

**Anton's Weekly Digest of
International Law Scholarship***(available on <http://donanton.org>)(email subscription available at <http://mailman.anu.edu.au/mailman/listinfo/intlawprofessors>)**Vol. 2, No. 4
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**I. SSRN Legal Scholarship Network/bepress Legal Repository/NELLCO Legal Scholarship Repository/Publishers Advances**

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

**International Arbitration's Public Realm****Catherine A. Rogers**

The Pennsylvania State University Dickinson School of Law

*CONTEMPORARY ISSUES IN INTERNATIONAL ARBITRATION AND MEDIATION 2010*

Domestic arbitration is under attack as permitting repeat players to evade mandatory statutory law, retarding legal developments, undermining democratic lawmaking, and ultimately imposing substantively biased outcomes on less sophisticated parties through contracts of adhesion. Collectively, these critiques of domestic arbitration could be interpreted as suggesting that domestic arbitration seeks to obviate or even subvert public interests and the public realm. The thesis of this chapter is that, in contrast to criticisms of domestic arbitration, international arbitration has a vibrant public realm. International arbitration has the potential to produce public goods and to go beyond simply resolving disputes, but to also promote international cooperation, transnational governance and the development of the international rule of law.

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**Right to Water: Some Theoretical Issues****Taposik Banerjee**

Jawaharlal Nehru University; NISTADS

With more and more economic progress taking place around the world, the demand for water is increasing like never before in the history of humankind. As a result cases of conflict over rights on water are also rising. Water is linked with human life in numerous ways and consequently people

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

assert their rights on this natural resource through several routes. Rights of the users to use water, however, can be classified into two broad groups. One group consists of the human rights or fundamental rights. The second group is property rights over different water sources that are either tradable or non-tradable. The paper discusses several types of rights over water sources - the way they evolved and the way the courts have interpreted those rights. While focusing on the mechanism for allocation of property right over groundwater, the paper makes an attempt to address the problem where different types of rights of individuals clash against each other.

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### **Dignity in the Service of Democracy**

**Erin Daly**

Widener University School of Law

*Widener Law School Legal Studies Research Paper No. 11-07*

At a broad level, perhaps the most noticeable trend in Latin American constitutional law is the increasing muscularity of constitutional tribunals. Throughout the region, particularly in South America, tribunals charged with interpreting their country's constitution are increasingly asserting themselves and inserting themselves into public controversies, from abortion to same sex marriage to the rights of political association.

This heightened judicial activity can come at a cost to democracy: typically, the more social issues are decided by unelected and unaccountable judges rather than through a political process, the less the people control the resolution of those issues. The more outcomes are deemed to be constitutionally determined, the less room there is for political negotiation and change. And the more courts read into constitutional texts, the more value-laden their judgments, the less legitimacy they have.

But the trend in Latin America challenges this conventional wisdom: the form that judicial activism is taking is enhancing, rather than eroding, both judicial authority and democratic decision making. And the principal engine that is driving this process is judicial invocation of the constitutional right to dignity.

Latin American courts are relying on the constitutional right to human dignity to decide cases more often than one can count, and in an extraordinarily wide range of situations. The Colombian constitutional court has tried to schematize the concept of dignity, noting that the phrase "human dignity" can manifest itself in two ways: from the point of view of the concrete object of protection and from the point of view of its normative function. With respect to the first perspective, the Court has identified three clear and distinct lines: human dignity can be understood (1) as autonomy or the possibility of designing a life plan and self-determination according to his or her own desires; (2) as entailing certain concrete material conditions of life; and (3) as the intangible value of physical and moral integrity. As shorthand, it characterizes these three dimensions, respectively, as living as one wishes, living well, and living without humiliation. In Part One, this paper illustrates this schema by discussing cases from throughout the region, showing how the courts have interpreted the right to dignity to insist on protection for a wide range of interests. Part Two explores the normative function of Latin America's dignity jurisprudence by demonstrating the mutually reinforcing connection between dignity, as described by the cases, and democratic citizenship.

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### **Reflexively Regulating International Labour Practices: Are We There Yet? The Risk of Social Disclosure**

**Ryan Edmonds**

York University - Osgoode Hall Law School

In a globalized economy, domestic states have struggled with how to effectively exert influence over transnational corporations. This issue is especially germane to labour law in light of trends towards

outsourced foreign labour that is vulnerable to abuse. Many have theorized that 'reflexive regulation,' a governance system of incentives and disincentives designed to stimulate certain behaviour, holds the answer to this transnational regulatory dilemma. However, the arguments in favour of reflexive regulation make the tenuous assumption that corporations will, in fact, respond to the stimulus in the manner anticipated by those who prescribe it. In the context of international labour law, the assumption is that corporations will perceive a requirement to disclose information about foreign labour practices as a bona fide business risk that must be rectified, and, as the theory goes, this will ultimately lead to correction, one way or another, of the labour abuse. The purpose of this paper is to test that assumption, and it does so through an analytical framework based on principles of enterprise risk management. In assessing whether we have actually 'arrived' at an era of reflexive regulation, this paper adopts a two-pronged analysis: first, the risk perspectives of voluntary disclosure through corporate social responsibility initiatives, and second, expanded mandatory disclosure requirements through securities regulators for publically traded companies. The paper concludes that despite inherent difficulties, because the long-term risk-adverse agenda of institutional investors aligns with the social justice agenda of disclosure activists, mandatory social disclosure through securities regulators has the greatest likelihood of correcting impugned corporate behaviour.

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### **Rights Based Approaches to Development: Implications for NGOs**

**Shannon Kindornay**

affiliation not provided to SSRN

**James Ron**

Carleton University - Norman Paterson School of International Affairs

The rights-based approach (RBA) emerged as a new development paradigm in the late 1990s. Within ten years, it had swept through the websites, policy papers and official rhetoric of multi-lateral development agencies, bi-lateral donors, and non-governmental organizations (NGOs) throughout the global development assistance sector. Today, specialized consultants and advisors are elaborating and mainstreaming the paradigm through reports, workshops, and project evaluations, ensuring that rights-based thinking will continue to proliferate for years to come.

Many view this trend with excitement, highlighting the normative and practical value of injecting human rights principles into standard development thinking and practice. These commentators hope rights-based approaches will empower marginalized groups, focus attention on inequality, and boost state and donor accountability. Skeptics, however, fear the emergence of yet another development fad. What, then, is really happening? Is the rights-based approach having observable impacts?

This Article proposes five hypotheses about the likely impact of rights-based approaches on the work, structure, and number of NGOs involved in the development process. If the rights-based paradigm is having real effects, we should be able to observe its traces in the work and activities of development-related NGOs that accept overseas resources and aid.

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### **Environment and Development: Friends or Foes in the 21st Century**

**Paolo Galizzi**

Fordham University - School of Law

**Alena Herklotz**

Fordham University - School of Law

*RESEARCH HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW, Fitzmaurice, Ong, Merkouris, eds., 2011*

This chapter, published in the Research Handbook of International Environmental Law (Fitzmaurice and others eds) explores the complex relationship between environmental protection and the promotion of sustainable development.

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**International Criminal Courts and the Making of Public International Law: New Roles for International Organizations and Individuals****Kenneth S. Gallant**

UALR Bowen School of Law

John Marshall Law Review, Forthcoming

[UALR Bowen School Research Paper No. 11-02](#)

Judicial decisions of the International Criminal Court and other international criminal tribunals now serve as instances of practice and statements of *opinio juris* for the formation of customary international criminal law and customary international human rights law related to criminal law and procedure. In these areas of law and others, they are no longer "subsidiary" sources as that word is used in the International Court of Justice Statute, Art. 38. In the same fields of customary international law, other binding acts of international organizations, such as the UN Security Council, are also used as practice, and the statements of these organizations are used as *opinio juris*.

Where judicial and quasi-judicial decisions of international organizations are acts of treaty interpretation and application, these acts are instances of subsequent practice. In some cases, judicial decisions play a role similar to the subsequent acts of states parties to the treaties in the Vienna Convention of the Law of Treaties. Under the ICC Statute, when the Court is interpreting a matter within its judicial competence, its decision is authoritative.

Individuals, particularly those accused of crime, can make direct claims of right under international law to these courts and tribunals. These claims may concern jurisdiction, the substantive law of crimes and defenses, international human rights in criminal procedure and criminal law, or other issues that arise in the course of prosecutions.

The expanding role of international organizations, including the international judiciary, in the process of making international law is being led by the ICC and other international criminal tribunals. It is already spreading to other areas of the law, such as international trade law. This growth is likely to continue.

Individuals have gained the right to make claims directly under international law in certain non-criminal international fora. As in criminal law, the right depends on the agreement of states or international organizations to establish these tribunals. While the growth of this right is uncertain, it is hard to imagine that it will be cut back.

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**Book Review Essay: 'War in an Age of Risk', by Christopher Coker****N.A.J. Taylor**

University of Queensland; Taylor McKellar

Australian Journal of International Affairs, Forthcoming

Sociologists such as Anthony Giddens and Ulrich Beck have for decades argued that society has become organised by the concept of risk. Giddens reasons that risk manifests as either external (i.e. the impact of natural forces) or manufactured (i.e. involving a high degree of human agency), and that it is the complexity bound in these latter risks that is most difficult to predict and manage. Whilst Beck emphasises that uncertainty over hazards and insecurity is perpetuated to a large extent by modern society itself. This 'risk society' is difficult to navigate since uncertainty involving the actions of humans renders it unlikely to ever experience anything close to 'order'.

Pursuing these ideas in his book *War in an Age of Risk*, Christopher Coker contends that Clausewitz's conceptualisation of war is dialectical, in that if war is indeed the 'continuation of politics by other

means', it must also change politics. As a result, we are told, 'wars... have become an instrument of risk management' (p.10) and thus the risks, rewards, and costs imbued must continually and relentlessly be categorised, regulated and monitored. That is not to say, that we live in more dangerous (or risky) times, but that 'In the risk age', according to Coker, 'life is too complex to be reordered, and ... war is too imperfect an instrument to do the reordering' (p.171).

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### **Europe and the International Dimension**

**Ben Tonra**

University College Dublin (UCD)

**Brigid Laffan**

University College Dublin (UCD) - Department of Politics

Ireland, according to Article 5 of the Irish constitution, is a 'sovereign, independent, democratic state'. This assertion of the state's legal right to conduct its own affairs without outside interference is, however, an inadequate description of the state's relationship with the rest of the world. Forces of Europeanisation and globalisation have greatly increased Ireland's interaction with the international system and have embedded the state within it. It makes considerable sense to adapt the terminology often used by economists, and to think of Ireland as a 'small open polity'.

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### **Enforced Disappearances in Cyprus: Problems and Prospects of the Case Law of the European Court of Human Rights**

**Nikolas Kyriakou**

European University Institute

The article critically examines the judgments of the European Court of Human Rights that relate to cases of enforced disappearance stemming from the Cyprus conflict. More particularly, it takes issue with the judgment of *Varnava and others v. Turkey* and challenges the Court's reasoning on the application of the six-month rule and its interplay with the continuous nature of enforced disappearances. In the final section, the author explores the avenues open to relatives of disappeared persons in the aftermath of the aforementioned judgment.

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### **Does it Still Walk Like a Duck? The European Court of Human Rights' Evolving Approach Toward Non-Governmental Organizations**

**Anna Valerie Dolidze**

Cornell Law School

The paper argues that the European Court of Human Rights has developed a "negative-substantive" *ratione personae* admissibility test for non-governmental organizations. This test represents the Court's definition of a "non-governmental organization." The definition, however, has not remained static and has gradually evolved. By looking at the development of the Court's jurisprudence, the paper argues that the Court has expanded the test and has reshaped the definition of a "non-governmental organization." The change has allowed admission of more applications by NGOs. In line with arguments in literature on judicial expansionism of international tribunals, the paper illustrates how this move has, in turn, fueled the case law of the Court and has contributed to raise its influence. As such, the paper contributes to the debate on the role of civil society in strengthening global governance and to the discussions on the definition and nature of non-governmental organizations.

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**Immigration, Integration and Terrorism: Is There a Clash of Cultures?****Justina A. V. Fischer**

Organization for Economic Co-Operation and Development (OECD); Stockholm School of Economics;  
University of Hohenheim  
[\*CEIS Working Paper No. 182\*](#)

We test whether immigrants are more prone to support terror than natives because of lower opportunity costs, using the international World Values Survey data. We show that, in general, economically, politically and socially non-integrated persons are more likely to accept using violence for achieving political goals, consistent with the economic model of crime. We also find evidence for the destructive effects of a 'clash of cultures': Immigrants in OECD countries who originate from more culturally distanced countries in Africa and Asia appear more likely to view using violence for political goals as justified. Most importantly, we find no evidence that the clash-of-cultures effect is driven by Islam religion, which appears irrelevant to terror support. As robustness test we relate individual attitude to real-life behavior: using country panels of transnational terrorist attacks in OECD countries, we show that the population attitudes towards violence and terror determine the occurrence of terror incidents, as does the share of immigrants in the population. A further analysis shows a positive association of immigrants from Africa and Asia with transnational terror, while the majority religion Islam of the sending country does not appear to play a role. Again, we find that culture defined by geographic proximity dominates culture defined by religion.

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**The Google Book Settlement and the TRIPS Agreement****Daniel J. Gervais**

Vanderbilt Law School

[\*Stanford Technology Law Review, Vol. 1, 2011\*](#)[\*Vanderbilt Public Law Research Paper No. 10-25\*](#)

The proposed amended settlement in the Google Book case has been the focus of numerous comments and critiques. This "perspective" reviews the compatibility of the proposed settlement with the TRIPS Agreement and relevant provisions of the Berne Convention that were incorporated into TRIPS, in particular the no-formality rule, the most-favored nation (MFN) clause, national treatment obligations, and the so-called three-step test.

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**Restoring Global Aviation's 'Cosmopolitan Mentalité****Brian F. Havel**

DePaul University College of Law

**Gabriel S. Sanchez**

DePaul University College of Law

[\*Boston University International Law Journal, Vol. 29, p. 1, 2011\*](#)

For over six decades, the central juristic premise of the global regulatory regime for international civil aviation has been that citizenship defines ownership; the mentalité - the determinative category of thought - has been that nationality organizes air commerce. Through this conflation of commercial and national affiliation, there are American carriers, British carriers, Canadian carriers - but not a single authentically transnational carrier. Because nationality supervenes, there is no international airline as such; the concept of a multinational enterprise remains unknown in air transport, even in the 21st century. In this article, we generate a fresh context within which to reevaluate the issue of airline nationality by first illuminating the implicit cosmopolitanism of the international aviation industry and of its (potential) global regulatory structure by recollecting the origins of the current order and by positioning the industry within the conceptual development of the notion of cosmopolitanism itself. To accomplish this, we use the recently-signed air services agreement between Canada and the European Union to project what we will call a "cosmopolitan mentalité" that

can radically transform air transport law and regulation for the future. In particular, we will explore how a doctrine of "citizenship purity" has had a stranglehold on the natural cosmopolitanism of the aviation industry virtually since its establishment, and how the Canada/EU agreement, which contains features (or at least prospective features) excluded from all prior bilateral air services agreements through which countries exchange air route permissions, models a way past the industry's inheritance of regulatory chauvinism.

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

**Timothy Zick**

William & Mary Law School

[Boston College Law Review, Vol. 52](#)

[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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### **Global Intellectual Property Governance (Under Construction)**

**Margaret Chon**

Seattle University School of Law

*The Berkeley Electronic Press, Vol. 12, No. 1, January 2011*

[Seattle University School of Law Research Paper No. 11-03](#)

Top down as well as bottom-up models of regulation are shifting to a governance paradigm characterized by the greater interaction among public, private and civil society sectors, as well as potential increased flexibility of law. As applied to intellectual property, particularly in the international context, governance literature is emerging but still episodic. In this Article, I examine the World Intellectual Property Organization's Development Agenda, currently being implemented through its Committee on Development and Intellectual Property. WIPO's efforts to address global development goals with intellectual property can be theorized through the more participatory and dynamic legal mechanisms promised by global governance. Among the challenges are fragmentation, policy incoherence and a relative lack of due process of softer law, as enacted and as enforced. The pragmatic impact of this major WIPO initiative – evaluated both in terms of the projected benefits and risks of global governance – remains to be seen.

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**Crimes Against Humanity****Margaret M. DeGuzman**

Temple University - James E. Beasley School of Law

*RESEARCH HANDBOOK ON INTERNATIONAL CRIMINAL LAW, Bartram S. Brown, ed., Edgar Elgar Publishing, 2011**Temple University Legal Studies Research Paper*

The modern concept of crimes against humanity is a product of the scale and horror of the crimes committed in the two world wars as well as a growing consensus in the international community that certain crimes committed within national borders are legitimate subjects of international law and adjudication. Unlike war crimes and genocide, crimes against humanity are not codified in an international convention. Instead, the law of crimes against humanity has primarily developed through the evolution of customary international law. . . . The primary challenge in defining crimes against humanity is to identify the precise elements that distinguish these offenses from crimes subject exclusively to national laws. . . . In light of the very serious legal consequences of designating an offense a crime against humanity as well as the heightened moral condemnation the label entails, the importance of understanding the exact contours of these offenses cannot be underestimated. This chapter provides a brief historical sketch of the evolution of the norm prohibiting crimes against humanity, assesses the current state of the definition with respect to each potential element of the chapeau and some the constitutive crimes, and argues that a normative framework should be adopted to resolve the remaining uncertainties surrounding this category of international crimes.

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**Decolonizing International Law: Development, Economic Growth and the Politics of Universality****Sundhya Pahuja**

Melbourne Law School

*DECOLONIZING INTERNATIONAL LAW: DEVELOPMENT, ECONOMIC GROWTH AND THE POLITICS OF UNIVERSALITY, Cambridge University Press, 2011**U of Melbourne Legal Studies Research Paper No. 520*

International law has been subject to so much well-deserved criticism, and yet remains a compelling moral language for issues of global justice. It has an aspirational, or utopian dimension, in which law bears an enduring relation to an idea of justice. And yet attempts to call on the promise of international law have had the unintended consequence of legitimising an expanding domain of international intervention into the Third World. This thesis asks why this is so, taking seriously the idea that international law has both imperial and emancipatory tendencies. It offers a jurisprudential and political-economic account of what produces these qualities. Its central argument is that the increasing violence of transformative interventions in the Third World represents the intensification of a dynamic inaugurated with the institution of the post-war settlement. It suggests that modern international law holds out a promise of universal applicability which has inspired attempts by the Third World to use international law as a site of political struggle. However, the concept of development and its relation to international law, has caused that universal promise to be subsumed within a claim to universality for particular forms of social, legal and economic ordering. That claim has not brought the promised transformation, but has instead produced within international law a project of violent transformation. This project has made the idea(l) of self government in the Third World illusory and vulnerable to capture by rent-seeking elites. The account offered here may assist those who use international law as a site of political struggle, whether by choice or necessity, to adopt strategies which minimise the imperial dimension of international law and emphasise its emancipatory tendency. It hopes to be a step in creating a praxis of decolonising international law.

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## **Overview of the Clean Development Mechanism and the Need for, and Barriers to, Equitable Distribution**

**Tomilola Akanle**

University of Dundee

This paper identifies some of the main reasons why the Clean Development Mechanism (CDM) regime is not achieving an equitable distribution of projects as countries want it to. It begins by providing an overview of the CDM and then examines the need for an equitable distribution of CDM projects. It then moves to its main objective, which is to identify the main causes of the inequity in the distribution of CDM projects. The paper also considers the prospects for achieving a more equitable distribution of projects in the post-2012 period. Issues of equity and need, as well as the distribution of resources, are primary themes considered in this paper.

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## **Introduction: The Developing Country Experience in WTO Dispute Settlement**

**David Evans**

*affiliation not provided to SSRN*

**Gregory Shaffer**

University of Minnesota - Twin Cities - School of Law

*Dispute Settlement at the WTO: The Developing Country Experience, Cambridge University Press 2010*

*Minnesota Legal Studies Research Paper No. 11-03*

This paper is the introduction to the book *Dispute Settlement at the WTO: The Developing Country Experience*, edited by Gregory Shaffer and Ricardo Meléndez-Ortiz (Cambridge University Press, 2010). The paper examines dispute settlement at the World Trade Organization from a developing country perspective. It builds from nine case studies of countries in Africa, Asia, and South America to provide a bottom-up assessment of the challenges, experiences and strategies of developing countries within the WTO. The paper includes charts that break down developing country participation by region. It highlights the findings of the nine case studies.

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## **Transitional Exceptions to the Rule of Law in International Administrations: The Case of the OHR in Bosnia and Herzegovina and the Right to Due Process**

**Juan J. Garcia-Blesa**

American University in Bosnia and Herzegovina

Promotion and even direct implementation of rule of law in conflict and post-conflict societies, as defined by the UN Secretary-General in 2004-2006, have actually become core activities of the United Nations during the last decades. These tasks are occasionally entrusted to international administrations that exercise a number of legal competences in the field embodied in their international mandates. The Office of the High Representative in Bosnia has been mandated to guarantee that full compliance with the Dayton Peace Agreement is achieved, including respect for the essential elements of rule of law in this society, as a key condition for long-lasting peace. However, some of the competences of the OHR seem to go far beyond the most basic idea of rule of law. This is the case of the power to vet, dismiss and ban public officials from public life at the OHR's discretion, in permanent and increasing tension with the due process requirements. This anomaly can be explained by the need for some transitional exceptions to the rule of law in conflict and post-conflict societies. Furthermore, suspensions are provided for in every international human rights system on the grounds of exceptional emergency situations (e.g., Articles 4 ICCPR and 15 ECHR). Notwithstanding, there seems to be a common limitation to exceptions in these human rights protection systems that require them to be temporary. After thirteen years of exceptional rule in Bosnia, could this be the time for revision? Any tentative answer would need a thorough evaluation of

the political situation in Bosnia. This paper only attempts to offer some reflections on possible legal scenarios.

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### **Environmental Human Rights: Paradigm of Indivisibility**

**Erin Daly**

Widener University School of Law

*Widener Law School Legal Studies Research Paper No. 11-05*

While scholars may disagree as to the scope and depth of the indivisibility of rights, or about the nature of the indivisibility claim, it is clear that the specter of indivisibility is most pertinent with regard to some rights than others. The constitutional right to a healthy environment is perhaps the paradigmatic example of the indivisibility claim. Environmental rights are inseparable from many other rights, including (depending on the factual nature of the claim) the right to life, to health, to dignity, to subsistence, to employment, to property and so on. Sometimes the relationship between the environmental and other claims is positive, as when remedying the environmental damage will promote the right to health, but sometimes it is negative, as when, for instance, jobs are lost when the environmental damage is remedied. This paper explores the interlocking nature of environmental and other human rights and suggests how courts should respond to the challenge of indivisibility in the context of enforcing fundamental environmental rights.

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### **Reform and the Common Fisheries Policy**

**Jill Wakefield**

University of Warwick - School of Law

*Warwick School of Law Research Paper No. 2010-29*

The reform of the EU Common Fisheries Policy is being discussed. It is accepted by all Member States that European waters are degraded, increasingly pressured by commercial and recreational sectors. Despite the adoption of an Integrated Maritime Policy to overcome the incoherence and fragmentation of marine policy, fisheries are to retain their independence from the policy. The discrete legal regime covering European fisheries provides for sustainable exploitation, a contradiction in terms, according to an unenforceable precautionary approach with Member States having a legally enforceable right to a continuing quota share. Until the values of the Common Fisheries Policy are changed and fisheries policy is subjected to the integrated maritime policy, fisheries will continue to decline.

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### **International Humanitarian Law: An Ancient Indian Perspective**

**Mahesh**

Rajiv Gandhi National University of Law (RGNUL)

**Bhumika Mukesh Modh**

affiliation not provided to SSRN

This paper begins with the discussion of Hinduism and the concept of dharma, widely translated as way of righteousness. The paper further traces the analogical deductions of the origin of the international humanitarian law from the ancient Indian texts. The paper also tries to trace back to the ancient Indian warfare methods and techniques to establish the correlation and roots of international law and international humanitarian law with the concept and philosophy of Hinduism. The paper tries to prove that war as an art as well as a science was equally well understood in ancient India. The sources of ancient India, which are the sources of Hinduism, support the statement that the Indian civilisation was the first to discover the means and the laws of war. The ancient Indian texts established rules for the conduct of rulers towards their people, including, for example, the obligation to treat the vanquished humanely and the prohibition of poisoned weapons.

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**Transitional Justice in Ancient Athens: A Case Study****Adriaan Lanni**

Harvard University - Harvard Law School

[University of Pennsylvania Journal of International Law, Vol. 32, No. 2, p. 551, 2010](#)

This article presents our first well-documented example of a self-conscious transitional justice policy - the classical Athenians' response to atrocities committed during the reign of the Thirty Tyrants - as a case study that can offer insight into the design of modern transitional justice institutions. The Athenians carefully balanced retribution and forgiveness: an amnesty protected collaborators from direct prosecution, but in practice private citizens could indirectly sanction even low-level oligarchic sympathizers by raising their collaboration as character evidence in unrelated lawsuits. They also balanced remembering and forgetting: discussion of the civil war in the courts memorialized the atrocities committed during the tyranny, but also whitewashed the widespread collaboration by ordinary citizens, depicting the majority of the populace as members of the democratic resistance. This case study of Athens' successful reconciliation offers new insight into contemporary transitional justice debates. The Athenian experience suggests that the current focus on uncovering the truth may be misguided. The Athenian case also counsels that providing an avenue for individual victims to pursue local grievances can help minimize the impunity gap created by the inevitably selective nature of transitional justice.

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

University of Luxembourg

[University of Luxembourg Law Working Paper No. 2011-01](#)

This article deals with the relevance, or irrelevance, of the principle of non-discrimination to that part of private international law that deals with choice of law. Non-discrimination potentially goes to the very core of conflict of laws rules as they are traditionally conceived - that, at least, is the idea at the basis of several academic schools of thought. The empirical reality of case law (of the European Court of Human Rights, or the equally authoritative pronouncements of national courts on similar provisions in national constitutions) is to a large extent different. And it is possible to adopt a compromise solution: the general principle of equality before the law may be tolerant towards multilateral conflict rules, but the position will be different where specific rules of non-discrimination are at stake, or where the rules of private international law concerned have a substantive content.

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**'With Faces Hidden While the Walls Were Tightening': Applying International Human Rights Standards to Forensic Psychology****Michael L. Perlin**

New York Law School

*U.S. - China Law Review, Vol. 7, No. 1, 2010*[NYLS Legal Studies Research Paper No. 10/ #15](#)

Although there are now robust bodies of literature in both law and psychology and in international human rights law, there has been remarkably little written about the specific relationship between forensic psychology and international human rights standards (and about the relationship between mental disability law and such standards in general). Attention is paid when it appears that state psychiatry or psychology is used as a tool of political oppressions B e.g., in the former Soviet Union or in China B but the literature is strangely silent on questions dealing with the extent to which forensic psychology practice comports with international human rights norms. Studies done by groups such as

Mental Disability Rights International (MDRI) and Mental Disability Advocacy Centre (MDAC) reveal serious and systemic problems in this area, and evidence suggests that, in many nations, little has been done to correct violations of such norms. In this paper, I seek to offer some preliminary insights into this issue by looking at (1) the range of cases in which forensic psychologists typically evaluate persons in the criminal justice system and then testify as to their findings, (2) the range of standards of practice imposed in such matters, (3) the traditional role of forensic psychiatrists in institutional litigation in the United States, (4) the extent to which the work of forensic psychologists is examined critically by courts and/or licensing boards, (5) the special issues posed when this question is examined in the context of nations with developing economies, (6) the relevant international mental health norms, and (7) the extent to which such work meets international human rights norms. I will conclude by offering some suggestions as to how such norms can more effectively be met (focusing specifically on how information about such norms can effectively be disseminated in nations with developing economies), by recommending that licensing and review boards specifically build such norms into their evaluation processes, and by considering different strategies to best insure that there is adherence to such norms in forensic practice.

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**Assessing the Effectiveness of Human Rights Non-Governmental Organizations (NGOs)  
From the Birth of the United Nations to the 21st Century: Ten Attributes of Highly  
Successful Human Rights NGOs**

[George E. Edwards](#)

Indiana University School of Law - Indianapolis

*Michigan State Journal of International Law, Vol. 18, pp. 165-227, 2009-2010*

It is undisputed that human rights non-governmental organizations ("human rights NGOs") have proliferated dramatically in the sixty years since the United Nations promulgated the Universal Declaration of Human Rights, and that human rights NGOs play a critical role in promoting and protecting human rights in all corners of the globe. However, the human rights community cannot agree on what constitutes a "human rights NGO," how tidily to categorize them, or even that "NGO" is an appropriate moniker for such groups. Furthermore, despite the omnipresence of human rights NGOs, human rights community stakeholders cannot agree on a framework for vetting NGOs to help ensure their legitimacy. Definitional and other problems make it difficult for stakeholders easily to distinguish between human rights groups deserving support and human rights groups deserving disbandment. The United Nations, other inter-governmental organizations, and national governments need to now which groups are lawful, legitimate, and worthy of accrediting, licensing, granting tax benefits to, or supporting. Individuals seeking to join an NGO and recipients of NGO largesse need to know which NGOs to trust. Donors need to know which NGOs to fund, and NGOs need to know with which other NGOs they might collaborate to protect human rights. While this Article does not purport to develop this much-needed, coherent framework, it advances the framework's development by identifying and analyzing attributes shared by successful human rights NGOs. This Article posits that human rights community stakeholders may assess human rights NGOs in part by determining whether they possess these shared characteristics. . . .

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**No Longer Outside, Not Yet Equal: Rethinking China's Membership in the World Trade  
Organization**

[Xiaohui Wu](#)

Wuhan University Institute of International Law

*Chinese Journal of International Law, Vol. 10, 2011*

China joined the WTO in 2001 under exceptionally unfavourable, non-reciprocal and asymmetric terms of membership. China's less-than-equal status raises difficult legal questions with respect to the rule of law in the WTO, as they call into question the normativity of the fundamental principles that underlie the WTO system. It is argued that, in DSB cases involving China's WTO-plus obligations,

restrictive interpretation should generally be used to determine the meaning of an ambiguous provision, as a value-oriented interpretative approach in favour of the equilibrium of rights and obligations of China and in deference to the uniformity and integrity of the WTO legal system. For bilateral trade relations to be mutually advantageous and more balanced, major WTO members should offer equal status to China in the world trading system, in exchange for China's full compliance with its WTO commitments and greater contribution to the world trading system. This entails the development of reciprocal and cooperative trade policies on both sides.

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### **The Dispute Settlement Process of the WTO: A Normative Structure to Achieve Utilitarian Objectives**

**Srividhya Ragavan**

University of Oklahoma Law Center

**Manning Brian**

*affiliation not provided to SSRN*

*Univ. of Missouri - Kansas City Law Review, Vol. 79, No. 1, 2010*

The paper posits that the World Trade Organization (WTO) has failed to efficiently promote mutually advantageous global relationships. The authors contend that the structure and the functioning of the Dispute Settlement Body have contributed to the failure of the WTO. The DSB's approach to interpreting the WTO agreements has been normative, as opposed to a realistic. Consequently, decisions from the DSB have resulted in strict interpretation of WTO agreements without appropriately balancing member's national realities. Thus, the overall goals of the organization have been compromised to reinforce existing global power structures rather than promote cooperative governance. The authors examine two decisions of the DSB - one relating to agriculture issues and the second relating to the TRIPS agreement compliance - to assert their position. The operation of the DSB, the authors assert, results in three distinct disadvantages being, 1. reducing the line between domestic issues and market access issues; 2. failing to balance the rights and obligations of members; 3. allowing powerful nations to avoid WTO rules by simply not adopting them at the national level and, thus, works to preserve the existing bargaining imbalances.

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### **Why a Regional Tribunal is Needed to Implement the CRPD**

**Michael L. Perlin**

New York Law School

*[NYLS Legal Studies Research Paper No. 10/11 #18](#)*

. . . In this paper, I will first briefly discuss some of the important disability rights cases litigated in other parts of the world so as to demonstrate how regional tribunals can have a significant impact on the lives of persons with disabilities. Then, I will briefly consider the "Asian values" dispute, and conclude that that leads to a false consciousness (since it presumes a unified and homogenous multi-regional attitude towards a bundle of social, cultural and political issues), and that the universality of human rights must be seen to predominate here. After that, I will explain why the UN Convention on the Rights of Persons with Disabilities is a paradigm-shattering Convention that, truly, is the "first day of the rest of our lives" for anyone who does work in this area, and will conclude by arguing why the creation of the DRTAP is timely, inevitable and essential, if the Convention is to be given true life.

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### **The Convention on the Rights of Persons with Disabilities, the Disability Rights Tribunal for Asia and the Pacific, and the Future of Online Legal Education in Chinese Schools as a Means of Training Lawyers to Represent Persons with Disabilities**

**Michael L. Perlin**

New York Law School

*[NYLS Legal Studies Research Paper No. 10/11 #16](#)*

Regional human rights tribunals are an essential element in the enforcement of international human rights in each continental region, especially in the context of mental disability law. In Asia and the Pacific region, however, there is no such body. Without a regional tribunal, we cannot be overly optimistic about the Areal life impact of the UN Convention on the Rights of Persons with Disabilities (CRPD) on the rights of persons with disabilities in this region. The author - director of the International Mental Disability Law Reform Project at New York Law School - is working with colleagues to create a Disability Rights Tribunal for Asia and the Pacific (DR-TAP) (Perlin & Ikehara, 2010; Perlin, 2010; Ikehara, 2010)). . . . This paper will (1) explain the proposed need for and structure of the DR-TAP (focusing specifically on, inter alia, issues related to the appointment of counsel, remedies and sanctions) in the context of the historical background of such regional tribunals in Asia, (2) discuss the steps that have been taken so far to create this Tribunal, (3) explore the relationship between the DR-TAP and the CRPD, (4) explain why it is critical that China become a part of the DR-TAP, (5) discuss the role of online, distance learning courses in training counsel to represent individuals at such a Tribunal, and (6) offer strategies to enhance the possibilities that China would choose to participate in the Tribunal.

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**The Evolution of US and EU Approaches to Intellectual Property Provisions Related to Public Health in Free Trade Agreements: Are They Responding to Public Health Concerns?**

**Yi-Jen Chu**

*affiliation not provided to SSRN*

The tension between patent law and public health concerns such as access to medicine has long been an issue of much debate. The requirement of patent protection for pharmaceutical products and various other relevant provisions under the TRIPS Agreement signifies this tension as they have created considerable difficulties for developing countries acquiring the medicines needed to address their public health concerns, despite the flexibilities that had been built into the Agreement. Hence, the Doha Declaration on the TRIPS Agreement and Public Health has been adopted in 2001 to address this issue, hoping to provide relief to this tension between public health policies and intellectual property rights. Nevertheless, this tension seems to have been further heightened with the proliferation of Free Trade Agreements (FTAs), through which developed countries such as the US and the EU have introduced TRIPS-plus obligations that go beyond the minimum standards set by TRIPS, further exacerbating the tension. Over the years, these TRIPS-plus FTAs have been much criticized for their possible conflict with TRIPS norms and their potential negative impact on access to medicine for developing countries. This paper, after providing a brief overview of relevant TRIPS provisions related to public health as well as the phenomenon of FTAs within the WTO regime, will attempt to sketch out the evolution of the approaches the US and EU have taken toward intellectual property provisions related to public health in the FTAs they have signed over the years and examine whether the evolution of these approaches are perhaps a response or an attempt to address the criticisms that have been voiced against these TRIPS-plus provisions.

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**Financial Crisis, International Relations and International Economic Laws**

**Krishna Shorewala**

*affiliation not provided to SSRN*

The 2008 Financial Crisis has affected nearly every aspect of every economy in the world in some way or another. In a short span of time, its causes and consequences have been analyzed in great detail. However, while plenty has been written about its impact on domestic systems, its impact on international economic law is yet to receive the same kind of attention. This paper discusses the impact of the Crisis on the larger framework of international relations. It then examines the effect these changes have on key ongoing debates in international economic law particularly the much delayed Doha Development Agenda and the regulation of Sovereign Wealth Funds.



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**Jurisdictional Discovery in Transnational Litigation: Extraterritorial Effects of United States Federal Practice****S.I. Strong**

University of Missouri School of Law

*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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**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

*Harvard National Security Journal, Vol. 2, 2011*

In the recent case of *Holder v. Humanitarian Law Project*, the Supreme court of the United States ruled that a criminal prohibition on advocacy carried out in coordination with, or at the direction of, a foreign terrorist organization is constitutionally permissible: it is not tantamount to an unconstitutional infringement of freedom of speech. This Article aims to understand both the decision itself and its implications in the context of the global effort to define the limits of speech that aims to support or promote terrorism. More specifically, the Article compares the European approach, which focuses on whether the content of the speech tends to support terrorism, with the U.S. approach, which focuses on criminalizing speakers who have links to terrorist organizations. Both approaches are evaluated against the background of the adoption of Resolution 1624 by the United Nations Security Council in 2005, which called on states to prohibit by law incitement to commit terrorist acts. The Article then follows the implementation of the resolution by comparing the traditional American resistance to direct prohibitions of incitement that fail to meet the standard set by the *Brandenburg v. Ohio* precedent and European legislation that is open to such limitations subject to balancing tests. It then evaluates the potential advantages and threats each option pose to freedom of speech by examining them from the perspective of the controversy of candor within legal decision-making. Based on this analysis, the Article also articulates the challenge of balancing international norms regarding the limits of freedom of speech with different and even conflicting domestic traditions regarding the scope of protection of freedom of speech.

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**Modes and Patterns of Social Control: Implications for Human Rights Policy****Wendy E. Parmet**

Northeastern University - School of Law  
*International Council on Human Rights Policy, 2010*

Modes and Patterns of Social Control: Implications for Human Rights Policy is the latest report of the International Council on Human Rights Policy. This report looks into the human rights implications of contemporary patterns of social control: how laws and policies construct and respond to people, behaviour or status defined as "undesirable", "dangerous", criminal or socially problematic.

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**The Greenpeace of Cultural Environmentalism****Jyh-An Lee**

National Chengchi University (NCCU)  
*Widener Law Review, Vol. 16, No. 1, 2010*

Over the past twenty years, institutions and organizations such as Creative Commons ("CC"), the Electronic Frontier Foundation ("EFF"), the Free Software Foundation ("FSF"), and Public Knowledge ("PK") have established the essential foundations for intellectual-commons as a social movement. . . . This Article focuses on the NPOs that occupy an increasingly critical and visible position in the cultural-environmentalism movement in recent years. These organizations have been involved in current intellectual property (IP) reform via litigation, political advocacy, public-interest grant-making, as well as various private ordering activities, such as producing free licensing schemes and repositories of commons resources. . . . Given the importance of NPOs in the intellectual-commons environment, it is surprising how little attention they have received in legal literature. The aim of this Article is to fill that gap. . . .

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**The Great Lakes as an Environmental Heritage of Humankind: An International Law Perspective****A. Dan Tarlock**

Illinois Institute of Technology  
*University of Michigan Journal of Law Reform, Vol. 4, No. 4, 2007*

Since 1985, the eight Great Lakes states and the Canadian provinces of Ontario and Quebec have cooperated to prevent almost all diversions of water from the Great Lakes basin. In 2005, the eight states signed an Agreement to create a tiered system of reviews for diversions and a draft interstate Compact, which creates a binding process to regulate diversions. This cooperation is primarily a state initiative, supported by the federal governments in both countries, which has paid little attention to the international character of the lakes. This Essay argues that there are three major benefits to the region from the incorporation of international environmental law into the anti-diversion regime. . . .

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**Pulling The Trigger: Separation Violence as a Basis for Refugee Protection for Battered Women**

Marisa Cianciarulo & Claudia David  
*American University Law Review* 59, no.2 (December 2009): 337-384

For over a decade, women seeking asylum from persecution inflicted by their abusive husbands and partners have found little protection in the United States. During that time, domestic violence-based asylum cases have languished in limbo, been denied, or occasionally been granted in unpublished opinions that have not provided a much-needed adjudicative standard. The main case setting forth the pre-Obama approach to domestic violence-based asylum is rife with misunderstanding of the nature of domestic violence and minimization of the role that society plays in the proliferation of

domestic violence. Fortunately, however, a recent Obama-administration legal brief indicates that women fleeing countries where governments are unable or unwilling to protect them from their abusive husbands finally may be able to avail themselves of U.S. asylum law. This article proposes a workable standard for adjudicating such claims. Based in part on psychological research on the dynamics of abusive relationships, particularly the phenomenon known as "separation violence," this article formulates a particular social group that satisfies the various legal elements for political asylum: "women who have left severely abusive relationships." This social group is based on research demonstrating that abusers strike out with increased violence when their partners leave the relationships, in many cases even killing them. This article explores the dynamics of abusive relationships, the failure of U.S. adjudicators to understand those dynamics, and the application of international human rights law to domestic violence survivors.

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**Advocacy Before Regional Human Rights Bodies: A Cross-Regional Agenda**

Abramovich, Victor. et al.  
American University Law Review 59, no.1 (October 2009): 163-257.  
Transcript of Proceedings

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**Conflict of Laws Conventions and Their Reception in National Legal Systems: Report for the United States**

**Hannah L. Buxbaum**

Indiana University School of Law-Bloomington  
*THE IMPACT OF UNIFORM LAW ON NATIONAL LAW: LIMITS AND POSSIBILITIES*, J. Sanchez Cordero, ed., 2010

This is the U.S. national report on "Conflict of Laws Conventions and Their Reception in National Legal Systems," prepared for the Intermediate Congress of the International Academy of Comparative Law held in 2008. The report discusses the various mechanisms for implementation of conflict-of-laws conventions in the United States: through federal legislation, federal rulemaking and state legislation. It reviews the conflict-of-laws conventions to which the United States is party (including in the areas of family law and litigation procedure), as well as recent case-law under those conventions. It also examines relevant aspects of U.S. law on treaties, discussing the issue of self-executing versus non-self executing treaties within the particular context of private law conventions.

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**Al Maqaleh v. Gates**

**Kal Raustiala**

University of California, Los Angeles (UCLA) - School of Law  
*American Journal of International Law*, Vol. 104, No. 4, 2010  
[UCLA School of Law Research Paper No. 11-03](#)

Does the constitutional right to habeas corpus reach to Bagram Air Base in Afghanistan? In *Boumediene v. Bush*, the Supreme Court held that noncitizens detained at the American naval base at Guantanamo Bay, Cuba could avail themselves of the constitutional right of habeas corpus. In *Al Maqaleh v. Gates* the DC Circuit faced the same question with regard to Bagram, and ruled that Bagram, while also an offshore American military base, was not analogous to Guantanamo with regard to habeas rights. This brief essay describes the case and analyzes its significance in light of the larger debates over the conflict in Afghanistan and against al Qaeda.

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**In the Spirit of Ubuntu: Enforcing the Rights of Orphans and Vulnerable Children Affected by HIV/AIDS in South Africa**

**John D. Bessler**

University of Baltimore School of Law; Georgetown University Law Center

*Hastings International and Comparative Law Review, Vol. 31, No. 1, Winter 2008, pp. 33- 113.*

This Article discusses the traditional African concept of ubuntu, which is frequently cited in South African jurisprudence, and analyzes South Africa's lack of compliance with the human rights of orphans and vulnerable children whose lives have been affected by HIV/AIDS. The Constitution of the Republic of South Africa explicitly protects children's rights and various socio-economic rights of concern to children, and the Constitutional Court of South Africa has held such rights to be justiciable. The constitutional rights of South African children affected by HIV/AIDS, however, have been continually violated. This Article discusses how the existence of these constitutional rights may assist orphans and vulnerable children as well as those advocating on their behalf. It also identifies legal strategies pertaining to such rights that may be used to improve the lives of HIV/AIDS-affected children in South Africa.

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**Stakeholder Perspectives on a Financial Sector Legitimation Process: The Case of NGOs and the Equator Principles**

**Brendan O'Dwyer**

University of Amsterdam - Faculty of Economics and Business (FEB)

**Niamh O'Sullivan**

*affiliation not provided to SSRN*

*Accounting, Auditing & Accountability Journal, Forthcoming*

The purpose of this paper is to present an in-depth, context rich, and stakeholder-focused perspective on the legitimation dynamics surrounding the initiation and evolution of one of the key financial sector environmental and social responsibility initiatives in recent years, the Equator Principles. The paper draws on a combination of in-depth interviews with non-governmental organization (NGO) leaders, extensive documentary analysis and participant observation in order to understand and explain, from an NGO perspective, the use of the Equator Principles as a central element in an attempt to legitimise financial institutions' project finance activities. Key aspects of legitimacy theory are used to theoretically frame the analysis. The paper reveals and analyses the process through which campaigning NGOs conferred a nominal level of legitimacy on financial institutions' project finance activities. It proceeds to unveil how and why this attained legitimacy unravelled. A perceived lack of accountability at an institutional, organisational and individual project level is identified as a central reason for this reduction in legitimacy. The paper primarily focuses on one side of the story of the dynamics of the legitimation process underpinning the evolution of the Equator Principles until 2006. . . . The paper advances our understanding of the dynamics of legitimation processes. These dynamics are studied from the perspective of a key "relevant public" thereby prioritising perceptions that are largely absent from corporate social accountability research seeking to empirically inform legitimacy theory.

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**A New Fundamental Freedom Beyond Market Integration: Union Citizenship and its Dynamics for Shifting the Economic Paradigm of European Integration**

**Ferdinand Wollenschlaeger**

*affiliation not provided to SSRN*

*European Law Journal, Vol. 17, No. 1, pp. 1-34, 2010*

The development of European integration from an economic to a political community has become manifest not just in the continuous addition of non-economic policy areas to the treaties. The introduction of Union citizenship (and its controversial subsequent development in the European

Court of Justice's jurisprudence) has also triggered a paradigm shift in one of the community's core areas, the concept of negative integration hitherto intrinsically linked to the internal market. Thus, neither the individual's quality as a market actor nor his/her involvement in a transnational economic activity is a condition for enjoyment of the market freedoms' core guarantees, these being a right of residence and a far-reaching claim to national treatment in other Member States, as well as a prohibition on restrictions to the free movement of persons. A new fundamental freedom beyond market integration (*Grundfreiheit ohne Markt*) has emerged. This process, whose consequences for the welfare systems of the wealthier Member States have been fiercely discussed for some time, however, also threatens to curtail severely the regulatory autonomy at the national level.

## II. Books

### Maritime Security and the Law of the Sea

(Oxford Univ. Press 2011)

Natalie Klein (Macquarie Univ. - Law)

Maritime Security and the Law of the Sea examines the rights and duties of states across a broad spectrum of maritime security threats. It provides comprehensive coverage of the different dimensions of maritime security in order to assess how responses to maritime security concerns are and should be shaping the law of the sea. The discussion sets out the rules regulating passage of military vessels and military activities at sea, law enforcement activities across the different maritime zones, information sharing and intelligence gathering, as well as armed conflict and naval warfare. In doing so, this book not only addresses traditional security concerns for naval power but also examines responses to contemporary maritime security threats, such as terrorism, weapons of mass destruction, piracy, drug-trafficking, environmental damage and illegal fishing.

While the protection of sovereignty and national interests remain fundamental to maritime security and the law of the sea, there is increasing acceptance of a common interest that exists among states when seeking to respond to a variety of modern maritime security threats. This book argues that security interests should be given greater scope in our understanding of the law of the sea in light of the changing dynamics of exclusive and inclusive claims to ocean use. More flexibility may be required in the interpretation and application of the UN Convention on the Law of the Sea if appropriate responses to ensure maritime security are to be allowed.

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### War by Contract: Human Rights, Humanitarian Law, and Private Contractors

(Oxford Univ. Press 2011)

Francesco Francioni (European Univ. Institute - Law) & Natalino Ronzitti (LUISS Univ. - Law)

- Eugenio Cusumano, Policy Prospects for Regulating Private Military and Security Companies
- Natalino Ronzitti, The Use of Private Contractors in the Fight against Piracy: Policy Options Human Rights
- Federico Lenzerini & Francesco Francioni, The Role of Human Rights in the Regulation of Private Military and Security Companies
- Ieva Kalnina & Ugis Zeltins, The Impact of the EU Human Rights System on Operations of Private Military and Security Companies
- Francesco Francioni, The Role of the Home State in Ensuring Compliance with Human Rights by Private Military Contractors
- Carsten Hoppe, Positive Human Rights Obligations of the Hiring State in Connection with the Provision of Coercive Services by a Private Military And Security Company
- Christine Bakker, Duties to Prevent, Investigate and Redress Human Rights Violations by Private Military and Security Companies: The Role of the Host State
- Giulia Pinzauti, Adjudicating Human Rights Violations Committed by Private Contractors in Conflict Situations before the European Court of Human Rights

- Guido Den Dekker & Eric Myjer, The Right to Life and Self-Defence of Private Military and Security Contractors in Armed Conflict International Humanitarian Law
- Luisa Vierucci, Private Military and Security Companies in Non-International Armed Conflicts: Ius ad Bellum and Ius in Bello Issues
- Giulio Bartolini, Private Military Companies as "Persons who Accompany the Armed Forces"
- Luisa Vierucci, Private Military and Security Companies in Non-International Armed Conflicts: Ius ad Bellum and Ius in Bello Issues
- Christine Bakker & Susanna Greijer, Children's Rights: The Potential Impact of Private Military and Security Companies
- Ana Filipa Vrdoljak, Women and Private Military and Security Companies
- Valentina Falco, Private Military and Security Companies and the EU's Crisis Management: Perspectives under Human Rights and International Humanitarian Law
- Marina Mancini, Faustin Ntoubandi & Thilo Marauhn, Old Concepts and New Challenges: Are Private Contractors the Mercenaries of the 21st Century? Accountability and Responsibility of Private Contractors
- SORCHA MacLeod, The Role of International Regulatory Initiatives on Business and Human Rights for Holding Private Military and Security Contractors to Account
- Carsten Hoppe & Ottavio Quirico, Codes of Conduct for Private Military and Security Companies: The State of Self-regulation in the Industry
- Nigel White, Institutional Responsibility for Private Military and Security Contractors
- Charlotte Beaucillon, Julian Fernandez & Hélène Raspail, State Responsibility for Conduct of PMSC Violating Ius ad Bellum Criminal and Civil Liability of Private Military and Security Companies and their Employees
- Ottavio Quirico, The Criminal Responsibility of PMSC Personnel under International Humanitarian Law
- Micaela Frulli, Immunity for Private Contractors: Legal Hurdles or Political Snags?
- Andrea Atteritano, Liability in Tort of Private Military and Security Companies: Jurisdictional Issues and Applicable Law

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### **International Straits: Concept, Classification and Rules of Passage**

(Springer 2010)

Ana G. López Martín

This book analyzes the regime of navigation in historical relation to the United Nations Convention of the Law of Sea (UNCLOS) of 10 December 1982, and then analyzes in detail the concept of international straits to arrive at a complete definition. This work examines the eight categories of straits laid out in the UNCLOS. It analyzes the right of innocent passage and the regime of transit passage, both systems of navigation in international straits, and then presents the domestic legislation and the traffic separation schemes which apply to international straits. Finally, the work includes a complete catalogue of straits with the reference to their respective UNCLOS articles.

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### **From Transnational Relations to Transnational Laws**

(Ashgate, Dec. 2010)

Edited by Anne Hellum, University of Oslo, Norway, Shaheen Sardar Ali, University of Warwick, UK  
and Anne Griffiths, Edinburgh University, UK

This book approaches law as a process embedded in transnational personal, religious, communicative and economic relationships that mediate between international, national and local practices, norms and values. It uses the concept "living law" to describe the multiplicity of norms manifest in transnational moral, social or economic practices that transgress the territorial and legal boundaries of the nation-state. Focusing on transnational legal encounters located in family life, diasporic religious institutions and media events in countries like Norway, Sweden, Britain and Scotland, it

demonstrates the multiple challenges that accelerated mobility and increased cultural and normative diversity is posing for Northern European law. For in this part of the world, as elsewhere, national law is challenged by a mixture of expanding human rights obligations and unprecedented cultural and normative pluralism enhanced by expanding global communication and market relations. As a consequence, transnationalization of law appears to create homogeneity, fragmentation and ambiguity, expanding space for some actors while silencing others. Through the lens of a variety of important contemporary subjects, the authors thus engage with the nature of power and how it is accommodated, ignored or resisted by various actors when transnational practices encounter national and local law.

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### **The Absence of Direct Effect of WTO in the EC and in Other Countries**

(G. Giappichelle Editore 2010)

**Claudio Dordi**

Principali abbreviazioni. – Introduction. – I. The direct effect of the agreements concluded by the EU: some inconsistencies in ECJ case law? (C. Dordi). – Section I: The effect of WTO in the EC legal system. – II. The Court of Justice of the European Community and the effect of international agreements on the EC legal order: the case of the WTO (A. Lorusso). – III. Negotiation and conclusion of international treaties by the EC and by Member States: exclusive and mixed agreements (M. Barra). – IV. A claim for “soft solutions” in interconnecting the EU and WTO legal system Constitutional issues and implementation exceptions: is it time to lift rigid structures? (L. Borlini). – V. WTO as a parameter for the EC legislation through the “consistent interpretation” doctrine (G.I. Fiorelli). – VI. Non-contractual liability of the Community regarding WTO obligations: Where do we stand? (A. Alemanno, F. Di Gianni). – VII. Issues related to the judicial implementation of the TRIPs Agreement within the EU (L. Manderieux). – VIII. The double track: EC State Aids and WTO provisions intersection (V. Squaratti) – Section II: The effects of other agreements/acts in the EC. – IX. The implementation of UN Security Council Resolutions imposing economic sanctions in the EU/EC legal system: Interpillar issues and judicial review (P. Mariani) – X. The European Convention on Human Rights and its effects on the Legal System of the EC and its Member States (P. Buizza, L. Piazza). – XI. The legal effects of multilateral environmental agreements in the European Community legal system (L. Piazza). – Section III: The effect of WTO in the EC legal system. – XII. GATT/WTO Law in the Austrian Legal Order (A. Reinisch). – XIII. The Relevance of WTO Law in the US Legal System (G. Gattinara). – XIV. WTO Law and the Canadian Legal Order (P. Farah, G. Gattinara). – XV. The (Absence of) Direct Effect of WTO law – Current Developments within the Indian Legal System (N. Chowdhury). – XVI. Public International Law in the Japanese Legal System: the Case of the GATT (G. Rubagotti). – XVII. GATT 1947 and WTO Agreements Case Law in Japan (F. Azuma). – XVIII. The Application of WTO Law in Switzerland (A.R. Ziegler).

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### **Digest of United States Practice in International Law, 2009**

(Oxford Univ. Press 2011)

Elizabeth Wilcox (Office of the Legal Adviser, U.S. Department of State)

Co-published by Oxford University Press and the International Law Institute, and prepared by the Office of the Legal Adviser at the Department of State, the *Digest of United States Practice in International Law* presents an annual compilation of documents and commentary highlighting significant developments in public and private international law, and is an invaluable resource for practitioners and scholars in the field.

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**Climate Change Adaptation and Disaster Risk Reduction Issues and Challenges****Editor(s):** [Juan Pulhin](#), [Joy Pereira](#),**Imprint:** Emerald Group Publishing Limited (Dec. 2010)

The importance of Climate Change Adaptation (CCA) and Disaster Risk Reduction (DRR) is increasing due, in part, to recent major disasters throughout the world. CCA and DRR are closely associated and there has been significant awareness at global and national levels to make collective focus on CCA and DRR. Although there are several books on CCA, this is the first systematic academic publication to highlight the linkages between CCA and DRR, CCA-DRR synergy and interactions. The book is divided into four parts: Part 1 focuses on the theory of CCA and DRR and its enabling environment; Part 2 focuses on governance, education and technology as the framework of CCA-DRR linkage; Part 3 focuses on different entry points with chapters on urban, coast, mountain, river and housing; and Part 4 focuses on regional perspective of CCA and DRR looking at developing nations, south Asia, ASEAN and Small Island Developing States. Key issues and challenges related to the CCA and DRR are highlighted throughout, mostly drawing lessons and experiences from the field practices. This book gives researchers and practitioners greater awareness on the current trend of research in the field.

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**International Protection of Foreign Investment** (2d ed)

Juris Publishing (Sept. 2010)

Dennis Cambell, ed.

Covers 39 of some of the most important jurisdictions in North and South America, Europe, Asia and the Pacific, and the Middle East, as well as the European Union, detailing the protection of foreign investment under national and international laws and treaties, which is critical to those making investments abroad. The approach of national investment laws and that of bilateral investment treaties differ greatly from jurisdiction to jurisdiction, amid differing economic, social, and political environments and attitudes to investment from abroad. *International Protection of Foreign Investment* offers guidance from leading authorities as to why foreign investment laws are important to host states in maintaining a competitive position in world trade, as well as to investors who want some assurances that their investments will not be subject to government fiat or other negative consequences.

**III. Journals****(contents edited to avoid duplication where possible)****PUBLIC INTERNATIONAL LAW eJOURNAL**

Vol. 6, No. 15: Jan 26, 2011

[ALAN O'NEIL SYKES, EDITOR](#)**Overview of Recent Cases Before the European Court of Human Rights and the European Court of Justice (January-April 2010)**[Mel Cousins](#), Glasgow Caledonian University**The New International Commercial Terms (INCOTERMS) and its Application in Colombia's Law**[Maximiliano Rodriguez](#), affiliation not provided to SSRN**Beyond Fragmentation**[Andrea K. Bjorklund](#), University of California, Davis - School of Law[Sophie Nappert](#), affiliation not provided to SSRN



**In Defense of the Hazardous Tool of Legal Blogging**

[Jean d'Aspremont](#), University of Amsterdam

**Prospects for a Denuclearised Middle East**

[N.A.J. Taylor](#), University of Queensland, Taylor McKellar

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

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- Extraterritoriality and the Sexual Conduct of Australians Overseas (Danielle Ireland-Piper) p.16

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**Georgetown Law Journal, Volume 99, Number 2, January 2011**

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- How International Financial Law Works (and How It Doesn't) (Chris Brummer) p.257

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**University of San Francisco Law Review, Volume 45, Number 1, Summer 2010**

(select articles)

- THE USE OF FOREIGN LAW IN CONSTITUTIONAL INTERPRETATION: LESSONS FROM SOUTH AFRICA (Jacob Foster) p.79
- GUANTÁNAMO AS A "LEGAL BLACK HOLE": A BASE FOR EXPANDING SPACE, MARKETS, AND CULTURE (Ernesto Hernández-López) p.141

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**Journal of Maritime Law and Commerce, Volume 41, Number 4, October 2010**

- Construction Problems in the Rotterdam Rules Regarding the Performing and Maritime Performing Parties (Kerim Atamer) p.469
- Admiralty Course Offerings in United States Law Schools (Michael Sevel) p.499
- An Efficient Solution in a Time of Economic Hardship: The Right to Keep and Bear Arms in Self-Defense Against Pirates (Robert S. Jeffrey) p.507

- Piracy and its Legal Problems: With Specific Reference to the English Law of Maritime Insurance (Gotthard Gauci) p.541
- Piracy Jure Gentium: The Jurisdictional Conflict of the High Seas and Territorial Waters (Debra Doby) p.561
- The European Union and the International Maritime Organization: EU's External Influence on the Prevention of Vessel-Source Pollution (Liu Nengye and Frank Maes) p.581
- Transborder Human Trafficking in Malaysian Waters: Addressing the Root Causes (Pooja Theresa Stanslas) p.595

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### **ANTITRUST: ANTITRUST LAW & POLICY eJOURNAL**

Vol. 3, No. 10: Jan 21, 2011

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#### **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

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[John M. Connor](#), Purdue University, American Antitrust Institute (AAI)

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[Wentong Zheng](#), University at Buffalo Law School, The State University of New York

#### **The Essential Facilities Doctrine Under Scrutiny: EU and US Perspective**

[Ali A. Massadeh](#), University of East Anglia, School of Law

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### **NATIONAL SECURITY & FOREIGN RELATIONS LAW eJOURNAL**

Vol. 8, No. 6: Jan 21, 2010

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#### **A Dynamic Theory of Resource War**

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[Mikhail Golosov](#), Yale University - Department of Economics

[Aleh Tsyvinski](#), Yale University - Cowles Foundation

[Pierre Yared](#), Columbia University - Graduate School of Business

#### **Shadowing the Flag: Extending the Habeas Writ Beyond Guantánamo**

[Dawinder S. Sidhu](#), University of Baltimore - School of Law

#### **Strategic Naval Inspection for Port Safety and Security**

[Kevin X. Li](#), Hong Kong Polytechnic University - Department of Logistics

[Charles S. Tapiero](#), NYU Poly - Department of Finance and Risk Engineering

#### **Delusions of Grandeur: On the Creeping Militarization of U.S. Foreign Policy**

[Christopher J. Coyne](#), George Mason University - Department of Economics

#### **The FTO Reporter 2010**



[Stephen I. Landman](#), Catholic University of America (CUA) - Columbus School of Law

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(Jan. 25, 2011)

Record 1.

TI: Transnational corporations and international law: bringing TNCs out of the accountability vacuum

AU: Jonge, Alice de

JN: Critical Perspectives on International Business

PD: 1 February 2011

VO: 7

NO: 1

PG: 66-89(24)

PB: Emerald Group Publishing Limited

IS: 1742-2043

URL: <http://www.ingentaconnect.com/content/mcb/290/2011/00000007/00000001/art00004>

Click on the URL to access the article or to link to other issues of the publication.

Record 2.

TI: Pricing-to-Market and the Failure of Absolute PPP

AU: Alessandria, George; Kaboski, Joseph P.

JN: American Economic Journal: Macroeconomics

PD: January 2011

VO: 3

NO: 1

PG: 91-127(37)

PB: American Economic Association

IS: 1945-7707

URL: <http://www.ingentaconnect.com/content/aea/aejma/2011/00000003/00000001/art00004>

Click on the URL to access the article or to link to other issues of the publication.

Record 3.

TI: The invasion of Iraq: what are the morals of the story

AU: BIGGAR, NIGEL

JN: International Affairs

PD: January 2011

VO: 87

NO: 1

PG: 29-37(9)

PB: Blackwell Publishing Ltd

IS: 0020-5850

URL: <http://www.ingentaconnect.com/content/bpl/inta/2011/00000087/00000001/art00005>

Click on the URL to access the article or to link to other issues of the publication.

Record 4.

TI: Book reviews

AU:

JN: International Affairs

PD: January 2011

VO: 87

NO: 1

PG: 195-250(56)

PB: Blackwell Publishing Ltd

IS: 0020-5850

URL: <http://www.ingentaconnect.com/content/bpl/inta/2011/00000087/00000001/art00015>

Click on the URL to access the article or to link to other issues of the publication.

Record 5.

TI: JURISDICTION FRICTION AND THE FRUSTRATION OF THE HAGUE CONVENTION: WHY INTERNATIONAL CHILD ABDUCTION CASES SHOULD BE HEARD EXCLUSIVELY BY FEDERAL COURTS

AU: Lesh, Eric

JN: Family Court Review

PD: January 2011

VO: 49

NO: 1

PG: 170-189(20)

PB: Blackwell Publishing Inc

IS: 1531-2445

URL: <http://www.ingentaconnect.com/content/bpl/fcre/2011/00000049/00000001/art00015>

Click on the URL to access the article or to link to other issues of the publication.

Record 6.

TI: The Legal Basis for Bilateral and Multilateral Police Deployments

AU: Watson, James; Fitzpatrick, Mark; Ellis, James

JN: Journal of International Peacekeeping

PD: February 2011

VO: 15

NO: 1

PG: 7-38(32)

PB: Martinus Nijhoff Publishers, an imprint of Brill

IS: 1875-4104

URL: <http://www.ingentaconnect.com/content/mnp/joup/2011/00000015/00000001/art00002>

Click on the URL to access the article or to link to other issues of the publication.

Record 7.

TI: Transnational Policing and International Human Development A Rule of Law Perspective

AU: Murney, Tony; Crawford, Sue-Ellen; Hider, Andie

JN: Journal of International Peacekeeping

PD: February 2011

VO: 15

NO: 1

PG: 39-71(33)

PB: Martinus Nijhoff Publishers, an imprint of Brill

IS: 1875-4104

URL: <http://www.ingentaconnect.com/content/mnp/joup/2011/00000015/00000001/art00003>

Click on the URL to access the article or to link to other issues of the publication.

Record 8.

TI: The Applicability of Human Rights Standards to International Policing

AU: Kondoch, Boris

JN: Journal of International Peacekeeping

PD: February 2011

VO: 15

NO: 1

PG: 72-91(20)

PB: Martinus Nijhoff Publishers, an imprint of Brill

IS: 1875-4104

URL: <http://www.ingentaconnect.com/content/mnp/joup/2011/00000015/00000001/art00004>

Click on the URL to access the article or to link to other issues of the publication.

Record 9.

TI: Accountability in International Policing

AU: Grenfell, Katarina

JN: Journal of International Peacekeeping

PD: February 2011

VO: 15

NO: 1

PG: 92-117(26)

PB: Martinus Nijhoff Publishers, an imprint of Brill

IS: 1875-4104

URL: <http://www.ingentaconnect.com/content/mnp/joup/2011/00000015/00000001/art00005>

Click on the URL to access the article or to link to other issues of the publication.

Record 10.

TI: Legal Aspects of EU Military Operations

AU: Naert, Frederik

JN: Journal of International Peacekeeping

PD: February 2011

VO: 15

NO: 1

PG: 218-242(25)

PB: Martinus Nijhoff Publishers, an imprint of Brill

IS: 1875-4104

URL: <http://www.ingentaconnect.com/content/mnp/joup/2011/00000015/00000001/art00010>

Click on the URL to access the article or to link to other issues of the publication.

Record 11.

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AU: Stever, H. Guyford

JN: Interdisciplinary Science Reviews

PD: March 1976

VO: 1

NO: 1

PG: 1-11(11)

PB: Maney Publishing

IS: 0308-0188

URL: <http://www.ingentaconnect.com/content/maney/isr/1976/00000001/00000001/art00003>

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Geraldine Coughlan, On the Front Line of Accountability - Should The Killing of Journalists be a War Crime, [International Criminal Law Bureau](#) (Jan. 26, 2011)

Mark Notaras, A Food Price Crisis, If Not In Name, [OurWorld 2.0](#) (Jan. 26, 2011)

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Mark Leon Goldberg, Why the USA Should Stay on the Human Rights Council, [UN Dispatch](#) (Jan. 24, 2011)

Stephanie Farrior, Dr. Fliartiga, Torture and the Environment, [IntLawGrrls](#) (Jan. 24, 2011)

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Cesare Romano & Elizabeth Burleson, The Cancún Climate Conference, [ASIL Insight](#), Volume 15, Issue 41 (Jan. 21, 2011)

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Clara Ramírez-Barat, [Making an Impact: Guidelines on Designing and Implementing Outreach Programs for Transitional Justice](#), International Center for Transitional Justice (Jan. 2011)

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