-thirds of the Earth""s surface. This book provides a fresh explanation of the foundational principles of the law of the sea, a critical overview of the 1982 United Nations Convention on the Law of the Sea, and an analysis of subsequent developments including the many bilateral, regional and global agreements that supplement the Convention. The book takes as its focus the rules and institutions established by the Convention on the Law of the Sea and places the achievements of the Convention in both historical and contemporary context. All of the main areas of the law of the sea are addressed including the foundations and sources of the law, the nature and extent of the maritime zones, the delimitation of overlapping maritime boundaries, the place of archipelagic and other special states in the law of the sea, navigational rights and freedoms, military activities at sea, and marine resource and conservation issues including fisheries, marine environmental protection, and dispute settlement.

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Internalizing Externalities in EU Law: Why Neither Corporate Governance nor Corporate Social Responsibility Provides the Answers

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George Washington International Law Review, Vol. 40, No. 4, pp 977-1024
Nordic & European Company Law Working Paper No. 10-10

EU law purports to take sustainable development and notably its environmental dimension seriously. At Treaty level, we have seen a progression from a situation where environmental protection was not mentioned, to the inclusion of the objective of environmental protection amongst the general

objectives of EU law in Article 2 of the EC Treaty, and the codification of the sustainable development principle in the environmental integration rule in Article 6 EC. If we take seriously EU law's claim of taking sustainable development and especially the environmental dimension thereof seriously, this opens up for interesting issues, for what is the significance of the overarching objective of sustainable development for the various sectors of EU law? Specifically, does EU law require the integration of the environmental dimension of sustainable development in European company law? The position of this article is yes, it does. . . .

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Environmental Protection Vis-À-Vis Judicial Activism

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OIDA International Journal of Sustainable Development, Vol. 02, No. 05, pp. 73-80, 2011

The black ebony staves of the judiciary which has thumped time and again for protection of man miniature against excruciating blows of evil is known on the aspiration for protecting the environment. The judiciary is having a coherent vision on environmental protection. However the problem of law making and amending is really onerous in this area. As there are certain things like industrialization, urbanization, cultural and moral values of humanity that hamper or create a razzmatazz of legal norms which are really hard to be deciphered out. In today's emerging jurisprudence, environmental rights incorporates of collective rights are described as 'third generation' rights. The "first generation rights" are generally political rights while "second generation" rights are called socioeconomic rights as found in the international convert on economic, social & cultural rights. There is a prominent saying "The times have changed and you must too unless the times won't forgive you" so according to the changing trends of the society from time to time, law also has to evolve accordingly. Earlier, there were many human activists who worked for freeing the society from the existing problems. But in the fast moving world of today, where a person hardly finds time off for his family and close ones, it is a disappointing fact that there is no one to look after the matters of public importance. Hence, fields like Environmental protection go unnoticed. For this PIL has emerged as a Midas touch and is proving to be very effective. However the role of the judiciary is really important as the role of mitochondria of a living human cell. Had the judiciary turned the deaf ear towards environmental problems it could not be in any way came to celluloid. One significant fact to support the sensibility of the judiciary is the case of Subhash Kumar vs. State of Bihar where in personal grudges of two parties the judiciary put life in the cold letters of the constitution i.e. the environmental protection which previously was a fundamental duty under article 51(A) also came as a fundamental right under article 21 of the constitution of India. No matter how criticized it is, no matter how unidentified it is but one thing to which everyone takes leave to doubt is the massive contribution to the welfare of the environment.

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Companies, Society and the Environment

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TOWARDS A SUSTAINABLE EUROPEAN COMPANY LAW: A NORMATIVE ANALYSIS OF THE OBJECTIVES OF EU LAW WITH THE TAKEOVER DIRECTIVE AS A TEST CASE, Chapter 1, Kluwer Law International, 2009
Nordic & European Company Law Working Paper No. 10-11

Do companies have a role beyond the maximisation of profit for shareholders? May human and environmental interests be discussed in the realm of company law? Does company law have a role in furthering sustainable development? The book 'Towards a Sustainable European Company Law. A Normative Analysis of the Objectives of EU Law, with the Takeover Directive as a Test Case' gives the

controversial affirmative answer to all three questions, and goes to the very core of the ongoing debate on the function and future of European company law. . . .

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Localized Past, Globalized Future: Towards an Effective Bioethical Framework Using Examples from Population Genetics and Medical Tourism

Heather Widdows
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Bioethics, Vol. 25, No. 2, pp. 83-91, 2010

This paper suggests that many of the pressing dilemmas of bioethics are global and structural in nature. Accordingly, global ethical frameworks are required which recognize the ethically significant factors of all global actors. To this end, ethical frameworks must recognize the rights and interests of both individuals and groups (and the interrelation of these). The paper suggests that the current dominant bioethical framework is inadequate to this task as it is over-individualist and therefore unable to give significant weight to the ethical demands of groups (and by extension communal and public goods). It will explore this theme by considering the inadequacy of informed consent (the global standard of bioethics) to address two pressing global bioethical issues: medical tourism and population genetics. Using these examples it will show why consent is inadequate to address all the significant features of these ethical dilemmas. Four key failures will be explored, namely. It will conclude by suggesting that more appropriate models are emerging, particularly in population genetics, which can supplement consent.

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The Relevance to Investors of Greenhouse Gas Emission Disclosures

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David H. Lont
University of Otago - Department of Accountancy
Yuan Sun
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This study documents that investors care about companies' greenhouse gas (GHG) emission disclosures. We present two kinds of evidence to support this finding. First, we show that investors act as if they use GHG emissions information to assess company stock market value. Second, by conducting an event study, we observe a significant market response around the date a company discloses new climate change information in a press release or 8-K filing. Sensitivity tests show that these findings are robust to alternative ways to model company value and assess the news content of emissions information. As anticipated, our results strengthen for companies in the U.S. environment and for emission-intensive industries, such as utilities and energy. Lastly, our results convey a message to those companies that may have chosen not to disclose GHG emissions, in that we find that investors view estimates of non-disclosed GHG emission amounts as value relevant also. SEC-registered non-discloser companies might, therefore, reconsider whether their policies adhere to the most basic rule of disclosure – to report "such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading." (17 CFR 240,12b-20.)

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Drought and Underdevelopment in Bundelkhand: A Public Policty Analysis

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B B Ambedkar University

This paper is an attempt to analyse the public policy for drought management in India in general and Bundelkhand region of Central India in particular. Bundelhand has been in news for farmers' suicide,

starvation deaths and increasing level of poverty. Despite having adequate water and natural resources the region has been suffering from acute poverty and hunger. This study argues that the Ministry of Agriculture's present policy for drought, based upon the principle of 'one-size fits all,' is narrow in nature. In measuring drought only two factors are taken into account – first, the precipitation level during the Monsoon season and second, net sown area during a particular season. In addition to this, it focuses only on short term strategies for drought mitigation. It ignores the long term issues like environmental sustainability and inclusive development. In case of Bundelkhand it is visible that ignoring these issues has serious implications not only for the economy of the region but also on the society and climate. Above all it has serious impact on the political and civil unrest, which has never been analysed while understanding drought. This paper argues that there is an immediate need of rethinking on government of India's drought management strategies. It should rather adopt a holistic framework. It should focus, on the one hand, region specific drought strategies taking into account country's diverse geographic terrain, variety of types of soil, uneven rainfall, and economic diversity. On the other hand it should look into various implications of drought including economic, social, environmental and political.

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Human Rights: China's Historical Perspectives in Context

Xiaohui Wu
Wuhan University Institute of International Law

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

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

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Book Review: *When Cooperation Fails: The International Law and Politics of Genetically Modified Foods* by Mark A. Pollack & Gregory C. Shaffer

Sungjoon Cho
Chicago Kent College of Law

American Journal of International Law, Vol. 104, No. 2, p. 324, April 2010

Mark Pollack and Gregory Shaffer's book ("When Cooperation Fails: The International Law and Politics of Genetically Modified Foods") offers comprehensive and multi-dimensional perspectives on the international, in particular transatlantic, regulation of GM foods. The über-narrative of this book is "governance" regarding the fundamental question of how (or whether) to regulate GM foods in transatlantic relations. The book captures the "failure of cooperation" or failed governance between two titans, the US and the EU. After a panoramic description on the history and recent developments of the transatlantic engagement on GM foods issues, they present conditions and constraints which deter productive interaction (cooperation) between them. However, the book largely leaves unattended the root cause of tension in this particular dispute: the inherently uncertain and provisional nature of "science" which the regulation of GM foods inevitably involves. It is important to note that the inherently uncertain and provisional nature of risk science around GM foods itself institutes a deep structure beneath all these diverging phenomena.

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Prospects for a Denuclearised Middle East

N.A.J. Taylor
University of Queensland; Taylor McKellar

Prospects for Peace in the Middle East Conference, Centre for Dialogue, La Trobe University, July 9, 2010

This lecture addressed the following questions: What is the biological, nuclear, radiological and chemical (BNRC) capability of the states in the Middle East? Why do states in the region possess a third of the world's missiles capable of hitting targets 150 km away? How does this impact regional and international security? What are the key proposals to lower the tensions WMD and missile proliferation causes? Who was pushing for what at the recent 2010 NPT RevCon? Is a denuclearized Middle East likely? Why are the positions of Egypt, Israel and Iran so important?

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The Right to Water, Privatised Water and Access to Justice: Tackling United Kingdom Water Companies' Practices in Developing Countries

Damon Barrett
International Harm Reduction Association
Vinodh Jaichand
Irish Centre for Human Rights

South African Journal of Human Rights, pp. 543-562, 2007

[enter Abstract Body]The existence of a "right" to water in international human rights law does not guarantee access to adequate and safe water for the poorest people on the planet. As an economic right, water is non-justiciable. Multinational corporations, often with the support of Western governments and the World Bank, wield massive power in controlling the water supply for many millions worldwide. In most cases the promises of such corporations do not live up to the reality of performance. In the push for profit, the right to water is further infringed upon and with a "commodity" like water, poor performance or negligent policies can result in illness and death. Since the enactment of the Water Industry Act 1999 in the UK, limiting devices such a pre-payment meters and disconnection for non-payment have been illegal. Yet UK multinational water companies continue to use such policies in developing countries where health and safety standards are less stringent and where an absence of legal aid denies the poorest any effective access to justice. Two recent cases in the House of Lords, however, have paved the way for cases against such companies to be heard in the UK courts by allowing the doctrine of Forum Non Conveniens to be by-passed in the interests of justice. This essay considers such a claim on the basis of the English law of negligence. . . .

II. Books

Violence against Women under International Human Rights Law

(Cambridge Univ. Press 2011)
Alice Edwards

Since the mid-1990s, increasing international attention has been paid to the issue of violence against women; however, there is still no explicit international human rights treaty prohibition on violence against women and the issue remains poorly defined and understood under international human rights law. Drawing on feminist theories of international law and human rights, this critical examination of the United Nations' legal approaches to violence against women analyses the merits of strategies which incorporate women's concerns of violence within existing human rights norms such as equality norms, the right to life, and the prohibition against torture. Although feminist strategies of inclusion have been necessary as well as symbolically powerful for women, the book argues that they

also carry their own problems and limitations, prevent a more radical transformation of the human rights system and ultimately reinforce the unequal position of women under international law.

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Reflections on the UN Declaration on the Rights of Indigenous Peoples
(Hart Publishing, Jan. 2011)
Edited by Stephen Allen and Alexandra Xanthaki

The adoption of the Declaration on the Rights of Indigenous Peoples by the United Nations General Assembly on 13 September 2007 was acclaimed as a major success for the United Nations system given the extent to which it consolidates and develops the international corpus of indigenous rights. This is the first in-depth academic analysis of this far-reaching instrument. Indigenous representatives have argued that the rights contained in the Declaration, and the processes by which it was formulated, obligate affected States to accept the validity of its provisions and its interpretation of contested concepts (such as 'culture', 'land', 'ownership' and 'self-determination'). This edited collection contains essays written by the main protagonists in the development of the Declaration; indigenous representatives; and field-leading academics. It offers a comprehensive institutional, thematic and regional analysis of the Declaration. In particular, it explores the Declaration's normative resonance for international law and considers the ways in which this international instrument could catalyse institutional action and influence the development of national laws and policies on indigenous issues.

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Unrecognized States in the International System
(Routledge 2010)
Nina Caspersen & Gareth Stansfield

Unrecognized states are territories that have achieved de facto independence, yet have failed to gain international recognition as independent states. These territories constitute anomalies in the international system of sovereign states and often present significant challenges to policy makers, as evidenced by the war in Georgia and the continued debate over Kosovo's independence.
This book draws on both theory and case studies to better understand the phenomenon of unrecognized states, demonstrating that the existence of such entities is less unusual than previously assumed. Moving away from an overt focus on case studies, the chapters present various themes that link the emergence, operations, and development of unrecognized states and assess how the established order of states responds to the challenges they present: How do unrecognized interact with the international system of sovereign states? How does it shape their emergence, operations and development? How do these entities develop in a context of non-recognition? Are we witnessing a new form of statehood, or are these entities better understood as states-in-waiting? What are the strategies available for dealing with unrecognized states? Could power-sharing or autonomy provide a solution or are more innovative strategies necessary?

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Biodiversity and climate change: Reports and guidance developed under the Bern Convention - Volume I
(Nature and Environment N°156)(2010)
Council of Europe

The effects of climate change on ecosystems are complex. The impact on the species and habitats protected by the Bern Convention may differ widely, depending on the species, their habitats and location. This publication includes six expert reports presenting concrete measures for addressing the vulnerability of Europe's natural heritage in the face of climate change and its effects, and how this heritage must adapt in order to survive. This publication reproduces the full text of Recommendation 135 (2008) on addressing the impacts of climate change on biodiversity, adopted by the Standing

Committee of the Bern Convention in November 2008, which stresses the urgent need to tackle the impact of climate change on biological diversity and on its conservation. With this publication, the Council of Europe aims to increase awareness about the links between biodiversity and climate, and emphasise the large potential for synergies when addressing biodiversity loss and climate change in an integrated manner.

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The Impact of EU Law on Minority Rights
(Hart Publishing, Jan. 2011)
Tawhida Ahmed

This book provides a critical evaluation of the ways in which EU law engages with minority rights protection: at its core is an analysis of EU law and minority rights. Unlike the UN or ECHR, the EU has no competence to set standards on minority protection and this has been a point of disappointment for minority rights advocates. Indeed, this book will demonstrate that, in EU law, binding standards really only exist in the sphere of non-discrimination and are at their strongest in the field of employment. As such, binding standards within EU law affect only a small proportion of the canon of minority rights. However, the EU does have competence to promote diversity and facilitate redistribution of power and resources across the EU. According to a broad understanding of minority rights protection, acts of promotion and facilitation -alongside those of standard-setting - constitute essential underpinnings for minority protection. The EU's existing competences do therefore play a key role in minority protection. In order to support these conclusions, the book undertakes a comprehensive examination of the impact of EU law on minority rights protection.

The book examines a broad range of the EU's legal provisions and principles which may affect minority protection, before undertaking in-depth analyses of the examples of minority cultural rights and minority linguistic rights. In addition, the final substantive chapter of the book contextualises the impact of EU law within the perspective of the overall needs of a specific group - the Roma minority. The concluding chapter draws together the EU's contribution to minority rights. In short, the EU can be seen as a promoter, but not a protector, of minority rights. Although not ideal, especially from the perspective of minorities, it is worth at least exploring such a view. Such an exploration would enable the EU most easily to build upon its existing competences and regulatory capacities.

This book will be of interest to lawyers and activists concerned with minority rights and Roma rights protection within the EU. It will also be of relevance to those interested in understanding the dynamics between the EU and the international law community in overlapping areas of rights protection, and exploring how this informs our perception of the capacity of the EU to be a central actor in the field of rights protection.

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Contracting with Sovereignty:
State Contracts and International Arbitration
(Hart Publishing, Jan. 2011)
Ivar Alvik

The application of international law to state contracts with foreign private companies was the cause of continuing controversy throughout much of the twentieth century. State contractual undertakings with foreign investors raise a number of legal issues that do not fit well into the traditional pattern of international law as a law between states, but which also cannot be satisfactorily resolved by the exclusive application of the municipal law of the contracting state. In recent years the controversy has gained new prominence as a result of the advent of a new form of international dispute settlement, namely the mechanism of investment treaty arbitration. The main feature of this model of dispute resolution is that foreign investors are entitled to bring claims against states directly before international arbitral tribunals. This model, which emerged strongly in the late 1990s, has generated a rapidly expanding body of arbitral case law and in the process become one of the most significant

new developments in modern international law. Many of the disputes subject to investment treaty arbitration have their origin in contractual commitments made by states toward foreign investors. At the same time international commercial arbitration continues to be the preferred means of dispute resolution in contracts between foreign investors and states or state entities. This book explores how contract claims against states are dealt with in the two parallel processes of treaty-based and contract-based arbitration. The book charts the development of commercial arbitration into an international legal remedy in this field, discusses the theoretical problems which it creates for international law, and outlines the most significant substantive features of the international law applicable to contract claims as developed by arbitral tribunals on the basis of treaty standards and customary law.

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Regionalism in East Asia: Why Has It Flourished Since 2000 and How Far Will It Go?
(World Scientific Publishing, Nov. 2010)
Richard Pomfret

This book examines an important economic development in East Asia during the first decade of the 21st century. Whereas regional arrangements were, with the sole significant exception of ASEAN, conspicuously absent before 2000, they have proliferated since 2000 in both the monetary and trade areas. The book places this political development in the changing nature of the national economies, especially their increasing integration into regional and global value chains with the fragmentation of production processes. This is a freshly written, coherent analysis of the topic, drawing upon (updated) material from a series of articles that the author has published on the subject over the years. Although the book is based on theoretical and, especially, empirical analysis of regionalism, it is written in a non-technical style accessible to a wide range of readers. The book is likely to be adopted as supplementary reading for university courses on Asian economies, whether be it in area studies or economics/political economy disciplines.

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Activation Policies and the Protection of Individual Rights:
A Critical Assessment of the Situation in Denmark, Finland and Sweden
(Ashgate, Dec. 2010)
Paul Van Aerschot, University of Helsinki, Finland

In Denmark, Finland and Sweden the evolution of administrative law, including social welfare law, has been marked by a shift towards a stronger protection of the recipient's individual rights. The adoption of activation policies targeting recipients of social assistance has highlighted the tensions between decision-making concerning the implementation of these policies and the legislative efforts to promote the realisation of individual rights in the field of social welfare. An examination of the legislation in question and its implementation conditions shows that the realisation of individual rights is subordinated to the pursuit of organisational and other objectives. The findings of the study are used to formulate proposals for the promotion of individual rights based on the Nordic egalitarian model of citizenship. This critical assessment of activation policies should be of broad international appeal. It will be of interest to researchers in social policy, as well as those concerned with protection of rights.

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Conflict of Laws in International Arbitration
(Sellier 2010)
Franco Ferrari & Stefan Kröll

Irrespective of the increasing harmonization of law at the transnational level, every arbitration raises a number of conflict of laws problems relating to procedural questions as well as to issues concerning the merits of the case. Unlike a state court judge, the arbitrator has no "lex fori" in the proper sense

providing the relevant conflict rules to determine the applicable law. This raises the question of what conflict of laws rules to apply and, consequently, of the extent of the freedom the arbitrator enjoys in dealing with this and related issues. The best example of the importance of conflict of laws questions in arbitration is the Vivendi-Elektrim saga where the outcome of the various proceedings depended on the question of characterization.

III. Journals
(contents edited to avoid duplication where possible)

PUBLIC INTERNATIONAL LAW eJOURNAL
Vol. 6, No. 11: Jan 19, 2011
ALAN O'NEIL SYKES, EDITOR

Learning Our Lessons? The Rwanda Tribunal Record on Prosecuting Rape
Doris Buss, Law Department, Carleton University

Denunciation of the ICSID Convention under the General International Law of Treaties
Antonios Tzanakopoulos, University of Glasgow School of Law

EU Accession to the ECHR: Implications for the Judicial Review in Strasbourg
Tobias Lock, University College London

Customary International Law and Withdrawal Rights in an Age of Treaties
Curtis A. Bradley, Duke University - School of Law
Gaurang Mitu Gulati, Duke University - School of Law

The Future of the United States Commission on Civil Rights
Dawinder S. Sidhu, University of Baltimore - School of Law

NGO 'Lawfare': Exploitation of Courts in the Arab-Israeli Conflict
Anne Herzberg, NGO Monitor

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PUBLIC INTERNATIONAL LAW eJOURNAL
Vol. 6, No. 10: Jan 18, 2011
ALAN O'NEIL SYKES, EDITOR

Four Challenges to the Geneva Conventions and Other Existing Law Posed by Detention Operations in Contemporary Conflicts
Vijay M. Padmanabhan, Yeshiva University - Benjamin N. Cardozo School of Law
John Bellinger, Arnold & Porter

Privatizing the Adjudication of International Commercial Disputes: The Relevance of Organizational Form
Kevin E. Davis, New York University (NYU) - School of Law

International Law, Public Health and Addiction
Peter Joseph Hammer, Wayne State University Law School

The International Law of the Sea
Donald R. Rothwell, Australian National University (ANU) - College of Law
Tim Stephens, University of Sydney - Faculty of Law

The Diplomatic Channel
Michael Waibel, Lauterpacht Centre for International Law, University of Cambridge - Faculty of Law

At King Agramant's Camp â€" Old Debates, New Constitutional Times
Ignacio de la Rasilla del Moral, Harvard Law School, Royal Complutense College in Harvard

Subjective Well-Being Approach to the Valuation of International Development: Evidence for the Millennium Development Goals
Edsel L. Beja, Ateneo De Manila University - Economics Department

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PUBLIC INTERNATIONAL LAW eJOURNAL
Vol. 6, No. 9: Jan. 17, 2011
ALAN O'NEIL SYKES, EDITOR

To Transfer or Not to Transfer: Identifying and Protecting Relevant Human Rights Interests in Non-Refoulement
Vijay M. Padmanabhan, Yeshiva University - Benjamin N. Cardozo School of Law

Secessions, Coups and the International Rule of Law: Assessing the Decline of the Effective Control Doctrine
Brad R. Roth, Wayne State University Law School

Travellers, Tax Policy and Agency Permanent Establishments
Richard J. Vann, Sydney Law School

The Case for Public Administration with a Global Perspective
Yilin Hou, University of Georgia - Department of Public Administration and Policy
Anna Ya Ni, Syracuse University - Maxwell School of Citizenship and Public Affairs
Ora-orn Poocharoen, Lee Kuan Yew School of Public Policy
Kaifeng Yang, Florida State University - Askew School of Public Administration and Policy
Zhirong Jerry Zhao, University of Minnesota - Twin Cities - Hubert H. Humphrey Institute of Public Affairs

The United States' Engagement in Global Tobacco Control: Proposals for Comprehensive Funding and Strategies
Thomas J. Bollyky, *affiliation not provided to SSRN*
Lawrence O. Gostin, Georgetown University Law Center - O'Neill Institute for National and Global Health Law

The Public-Private Dualities of International Investment Law and Arbitration
Alex Mills, University of Cambridge - Faculty of Law, University of Cambridge - Selwyn College

Opting Out of the Law of War: Comments on 'Withdrawing from International Custom'
David J. Luban, Georgetown University Law Center

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PUBLIC INTERNATIONAL LAW eJOURNAL
Vol. 6, No. 8: Jan. 14, 2011
ALAN O'NEIL SYKES, EDITOR

Sovereign Defaults Before International Courts and Tribunals
Michael Waibel, Lauterpacht Centre for International Law, University of Cambridge - Faculty of Law

Squaring the Circle? – International Humanitarian Law and Transnational Armed Conflicts
Tamás Hoffmann, Corvinus University

Monism and Fundamental Rights in Europe and Beyond
Lorenzo Zucca, King's College London School of Law

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

Labor 'Pains' During Public Enterprise Reforms in Fiji
Jashwini Narayan, The University of the South Pacific

.....

INTERNATIONAL ECONOMIC LAW eJOURNAL
Vol. 6, No. 8: Jan 19, 2011
ALAN O'NEIL SYKES, EDITOR

The Backlash Against Investment Arbitration: Perceptions and Reality
Michael Waibel, Lauterpacht Centre for International Law, University of Cambridge - Faculty of Law
Asha Kaushal, *affiliation not provided to SSRN*
Kwo-Hwa Chung, *affiliation not provided to SSRN*
Claire Balchin, Allen & Overy

TRIPS Enforcement and Developing Countries
Peter K. Yu, Drake University Law School

Financial Crisis, International Relations and International Economic Laws
Krishna Shorewala, *affiliation not provided to SSRN*

The Bonus Culture Revisited: Legal and Ethical Dimensions of Economic Regulation
Ioannis Glinavos, Kingston University

.....

INTERNATIONAL ECONOMIC LAW eJOURNAL
Vol. 6, No. 7: Jan 18, 2011
ALAN O'NEIL SYKES, EDITOR

The Public-Private Dualities of International Investment Law and Arbitration
Alex Mills, University of Cambridge - Faculty of Law, University of Cambridge - Selwyn College

Is the Path to Higher Exports in India Paved with Export Zones?
Triyakshana Seshadri, George Mason University, Denison University - Department of Economics

Growing Foreign Investment and Regulatory/Policy Risks Facing High Technology Innovations
Lawrence A. Kogan, affiliation not provided to SSRN

Creditor Protection in International Law
Michael Waibel, Lauterpacht Centre for International Law, University of Cambridge - Faculty of Law

Autonomy in Setting Appropriate Level of Protection Under the WTO Law: Rhetoric or Reality?
Michael Ming Du, Chinese University of Hong Kong - Faculty of Law

.....

INTERNATIONAL ECONOMIC LAW eJOURNAL
Vol. 6, No. 6: Jan 13, 2011
ALAN O'NEIL SYKES, EDITOR

The Applicability of GATT Jurisprudence to the Interpretation of the TRIPS Agreement
Susy R. Frankel, Victoria University of Wellington

Commodifying and Embedding Services of General Interests in Transnational Contexts - The Example of Healthcare Liberalisation in the EU and the WTO
Markus Krajewski, University of Erlangenurnberg - Law School

Two Decades Lost: Reinvigorating the Weak Cousin of WTO Law
Michael Waibel, Lauterpacht Centre for International Law, University of Cambridge - Faculty of Law

Harmonizing Climate Change and International Investment Law: Threats, Challenges and Opportunities
Daniel M. Firger, Columbia Center for Climate Change Law, New York University (NYU) - School of Law

.....

LAW & SOCIETY: INTERNATIONAL & COMPARATIVE LAW eJOURNAL
Vol. 6, No. 8: Jan. 14, 2011
CHRISTIANA OCHOA, EDITOR

The Latin Bias: Regions, Human Rights, and the Western Media
Emilie Marie Hafner-Burton, University of California, San Diego (UCSD) - Graduate School of International Relations and Pacific Studies (IRPS), Woodrow Wilson School
James Ron, Norman Paterson School of International Affairs

Financial Crisis, International Relations and International Economic Laws
Krishna Shorewala, *affiliation not provided to SSRN*

The Evolving Definition of the Refugee in Contemporary International Law
William Thomas Worster, The Hague University

Travellers, Tax Policy and Agency Permanent Establishments
Richard J. Vann, Sydney Law School

Roman Law in the United States with a Note on the State of Florida (La Tradición Romanística En Los Estados Unidos Con Una Nota Sobre El Estado De La Florida)
Matthew C. Mirow, Florida International University (FIU) - College of Law

Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Reports
Anne T. Gallagher, Equity International

TRIPS Enforcement and Developing Countries
Peter K. Yu, Drake University Law School

Customary International Law and Withdrawal Rights in an Age of Treaties
Curtis A. Bradley, Duke University - School of Law
Gaurang Mitu Gulati, Duke University - School of Law

Same-Sex Marriages Inside the Closet: Deconstruction of Subjects of Gay and Lesbian Discourses in Russia
Alexander A. Kondakov, *affiliation not provided to SSRN*

Choice of Law in the American Courts in 2010: Twenty-Fourth Annual Survey
Symeon Symeonides, Willamette University - College of Law

.....

LAW & SOCIETY: INTERNATIONAL & COMPARATIVE LAW eJOURNAL
Vol. 6, No. 7: Jan. 13, 2011
CHRISTIANA OCHOA, EDITOR

An Element of Concern in North Africa: The Case of Morocco's Phosphate Industry
Charles A. Rarick, Purdue University Calumet

Exclusions from Patentable Subject Matter and Exceptions and Limitations to the Rights - Biotechnology
Denis Borges Barbosa, Pontifícia Universidade Católica do Rio de Janeiro
Karin Grau-Kuntz, *affiliation not provided to SSRN*

State Sovereignty and International Human Rights
Anush Hayrapetyan, Riga Graduate School of Law

Matrimonial Property Regimes and Patrimonial Aspects of Other Forms of Union: What Problems and Proposed Solutions? (Proposal for Rome IV Regulation)
Sjef J. H. M. van Erp, Maastricht European Private Law Institute, University of Maastricht - Faculty of Law

The ICJ Advisory Opinion on Kosovo: Different Perspectives of a Delicate Question
Peter Hilpold, University of Innsbruck

Exceptions, Limitations and Exclusions to Patent Rights - South America
Denis Borges Barbosa, Pontifícia Universidade Católica do Rio de Janeiro
Karin Grau-Kuntz, *affiliation not provided to SSRN*

European Property Law: A Methodology for the Future
Sjef J. H. M. van Erp, Maastricht European Private Law Institute, University of Maastricht - Faculty of Law

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

Tortious Liability for Released Detainees
Raymond Youngs, University College London - Faculty of Laws

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INTERNATIONAL ENVIRONMENTAL LAW eJOURNAL
Vol. 3, No. 3: Jan. 14, 2011
DAVID D. CARON & TSEMING YANG, EDS.

Climate Change, Fragmentation, and the Challenges of Global Environmental Law: Elements of a Post-Copenhagen Assemblage
William Boyd, University of Colorado Law School

The International Law of the Sea
Donald R. Rothwell, Australian National University (ANU) - College of Law
Tim Stephens, University of Sydney - Faculty of Law

The Role of Climate Change in Kenya's International Trade Arena - An Analysis of EPA's on Climate Change
Jill Sandra Juma, SEATINI

What is the Growth Potential of Green Innovation? An Assessment of EU Climate Policy Options
Ziga Zarnic, Organization for Economic Co-Operation and Development (OECD)
Janos Varga, *affiliation not provided to SSRN*
Ariane Labat, *affiliation not provided to SSRN*
Andrea Conte, European Union - Directorate General for Economic and Financial Affairs (DG ECFIN)

Harmonizing Climate Change and International Investment Law: Threats, Challenges and Opportunities
Daniel M. Firger, Columbia Center for Climate Change Law, New York University (NYU) - School of Law

Competition in the EU Energy Sector - An Overview of Developments in 2009 and 2010
Hans Vedder, University of Groningen

.....

HUMAN RIGHTS & THE GLOBAL ECONOMY eJOURNAL
Vol. 5, No. 4: Jan 17, 2011
HOPE LEWIS, WENDY E. PARMET & RASHMI DYAL-CHAND, EDS.

To Transfer or Not to Transfer: Identifying and Protecting Relevant Human Rights Interests in Non-Refoulement
Vijay M. Padmanabhan, Yeshiva University - Benjamin N. Cardozo School of Law

International Migration and Remittances to India in the Era of Globalisation
Soumitra Kumar Bera, North Eastern Hill University (NEHU)

Global Ecological Integrity and Third World Approaches to International Law
Sara L. Seck, University of Western Ontario

State Sovereignty and International Human Rights
Anush Hayrapetyan, Riga Graduate School of Law

Multinationals and Partnerships in Central African Conflict Countries
Ans Kolk, University of Amsterdam - Amsterdam Business School (ABS)
Francois Lenfant, Cordaid

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HUMAN RIGHTS & THE GLOBAL ECONOMY eJOURNAL
Vol. 5, No. 3: Jan 13, 2011
HOPE LEWIS, WENDY E. PARMET & RASHMI DYAL-CHAND, EDS.

The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations?
David Bilchitz, South African Institute for Advanced Constitutional, Public, Human Rights and International Law, University of Pretoria, University of the Witwatersrand

An Idea of American Indian Land Justice: Examining Native Land Liberation in the New Progressive Era
Richael Faithful, American University - Washington College of Law

Beyond Exclusion: A Review of Peter J. Spiro's 'Beyond Citizenship'
Jeff Redding, Saint Louis University School of Law

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

Reimagining Human Rights Law: Toward Global Regulation of Transnational Corporations
Rachel J. Anderson, William S. Boyd School of Law, UNLV

Health or Trade? A Critique of Contemporary Approaches to Global Health Diplomacy
Obijiofor V. Aginam, Carleton University - Department of Law

The Bottom Up Journey of 'Defamation of Religion' from Muslim States to the United Nations: A Case Study of the Migration of Anti-Constitutional Ideas
Robert C. Blitt, University of Tennessee College of Law

The Ties that Bind: Family and Private Life as Bars to Deportation of Immigrants
Yael Ronen, Sha'arei Mishpat College, Minerva Center, Faculty of Law, Hebrew University of Jerusalem

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

Conceptualizing the Home State Duty to Protect Human Rights
Sara L. Seck, University of Western Ontario

Kenya's Credible Commitment to Keep its Date with the ICC
James Thuo Gathii, Albany Law School

Transnational Corporations and the Disjoint of Traditional Structures of Liability to Victims
Benedict Semple Wray, European University Institute - Department of Law (LAW)

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DEMOCRATIZATION: BUILDING STATES & DEMOCRATIC PROCESSES eJOURNAL
Vol. 4, No. 4: Jan 14, 2011
TIMOTHY WILLIAM WATERS & **BRIAN DALE SHOUP**, EDS.

Legitimizing Global Economic Governance Through Transnational Parliamentarization: The Parliamentary Dimensions of the WTO and the World Bank
Markus Krajewski, University of Erlangenunberg - Law School

The European Integration and the Democratization in Eastern Europe
Simeon Mitropolitski, University of Montreal

Democracy, Foreign Direct Investment and Natural Resources
Elizabeth Asiedu, University of Kansas - Department of Economics
Donald Da-Hsiang Lien, University of Texas at San Antonio - College of Business - Department of Economics

The Use and Abuse of International Law: Choice of Applicable Criminal Law in Post-Conflict East Timor
Yael Ronen, Sha'arei Mishpat College, Minerva Center, Faculty of Law, Hebrew University of Jerusalem

Coercive Capacity and the Prospects for Democratization
Michael Albertus, Stanford University - Department of Political Science
Victor A. Menaldo, University of Washington - Department of Political Science

Multinationals and Partnerships in Central African Conflict Countries
Ans Kolk, University of Amsterdam - Amsterdam Business School (ABS)
Francois Lenfant, Cordaid

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INTERNATIONAL, TRANSNATIONAL & COMPARATIVE CRIMINAL LAW eJOURNAL
Vol. 5, No. 3: Jan 13, 2011
DIANE MARIE AMANN, EDITOR

Special Studies in Criminal Law, Volume 1 (Estudios De Derecho Penal Especial: Tomo I)
Andras H. Luna, Rama Judicial de Colombia

On Tyranny and Economic Greed: The NCP and the Disintegration of the Sudanese Nation
Issam A.W. Mohamed, Alneelain University

Freedom of Speech, Support for Terrorism, and the Challenge of Global Constitutional Law
Daphne Barak-Erez, Tel Aviv University - Buchmann Faculty of Law
David Scharia, Counter Terrorism Committee Executive Directorate UN Security Council

Optimal Justice: Education, Rehabilitation, Forgiveness - Or How Joseph Ends Sibling Rivalry and Becomes a Saint
Barbara P. Billauer, Foundation for Law and Science Centers, Inc., Institute of World Politics

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

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NATIONAL SECUITRY & FOREIGN RELATIONS LAW eJOURNAL
Vol. 8, No. 7: Jan 17, 2011
OREN GROSS, EDITOR, ED.

Four Challenges to the Geneva Conventions and Other Existing Law Posed by Detention Operations in Contemporary Conflicts
Vijay M. Padmanabhan, Yeshiva University - Benjamin N. Cardozo School of Law
John Bellinger, Arnold & Porter

Accountability, Liability, and the War on Terror - Constitutional Tort Suits as Truth and Reconciliation Vehicles
George D. Brown, Boston College Law School

Public Law Values in the House of Lords - In an Age of Counter-Terrorism
Max Harris, *affiliation not provided to SSRN*

Fear's Legal Dimension: Counterterrorism and Human Rights
Andrea Bianchi, Graduate Institute of International and Development Studies

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EUROPEAN PUBLIC LAW: EU eJOURNAL
Vol. 8, No. 7: Jan 17, 2011
PAUL B. STEPHAN, & JOHN S. BELL, EDS.

Implementing EU Law on Services: National Diversity and the Human Rights Dilemma
Stein Evju, Department of Private Law, Faculty of Law, University of Oslo

Choice of Law Rules and the Prohibition of Discrimination Under the European Convention on Human Rights
Patrick Kinsch, University of Luxembourg

Legal and Economic Approach to Tying and Other Potentially Unfair and Anticompetitive Commercial Practices: Focus on Financial Services
Diego Valiante, Centre for European Policy Studies
Andrea Renda, Centre for European Policy Studies (CEPS), Libera Università degli Studi Sociali (LUISS) Guido Carli

EU Accession to the ECHR: Implications for the Judicial Review in Strasbourg
Tobias Lock, University College London

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EUROPEAN PUBLIC LAW: EU eJOURNAL
Vol. 8, No. 6: Jan 13, 2011
PAUL B. STEPHAN, & JOHN S. BELL, EDS.

Commodifying and Embedding Services of General Interests in Transnational Contexts - The Example of Healthcare Liberalisation in the EU and the WTO
Markus Krajewski, University of Erlangenberg - Law School

A Good Day and Salutory Warning for the European Union
Michael Waibel, Lauterpacht Centre for International Law, University of Cambridge - Faculty of Law

Pluralism, Deference and the Margin of Appreciation Doctrine
Janneke Gerards, Leiden University - Leiden Law School

Access to European Energy Networks: The Relation between Third Party Access and Refusal to Deal Concepts
Michail D. Diathessopoulos, University of Cambridge - Faculty of Law, University of Glasgow - School of Law, University of Leicester - Faculty of Law, Lancaster University - Law School

Competition in the EU Energy Sector - An Overview of Developments in 2009 and 2010
Hans Vedder, University of Groningen

.....

ENVIRONMENTAL LAW & POLICY eJOURNAL
Vol. 3, No. 4: Jan 13, 2011
HOLLY DOREMUS, JOHN PATRICK DWYER, PETER S. MENELL, EDS.

Multilevel Governance of GMO and Non-GMO Coexistence: Filling the Gap in the EU Regulatory Regime on Agricultural Biotechnology
Thijs F.M. Etty, VU University Amsterdam - Institute for Environmental Studies (IVM), and
VU Law Faculty, Transnational Legal Studies Department

Harmonizing Climate Change and International Investment Law: Threats, Challenges and Opportunities
Daniel M. Firger, Columbia Center for Climate Change Law, New York University (NYU) - School of Law

Government Entrepreneurs: Incentivizing Sustainable Businesses as Part of Local Economic Development Strategies In Greening Local Government
Jonathan D. Rosenbloom, Drake University Law School

Through Another's Eyes: Getting the Benefit of Outside Perspectives in Environmental Review
Holly Doremus, University of California, Berkeley - School of Law

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Netherlands International Law Review
Volume57 - Issue 03,December 2010

THE INTERNATIONAL COURT OF JUSTICE 1989-2009: AT THE HEART OF THE DISPUTE SETTLEMENT SYSTEM?
Hugh Thirlway
Netherlands International Law Review, Volume 57, Issue 03, December 2010, pp 347 - 395
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OPERATION 'CAST LEAD': JUS IN BELLO PROPORTIONALITY
Michael Wells-Greco
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André J. Berends
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Miscellaneous

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Cedric Ryngaert
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Erik V. Koppe
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LEIDEN POLICY RECOMMENDATIONS ON COUNTER-TERRORISM AND INTERNATIONAL LAW
Netherlands International Law Review, Volume 57, Issue 03, December 2010, pp 531 - 550
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- Gregory Rose and Ben Milligan, Law for the Management of Antarctic Marine Living Resources: From Normative Conflicts towards Integrated Governance?
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- Danilo Comba, The Polar Continental Shelf Challenge: Claims and Exploitation of Mineral Sea Resources—An Antarctic and Arctic Comparative Analysis
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Vol. 14, Issue 1 (2010-2011)

International Environmental Law in a Changing World	Administrator
Circunstances Surrounding the Barrier and the Wall Case	Yaroslav Shiryaev, LLM
The Australian Legislative Response to Terrorism - An Appraisal	Rolf Driver FM and Tom Percy QC
Bridging the Gap Between the Biodiversity Convention and TRIPs:	Reid Johnson
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- Jamie Pittock, A Pale Reflection of Political Reality: Integration of Global Climate, Wetland, and Biodiversity Agreements
- Darragh Conway, The United Nations Security Council and Climate Change: Challenges and Opportunities
- Alexander Zahar, Verifying Greenhouse Gas Emissions of Annex I Parties: Methods We Have and Methods We Want

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Volume 32, Number 4, November 2010

Articles

Inscribing Abortion as a Human Right: Significance of the Protocol on the Rights of Women in Africa
Charles G. Ngwena
pp. 783-864
HTML Version | PDF Version (411k) | Summary

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Jeroen Temperman
pp. 865-897
HTML Version | PDF Version (216k) | Summary

Mugabe's Zimbabwe, 2000-2009: Massive Human Rights Violations and the Failure to Protect
Rhoda E. Howard-Hassmann
pp. 898-920
HTML Version | PDF Version (173k) | Summary

International Forensic Investigations and the Human Rights of the Dead
Adam Rosenblatt
pp. 921-950
HTML Version | PDF Version (197k) | Summary

The Interplay Between Global and Regional Human Rights Systems in the Construction of the Indigenous Rights Regime
Mauro Barelli
pp. 951-979
HTML Version | PDF Version (187k) | Summary

The Justice Balance: When Transitional Justice Improves Human Rights and Democracy
Tricia D. Olsen
Leigh A. Payne
Andrew G. Reiter
pp. 980-1007
HTML Version | PDF Version (232k) | Summary

Science and Human Rights: A Bridge Towards Benefiting Humanity

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Safia Swimelar
pp. 1069-1078
HTML Version | PDF Version (136k) | Summary

.....

International Journal of Human Rights, Volume 14, Number 6, November 2010

Introduction
- Sociology and human rights: confrontations, evasions and new engagements (Patricia Hynes; Michele Lamb; Damien Short; Matthew Waites) p.811-832

Articles
- Cultural genocide and indigenous peoples: a sociological approach (Damien Short) p.833-848
- Who's human? Developing sociological understandings of the rights of women raped in conflict (Victoria Canning) p.849-864
- Sociology and human rights: what have they got to say about care and dignity? (Joanna Ferrie) p.865-879
- Contestations over rights: from establishment to implementation of the National Basic Livelihood Security System in South Korea (Eunna Lee-Gong) p.880-895
- Human rights and cities: the Barcelona Office for Non-Discrimination and its work for migrants (Michele Grigolo) p.896-914
- From 'rights-based' to 'rights-framed' approaches: a social constructionist view of human rights practice (Hannah Miller) p.915-931
- Reconstructing Rwanda: balancing human rights and the promotion of national reconciliation (Jennifer Melvin) p.932-951
- Global points of 'vulnerability': understanding processes of the trafficking of children and young people into, within and out of the UK (Patricia Hynes) p.952-970
- Human rights, sexual orientation and the generation of childhoods: analysing the partial decriminalisation of 'unnatural offences' in India (Matthew Waites) p.971-993
- Loyalty and human rights: liminality and social action in a divided society (Michele Lamb) p.994-1012

.....

Law, Environment and Development Journal
(Vol. 6, Issue 3)

The Nagoya Protocol on Access to Genetic Resources and Benefit Sharing: What is New and What are the Implications for Provider and User Countries and the Scientific Community?
Evanson Chege Kamau, Bevis Fedder and Gerd Winter

The Trafigura Case and the System of Prior Informed Consent Under the Basel Convention – A Broken System?
Gary Cox

The Bali Firewall and Member States' Future Obligations within the Climate Change Regime
Christopher Smith

'Command Without Control': Are Market Mechanisms Capable of Delivering Ecological Integrity to REDD?
Simon West

Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, in Ensuring Access to Justice for Victims of Environmental Degradation
Emeka Polycarp Amechi

Implementation of Environmental Judgments in Context: A Comparative Analysis of Dahanu Thermal Power Plant Pollution Case in Maharashtra and Vellore Leather Industrial Pollution Case in Tamil Nadu
Geetanjoy Sahu

'Waste not Want not'- Sustainable Waste Management in Malta
Tilak A. Ginige

.....

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(Vol. 92, no. 879, September 2010)

- Environment
  - Interview with Achim Steiner
  - Martin Beniston, Climate change and its impacts: growing stress factors for human societies
  - Michael Bothe, Carl Bruch, Jordan Diamond & David Jensen, International law protecting the environment during armed conflict: gaps and opportunities
  - Julian Wyatt, Law-making at the intersection of international environmental, humanitarian and criminal law: the issue of damage to the environment in international armed conflict
  - Mara Tignino, Water, international peace, and security
  - Karen Hulme, Taking care to protect the environment against damage: a meaningless obligation?
  - Lisette M. Braman, Pablo Suarez & Maarten K. van Aalst, Climate change adaptation: integrating climate science into humanitarian work
  - Vikram Kolmannskog & Lisetta Trebbi, Climate change, natural disasters and displacement: a multi-track approach to filling the protection gaps
- Selected Article on International Humanitarian Law
  - Friedrich Rosenfeld, Collective reparation for victims of armed conflict

.....

Loyola Maritime Law Journal, Volume 8, 2010

- When Good Courts Go Wrong: A Critique of the Supreme Court's Domestic Maritime Boundary Jurisprudence (Gayl S. Westerman) p.1
- Availability of a Sliding Scale for Seaman Status: How and Why Pragmatism Has Survived (Devin C. Reid) p.73
- Going Overboard: The Ninth Circuit Forces Seamen to Walk the Plank of Arbitration in Rogers v. Royal Caribbean Cruise Line (Tommy Cantrell) p.103
- The Legal Battle Over Rule B Attachments of Electronic Funds Transfers during the Global Recession of 2008-2010 (Sam Winston) p.115
- The Oil Pollution Act of 1990: An Oil Slick Over Robins Dry Dock (Sye J. Broussard) p.153
- Punitive Damages for Maritime Work Related Injuries (Joseph R. Moore) p.197

.....

Journal of Private International Law, Volume 6, Number 3, December 2010

- Provisional Measures in the "Brussels I" Review: Disturbing the Status Quo? (Dickinson, Andrew) p.519-564
- The Enforcement of Jurisdiction Agreements Under the Brussels I Regulation: Reconsidering the Principle of Party Autonomy (Steinle, Jonas; Vasiliades, Evan) p.565-587
- A New Approach to the Governing Law of Companies in the Eu: A Legislative Proposal (Borg-Barthet, Justin) p.589-621
- Bankruptcy Jurisdiction and Enforcement of Foreign Bankruptcy Judgments in Egypt (Zamzam, Abdel-Moneem) p.623-635
- Certainty Versus Uniformity: Renvoi in the Context of Movable Property (Forsyth, Christopher) p.637-647
- The Impact of the Hague Abduction Convention on the Rights of the Family In the Case-law of the European Court of Human Rights and the UN Human Rights Committee: The Danger of Neulinger (Walker, Lara) p.649-682

.....

Global Governance: A Review of Multilateralism and International Institutions
(Vol. 17, no. 1, January-March 2011)

- Global Insights
  - Margaret Joan Anstee, The John Holmes Memorial Lecture: What Price Security?
  - Sakiko Fukuda-Parr & David Hulme, International Norm Dynamics and the "End of Poverty": Understanding the Millennium Development Goals
- Articles
  - Astri Suhrke, Virtues of a Narrow Mission: The UN Peace Operation in Nepal
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- Special Focus
  - Alexandra Gheciu & Roland Paris, NATO and the Challenge of Sustainable Peacebuilding
  - Anand Menon & Jennifer Welsh, Understanding NATO's Sustainability: The Limits of Institutionalist Theory
  - Alexandra Gheciu, Divided Partners: The Challenges of NATO-NGO Cooperation in Peacebuilding Operations
  - Michael J. Williams, (Un)Sustainable Peacebuilding: NATO's Suitability for Postconflict Reconstruction in Multiactor Environments

.....

European Human Rights Law Review, Issue 6, 2010

- Editorial (Francesca Klug and Jane Gordon) p.551
- Bulletin p.555
- Bulletin: Counter-Terrorism and Human Rights p.559
- Opinion Pieces
- The Human Rights Act: A View from the Bench (Lord Bingham of Cornhill) p.568
- The Human Rights Act: Ten Years On (Jack Straw, MP) p.576
- The Human Rights Act: An Academic Sceptic Changes his Mind but not his Heart (Conor Gearty) p.582
- The Human Rights Act and the Courts: A Practitioner's Perspective (Rabinder Singh, QC) p.589

Articles

- The War on Terror Without the Human Rights Act: What Difference has it Made? (James Welch and Shami Chakrabarti) p.593
- The Impact of the Human Rights Act on the Legislature: A Diminution of Democracy or a New Voice for Parliament? (Murray Hunt) p.601
- A Developing Human Rights Culture in the UK? Case Studies of Policing (Jane Gordon) p.609
- Follow or Lead? The Human Rights Act and the European Court of Human Rights (Francesca Klug and Helen Wildbore) p.621
- Case Analysis
- R (Smith) v Oxfordshire Assistant Deputy Coroner (Equality and Human Rights Commission intervening) (Ben Silverstone) p.631

Case and Comment

- P.B. and J.S. v Austria (Application No.18984/02) p.633
- Neulinger and Shuruk v Switzerland (Application No.41615/07) p.636
- Babar Ahmad and Others v UK (Application Nos 24027/07, 11949/08 and 36742/08) p.639
- Clift v United Kingdom (Application No.7205/07) p.642
- A v Netherlands (Application No.4900/06) p.645
- Aksu v Turkey (Application Nos 4149/04 and 41029/04) p.647
- Mengesha Kimfe v Switzerland (Application No.24404/05) p.650
- Gall v Malta (Application No.28221/08) p.653
- Book Reviews p.657

.....

Deakin Law Review, Volume 15, Number 2, 2010

(select article)

- Control Orders Post 9-11 and Human Rights in the United Kingdom, Australia and Canada: A Kafkaesque Dilemma? (Sascha-Dominik Bachmann and Matthew Burt) p.131

.....

Washington and Lee Law Review, Volume 67, Number 4, Fall 2010

- ARTICLE
- Predatory Bundling and the Exclusionary Standard (J. Shahar Dillbary) p.1231
- PROSECUTORIAL POWER: A TRANSNATIONAL SYMPOSIUM
- Introduction (Erik Luna & Marianne Wade) p.1285
- Uncertainty and the Search for Truth at Trial: Defining Prosecutorial "Objectivity" in German Sexual Assault Cases (Shawn Marie Boyne) p.1287
- The French Prosecutor in Question (Jacqueline S. Hodgson) p.1361
- Prosecutors as Judges (Erik Luna & Marianne Wade) p.1413
- Brady's Bunch of Flaws (Daniel S. Medwed) p.1533
- The Tainted Federal Prosecutor in an Overcriminalized Justice System (Ellen S. Podgor) p.1569
- The Worldwide Accountability Deficit for Prosecutors (Ronald F. Wright & Marc L. Miller) p.1587
- NOTES
- A Complicated Environment: The Problem with Extending Victims' Rights to Victims of Environmental Crimes (Andrew Atkins) p.1623
- If It Looks Like a Duck ...:Private International Arbitral Bodies Are Adjudicatory Tribunals Under 28 U,S.C. § 1782(a) (Brandon Hasbrouck) p.1659
- The Problem of Parental Relocation: Closing the Loophole in the Law of International Child Abduction (Maryl Sattler) p.1709

.....

Hastings West-Northwest Journal of Environmental Law and Policy, Volume 17, Number 1, Winter 2011
(select articles)

- Deferring to the Assertion of National Security: The Creation of a National Security Exemption Under the National Environmental Policy Act of 1969 (Emily Donovan) p.3
- Political Cases or Political Questions: The Justiciability of Public Nuisance Climate Change Litigation and the Impact on Native Village of Kivalina v. ExxonMobil (Ashley E. Breakfield) p.39

.....

National Taiwan University Law Review, Volume 5, Number 2, September 2010
(select articles)

- Globalization, Government Reform and the Paradigm Shift of Administrative Law (Jiunn-rong Yeh) p.113
- U.S. Environmental Law in Global Perspective: Five Do's and Five Don'ts from Our Experience (E. Donald Elliott) p.143

.....

National Taiwan University Law Review, Volume 4, Number 3, December 2009
(select articles)

- Towards a Global Constitutional Gene Pool (Cheryl Saunders) p.1
- The Emergence of Asian Constitutionalism: Features in Comparison (Jiunn-Rong Yeh) p.39
- An Isolated Nation with Global-minded Citizens: Bottom-up Transnational Constitutionalism in Taiwan (Wen-Chen Chang) p.203
- International Human Rights Law and Domestic Constitutional Law: Internationalisation of Constitutional Law in Hong Kong (Albert H.Y. Chen) p.237
- Reception and Resistance: Globalisation, International Law and the Singapore Constitution (Li-ann Thio) p.335

.....

Ethics & International Affairs Volume 24.4 (Winter 2010)

Response
The Responsibility to Protect: Growing Pains or Early Promise? [Full Text]
The ability of RtoP to deliver has been mixed, but it is a bit early in RtoP's young life to judge what it will be when it grows up as a mature policy tool. There is reason to question, as well, whether Somalia and Darfur are the best tests of RtoP's potential.
Author(s): Edward C. Luck

Features
The Politics of Carbon Leakage and the Fairness of Border Measures [Abstract]
It is possible to design fair border measures that address carbon leakage, are consistent with the leadership responsibilities of developed countries, do not penalize developing countries, and ensure that consumers take some responsibility for the emissions outsourced to developing countries.
Author(s): Robyn Eckersley

Common Health Policy Interests and the Shaping of Global Pharmaceutical Policies [Abstract]
The division of interests in key health policy areas are not necessarily between rich and poor countries, but between pharmaceutical industry interests and health policy interests on the one hand, and national industrial and trade policy interests and public health policies on the other.
Author(s): Meri Koivusalo

Review Essay
Implementing the Responsibility to Protect: Where Expectations Meet Reality [Full Text]
Scholars of RtoP need a much deeper understanding of both how norms evolve and the competing normative commitments that drive those who remain skeptical of endowing the international community with a responsibility to protect.
Author(s): Jennifer Welsh

Book Reviews
"The Birthright Lottery: Citizenship and Global Inequality" by Ayelet Shachar [Full Text]
"The Birthright Lottery" puts forward an account of birthright citizenship as analogous to inherited property, and proposes a birthright privilege levy on citizenship inheritance that citizens of affluent countries should contribute to alleviate global inequalities of wealth and opportunity.

"Genocide: A Normative Account" by Larry May [Full Text]
Larry May's "Genocide: A Normative Account" is not a study of genocide per se, but rather an attempt to draw attention to the conceptual and practical difficulties and "puzzles" of conceptualizing and prosecuting genocide under international law.

"Women and States: Norms and Hierarchies in International Society" by Ann E. Towns [Full Text]
This new work by Ann Towns is an intelligent and timely addition to interdisciplinary scholarship that is interested in the relationships between the status of women, state behavior, and approaches to global governance.

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(Jan. 18, 2011)

Record 2.
TI: International Transformations of the Capitalist State
AU: Picciotto, Sol
JN: Antipode
PD: January 2011
VO: 43
NO: 1
PG: 87-107(21)
PB: Blackwell Publishing Ltd
IS: 0066-4812
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VO: 74
NO: 1
PG: 135-149(15)
PB: Blackwell Publishing Ltd
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AU: Rutkowski, Anthony
JN: Info - The journal of policy, regulation and strategy for telecommunications
PD: 25 January 2011
VO: 13
NO: 1
PG: 13-31(19)
PB: Emerald Group Publishing Limited
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Record 5.
TI: Exploring the Applicability of Command Responsibility to Private Military Contractors
AU: Frulli, Micaela
JN: Journal of Conflict and Security Law
PD: 18 November 2010
VO: 15
NO: 3
PG: 435-466(32)
PB: Oxford University Press
IS: 1467-7954
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Record 6.
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AU: Barber, Rebecca J.
JN: Journal of Conflict and Security Law
PD: 18 November 2010
VO: 15
NO: 3
PG: 467-500(34)
PB: Oxford University Press
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JN: Journal of Conflict and Security Law
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VO: 15
NO: 3
PG: 501-532(32)
PB: Oxford University Press
IS: 1467-7954
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TI: Chinas Development of International Economic Law and WTO Legal Capacity Building
AU: Hsieh, Pasha L.
JN: Journal of International Economic Law
PD: 7 December 2010
VO: 13
NO: 4
PG: 997-1036(40)
PB: Oxford University Press
IS: 1369-3034
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AU: Spears, Suzanne A.
JN: Journal of International Economic Law
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VO: 13
NO: 4
PG: 1037-1075(39)
PB: Oxford University Press
IS: 1369-3034
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PB: Oxford University Press
IS: 1540-1650
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JN: Chinese Journal of International Law
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VO: 9
NO: 4
PG: 839-842(4)
PB: Oxford University Press
IS: 1540-1650
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Record 15.
TI: Health and child labor in agriculture
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PG: 364S-371S(8)
PB: Nevin Scrimshaw International Nutrition Foundation
IS: 0379-5721
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IV. Blogs (select items)

Marko Milanovic, OUP Yearbooks Available Online [For Free until Feb. 28], EJIL: Talk! (Jan. 19, 2011)

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