

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](#)
- [II. Books](#)
- [III. Journals](#)
- [IV. Blogs \(select items\)](#)
- [V. Gray Literature/Newsletters/Webtools \(select items\)](#)
- [VI. Documents/Negotiations \(select items\)](#)
- [VII. Media/Press Releases \(select items\)](#)

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

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

#### **Faraway, So Close: A Legal Analysis of the Increasing Interactions between the Convention on Biological Diversity and Climate Change Law**

[Elisa Morgera](#)

University of Edinburgh

[University of Edinburgh School of Law Working Paper No. 2011/05](#)

The legal and policy implications of the impacts on biodiversity of climate change, as well as of mitigation and adaptation measures, have been progressively addressed by the Convention on Biological Diversity (CBD). This process experienced a steep acceleration at the tenth meeting of the CBD Conference of the Parties (COP X - 18-29 October 2010 in Nagoya, Japan) that resulted in a host of unprecedented and far-reaching decisions related to climate change. This article will first discuss the increasing understanding of the links between global biodiversity loss and climate change, and then review the main climate change-related outcomes of the CBD COP X. It will conclude by discussing the legal relevance of this significant rapprochement of international biodiversity law to climate change law.

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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](#).

## Questioning Hierarchies of Harm: Women, Forced Migration, and International Criminal Law

[Jaya Ramji-Nogales](#)

Temple University - James E. Beasley School of Law

*International Criminal Law Review, 2011*

Though international criminal law has made great strides in addressing harm perpetrated against women in wartime, its gendered structure diverts attention away from other significant harms that women endure as a result of armed conflict. In particular, international criminal law's hierarchy of harm elevates crimes committed as part of a plan or pattern across political groups over equally serious forms of harm perpetrated randomly, often within political groups. Thus the private and opportunistic harms enabled by situations of displacement and perpetrated against female forced migrants do not fall clearly within the framework of international criminal law. This vacuum of accountability extends beyond international criminal law, as female forced migrants cannot rely on their own governments, their host governments, and often even international humanitarian organizations to protect them against opportunistic violence. International criminal law could fill the void only after quite serious reconstruction, namely expansion of its scope and restructuring of its focus. It may be that a structure designed specifically to prevent and account for opportunistic violence against female forced migrants would be better equipped to perform that task. Criminal accountability might be better performed in national legal systems or informal justice systems created within camp environments. There are also solutions other than criminal accountability, such as human rights law, that might be more appropriate in addressing such harms. In the meantime, until a solution is found that places these 'private' crimes on equal footing with 'public' attacks currently prohibited by international criminal law, the serious and frequent harms suffered by forcibly displaced women will continue to be overlooked, relegated to the bottom of the hierarchy of harm.

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## Taking Tea with Torturers

[Craig Scott](#)

York University - Osgoode Hall Law School

This working paper (3000 words, including 19 footnotes) was written on January 29-31, 2011, as events unfolded in Egypt. It was published in the present version as an article on January 31, 2011, by OpenDemocracy, and may be republished with attribution for non-commercial purposes following the Creative Commons guidelines. The article's sub-title is "From the Shah of Iran to Sri Lanka's Foreign Minister to Egypt's Mubarak, cozy relationships in US foreign policy need to be questioned." Its point of departure is the Thatcher-Pinochet friendship, which is related to Hillary Clinton's interview in Egypt in 2009 when she downplayed the US Department of State's own report of serious human rights violations in Egypt (including a torture apparatus) while emphasizing, "I really consider President and Mrs. Mubarak to be friends of my family." The article then shows how a version of family-ties coziness has plausibly played a role in how Sri Lanka has managed to mute, to the point of near-silence, US criticism. I take the reader through the first joint press conference held by Secretary of State Clinton and the just-appointed Foreign Minister of Sri Lanka G L Peiris, who attended Oxford University as a Rhodes Scholar alongside former US President Bill Clinton. Amongst the notable omissions and elisions in Hillary Clinton's remarks during that press conference was the complete failure to address her own Department of State's report on approximately 300 incidents of possible war crimes in Sri Lanka that needed investigating. I return to Egypt in its present crisis by comparing the 30 years of support for Mubarak to the decades of US support for the Shah of Iran, which support then merged with President Jimmy Carter's inability to disentangle a personal rapport with the Shah from Carter's supposed human rights-friendly foreign policy. The piece ends with consideration of the implications for US foreign policy of cozy personal relationships with key politicians in repressive regimes – implications that go beyond adding a layer of complexity, extending to questions of ethical accountability.

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**International Courts: Uneven Judicialization in Global Order****[Benedict Kingsbury](#)**

New York University (NYU) - School of Law

*CAMBRIDGE COMPANION TO INTERNATIONAL LAW*, J. Crawford and M. Koskeniemi, eds., 2011  
[NYU School of Law, Public Law Research Paper No. 11-05](#)

'Law without courts' seemed to Hugo Grotius an entirely coherent approach to the juridification of international relations. The first edition of his *Law of War and Peace* (1625) reflects an intense commitment to framing claims and rules for conduct outside the state in terms of legal rights and duties, but not to judicialization, even though arbitration between sovereigns was addressed in earlier works he had read, such as Alberico Gentili's *Law of War* (1598). Yet in modern times international judicialization – the creation and use of international courts and tribunals – has been not only a significant component of liberal approaches to international order, but for some thinkers an indispensable concomitant of juridification. Section I of this chapter provides an overview of the waves, and accretion, in the formation of what are now ten basic types of international courts. Section II offers some balance to the tendencies (implicit in the approach taken in Section I) to acclaim each flourishing legal institution as an achievement and to study only what exists, by considering the marked unevenness in the issues, and in the ranges of states, currently subject to juridification through international courts and tribunals. Section III addresses the question whether the density and importance of the judicially-focused juridification that now exists has implications for politics, law, and justice that are truly significant and qualitatively different from what has gone before. This is explored by examining some of the main roles and functions of international courts, considered not simply as a menu but as a complex aggregate. Section IV concludes.

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**Introduction: The Roman Foundations of the Law of Nations****[Benedict Kingsbury](#)**

New York University (NYU) - School of Law

**[Benjamin Straumann](#)**

New York University School of Law

*THE ROMAN FOUNDATIONS OF THE LAW OF NATIONS: ALBERICO GENTILI AND THE JUSTICE OF EMPIRE*, B. Kingsbury & B. Straumann, eds., Oxford University Press, 2010  
[NYU School of Law, Public Law Research Paper No. 11-06](#)

Where did the writers of the sixteenth, seventeenth, and early eighteenth centuries seek the legal maxims and methods, the principles governing treaties or embassies or jurisdiction or property, and the broader ideas of justice in the inception, fighting, and conclusion of war, which they built into a law of nations of enduring importance? To a considerable extent, they looked to Roman law, Roman debates about the justifications of Rome's wars and imperial expansion, and a rich tradition of *ius naturae* and *ius gentium* deriving from Greco-Roman and early Christian sources. This book brings together a set of fresh perspectives exploring the significance and implications of the use made of Roman legal concepts, and of Roman just war theory and imperial practice, by early modern European writers who shaped lasting approaches to natural law and the law of nations.

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**[Kant's Concept of International Law](#)**Patrick Capps (Univ. of Bristol - Law) & Julian Rivers (Univ. of Bristol - Law)  
(Legal Theory, Vol. 16, no. 4, December 2010, pp. 229-257). Here's the abstract:

Modern theorists often use Immanuel Kant's work to defend the normative primacy of human rights and the necessity of institutionally autonomous forms of global governance. However, properly understood, his law of nations describes a loose and noncoercive confederation of republican states.

In this way, Kant steers a course between earlier natural lawyers such as Grotius, who defended just-war theory, and visions of a global unitary or federal state. This substantively mundane claim should not obscure a more profound contribution to the science of international law. Kant demonstrates that his concept of law forms part of a logical framework by which to ascertain the necessary institutional characteristics of the international legal order. Specifically, his view is that the international legal order can only take a noncoercive confederated form as its subjects become republican states and that in these circumstances law can exist without a global state. Put another way, Kant argues that if we get state-building right, the law of nations follows.

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### [Universal Exceptionalism in International Law](#)

By Anu Bradford & Eric A. Posner

52 Harv. Int'l L.J. 1 (2011)

A trope of international law scholarship is that the United States is an "exceptionalist" nation, one that takes a distinctive (frequently hostile, unilateralist, or hypocritical) stance toward international law. However, all major powers are similarly "exceptionalist," in the sense that they take distinctive approaches to international law that reflect their values and interests. We illustrate these arguments with discussions of China, the European Union, and the United States. Charges of international-law exceptionalism betray an undefended assumption that one particular view of international law (for scholars, usually the European view) is universally valid.

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### [Mutual Recognition in International Finance](#)

[See also SSRN post](#)

By Pierre-Hugues Verdier

52 Harv. Int'l L.J. 55 (2011)

In recent years, scholars have devoted considerable attention to transnational networks of financial regulators and their efforts to develop uniform standards and best practices. These networks, however, coexist with an emerging trend toward regional and bilateral mutual recognition arrangements. This Article proposes a theoretical account of mutual recognition that identifies its potential benefits, the cooperation problems it raises, and the resulting institutional frameworks in multilateral and bilateral settings. The multilateral model adopted in Europe relies on extensive delegation to supranational institutions, crossissue linkages, and political checks on delegation. An alternative bilateral model, illustrated by the recent arrangement between the SEC and Australia, relies on selective membership, bilateral enforcement, and limited duration and renegotiation clauses. The multilateral model is unlikely to be effective without strong, preexisting supranational institutions—in other words, outside Europe. Therefore, international efforts at mutual recognition are more likely to resemble the SEC's program. This bilateral model, however, is most likely to succeed between jurisdictions with developed financial markets as well as similar regulatory objectives and resources. It also requires sufficient private demand and enhanced cross-border supervision and enforcement agreements. Finally, it is less likely to be effective where one country seeks to improve regulatory standards in the other. These insights are relevant for other contemporary mutual recognition initiatives, such as between Europe and third countries and within ASEAN.

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### [On a Differential Law of War](#)

By Gabriella Blum

52 Harv. Int'l L.J. 163 (2011)

Should the United States, as the strongest military power in the world, be bound by stricter humanitarian constraints than its weaker adversaries? Would holding the U.S. to higher standards than the Taliban, Iraqi insurgents, or the North Korean army yield an overall greater humanitarian

welfare or be otherwise justified on the basis of international justice theories? Or would it instead be an unjustifiable attempt to curb American power, a form of dangerous "lawfare"? The paper offers an analytical framework through which to examine these questions. It draws on the design of international trade and climate agreements, where obligations have been linked to capabilities through the principle of Common-but-Differentiated Responsibilities (CDRs), and inquires whether the justifications that have been offered for CDRs in these other regimes are transposable to the laws of war. More broadly, the framework tests the extent to which war can and should be equated to other phenomena of international relations or whether it is a unique context that resists foreign analogies. Rather than offering a definitive answer, the inquiry illuminates the types of judgments and predictions that one must hold in order to have a position on the desirability of CDRs in international humanitarian law, most notably, the degree to which weaker adversaries will be prone to abusing further constraints on stronger enemies, the expected effects of CDRs on the propensity to go to war, who on the enemy's side is the "enemy," and what are the duties that are owed to one's enemies.

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**The Legal Turn in Late Development Theory:  
The Rule of Law and the World Bank's Development Model**

By Tor Krever

52 Harv. Int'l L.J. 287 (2011)

Long cherished by liberal political philosophers, today the rule of law is increasingly viewed as a necessary requirement, or even silver bullet, for economic development. The past decade has seen the rise of a veritable industry—multilateral development banks, government development agencies, and nongovernmental aid organizations—committed to promoting the rule of law through legal and judicial reform in developing countries. This Article considers the emergence of a new rule of law orthodoxy within contemporary development theory and, in particular, the World Bank's development model. It asks how and why the Bank has embraced the rule of law discourse, and offers a brief genealogy of the rule of law within the Bank's theorizing. It argues that the Bank's interest in law was primarily a response to the critique and failure of its neoliberal policies and identifies the new discourse's affinities with the rise of New Institutional Economics and "good governance" in the 1990s. Under the Bank's view, the law's value for economic development lies in its ability to provide a stable investment environment and the predictability necessary for markets to operate. The role of law is reduced to the facilitation of utility maximizing exchange and optimal market allocation, a view that informs many of the Bank's specific law reform projects. More a rhetorical shift than a fundamental break in development theorizing, the Bank's turn to law actually undergirds many continued neoliberal assumptions and masks a continuation of neoliberalism's core tenets. The new discourse is attractive precisely because it provides strong ideological support for the neoliberal agenda.

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**Picking Tariff Winners:**

**Non-Product Related PPMs and DSB Interpretations of "Unconditionally" within Article**

**I:1**

**Charles Benoit**

*affiliation not provided to SSRN*

*Georgetown Journal of International Law, Vol. 42, No. 2, 2011*

This paper proposes how WTO Members seeking a proportional increase in the consumption of "sustainable" ethanol can defend a unilaterally introduced tariff advantage for ethanol conditioned on green house gas emission life-cycle assessments. This explanation applies a WTO-contextual taxonomy of non-product-related process and production methods to argue that life-cycle assessments should not be interpreted as a prohibited PPM, and in fact are supported by the text of the WTO Preamble and the WTO Dispute Settlement Body's flexible interpretations of "unconditionally." The purpose of the paper is to advance an emerging view of GATT Article I:1's

most-favored-nation principle, and as such there is no reliance on derogations of the MFN principle found in the GATT Article XX exceptions or the Enabling Clause.

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**Cultural and Economic Self-Determination for Tribal Peoples in the United States  
Supported by the UN Declaration on the Rights of Indigenous Peoples**

**Angelique EagleWoman**

University of Idaho - College of Law

*Pace Environmental Law (PELR) Review, Vol. 28, No. 1, 2010*

The U.N. Declaration is a starting point to re-align the relationship between the Tribal Nations and the U.S. and to reassert tribal stewardship over mid-North America. Again, tribal peoples must be proactive and make economic decisions based on tribal values to bring us back in balance and harmony. Indigenous peoples throughout the world are beginning to bring the U.N. Declaration to life by linking their daily realities to the principles of basic human rights set forth in the Declaration. The theme this year for the 9th Session of the United Nations Permanent Forum on Indigenous Issues has been Indigenous Peoples Development with Culture and Identity.

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**The Impact of the UN Special Procedures on the Development and Implementation of  
Economic, Social and Cultural Rights**

**Christophe Golay**

Geneva Academy of International Humanitarian Law and Human Rights

**Claire Mahon**

Geneva Academy of International Humanitarian Law and Human Rights; Graduate Institute of International and Development Studies (IHEID); University of Michigan Law School

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*International Journal of Human Rights, Vol. 15, No. 2, 2011*

This article analyses the impact that some of the United Nations special procedures, namely those focusing on economic social and cultural rights (ESC rights), have upon the development of international human rights law, in particular through clarifying the normative content of the rights and the development of soft-law instruments. It also examines the impact of the ESC rights mandate-holders in implementing ESC rights through promotion activities, protection work and country missions and explores modalities for improvement.

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**A Portfolio Theory of Foreign Affairs: U.S. Relations with the Muslim World**

**Ali Khan**

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*Transnational Law & Contemporary Problems, Vol. 19, No. 3, 2011*

The portfolio theory presents foreign policy as a series of financial, military, diplomatic, and ideological investments in international relations. Portfolios protect and promote the state's interests through beneficial treaties, such as trade agreements, security measures, such as peace pacts and defense alliances, foreign assistance programs, cultural exchanges, and diplomatic initiatives to resolve global, regional, and bilateral problems. The portfolio theory explains how vested portfolios survive political changes and ideological shifts, preserving the foreign policy inertia and continuity. Contrary to popular expectations that the U.S. foreign policy would change with new administration, many portfolios do not change. U.S. portfolio managers frequently fortify key portfolios with federal legislation. The legislative fortification of portfolios makes it harder for subsequent portfolio managers to affect fundamental changes in foreign policy. The Obama administration, therefore, has limited options to reverse the portfolios that prior administrations launched, mostly in the form of economic

and trade sanctions, to modify the behavior of Muslim states and militant groups that do not support, or out-right impede, U.S. global or regional interests. Unfortunately, the future relations between the U.S. and the Muslims world are full of contentions. U.S. special stakeholders and epistemic groups continue to paint Islam as a threat to American interests and values at home and abroad. Even U.S. general stakeholders hold an unfavorable view of Muslims and find connections between Islam and violence. On the other side, Muslims perceive U.S. portfolio managers as anti-Islamic, inclined to punish Muslim states and degrade Islam. Frustrated with ineffectual and non-representative governments, Muslim militants, as special stakeholders, continue to challenge international peace and security. Great effort is needed to readjust and discard failed international portfolios.

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### **The Concept of Genocide and the Anfal Campaign**

**[Mark Klamberg](#)**

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*Living History Forum, Forthcoming*

The Anfal Campaign was a series of attacks conducted by the Iraqi Army against the Kurdish people in Northern Iraq. The campaign was the culmination of the efforts of the Iraqi regime to quell the Kurdish aspiration of greater autonomy and independence. The use of chemical weapons resulted in the death of estimated 5'8000 to 1'08000 civilians. It is argued in this paper that the Anfal campaign was not merely an counter-insurgency operation but also genocide.

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### **Strengthening Developing Country Coalitions in WTO Negotiations: Is IBSAC (India, Brazil, South Africa, China) the Right Forum?**

**[Debashis Chakraborty](#)**

Indian Institute of Foreign Trade

**[Pritam Banerjee](#)**

Confederation of Indian Industry

**[Dipankar Sengupta](#)**

Department of Economics, Jammu University

The IBSA (India, Brazil and South Africa) Dialogue Forum came into being in middle of 2003 with the meeting of the heads of Governments of the three countries on the sidelines of the G8 Evian Summit. The countries have been part of the G-20 negotiating forum at the WTO and hold an important position among the developing countries. The article analyzes the cohesion among the IBSAC members and comments on its future outlook.

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### **Introduction to The United States and Torture: Interrogation, Incarceration, and Abuse**

**[Marjorie Cohn](#)**

Thomas Jefferson School of Law

*THE UNITED STATES AND TORTURE: INTERROGATION, INCARCERATION, AND ABUSE, New York University Press, 2011*

[Thomas Jefferson School of Law Research Paper No. 1754705](#)

Emboldened by the terrorist attacks of September 11, 2001, the George W. Bush administration lost no time establishing a policy that authorized the use of "enhanced interrogation techniques," that is, torture and abuse. Cofer Black, head of the CIA Counterterrorist Center, testified at a joint hearing of the House and Senate intelligence committees in September 2002: "This is a very highly classified area, but I have to say that all you need to know: There was a before 9/11, and there was an after 9/11. After 9/11 the gloves come off." Indeed, in his January 2003 State of the Union Address, President Bush admitted: "All told, more than 3,000 suspected terrorists have been arrested in many countries. Many others have met a different fate. Let's put it this way: They are no longer a problem

to the United States and our friends and allies." Bush was tacitly admitting to the illegal practice of summary execution. This book, the Introduction of which by editor Marjorie Cohn is posted here on SSRN by permission of New York University Press, details the complicity of the U.S. government in the torture and cruel treatment of prisoners both at home and abroad. Following is an abstract of Professor Cohn's Introduction, summarizing the contents of the book. . . .

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### **Assessing China's Carbon Intensity Pledge for 2020: Stringency and Credibility Issues and Their Implications**

**ZhongXiang Zhang**

East-West Center - Research Program

*FEEM Working Paper No. 158.2010*

Just prior to the Copenhagen climate summit, China pledged to cut its carbon intensity by 40-45% by 2020 relative to its 2005 levels to help to reach an international climate change agreement at Copenhagen or beyond. This raises the issue of whether such a pledge is ambitious or just represents business as usual. To put China's climate pledge into perspective, this paper examines whether this proposed carbon intensity goal for 2020 is as challenging as the energy-saving goals set in the current 11th five-year economic blueprint, to what extent it drives China's emissions below its projected baseline levels, and whether China will fulfill its part of a coordinated global commitment to stabilize the concentration of greenhouse gas emissions in the atmosphere at the desirable level. Given that China's pledge is in the form of carbon intensity, the paper shows that GDP figures are even more crucial to the impacts on the energy or carbon intensity than are energy consumption and emissions data by examining the revisions of China's GDP figures and energy consumption in recent years. Moreover, the paper emphasizes that China's proposed carbon intensity target not only needs to be seen as ambitious, but more importantly it needs to be credible. Finally, it is concluded with a suggestion that international climate change negotiations need to focus on 2030 as the targeted date to cap the greenhouse gas emissions of the world's two largest emitters in a legally binding global agreement.

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### **East Asia's Engagement with Cosmopolitan Ideals Under its Trade Treaty Dispute Provisions**

**C. L. Lim**

University of Hong Kong

*McGill Law Journal, Vol. 56, 2011*

An East Asian view about how trade dispute settlement systems should be designed is slowly emerging. This paper argues that democratically-inspired trade law scholarship and cultural explanations of the international law behaviour of the Southeast and Northeast Asian trading nations have failed to capture or prescribe the actual treaty behaviour of these nations. Instead, such behaviour has resulted in the emergence of two different treaty models for the peaceful settlement of trade disputes. This article traces the practices of the Association of Southeast Asian Nations (ASEAN), together with that of China, Korea, Japan, Australia, and New Zealand. We find two models of trade dispute settlement emerging. The first, which seems firmly established, may be found in ASEAN's 2004 dispute settlement protocol and the regimes established under the China-ASEAN, Korea-ASEAN, Japan-ASEAN, and ASEAN-Australia-New Zealand FTAs. They all adopt a closed, sovereign-centric view of trade dispute settlement with no public access to the dispute proceedings, little or no disclosure of party submissions, and no consultation or access given to non-governmental organization (NGO) briefs. It is a model which may be criticized for its lack of transparency. However, a second model, based on the Trans-Pacific Strategic Economic Partnership Agreement, could in time become an alternative model for an Asia-Pacific-wide FTA (i.e. including the East Asian nations within it). It adopts a more open approach; one which better accommodates greater transparency in dispute proceedings. At least for now, the two models co-exist, obviating the need for East Asia's legal policy-

makers to choose a clear, dominant design for treaty-based trade dispute settlement in the region. But it also means that East Asia's trading partners can influence East Asian nations, at least in those trade agreements which – like the Trans-Pacific Strategic Economic Partnership Agreement – involve negotiations with trans-continental partners.

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**Who May Be Killed? Anwar Al-Awlaki as a Case Study in the International Legal Regulation of Lethal Force**

**Robert Chesney**

University of Texas School of Law

*Yearbook of International Humanitarian Law (forthcoming 2011)*

Anwar al-Awlaki is a dual Yemeni-American citizen who has emerged in recent years as a leading English-language proponent of violent jihad, including explicit calls for the indiscriminate murder of Americans. According to the U.S. government, moreover, he also has taken on an operational leadership role with the organization al Qaeda in the Arabian Peninsula (AQAP), recruiting and directing individuals to participate in specific acts of violence. Does international law permit the U.S. government to kill al-Awlaki in these circumstances? . . .

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**Rethinking the Commercial Law Treaty**

**John Coyle**

University of North Carolina School of Law

*Georgia Law Review, Vol. 45, p. 343, 2011*

*UNC Legal Studies Research Paper No. 1582898*

In international commercial transactions, it is not always clear which state's law will apply to govern a particular contract. Historically, states have sought to address this problem by means of two types of treaties. The first aims to solve the problem by bringing about the substantive unification of commercial law across multiple jurisdictions; once the law is everywhere the same, then it no longer matters which state's law applies to govern the contract. The second aims to solve the problem in part by empowering the transacting parties to choose the law that will govern their contract; once these parties know that their choice of law will be respected by national courts, then the uncertainty as to the governing law goes away. The conventional wisdom has long been that substantive unification represents the better approach to solving the problem of legal uncertainty. This Article challenges that conventional wisdom to argue that, in fact, a choice-of-law approach may be superior. It does so, first, by identifying weaknesses in the two rationales that have most frequently been advanced in favor of substantive commercial law treaties – that they are uniquely able to reduce transaction costs and that they offer law uniquely suited to the needs of international commercial transactions. The Article then explains how a choice-of-law treaty could lead to the development of better commercial law that more accurately captures the preferences of parties engaged in international commerce by facilitating the development of an international market for commercial law.

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**Pirates Versus Mercenaries: Purely Private Transnational Violence at the Margins of International Law**

**Ansel J. Halliburton**

UC Davis School of Law

Because of the recent surge in piracy emanating from the failed state of Somalia, the world's navies have focused unprecedented resources and attention on the Gulf of Aden and Indian Ocean. Despite a few successes, this military might has largely failed to reverse the tide of piracy. Shipping companies have begun to hire armed private guards to protect their vessels and crew where the public navies cannot. But should private force take a larger role? Should shipping companies hire

mercenaries to go on the offensive against pirates? Does, or should, international law allow them to do so? This paper surveys public international law, emerging transnational criminal law, human rights and humanitarian law, and the histories of piracy and transnational private violence in search of answers.

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### **Citizenship and Diaspora: A State Home for Transnational Politics?**

[Peter J. Spiro](#)

Temple University - James E. Beasley School of Law

*POLITICS FROM AFAR: TRANSNATIONAL DIASPORAS AND NETWORKS*, Terrance Lyons, Peter Mandaville, eds., Hurst/Columbia University Press, 2011

This paper, a revised version of which will appear in *Politics from Afar: Transnational Diasporas and Networks* (Hurst/Columbia University Press), explores the legal status of citizenship as vehicle for diaspora and globalized forms of community. The paper focuses on the rise in the acceptance of plural citizenship and the expansion of external citizen rights, especially political rights. Citizenship's increasing flexibility enhances state capacity to comprehend diaspora, that is, to allow the state to serve as the agent of diaspora community. Because individuals who are, as a matter of social fact, members in diaspora communities can now express and actualize that attachment through the citizenship tie, the state would seem a plausible home to diaspora. The trend towards extending full political rights to nonresident citizens is consistent with this hypothesis.

These developments do not necessarily establish the citizenship as a sustainable home for diaspora, however. The extension of citizenship rights to diaspora communities may not evidence a strong tie. Little is required of external citizens. In most cases, external citizens who naturalize in their new state of residence maintain their original citizenship as a default. The cost of retaining original citizenship is effectively zero. Electoral participation rates among external citizens are low.

There may also be normative issues with the state acting as institutional home of diaspora resulting from the continuing territorial governance authorities of the state. These concerns might be addressed by detaching citizenship from territorial governance, composing a polity to include both internal and external citizen populations, then devolving territorial governance to a sub-entity with respect to which voting participation rights would be limited to resident citizens. But this device would not address homeland interests on the part of external citizens and rising circular migration. Citizenship and the state may thus fall short as institutional vehicles for political diaspora.

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### **Collective Intentions and Individual Criminal Responsibility**

[Javid Gadirov](#)

Central European University

This article focuses on the treatment of collective intentions in individual criminal responsibility for crimes against humanity and war crimes, at the example of the emerging International Criminal Court's (ICC) jurisprudence. It is argued that collective ('joint' and 'indirect') perpetration accounts of ICC ought to provide first of all a coherent conception of collective intentions and actions to identify individuals involved in cooperative harm doing, to attribute harm to causally responsible individuals, and to provide grounds for formulating a 'decision method' necessary for distributiveness of moral blame. Secondly causal responsibility test for harm brought about in accordance with such intentions should (a) rely on strong sufficiency rather than normative attribution standart (real rather than hypothetical attribution); (b) specify that irreducible collective intention is a 'NESS' condition for attributing harm to liable individuals; (c) distinguish principals by formulating a stronger collective intention threshold that requires 'meshing' of individual participatory intentions. Finally allocation of moral blame for harm brought about collectively should (a) explain how moral blame is distributive among participants of collective actions, in order to avoid its blending into metaphysical shame or

'guilt by association'; (b) rely on collective intentions as a 'decision method' of harm-doing that distributes moral blame; (c) consider that 'strong' formulations of such 'decision method' blame superiors, and vice versa a weak 'decision method' would increase morally responsibility of final perpetrators. Whereas it has been argued in the literature that criminal prosecutions for human rights atrocities are at odds with liberal premises of human rights law including individual culpability, it is the purpose of this work to argue for such grounds and that ICC can address collective complicities based on respect for individual autonomy and without degenerating into collective guilt theories that disregard free will and moral responsibility.

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### **Sham of the Moral Court?**

[Mark Findlay](#)

University of Sydney - Institute of Criminology

[Sylvia Ntube Ngane](#)

University of Leeds

[Sydney Law School Research Paper No. 11/10](#)

This paper analyses the critical influences on witness-based truth telling for judicial decision-making in the international criminal tribunals. The judicial fixation on witness testimony reflects the weight and legitimacy given to personal testimony before international courts. This weight must be balanced by awareness that a witness may provide false testimony intentionally, or may be coerced by third parties to provide such testimony as has been evidenced recently before the ICC. If witness testimony is tainted then its capacity to endorse the truth finding function of the court is compromised. As a consequence to assert that the tribunal is a 'moral court' in such circumstances is jeopardized.

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### **The Bush Doctrine: Creating Discord in International Security**

[Ajit Singh](#)

Osgoode Hall Law School - York University

*University of California at Berkeley Political Journal, Vol. 11, No. 1, pp.70-103, Fall 2004*

The Bush Doctrine of pre-emptive Strike, as outlined in The National Security Strategy of the United States of America, invites abuse and sets a dangerous precedence for other countries to follow. . . . This paper will first look at the components of the National Security Strategy: its principles and aspects of its formulation. The paper will then look at the implementation of the National Security Strategy in Iraq: the arguments used for its justification, its outcome and precedence through a content analysis of public speeches from the Bush Administration justifying the war. Finally, this paper will apply the principles of the Bush Doctrine to situations in India, Pakistan, Japan and Korea. The analysis of the Bush Doctrine to these countries will show how these countries may launch a pre-emptive strike, under the principles of the Bush Doctrine and the precedence set in Iraq. The three parts of the paper will ultimately prove that The National Security Strategy of the United States of America, more specifically the Bush Doctrine, can easily be abused and will lead to greater conflicts around the world.

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### **[Responding to Ms. Zhang's Talking Points on the EEZ](#)**

Raul (Pete) Pedrozo

Chinese Journal of International Law (2011)doi: 10.1093/chinesejil/jmq035First published online: February 4, 2011

Centuries of State practice support the position that military activities in the EEZ are lawful without coastal State notice or consent. A plain reading of Articles 56, 58, 86 and 89 and the negotiating history of the 1982 UN Convention on the Law of the Sea (UNCLOS) likewise support the position that military activities may be conducted in the EEZ without notice to or consent of the coastal State.

Zhang's position on the EEZ exemplifies how Chinese scholars and government officials misuse the law to support China's anti-access strategy in the maritime domain.

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**The Financialisation of Agricultural Commodity Futures Trading and its Impact of the 2006-2008 Global Food Crisis**

Nicola Colbran, AusAID's Australia Indonesia Partnership for Justice  
(February 2011). *University of New South Wales Faculty of Law Research Series. University of New South Wales Faculty of Law Research Series 2011*. Working Paper 14.

The subject of this article is whether the financialisation of agricultural commodity futures trading contributed to the sudden price rises in 2006-2008. It also discusses the effect of financialisation on the functioning and usefulness of futures markets, and considers whether speculation could exacerbate price volatility again. The article is not intended to be an overly technical analysis of the topic and therefore does not include detailed economic analyses or econometric modelling. Rather, it seeks to provide an objective and straightforward discussion for those generally interested in agricultural commodity markets and their impact on food security and developing countries more generally.

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**Victims of Environmental Pollution in the Slipstream of Globalization**

**Jonathan M. Verschuuren**

Tilburg University - Center for Transboundary Legal Development; Tilburg Sustainability Center

**Steve Kuchta**

University of Connecticut - Department of Economics

In this contribution we set out to answer the question whether a transnational response to relieve the need of victims of transnational environmental pollution is required, and if so, what response would be in order. The first part of the question should be answered with a firm "yes." It is clear from the *Trafigura* case that the victims and the people that try to represent them meet a range of obstacles when trying to hold both the polluters and government agencies which did not correctly apply existing law accountable for their (in)action(s). The case study shows that, entirely within itself, there exist plenty of legal rules designed to protect the environment in developing countries from shipments of waste from the developed parts of the world. The problem is all about the lack of enforcement and the lack of possibilities for the victims to access various countries' judicial systems in order to get compensation for their loss. In our view, the current legal system, both nationally and internationally, is not well-equipped to handle cases of transnational pollution, especially when developing countries are involved. In this paper we show that within Europe, both EU law and the European Convention of Human Rights do offer some possibilities, but for African victims these are difficult, if not impossible, to effectuate.

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**The Implications of TRIPS Agreement 1994 of the World Trade Organisation for the Developing Countries**

**Kato Gogo Kingston**

University of East London - Law

*African Journal of Social Sciences, Vol. 1, No. 1, pp. 37-64, February 2011*

The obligations of WTO members to grant substantial protection to IP rights resulted from concerns of technology exporting countries, like the U.S. in particular, afraid of losing out to newly industrialised countries culminated in the adoption of the Trade-Related Intellectual Property Rights (TRIPS) Agreement in 1994 of the World Trade Organisation (Helpman, 1993). The case against IP protection is that, simply put, for developing countries the cost outweigh the benefits. The traditional view is that developing countries receive little or nothing for the price they pay in granting foreign

monopolies over technology and industry within their national borders (ICC, 1996). It is further argued that the IP rights stifle domestic innovation and impede the diffusion of technology in the developing countries. Therefore, with quite some justification, developing countries considers TRIPS as an instrument serving the interests of rich countries (Maskus, 1993). This paper argues that: (1) TRIPS serve the best interest of developed countries and that the MFN clause of the GATT/WTO has little or no significant benefits to the developing countries with regards to the TRIPS; (2) TRIPS cannot guarantee transfer of technology from the developed countries to the developing countries; (3) Consumers in developing countries will have to pay for technology even if no transfer of technology takes place to their respective home countries; (4) Legal protection of IP rights is not a necessary condition for technology transfer (Abbot, 1998); and (5) That TRIPS constitute exploitation machinery for economic control of the developing countries by the developed nations in the WTO (Primo Braga, 1995).

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### **Pinochet and the Uncertain Globalization of Criminal Law**

**Robert C. Power**

Widener University - School of Law

*George Washington International Law Review, Vol. 39, p. 89, 2007*

This article challenges the widely held opinion that the extradition case against Augusto Pinochet was a victory for international law and universal jurisdiction. It summarizes human rights violations in Chile from 1973 through the late 1980s, relying largely on Chilean sources. It then turns to the efforts to bring Pinochet, along with Chilean and Argentinean military authorities, to face criminal charges in Spain for crimes committed in South America. The article traces the four-way chess match in the United Kingdom, in which the Labour Party government initially supported Spain and House of Lords legal rulings held Pinochet extraditable on a few allegations of torture, but declined to extradite him due to poor health (he returned to Chile to live for another seven years). The article argues that Spain was not exercising universal jurisdiction, but instead relied on a form of passive personality jurisdiction, protecting its own citizens in a fashion somewhat reminiscent of colonialism. The law arising from the U.K. proceedings also seems more progressive on the surface than upon examination. While ultimately approving legal authority to extradite Pinochet to Spain, the House of Lords narrowly interpreted the Convention Against Torture and the double criminality requirement in ways likely to limit future extraditions of war criminals. Similarly, while head of state immunity was rejected by a majority of the law lords, the reasoning of most appears limited to violations of a few specific laws such as the Torture Convention, which expressly declares torture at the direction of top government officials to be an international crime. The article also explores provisions in the Genocide Convention, which reveals obstacles to effective prosecution of some, perhaps most, practitioners of what seems to be genocide. Ultimately the article reminds us that notwithstanding international law, extradition remains a political process and occurs only when politicians find it politically expedient to enforce international criminal law.

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### **Disclosure Before the ICC: The Emergence of a New Form of Policies Implementation System in International Criminal Justice?**

**Michele Caianiello**

Department of Juridical Sciences "A. Cicu"

*International Criminal Law Review, Vol. 10, pp. 23-42*

The use of theoretical models, the most famous of which is the distinction between accusatorial and inquisitorial, is decisive in testing the intrinsic consistency of a specific procedural system. The aim of this work is to analyse some aspects of the law of evidence provided for by ICC sources, specifically the disclosure provisions, and ascertain whether the blending of different legal traditions may be regarded as successful or subject to criticism. For this purpose, in his analysis the Author employs the widely known Damaška partition between coordinate vs. hierarchical officialdom, in the administration

of the process. The conclusion reached in this work is that some amendments to the sources of the ICC concerning the law of evidence would be advisable, in order to rectify certain inconsistencies. Among them, the author proposes the adoption of an official Prosecutor's file in the pre-trial phase.

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### **Applicability of the ECHR to British Soldiers in Iraq**

**Marko Milanovic**

University of Nottingham School of Law  
*Cambridge Law Journal*, Vol. 70, 2011

This very brief case note discusses the *R. (Smith) v. Oxford Assistant Deputy Coroner (Equality and Human Rights Commission intervening)* [2010] UKSC 29, [2010] 3 WLR 223 case, in which the UK Supreme Court decided that the ECHR will apply extraterritorially only to UK soldiers who find themselves on a UK base; if they died outside an area under the UK's effective control, there would be no requirement for an Article 2 ECHR-compliant investigation into their death. The note argues that the Court's holding in *Smith* logically flows from the House of Lords judgment in *Al-Skeini*, but accordingly also rests on the (probably unwarranted) assumption that *Al-Skeini* was correctly decided.

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### **An Opening for Voice in the Global Economic Order: The Global Financial Crisis and Emerging Economies**

**Enrique R. Carrasco**

University of Iowa - College of Law  
*Oregon Review Of International Law*, Vol. 12, pp. 179-212, 2010  
[\*U Iowa Legal Studies Research Paper No. 11-05\*](#)

The global financial crisis of 2008 has ruptured the global economic order. The United States and Europe, the rulers of the order since World War II, have struggled to recover from the crisis. By contrast, most emerging and developing economies rebounded relatively quickly over the past year. The crisis created an opportunity for emerging economies to join the table where global economic policy is decided. This opportunity is about "voice" – i.e., effective and meaningful representation of emerging and developing economies at the table. This Article provides an account of the evolution of developing and emerging economies' voice, focusing primarily on the IMF. It explains how the global financial crisis of 2008 has finally given "emerging economies" – which did not exist in 1944 – at least an opportunity to acquire what could become a significant voice in international monetary and financial law and policy.

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### **A Fresh Look at the Issue of Non-Justiciability of Defence and Foreign Affairs**

**Daniele Amoroso**

University of Naples Federico II, Faculty of Law  
*Leiden Journal of International Law*, Vol. 23, No. 4, p. 938, 2010

For decades it has been authoritatively stressed that non-justiciability of defence and foreign affairs represents one of the major hurdles to the application of international law by domestic courts. Until now, however, international law scholarship seems to have overlooked two aspects of this issue. First, it has not been sufficiently highlighted that the international and the European community legal orders are progressively eroding the scope of application of these non-justiciability doctrines. Second, it has rarely been shown how judicial intervention in international matters can be prevented from turning into the 'judicialization' of foreign policy. Hence, ideally by moving along the path traced by those who have already dealt with this issue, the present work aims to analyse these two aspects in greater depth.

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**Access to Knowledge: A Conceptual Genealogy**

[Amy Kapczynski](#)

University of California, Berkeley - School of Law

*Amy Kapczynski, ACCESS TO KNOWLEDGE IN THE AGE OF INTELLECTUAL PROPERTY, Gaelle Krikorian, ed., Zone Press 2010*

This is an introduction to an edited volume, "Access to Knowledge in the Age of Intellectual Property" (Zone Press, 2010). Its aim is to describe and analyze the conceptual stakes of the new mobilization around "A2K." A2K groups contest the terrain of intellectual property law (for example, around issues of access to medicines, free software, farmers' rights to seeds, and free culture) - but what do they have in common? The chapter elaborates on concepts that A2K thinkers use -- such as the commons, openness, and access -- to challenge the conventional justification for strong intellectual property law. It closes by posing a series of theoretical questions for the movement, like, what is the nature of the "freedom" that A2K demands?

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**The Implications of United Kingdom Anti-Terror Laws for the International Human Rights Standard**

[Kato Gogo Kingston](#)

University of East London - Law

*African Journal of Law and Criminology, Vol. 1, No. 1, pp. 27-58, February 2011*

Human rights are principles and officially permitted guarantees which shield persons and association of persons from the conducts and blunders largely by government officials that meddle with basic liberties, privileges and human solemnity. Human rights generally concern the reverence of, the realization and the safeguard of socio-cultural rights, political, economic and civil rights including the right to development. Human rights are global in nature and sacred to human existence. There are various international treaties, conventions and regulations that outline the various human rights and how they are to be adopted, applied and enforced by nations. On the other hand, terrorism could be construed as willful illicit violent activities which target members of the public, causing fear and sometimes inflicting significant amount of actual bodily harm and death, for the purpose of propagating social, religious and political ideology. Since the terror attacks that occurred in New York in September 2001, many countries including the United Kingdom have tightened their national security as well as amending their anti-terror laws. However, there is growing concern that some of such laws, especially in the case of the United Kingdom, are destroying the relative good reputation of the country in terms of human rights adherence. Human rights observers have put up the argument that; "compromising human rights cannot serve the struggle against terrorism. On the contrary, it facilitates achievement of the terrorist's objectives by ceding to him the moral high ground, and provoking tension, hatred and mistrust of government among precisely those parts of the population where he is most likely to find recruits. The paper evaluates a number of questions regarding the regulatory framework surrounding the enforcement of the UK Anti-terrorism legislation and the extent to which these laws and the enforcements conform to the ECHR and other International Human Rights Law. It suggests that there are prevailing conflicts between the preservation of Human Rights and the preservation of public safety in the United Kingdom.

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**The True Obstacle to the Autonomy of Seasteads: American Law Enforcement Jurisdiction Over Homesteads on the High Seas**

[O. Shane Balloun](#)

University of Wyoming

The Seasteading Institute (TSI) seeks to develop permanent communities on the last frontier on earth: the ocean. TSI would assist others to eschew old world political and social systems in favor of new, voluntary systems of living in the hope that the high seas will maximize their autonomy. TSI

defines seasteading as the creation of "permanent dwellings on the ocean - homesteading on the high seas." Without question, the undertaking that TSI envisions will require massive technological prowess to safely and profitably overcome the obstacles the ocean presents. Clearly, TSI must seek to comprehend fully the nature of the sea and the risks it would present to ocean-pioneers. Fortunately, The Seasteading Institute approaches the risks of homesteading on the high seas with a healthy pragmatism. Counter-intuitively, TSI declares that the physical threats to seasteading, such as tsunamis, typhoons and piracy, actually pose relatively little danger. What causes The Seasteading Institute far greater trepidation in planning its endeavors is "[t]he tangled morass of international maritime politics and law." A significant part of this tangled morass is American admiralty and maritime law. Thus, a pragmatic assessment of TSI's legal obstacles must include an analysis of potential obligations and liabilities under United States criminal law in admiralty, because the United States exercises broad power over the high seas.

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### **The Dilemma of Minerals Dependent Economy: The Case of Foreign Direct Investment and Pollution in Nigeria**

**Kato Gogo Kingston**

University of East London - Law

*African Journal of Law and Criminology, Vol. 1, No. 1, pp. 1-14, February 2011*

This study empirically investigates the causal relationship between mineral exploration and environmental pollution in Nigeria with specific focus on natural gas and crude oil in Niger Delta region. The model of Granger causality tests was used. Quarterly data covering 2008 and 2009 were used in accordance with the Akaike (1976) minimum lag length for time-series analysis. The ADF unit root tests show that the null hypothesis of unit root is rejected and, the KPSS stationarity test result accepts the null hypothesis of "stationarity" implying that the variables are fit for the purpose of Granger causality analysis. The test for cointegration show that the variables are cointegrated at the trace level; this imply that gas flaring, environmental pollution and foreign direct investment are statistically linked. The regression on the ordinary least square illustrates that the impact of oil and natural gas exploration on the Nigerian environment is persistent in the long-run. The Granger-causality test result shows that there is one-way causality flowing from the flaring of gas by the foreign firms to the environmental pollution in Nigeria. The study finds a long-run uni-directional causal relationship flowing from mineral exploration to air, soil and water pollution.

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### **Shell Oil Company in Nigeria: Impediment or Catalyst of Socio-Economic Development?**

**Kato Gogo Kingston**

University of East London - Law

*African Journal of Social Sciences, Vol. 1, No. 1, pp. 15-36, February 2011*

The aim of this paper is to investigate whether the She oil company, through investment and crude oil exploration, benefits socio-economic growth in Nigeria in general and in the Niger Delta of Nigeria in particular. In 1998, the United Nations Special Rapporteur's report on Nigeria accused Nigeria and Shell of violating human rights and failing to protect the environment, and called for an investigation into Shell activities in Nigeria. The report condemned Shell for arming the security forces which it regularly deploy to use lethal force civilians that protest against the oil firm. The paper explores the matrix within which the socio-economic rights (human rights, development rights and environment rights) have been significantly marginalised and the implications of the lack corporate social responsibility and the lack of accountability of Shell to the inhabitants of the Niger Delta of Nigeria. With respect to environmental obligations, the paper discusses how environmental degradation in the Niger Delta has infringed on human rights thereby impeding growth and economic development. The paper suggests possible future directions and initiatives for civil society in making corporations more accountable to states, citizens and the planet.

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**In Search of Refuge: Pacific Islands, Climate-Induced Migration, and the Legal Frontier****Maxine Burkett**

University of Hawaii at Manoa - William S. Richardson School of Law

*Asia Pacific Issues, No. 98, January 2011*

As the effects of climate change intensify, time is running out for millions living in Asia Pacific coastal and island communities. Many will be forced to leave their homes within the next half-century because of increased intensity and frequency of storms and floods, sea-level rise, and desertification. The low-lying small island states of the Pacific are especially endangered; residents there may lose not only their homes, but their entire nations. Planning aimed at avoiding humanitarian disaster and political chaos should already have begun, but a stumbling block is international law, which is not prepared to address the cross-cutting impacts of climate and migration. Finding viable solutions will require new ways of thinking, pushing the law to a new frontier that calls for a reconsideration of existing legal boundaries.

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**The Impact of EMU on Member State Sovereignty****Rhys A. Bollen**

RMIT University - Faculty of Business

It is generally accepted that European Economic and Monetary Union (EMU) involved a transfer of some sovereignty from Member States to the central organs of the European Union (EU). The various aspects of EMU and of sovereignty are considered in detail in this paper. EMU can be considered both as an aspect of the European Community's continued progress towards a common market as well as a stand-alone integration project. EMU encompasses the single currency, common monetary policy, establishment of the European Central Bank (ECB) and the implementation of a single payment area Europe-wide. This paper examines to what extent the implementation of each of the three elements of EMU have involved the transfer of sovereignty. It does this in particular by comparing the experience of the United Kingdom and Germany.

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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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**Tribes as Essential Partners in Achieving Sustainable Governance**

[Elizabeth Burleson](#)

Florida State University College of Law; London School of Economics

[FSU College of Law, Public Law Research Paper](#)

Indigenous peoples have modeled sustainable development around the world. Incentivizing the innovation and instillation of wind, solar, and other renewable energy sources can come in the form of public funding, including renewable portfolio standards, feed in tariffs and green tag programs. This article analyzes ways in which tribal communities are helping to expand cooperative good governance.

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**Understanding the Rise of the Regulatory State in the Global South**

[Navroz K. Dubash](#)

Center for Policy Research

[Bronwen Morgan](#)

University of Bristol - Faculty of Social Sciences and Law

This is a working paper intended as the framing paper for a workshop on the the rise of the regulatory state in the Global South. The paper, and the broader workshop, explore whether, and how, the rise of the regulatory state in the Global South, and its implications for processes of governance, are distinct from cases in the North. With the exception of a small but growing body of work on Latin America, most work on the regulatory state deals with the US or Europe, or takes a relatively undifferentiated 'legal transplant' approach to the developing world. Our focus is on regulatory agencies as a particular expression of the regulatory state, though we acknowledge that the two are by no means synonymous. We take seriously the historical legacy of the idea of a North/South divide while also integrating the considerable changes occurring topically in this purported divide (caused by increased economic integration between North and South and increased differentiation within the South). . . .

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**Comparative Law and International Organisations: Cooperation, Competition and Connections - Lessons from Hong Kong, China and Viet Nam**

[Cally Jordan](#)

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

[University of Melbourne Legal Studies Research Paper](#)

It is unlikely that there has been anything like it since the great codifications of the 19th century. The introduction of new legislative frameworks in China and neighbouring Viet Nam over the past 20 years has been ambitious and audacious, particularly in view of the inherent tensions involved in producing modern legislation adapted to a socialist market economy. With their great cultural respect for learning and the intellectual resources at their disposal, both the Chinese and the Vietnamese have taken law making seriously, and have taken to it with great alacrity. A hallmark of their efforts has been the attention devoted to the use of comparative methodology. These brief case studies of the process and outcomes of corporate law reform efforts in Hong Kong, China and Viet Nam in the last 15 years will look at the role played by international development institutions and the lessons which they may draw from the experiences.

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**Prosecution or Impunity? Is There an Alternative?****Marco Fanara**

United Nations Mandated University for Peace

International law stipulates states have a duty to prosecute individuals alleged to have committed or were in some way involved in gross violations of human rights. States also have the option of granting impunity to those individuals as a precondition to peace. Herein predicaments abound, do states seek 'justice' and prosecute or grant impunity in the name of 'reconciliation'. Are there alternatives? This paper presents arguments for and against both camps. To do so the case study of Uganda and the ICC's involvement therein is utilized. In short this paper aims to answer the question of whether impunity acts as a barrier to lasting peace or is it a crucial prerequisite.

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**Do You Mind My Smoking? Plain Packaging of Cigarettes Under the WTO TRIPS Agreement****Alberto Alemanno**

HEC Paris - Law Department

**Enrico Bonadio**

City University London

*John Marshall Review of Intellectual Property Law, Vol. 10, No. 3, 2011*

Plain packaging, a new tobacco control tool that is currently being considered by a growing number of countries, mandates the removal of all attractive and promotional aspects of tobacco product packages. As a result, the only authorized feature remaining would be the use of brand name, which would be displayed in a standard font, size, color and location on the package. In opposing this new strategy, the tobacco industry is particularly keen in emphasizing both the ineffectiveness of plain packaging in reducing smoking rates and its incompatibility with international trademark-related provisions. In particular, the tobacco industry as well as other regulated sectors, such as food, alcohol, and cosmetics, believe that plain packaging jeopardizes their trademark rights and particularly contravenes several trademark-related provisions as enshrined in the TRIPS Agreement and the Paris Convention for the Protection of Industrial Property. This article, after introducing the reader to the genesis and rationale of plain packaging within the broader context of the WHO Framework Convention on Tobacco Control, offers a detailed analysis of the compatibility of this new packaging measure with the international system for trade mark protection as enshrined in the TRIPS.

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**Managing the Carnivore Comeback: International and EU Species Protection Law and the Return of Lynx, Wolf and Bear to Western Europe****Arie Trouwborst**Tilburg University - Law School; Tilburg Sustainability Center  
*Journal of Environmental Law, Vol. 22, No. 3, pp. 347-372, 2010*

Lynx, wolves and brown bears are returning to areas in Western Europe from which they have long been absent. This raises specific questions, not only concerning the effective conservation of transboundary carnivore populations, but also regarding potential consequences for livestock, hunting, human safety and the like. Intense popular debates tend to ensue wherever large predators reappear. The response by public authorities, however, must respect the limits imposed by international and European nature conservation obligations. This article is intended to bring these limits into focus by introducing and analyzing relevant species protection regimes, chiefly the Bern Convention and the European Union's Habitats Directive. Legal issues are addressed regarding conservation status, prohibitions, derogations and transboundary management plans. Also addressed is the interesting predicament of 'frontier states' like the Netherlands, which seem to provide the ultimate test case for the adaptive capacity of carnivores and conservation law alike.

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**Whistleblowing: International Standards and Developments**[David Banisar](#)

ARTICLE 19: Global Campaign for Free Expression - Main

*CORRUPTION AND TRANSPARENCY: DEBATING THE FRONTIERS BETWEEN STATE, MARKET AND SOCIETY, I. Sandoval, ed., World Bank-Institute for Social Research, UNAM, Washington, D.C., 2011*

Whistleblowing is a key tool in fighting corruption. By promising that their rights will be protected, employees and others who are familiar with the inner workings of an organisation and are in position to see when corruption occurs, will feel more willing to expose those problems to those who are in a position to remedy it, or more generally to the public. Whistleblowers often face severe repercussions for their actions. They lose their jobs or are ostracized for their activities. Some are charged with crimes for violating laws or employment agreements. In extreme cases, they face physical danger. Over 30 countries around the world have adopted legal regimes to encourage these important disclosures and protect the whistleblowers from retribution. Many international agreements and treaties on anti-corruption including the Council of Europe and UN Convention Against Corruption now include requirements that nations adopt these laws. Many organisations are also adopting internal rules to facilitate disclosures. This paper reviews whistleblower legislation from around the world and proposes standards that should be adopted by nations in their own legislation.

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**International Technology Transfer and Trips Article 66.2: Can Global Administrative Law Help Least-Developed Countries Get What They Bargained for?**[Andrew C Michaels](#)

New York University (NYU) - School of Law

[Georgetown Journal of International Law, Vol. 41, No. 1, 2009](#)

This paper argues that an agreed substantive minimum standard for implementation of Article 66.2 would be helpful to the developing world. Such a standard would clarify what is required of developed countries to meet their technology transfer obligations under TRIPS, similar to the clear standards that developing countries are held to in meeting their obligations to enact stronger IPRs under TRIPS. This paper also explores possible mechanisms by which such a standard could be developed in the context of the emerging idea of Global Administrative Law. Although there are multiple options, the best place to develop a standard for implementation of Article 66.2 seems to be the Council for TRIPS. . . .

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**The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework**[Benoit Mayer](#)

McGill university, faculty of law; Centre for International Sustainable Development Law (CSIDL)

[Colorado Journal of International Environmental Law and Policy, Vol. 22, No. 3, 2011](#)

Tens and maybe hundreds of millions of people have been or are about to be displaced because of rising sea levels or land degradation induced by global warming. In some cases, internal displacement of the population is not possible, either because their territory may become entirely uninhabitable (e.g.: the Maldives) or because the unaffected part of their territory is not able to absorb the whole displaced population (e.g.: Bangladesh). The increasing masses of "climate migrants" cannot benefit from any appropriate protection under today's international law, as they do not fulfill legal conditions to be treated as "refugees." The vulnerability of climate migrants is contrary to the humanitarian conception of Human Rights and goes against the principle of common but differentiated responsibility for climate change. An international legal framework on climate change-induced migrations should be established as soon as possible to provide a sustainable solution, protect

affected individuals and communities, and reconcile international funding and local decision-making. It would be unlikely that an international treaty could receive a sufficient number of ratifications to be efficient and, additionally, it would not be able to sufficiently take into account the specificity of each migration scenario. Therefore, this paper proposes a framework that could be adopted by a United Nations General Assembly resolution. The proposed resolution would recognize climate migrants' fundamental rights, but could also create an agency in charge of facilitating and supervising bilateral or regional ad hoc negotiations on the resettlement of the most affected populations.

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### **Jurisdiction and Admissibility**

**Jan Paulsson**

University of Miami - School of Law

*GLOBAL REFLECTIONS ON INTERNATIONAL LAW, COMMERCE AND DISPUTE RESOLUTION*, p. 601,  
ICC Publishing, 2005

[\*University of Miami Legal Studies Research Paper No. 2010-30\*](#)

To distinguish between these two concepts is a matter of considerable concrete importance. Decisions of tribunals which do not respect jurisdictional limits may be invalidated by a controlling authority. But if parties have consented to the jurisdiction of a given tribunal, its determinations as to the admissibility of claims should be final. Mistakenly classifying issues of admissibility as jurisdictional may therefore result in an unjustified extension of the scope for challenging awards, and frustrate the parties expectation that their dispute be decided by the chosen neutral tribunal. Of course, national laws may explicitly provide that arbitral disposition of issues of admissibility are not final. But then again, national laws may explicitly provide that all decisions by arbitrators are subject to full appeals, including findings of fact or conclusions of law. Indeed, national laws may forbid arbitration altogether. Yet that is emphatically not the modern trend. This essay proposes an approach consistent with an international consensus that decisions of arbitrators having jurisdiction are final.

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### **No Shortcuts on Human Rights – Bail and the International Criminal Trial**

**Caroline Davidson**

Willamette University - College of Law

[\*American University Law Review\*, Vol. 60, No. 1, 2010](#)

International tribunals should serve as models for human rights best practices. The International Criminal Tribunal for the former Yugoslavia (ICTY) has made progress, but ultimately fallen short in serving as such a model in the area of bail or "provisional release," as it is known there. Lengthy trials, excessive judicial discretion and an unwritten rule that all defendants, whether or not they pose a risk of flight or danger to the community, be detained for their trials raise serious human rights concerns. Focusing on the ICTY, this article explores the human rights implications of provisional release for defendants on trial at international tribunals. It concludes that to achieve one of international criminal justice's most important goals – promoting respect for human rights – the ICC and other international tribunals should depart from the provisional release model of the ICTY. The article offers proposals for reform, including measures to make release for trial a realistic option.

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### **Unlawful Laws and the Authority of International Tribunals**

**Jan Paulsson**

University of Miami - School of Law

*International Centre for Settlement of Investment Disputes Foreign Investment Law Journal*, Vol 23,  
No. 2, p. 215, Fall 2008 [\*University of Miami Legal Studies Research Paper No. 2010-31\*](#)

International disputes often involve issues of both national and international law. Not infrequently, challenges are raised to the legitimacy of the national law invoked. Attention is then immediately

switched to international law, to see whether it may have a corrective effect, by operation of such things as international minimum standards or international public policy. The main point of this lecture is to say: "Not so fast!" National laws themselves contain corrective norms, and they may be formidable. An international court or tribunal charged with applying a national law has both the duty and the authority to apply it as a whole. If it does so, there may be no need to determine whether international law trumps national law. In this way a confrontation of legal orders is avoided.

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### **Drafting a European Constitution Challenges and Opportunities**

[Andreas Follesdal](#)

University of Oslo

*ConWEB Online - Constitutionalism Web Papers, University of Manchester School of Law No. 4*

These reflections address two tasks prompted by current controversies concerning whether the EU needs a written constitution. Normative considerations do not seem to require a constitution now - nor does such a constitution appear illegitimate in principle, hence it is normatively permissible in principle. Secondly, the Convention is called and composed in such a way as to exacerbate some risks, while reducing others, with ramifications for the legitimacy of the process and the normative quality of any resulting document. In particular, arguments must be provided both in favour and against centralisation of competences, to facilitate their best allocation. Given the participation of centralisation-prone institutions such as the European Parliament, the inclusion of national parliaments is welcome. Yet a disinterested stance is less likely insofar as many of the institutions are represented at the Convention, and especially insofar as an all-out crisis does not loom large. Bargaining solely for own institutional advantage is tempting, yet the credibility of the result requires that the institutions secure justice among Europeans - and not least: that the institutions are seen to be so secured. A central challenge is to foster within the Convention a general and public attitude of commitment to "the European interest." This counts in favour of public scrutiny of the process, even though such transparency may constrain drastic and creative restructuring. Transparency may prevent anything more than incremental tinkering - but that may be sufficient, and all that may reasonably be expected.

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### **Pluralism, Secularism and the European Court of Human Rights**

[Zachary R. Calo](#)

Valparaiso University School of Law

[Journal of Law and Religion, Vol. 26, p. 101, 2010](#)

Beginning with its seminal 1993 decision in *Kokkinakis v. Greece*, the European Court of Human Rights has defined religious pluralism as an essential good of the liberal democratic society. Yet, in subsequent decisions traversing a range of legal issues [e.g. *Sahin*, *Dahlab*, *Bayatyan*, and *Lautsi*], the Court has rendered decisions facially at odds with the goal of advancing religious pluralism. This paper is concerned with assessing the discontinuity between the Court's high embrace of normative religious pluralism and its failure to consistently realize this ideal in practice. The paper argues that the Court has failed to consistently render decisions in accord with the norm established in *Kokkinakis* because it has embraced a mode of secular legal logic which treats public religion as a problem to be managed rather than as an essential feature of a healthy democratic society. As such, pluralism does not serve to free religion to participate in the cultivation of public meaning but rather becomes a potential threat to a settled secular order. The Court's tepidness in advancing pluralism might thus be understood as part of an effort to control the meaning of the public in a way that preserves the predominance of a European secular story. . . .

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**Religion, Human Rights and Post-Secular Legal Theory****Zachary R. Calo**

Valparaíso University School of Law

*St. John's Law Review, Forthcoming*

This paper proposes that the fundamental challenge for religious legal theory is the question of the secular and, in particular, a certain mode of secular reason that has shaped the idea of law within modernity. The fundamental ambition of modern legal thought was to sever law from a connection to a sacred cosmic and intellectual order. The idea of human rights, at least in its regnant expression, embodies this project most fully in that it has increasingly been defined as a moral tradition that stands over and against religion. This paper, by contrast, argues that the destabilization of secular meaning creates the space, and indeed the necessity, for a pluralist theological turn within the idea of human rights.

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**Climate Change: Rethinking Restoration in the European Union's Birds and Habitats Directives****Jonathan M. Verschuuren**

Tilburg University - Center for Transboundary Legal Development; Tilburg Sustainability Center

*Ecological Restoration, Vol. 28, No. 4, pp. 431-439, 2010*

To prepare for the ecological impacts of climate change, a landscape approach is needed in which existing protected areas are enlarged and secured and ecological corridors between areas are protected and restored, thus establishing a real ecological network that is resilient to future change. This article reviews the EU Birds and Habitats Directives and shows that restoration is a central objective of the Natura 2000 network of protected areas created by the directives, at least where intense human activity and development is taking place within or nearby Natura 2000 sites. However, the current legal provisions fall short of meeting the requirements necessary to help biodiversity adapt to climate change. The good news is that these shortcomings do not hinder government authorities that want to take action. The bad news is that this will always be on a voluntary basis. The article recommends a few small amendments to the Natura 2000 scheme that would require member states to develop robust restoration plans that will help nature adapt to a changing climate.

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**The New Disciplinary Framework: Conditionality, New Aid Architecture and Global Economic Governance****Celine Tan**

University of Birmingham - Birmingham Law School

*INTERNATIONAL LAW, ECONOMIC GLOBALIZATION AND DEVELOPING COUNTRIES, J. Faundez and C. Tan, eds., Edward Elgar, 2010*

'Country ownership,' 'partnership' and 'participation' are key pillars of what has become increasingly referred to as the 'new aid architecture.' Catalysed primarily by the inception of the Poverty Reduction Strategy Paper (PRSP) framework, introduced in 1999 as preconditions for debt relief under the enhanced Heavily Indebted Poor Countries (HIPC) initiative and for concessional financing from the World Bank and the International Monetary Fund (IMF), this new blueprint for official development assistance (ODA) claims to move away from the prescriptive legacy of conditionality which has traditionally characterised the relationship between parties to such financing. In this respect, the principles underpinning the new aid architecture are regarded as the opposite of the doctrine of 'conditionality,' operating as a conceptually and operationally divergent framework for regulating relationships between the disbursers and recipients of development financing. This chapter examines the impact of this new regime of aid governance in the context of the evolution of conditionality as a regulatory instrument. It contends that changes to the policies and modalities of development financing in recent years have had the effect of entrenching rather than retiring the use of

conditionality in development financing. This, in turn, impacts significantly on recipient countries' engagement with and obligations under international law. The chapter argues that the new architecture of aid has extended and refined this regulatory role of conditionality. Instead of departing from the policies of the past, the new modalities of conditionality have been altered to serve as a deeper and more intrusive form of disciplinary control over the developing countries subject to them. Aside from reinforcing the asymmetrical nature of international economic law, this new regime exacerbates the fracture of domestic legal and constitutional frameworks in developing countries in the wake of globalization.

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**The Ad Hoc Committee Annulment Decision in Malaysian Historical Salvors: The Meaning of 'Investment' Re-Established?**

[Davide Rovetta](#)

European Commission - DG TAXUD

[Ashley R. Riveira](#)

*affiliation not provided to SSRN*

*Global Trade and Customs Journal, Vol. 6, No. 2, 2011*

Member States to the International Centre for Settlement of Investment Disputes (ICSID) Convention, as well as their companies and economic operators, are interested in guaranteeing meaningful protection for their investments. This is done by granting jurisdiction to ICSID arbitral tribunals to hear disputes between private persons and states party to the ICSID Convention in cases where a valid Bilateral Investment Treaty (BIT) is present. Because such tribunals' jurisdiction is limited to investment disputes, the definition of 'investment' as embodied in Article 25 of the ICSID Convention and the relevant BIT is of paramount importance. In fact, the definition of investment will have a bearing on whether or not a given economic activity by a company or a private person can be protected via a so-called Investment Treaty Arbitration. In turn, this rather technical issue will have direct practical economic consequences for companies and investors. Unfortunately, both the meaning of investment and the manner in which the ICSID Convention and BITs have been interpreted have been addressed in contradictory manners by various ICSID tribunals, creating unpredictability and damaging the level playing field of investors' protection. However, the ad hoc Committee's Decision on the Application for Annulment in *Malaysian Historical Salvors v. The Government of Malaysia* (hereinafter 'MHS Annulment Award') appears to have re-established a proper meaning and method of interpreting the term investment, which, it is argued, should be followed by future tribunals. If this were to happen, companies and economic operators will be able to enjoy both predictability and full protection of their investments.

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**[Executive Deference in U.S. Refugee Law: Internationalist Paths through and beyond](#)**

[Chevron](#)

Bassina Farbenblum, University of New South Wales

Duke Law Journal (2011) Vol. 60 (5) 1059-1122. This paper may also be referenced as [2011] UNSWLRS 15

When Congress amended U.S. immigration law via the Refugee Act of 1980, it did so with the explicit purpose of bringing U.S. asylum law into conformity with the nation's international refugee treaty obligations. Nevertheless, U.S. courts interpreting domestic asylum provisions routinely discount international legal norms, labouring under the mistaken perception that the Chevron doctrine requires deference to the executive agency's interpretation of asylum law regardless of its compatibility with international law. As a result, domestic asylum law has become jurisprudentially unmoored from international refugee law to the serious detriment of asylum seekers. This Article argues that neither Chevron nor the policies underlying it compel the lockstep deference that courts afford the Board of Immigration Appeals' interpretation of U.S. asylum law. The Article charts two alternate paths by

which courts may reject agency statutory interpretations that are inconsistent with international refugee law: a route through Chevron that navigates within existing Supreme Court jurisprudence, and a route beyond Chevron based on the limited applicability of this administrative law doctrine to the asylum-adjudication context. Addressing further impediments to the reconciliation of domestic and international law, the Article demonstrates that courts are indeed capable of applying a coherent interpretive methodology to determine the content of refugee treaty obligations, particularly if engaged by government lawyers committed to reestablishing the international legality of U.S. practice. In seeking to remove a fundamental administrative law obstacle to the implementation of international refugee law, the Article lends impetus to broader scholarly efforts to align U.S. law with this nation's international human rights obligations. It also provides a framework that enables courts, immigration attorneys, and government policymakers to situate U.S. asylum law in the more rights-protective context that Congress intended.

## II. Books

### International Human Rights and International Humanitarian Law

(Oxford Univ. Press, Jan. 2011)

Edited by Orna Ben-Naftali (Professor of International Law, The Law School, The College of Management Academic Studies, Israel)

The idea that international humanitarian law (IHL) and international human rights law (IHRL) are complementary, rather than mutually exclusive regimes generated a paradigmatic shift in the international legal discourse. The reconciliation was driven by a humanistic ethos and its purpose was to offer greater protection of the rights to life, liberty and dignity of all individuals under all circumstances. The complementarity of both regimes currently enjoys the status of the new orthodoxy and simultaneously invites critical reflection. This collection of essays accepts the invitation, offering diverse assessments of the merits of taking human rights to the battlefields of the twenty-first century.

The book comprises three parts: part I focuses on the paradigmatic (security based "armed conflict" vs. human rights centered "law enforcement" paradigms) and the normative complexities of the interaction between both regimes in the "fight against terror" and in other, allegedly new, types of wars. Part II discusses the interplay between IHRL and IHL in the context of three specific regimes: belligerent occupation; the European Court of Human Rights and the protection of cultural heritage. Part III explores the potential fusion of IHL and IHRL into a new paradigm in two areas: post-bellum accountability and compensation to victims of war crimes.

The range of issues, multitude of competing norms and narratives, and shifting paradigms explored in this collection, converse with each other. This conversation mirrors the process through which international law - paying deference to political realities while simultaneously seeking to transcend them - charts new pathways to advance its humanizing project.

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### Yearbook of International Environmental Law

Volume 20 2009 (Oxford Univ. Press, Jan. 2011)

Edited by Ole Kristian Fauchald, David Hunter, and Wang Xi

The Yearbook provides a comprehensive review of internationally significant environmental legal developments. A 'Year-In-Review' section summarizes trends organized by subject-matter, key countries or regions, and international governmental as well as non-governmental organizations. Each volume also features topical articles and book reviews.

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

(Oxford Univ. Press, Jan. 2011)

Edited by Francesco Francioni and Natalino Ronzitti

**Security and Policy Perspectives**

- 1: Eugenio Cusumano: Policy Prospects for Regulating Private Military and Security Companies
- 2: Natalino Ronzitti: The Use of Private Contractors in the Fight against Piracy: Policy Options

**Human Rights**

- 3: Federico Lenzerini and Francesco Francioni: The Role of Human Rights in the Regulation of Private Military and Security Companies
- 4: Ieva Kalnina and Ugis Zeltins: The Impact of the EU Human Rights System on Operations of Private Military and Security Companies
- 5: Francesco Francioni: The Role of the Home State in Ensuring Compliance with Human Rights by Private Military Contractors
- 6: 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
- 7: Christine Bakker: Duties to Prevent, Investigate and Redress Human Rights Violations by Private Military and Security Companies: The Role of the Host State
- 8: Giulia Pinzauti: Adjudicating Human Rights Violations Committed by Private Contractors in Conflict Situations before the European Court of Human Rights
- 9: Guido Den Dekker and Eric Myjer: The Right to Life and Self-Defence of Private Military and Security Contractors in Armed Conflict

**International Humanitarian Law**

- 10: Luisa Vierucci: Private Military and Security Companies in Non-International Armed Conflicts: Ius ad Bellum and Ius in Bello Issues
- 11: Giulio Bartolini: Private Military Companies as "Persons who Accompany the Armed Forces"
- 12: Luisa Vierucci: Private Military and Security Companies in Non-International Armed Conflicts: Ius ad Bellum and Ius in Bello Issues
- 13: Christine Bakker and Susanna Greijer: Children's Rights: The Potential Impact of Private Military and Security Companies
- 14: Ana Filipa Vrdoljak: Women and Private Military and Security Companies
- 15: Valentina Falco: Private Military and Security Companies and the EU's Crisis Management: Perspectives under Human Rights and International Humanitarian Law
- 16: Marina Mancini, Faustin Ntoubandi and Thilo Marauhn: Old Concepts and New Challenges: Are Private Contractors the Mercenaries of the 21st Century?

**Accountability and Responsibility of Private Contractors**

- 17: Sorcha MacLeod: The Role of International Regulatory Initiatives on Business and Human Rights for Holding Private Military and Security Contractors to Account
- 18: Carsten Hoppe, Ottavio Quirico: Codes of Conduct for Private Military and Security Companies: The State of Self-regulation in the Industry
- 19: Nigel White: Institutional Responsibility for Private Military and Security Contractors
- 20: Charlotte Beaucillon, Julian Fernandez and 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**

- 21: Ottavio Quirico: The Criminal Responsibility of PMSC Personnel under International Humanitarian Law
- 22: Micaela Frulli: Immunity for Private Contractors: Legal Hurdles or Political Snags?
- 23: Andrea Atteritano: Liability in Tort of Private Military and Security Companies: Jurisdictional Issues and Applicable Law

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**Disobeying the Security Council: Countermeasures against Wrongful Sanctions**

(Oxford Univ. Press, Jan. 2011)

Antonios Tzanakopoulos (Lecturer in Public International Law, University of Glasgow School of Law)

This book examines how the United Nations Security Council, in exercising its power to impose binding non-forcible measures ('sanctions') under Article 41 of the UN Charter, may violate international law, in the sense of limits on its power imposed by the UN Charter itself and by general international law, including human rights guarantees. Such acts may engage the international responsibility of the United Nations, the organization of which the Security Council is an organ. It then proceeds to assess how and by whom the engagement of this responsibility can be determined. Most importantly, the book discusses how and by whom the responsibility of the UN for unlawful Security Council sanctions can be implemented. In other words, how the UN can be held to account for Security Council excesses.

The central thesis of this work is that States can respond to unlawful sanctions imposed by the Security Council, in a decentralized manner, by disobeying the Security Council's command. In international law, this disobedience can be justified as constituting a countermeasure to the Security Council's unlawful act. Recent practice of States, both in the form of executive acts and court decisions, demonstrates an increasing tendency to disobey sanctions that are perceived as unlawful. After discussing other possible qualifications of disobedience under international law, the book concludes that this practice can (and should) be qualified as a countermeasure.

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**The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary**

(Oxford Univ. Press, Jan. 2011)

Edited by Andreas Zimmermann, Assistant editor Jonas Dörschner, and Assistant editor Felix Machts

The Convention Relating to the Status of Refugees adopted on 28 July 1951 in Geneva provides the most comprehensive codification of the rights of refugees yet attempted. Consolidating previous international instruments relating to refugees, the 1951 Convention with its 1967 Protocol marks a cornerstone in the development of international refugee law. At present, there are 144 States Parties to one or both of these instruments, expressing a worldwide consensus on the definition of the term refugee and the fundamental rights to be granted to refugees. These facts demonstrate and underline the extraordinary significance of these instruments as the indispensable legal basis of international refugee law.

This Commentary provides for a systematic and comprehensive analysis of the 1951 Convention and the 1967 Protocol on an article-by-article basis, exposing the interrelationship between the different articles and discussing the latest developments in international refugee law. In addition, several thematic contributions analyse questions of international refugee law which are of general significance, such as regional developments and the relationship between refugee law and the law of the sea.

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**The Impact of Investment Treaties on Contracts between Host States and Foreign Investors**

(Martinus Nijhoff Publishers 2011)

Jan Ole Voss

Foreign investments are usually implemented through contracts between host States and foreign investors. These contracts and international investment treaties represent two different legal instruments that protect foreign direct investment. The co-existence of both instruments under international investment law has generated fundamental problems. By scrutinizing and tracing the

increasingly divided jurisprudence on central aspects of treaty interpretation and analyzing the conflicting legal concepts applied by arbitral tribunals, this book represents a comprehensive examination of the complex relationship between the two in the field of investment treaty arbitration.

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**The European Court of Human Rights and the rights of marginalised individuals and minorities in national context**

(Martinus Nijhoff Publishers 2010)

Dia Anagnostou and Evangelia Psychogiopoulou, eds.

This volume explores the role of the ECtHR in protecting marginalised individuals and minorities. What factors and conditions have led growing numbers of such individuals and minorities to pursue their rights and freedoms in front of the ECtHR and how has the latter responded to these? Does the Convention and the jurisprudence of the Strasbourg Court enhance the protection of vulnerable groups at the national level and expand their rights? Or do they mainly tend to fill in relatively minor gaps or occasional lapses in national rights guarantees? Comprising a set of eight country-based case studies, this volume examines litigation on behalf of marginalised individuals and minorities, and the relevant ECtHR jurisprudence across the following countries: Austria, Bulgaria, Germany, Greece, France, Italy, Turkey and the UK.

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**International Law and Humanitarian Assistance: A Crosscut Through Legal Issues Pertaining to Humanitarianism**

(Springer 2011)

Hans-Joachim Heintze & Anrej Zwitter

It is becoming increasingly apparent that there are major gaps in International Humanitarian Law and Public International Law in the area of humanitarian assistance. In response international organizations such as the UN and the EU are developing their own legal frameworks for humanitarian assistance and the body of customary law and so-called international disaster response law is growing steadily. This however shows that a coherent body of law is far from being a given. The legal reality of international law pertaining to emergency response is rather broadly spread over various international legal fields and related documents, covering situations of armed conflict and natural disasters. This book is one of the first attempts of linking different legal areas in the growing field of what could be called the international law of humanitarian assistance.

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**Fighting Monsters: British-American War-making and Law-making**

(Hart Publishing, Feb. 2011)

Rory Brown (former Foundational Scholar of Jesus College, Cambridge member of Inner Temple)

Against the backdrop of the British-American law- and war-making of the first decade of the millennium, *Fighting Monsters* considers how the way we think about law affects the way we make war and how the way we think about war affects the way we make law. The discussion is founded upon four of the martial phenomena (aggressive or 'pre-emptive' war, targeted killings, torture and arbitrary detention) that unsettle our complacent and flabby understandings of what law is to a liberal democracy.

The author argues, first, that force is a quintessential albeit ambivalent element of any realistic, serviceable and intellectually coherent concept of law. Second, reappraising the classic question at the intersection of martial doctrine and political philosophy in its contemporary context, the author asserts that we need not, in fighting monsters, become monstrous ourselves; that fighting partisans does not entail our own partisanship; and that we can indeed govern without dirtying our hands.

Seeking to ground a total, essentialist and practical theory of legality's sordid relationship with brutality, the book encompasses language and image; war and crime; liberty, security and rationality; amity, enmity and identity; sex, terror and perversion; temporality, spirituality and sublimity; economy and hegemony; parliaments, the press and the public man.

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**Anti-Bribery Risk Assessment: A Handbook**

(Hart Publish, Feb. 2011)

*Edited by Thomas Gruetzner, Ulf Hommel and Klaus Moosmayer*

For the global economy, corruption is dangerous. The consequence is economic decay, not development. And that's why corruption demands a truly global response, one that knows no limits on collaboration. (US Attorney General Eric H. Holder at the OECD in May 2010). The fight against corruption and bribery is backed by numerous global and regional agreements and conventions, supplemented by national legislation and practice, such as the Convention of the OECD on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), the UN Convention against Corruption (2005), the Inter-American Convention against Corruption (1997), the Criminal Law Convention on Corruption of the Council of Europe (2002), the African Union Convention on Preventing and Combating Corruption (2006) and many more. Although most countries use their best endeavours to reduce corruption within their jurisdiction, the effects of the measures taken still vary from country to country. This book undertakes the task of giving a compact overview of the legal framework and practices of implementation in more than 150 countries worldwide, based on a uniform questionnaire. The reports of about 50 countries with the highest turnover in foreign trade are provided in print; a CD-ROM with the unprinted reports is included in the book.

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**NGOs and the Struggle for Human Rights in Europe**

(Hart Publishing, Jan. 2011)

*Loveday Hodson (Lecturer in Law at Leicester University)*

This publication provides a fresh perspective on the litigation of the European Court of Human Rights by focusing upon the role that non-governmental organisations play in it. The inspiration for this work was the growing literature that points to human rights as the outcome of political and social struggles. The role that NGOs play in these struggles is well-documented in the context of other international and regional human rights tribunals, but has been less widely written about in the context of the European Court of Human Rights. The Court is typically subject to legalistic, as opposed to socio-political, scrutiny. In this book the Court's litigation is re-cast as a site where politically motivated actors attempt to impact upon the meaning that is given to the language of the European Convention on Human Rights and to use the Convention as a mechanism that can contribute to social change.

For the purposes of this research a mixture of quantitative and qualitative research techniques are adopted. These methods facilitate the author's desire to obtain both a de-centred perspective on the Court's functions and a systematic picture of the scale of NGO involvement in the Court's litigation. The core of this work is primarily based on data obtained from a sample of cases in which the Court had delivered judgment, and a plethora of associated materials, including extensive interviews with NGOs that were involved in those cases. Ultimately, this book challenges the idea that the litigation of the Court is bound to the idea of achieving individual justice and highlights the meaningful impact that NGOs have on certain important sections of the Court's litigation.

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**A Question of Genocide: Armenians and Turks at the End of the Ottoman Empire**

(Oxford Univ. Press, 2011)

*Edited by Ronald Grigor Suny, Fatma Müge Göçek, and Norman M. Naimark*

A comprehensive work that moves beyond nationalist rhetoric to offer the most up-to-date scholarship and a more complete understanding of the Armenian genocide.

**III. Journals (some entries edited to avoid duplication)****PUBLIC INTERNATIONAL LAW eJOURNAL**

Vol. 6, No. 20: Feb 04, 2011

[ALAN O'NEIL SYKES, EDITOR](#)**Financing as Governance**[Fleur E. Johns](#), Sydney Law School**Internet Based Trade and the Court of Justice: Different Sector, Different Attitude**[Alan Littler](#), Tilburg University - Faculty of Law - Tilburg Law and Economics Center (TILEC)**International Courts: Uneven Judicialization in Global Order**[Benedict Kingsbury](#), New York University (NYU) - School of Law**Sham of the Moral Court?**[Mark James Findlay](#), University of Sydney - Institute of Criminology[Sylvia Ntube Ngane](#), University of Leeds**Reclaiming the Right to Food as a Normative Response to the Global Food Crisis**[Smita Narula](#), New York University (NYU) - School of Law

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**PUBLIC INTERNATIONAL LAW eJOURNAL**

Vol. 6, No. 20: Feb 04, 2011

[ALAN O'NEIL SYKES, EDITOR](#)**Imposed Protection in European Private International Law: From Value Neutralism Towards Community Protectionism (in Dutch)**[Laura van Bochove](#), Erasmus School of Law[Xandra E. Kramer](#), Erasmus University Rotterdam (EUR) - Erasmus School of Law**An Analysis of the Treaty Making Power Proposed by the NIPC**[Surendra Bhandari](#), Independent**Withdrawing from Customary International Law: Some Lessons from History**[William S. Dodge](#), University of California - Hastings College of the Law**Defining Executive Deference in Treaty Interpretation Cases**[Joshua A. Weiss](#), George Washington University - Law School**The International Court of Justice and Applied Forms of Reparation for International Human Rights and Humanitarian Law Violations**[Gentian Zyberi](#), Unaffiliated Authors

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**PUBLIC INTERNATIONAL LAW eJOURNAL**

Vol. 6, No. 19: Feb 03, 2011

[ALAN O'NEIL SYKES, EDITOR](#)**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 ECJ's Relationship with Other International Courts and Tribunals**[Nikos Lavranos](#), European University Institute (EUI)**International Arbitration's Public Realm**[Catherine A. Rogers](#), Bocconi University - Institute of Comparative Law (IDC), The Pennsylvania State University Dickinson School of Law**Universality and Univerzalization of Human Rights: Reflections on Obstacles and the Way Forward**[Willem van Genugten](#), Tilburg University - Law School

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**LAW & SOCIETY: INTERNATIONAL & COMPARATIVE LAW eJOURNAL**

Vol. 6, No. 17: Feb. 09, 2011

[CHRISTIANA OCHOA, EDITOR](#)**Sham of the Moral Court?**[Mark James Findlay](#), University of Sydney - Institute of Criminology[Sylvia Ntube Ngane](#), University of Leeds**Human Rights in a Warmer World: The Case of Climate Change Displacement**[Carl Söderbergh](#), Minority Rights Group International**Enhanced Multi-Level Protection of Human Dignity in a Globalized Context Through Humanitarian Global Legal Goods**[Nicolas Carrillo](#), Universidad Autónoma de Madrid**'Absolute Prohibition of Torture': A Myth or Reality?**[Zafar Javed Malik](#), *affiliation not provided to SSRN***Financing as Governance**[Fleur E. Johns](#), Sydney Law School**International Courts: Uneven Judicialization in Global Order**[Benedict Kingsbury](#), New York University (NYU) - School of Law**Legal Education in Asia: Globalization, Change and Contexts – In Review**[Luke R. Nottage](#), University of Sydney - Faculty of Law, University of Sydney - Australian Network for Japanese Law**A Nation at War with Itself: The Potential Impact of Uganda's Anti-Homosexuality Bill**[Barrie Sander](#), Herbert Smith LLP

**Taking Tea with Torturers**

[Craig M. Scott](#), York University - Osgoode Hall Law School

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**LAW & SOCIETY: INTERNATIONAL & COMPARATIVE LAW eJOURNAL**

Vol. 6, No. 16: Feb. 07, 2011

[CHRISTIANA OCHOA](#), EDITOR

**Prosecution or Impunity? Is There an Alternative?**

[Marco Fanara](#), United Nations Mandated University for Peace

**India's Policy and Practice in Implementation of International Treaty Obligation: Its Critical View**

[Sunny Jindal](#), *affiliation not provided to SSRN*

**Cultural Relativism Versus Sexual Rights as a Coherent Set of Human Rights**

[Marco Fanara](#), United Nations Mandated University for Peace

**Internet Based Trade and the Court of Justice: Different Sector, Different Attitude**

[Alan Littler](#), Tilburg University - Faculty of Law - Tilburg Law and Economics Center (TILEC)

**Which Treaties Reign Supreme?: The Dormant Supremacy Clause Effect of Implemented Non-Self-Executing Treaties**

[Leonie W. Huang](#), Fordham University - School of Law

**A Few Observations on Choice of Law**

[Nadezda Rozehnalova](#), *affiliation not provided to SSRN*

[Jiri Valdians](#), Masaryk University - Faculty of Law

**War Crimes**

[Noah Weisbord](#), Florida International University (FIU) - College of Law

[Carla M Reyes](#), *affiliation not provided to SSRN*

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**LAW & SOCIETY: INTERNATIONAL & COMPARATIVE LAW eJOURNAL**

Vol. 6, No. 15: Feb. 04, 2011

[CHRISTIANA OCHOA](#), EDITOR

**An Analysis of the Treaty Making Power Proposed by the NIPC**

[Surendra Bhandari](#), Independent

**Circumventing Accountability: Private Military Companies and Human Rights Abuses**

[Marco Fanara](#), United Nations Mandated University for Peace

**Towards a Concept of Human Rights: Inside and Outside Genealogy**

[Veronica Rodriguez-Blanco](#), University of Birmingham - School of Law

**Understanding the Rise of the Regulatory State in the Global South**

[Navroz K. Dubash](#), Center for Policy Research

[Bronwen Morgan](#), University of Bristol - Faculty of Social Sciences and Law

**Criminalizing Humanitarian Relief: Are US Material Support for Terrorism Laws Compatible with International Humanitarian Law?**

[Justin A. Fraterman](#), Georgetown University Law Center

**Convergences and Divergences in International Legal Norms on Migrant Labor**

[Chantal Thomas](#), Cornell Law School

**Reclaiming the Right to Food as a Normative Response to the Global Food Crisis**

[Smita Narula](#), New York University (NYU) - School of Law

**Indian Anti-Beggary Laws and Their Constitutionality Through the Prism of Fundamental Rights with Special Reference to Ram Lakhan V. State**

[Ashish Goel](#), National University of Juridical Sciences

**The International Court of Justice and Applied Forms of Reparation for International Human Rights and Humanitarian Law Violations**

[Gentian Zyberi](#), Unaffiliated Authors

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**INTERNATIONAL ENVIRONMENTAL LAW eJOURNAL**

Vol. 3, No. 5: Feb. 03, 2011

[DAVID D. CARON](#) & [TSEMING YANG](#), EDS.

**The Copenhagen Accord and the Silent Incorporation of the Polluter Pays Principle in International Climate Law: An Analysis of Sino-American Diplomacy at Copenhagen and Beyond**

[Jason Bui](#), City University of Hong Kong (CityUHK) - School of Law

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

[Tomilola Akanle](#), University of Dundee

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

[Paolo Galizzi](#), Fordham University - School of Law

[Alena Herklotz](#), Fordham University - School of Law

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**HUMAN RIGHTS & THE GLOBAL ECONOMY eJOURNAL**

Vol. 5, No. 11: Feb 07, 2011

[HOPE LEWIS](#), EDITOR

[WENDY E. PARMET](#), EDITOR

[RASHMI DYAL-CHAND](#), EDITOR

**Reclaiming the Right to Food as a Normative Response to the Global Food Crisis**

[Smita Narula](#), New York University (NYU) - School of Law

**Universality and Univerzalization of Human Rights: Reflections on Obstacles and the Way Forward**

[Willem van Genugten](#), Tilburg University - Law School

**The Myth and Reality of 'Shari'a' Courts in Canada: A Delayed Opportunity for the Indigenization of Islamic Legal Rulings**

[Faisal Kutty](#), Valparaiso University - Law School

**Victims of Environmental Pollution in the Slipstream of Globalization**

[Jonathan M. Verschuuren](#), Tilburg University - Center for Transboundary Legal Development, Tilburg Sustainability Center

[Steve Kuchta](#), University of Connecticut - Department of Economics

**Human Rights in a Warmer World: The Case of Climate Change Displacement**

[Carl Söderbergh](#), Minority Rights Group International

**Enhanced Multi-Level Protection of Human Dignity in a Globalized Context Through Humanitarian Global Legal Goods**

[Nicolas Carrillo](#), Universidad Autónoma de Madrid

**Questioning Hierarchies of Harm: Women, Forced Migration, and International Criminal Law**

[Jaya Ramji-Nogales](#), Temple University - James E. Beasley School of Law

.....

**HUMAN RIGHTS & THE GLOBAL ECONOMY eJOURNAL**

Vol. 5, No. 10: Feb 03, 2011

[HOPE LEWIS, EDITOR](#)

[WENDY E. PARMET, EDITOR](#)

[RASHMI DYAL-CHAND, EDITOR](#)

**Constitutionality of the Patient Protection and Affordable Care Act Under the Commerce Clause and the Necessary and Proper Clause**

[Wilson Ray Huhn](#), University of Akron - School of Law

**Right to Water: Some Theoretical Issues**

[Taposik Banerjee](#), Jawaharlal Nehru University, NISTADS

**The Due Diligence Standard and Violence Against Women**

[Stephanie Farrior](#), Vermont Law School

**The Business of Torture: The Domestic Liability of Private Airlines in the U.S. Extraordinary Rendition Program**

[Kate Kovarovic](#), American University - Washington College of Law

.....

**[Harvard ILJ | Harvard International Law Journal](#)**

Volume 52, Issue 1

**Articles:**

[Universal Exceptionalism in International Law](#)

By: Anu Bradford & Eric A. Posner

[Mutual Recognition in International Finance](#)

By: Pierre-Hugues Verdier

[What if Europe Held an Election and No One Cared?](#)

By: David Schleicher

[On a Differential Law of War](#)

By: Gabriella Blum

[The Evolution of Hostile Takeover Regimes in Developed and Emerging Markets: An Analytical Framework](#)

By: John Armour, Jack B. Jacobs, & Curtis J. Milhaupt

**Note:**

[The Legal Turn in Late Development Theory: The Rule of Law and the World Bank's Development Model](#)

By: Tor Krever

.....

[\*\*Nordic Journal of International Law\*\*](#)

Volume 80, Number 1, 2011

[International Legal Hierarchy Revisited - The Status of Obligations Erga Omnes](#)

pp. 1-23(23)

Author: Linderfalk, Ulf

[Challenge or Confirmation?](#)

[The Role of the Swedish Parliament in the Decision-making on the Use of Force](#)

pp. 25-93(69)

Authors: Österdahl, Inger

[The Hague Judgments Convention](#)

pp. 95-119(25)

Author: Nielsen, Peter Arnt

[The Law of Armed Conflict: International Humanitarian Law in War](#)

pp. 121-123(3)

Author: Hartmann, Jacques

.....

[\*\*Archiv des Völkerrechts\*\*](#)

(Vol. 48, no. 4, December 2010)

- Abhandlungen
  - Stefanie Schmahl & Tobias Winkler, Schutz vor Armut in der EMRK?
  - Dominik Eisenhut, Dominik Sovereignty, National Security and International Treaty Law: The Standard of Review of International Courts and Tribunals with regard to 'Security Exceptions'
- Beiträge und Berichte
  - Bartłomiej Krzan, Frieden und Gerechtigkeit nach der Kampala-Konferenz: Einige Überlegungen zur Rolle des Sicherheitsrats in der Völkerstrafgerichtsbarkeit
  - Jenny Döge, Cyber Warfare: Challenges for the Applicability of the Traditional Laws of War Regime

.....

[\*\*Fordham International Law Journal, Volume 34, Number 2, January 2011\*\*](#)

ARTICLES

- CHARACTERIZING US OPERATIONS IN PAKISTAN: IS THE UNITED STATES ENGAGED IN AN ARMED CONFLICT? (Laurie R. Blank & Benjamin R. Farley) p.151

- THE COMPLEMENTARY FACES OF LEGITIMACY IN INTERNATIONAL LAW: THE LEGITIMACY OF ORIGIN AND THE LEGITIMACY OF EXERCISE (Jean d'Aspremont & Eric De Brabandere) p.190
- PIRATES AND IMPUNITY: IS THE THREAT OF ASYLUM CLAIMS A REASON TO ALLOW PIRATES TO ESCAPE JUSTICE? (Yvonne M. Dutton) p.236
- FORMALIZATION OF PLEA BARGAINING IN GERMANY: WILL THE NEW LEGISLATION BE ABLE TO SQUARE THE CIRCLE? (Regina E. Rauxloh) p.296
- HEAD-OF-STATE AND FOREIGN OFFICIAL IMMUNITY IN THE UNITED STATES AFTER SAMANTAR: A SUGGESTED APPROACH (Christopher D. Totten) p.332

.....

**Zeitschrift für ausländisches öffentliches Recht und Völkerrecht**

**Volume 70, Issues 4, 2010**

- *Cançdo Trindade*: Die Entwicklung des interamerikanischen Systems zum Schutz der Menschenrechte (629)
- *von Bogdandy/Schill*: Die Achtung der nationalen Identität unter dem reformierten Unionsvertrag – Zur unionsrechtlichen Rolle nationalen Verfassungsrechts und zur Überwindung des absoluten Vorrangs (701)
- *Pfisterer*: Die nationale Sicherheitsstrategie der Vereinigten Staaten von Mai 2010 – ein Bericht (735)
- *Swart*: Is There a Text in This Court? The Purposive Method of Interpretation and the ad hoc Tribunals (767)
- *Mager*: Die Entwicklung des Wasserwirtschaftsrechts – Referenzgebiet für ein materiell-rechtlich fundiertes internationales Verwaltungsrecht (789)

.....

**Journal of the History of International Law**

**Volume 13, Number 1, 2011**

**The Wisconsin-Milwaukee Conference on International Law and World Order. Introduction**

pp. 1-5(5)

Author: Howland, Douglas

**Sovereignty beyond the West: The End of Classical International Law**

pp. 7-73(67)

Author: Lorca, Arnulf Becker

**Universalism and Equal Sovereignty as Contested Myths of International Law in the Sino-Western Encounter**

pp. 75-116(42)

Author: Chen, Li

**Contraband and Private Property in the Age of Imperialism**

pp. 117-153(37)

Author: Howland, Douglas

[Sovereignty and the Chinese Red Cross Society: The Differentiated Practice of International Law in Shandong, 1914-1916](#)

pp. 155-177(23)

Author: Reeves, Caroline

[The Wilsonian Challenge to International Law](#)

pp. 179-208(30)

Author: Smith, Leonard V.

[Beyond International Law: The Theories of World Law in Tanaka Kōtarō and Tsunetō Kyō](#)

pp. 209-234(26)

Author: Doak, Kevin M.

[Ernest Satow's Guides to Diplomatic Practice. From the First Edition in 1917 to the Sixth Edition \(2009\)](#)

pp. 235-245(11)

Author: Schwietzke, Joachim

.....

[Comparative Labor Law & Policy Journal, Volume 32, Number 2, Winter 2011](#)

LABOR LAW AND DEVELOPMENT: PERSPECTIVES ON LABOR REGULATION IN AFRICA AND THE AFRICAN DIASPORA

- Introduction: Labor Law and Development: Perspectives on Labor Regulation in Africa and the African Diaspora (Adelle Blackett) p.303
- Toward a Decent Work Regime for Informal Employment in Ghana: Some Preliminary Considerations (Dzodzi Tsikata) p.311
- Rethinking Labor Law in the New Commonwealth Caribbean Economy: A Framework for Change (Rose-Marie Belle Antoine) p.343
- Embedding Trade Liberalization in Social Policy: Lessons from the European Union? (Diamond Ashiagbor) p.373
- Convergences and Divergences in International Legal Norms on Migrant Labor (Chantal Thomas) p.405
- Beyond Standard Setting: A Study of ILO Technical Cooperation on Regional Labor Law Reform in West and Central Africa (Adelle Blackett) p.443

.....

[Journal of International Dispute Settlement](#)

Volume 2 Issue 1 February 2011

Gilbert Guillaume

The Use of Precedent by International Judges and Arbitrators

J Int. Disp. Settlement (2011) 2(1): 5-23 doi:10.1093/jnlids/idq025

[Abstract](#) [Full Text \(HTML\)](#) [Full Text \(PDF\)](#)

W. Michael Reisman

Soft Law and Law Jobs

J Int. Disp. Settlement (2011) 2(1): 25-30 doi:10.1093/jnlids/idq014

[Abstract](#) [Full Text \(HTML\)](#) [Full Text \(PDF\)](#)

Anastasios Gourgourinis

The Distinction between Interpretation and Application of Norms in International Adjudication

J Int. Disp. Settlement (2011) 2(1): 31-57 doi:10.1093/jnlids/idq022

[Abstract](#) [Full Text \(HTML\)](#) [Full Text \(PDF\)](#)

Thomas Schultz

The Concept of Law in Transnational Arbitral Legal Orders and some of its Consequences

J Int. Disp. Settlement (2011) 2(1): 59-85 doi:10.1093/jnlids/idq019

[Abstract](#) [Full Text \(HTML\)](#) [Full Text \(PDF\)](#)

Sébastien Manciaux

The Representation of States before ICSID Tribunals

J Int. Disp. Settlement (2011) 2(1): 87-96 doi:10.1093/jnlids/idq021

[Abstract](#) [Full Text \(HTML\)](#) [Full Text \(PDF\)](#)

Zachary Douglas

The MFN Clause in Investment Arbitration: Treaty Interpretation Off the Rails

J Int. Disp. Settlement (2011) 2(1): 97-113 doi:10.1093/jnlids/idq015

[Abstract](#) [Full Text \(HTML\)](#) [Full Text \(PDF\)](#)

August Reinisch

How Narrow are Narrow Dispute Settlement Clauses in Investment Treaties?

J Int. Disp. Settlement (2011) 2(1): 115-174 doi:10.1093/jnlids/idq016

[Abstract](#) [Full Text \(HTML\)](#) [Full Text \(PDF\)](#)

Leonila Guglya

The Interplay of International Dispute Resolution Mechanisms: the Softwood Lumber Controversy

J Int. Disp. Settlement (2011) 2(1): 175-207 doi:10.1093/jnlids/idq020

[Abstract](#) [Full Text \(HTML\)](#) [Full Text \(PDF\)](#)

Maud Piers

Consumer Arbitration in the EU: A Forced Marriage with Incompatible Expectations

J Int. Disp. Settlement (2011) 2(1): 209-230 doi:10.1093/jnlids/idq017

[Abstract](#) [Full Text \(HTML\)](#) [Full Text \(PDF\)](#)

Isabelle Van Damme

On 'Good Faith Use of Dictionary in the Search of Ordinary Meaning under the WTO Dispute Settlement Understanding'—A Reply to Professor Chang-Fa Lo

J Int. Disp. Settlement (2011) 2(1): 231-239 doi:10.1093/jnlids/idq023

[Abstract](#) [Full Text \(HTML\)](#) [Full Text \(PDF\)](#)

Cesare P.R. Romano

A Taxonomy of International Rule of Law Institutions

J Int. Disp. Settlement (2011) 2(1): 241-277 doi:10.1093/jnlids/idq024

[Abstract](#) [Full Text \(HTML\)](#) [Full Text \(PDF\)](#)

.....

### [Journal of International Dispute Settlement, Volume 2, Issue 1, February 2011](#)

#### Articles

- The Use of Precedent by International Judges and Arbitrators (Gilbert Guillaume) p.5-23
- Soft Law and Law Jobs (W. Michael Reisman) p.25-30
- The Distinction between Interpretation and Application of Norms in International Adjudication (Anastasios Gourgourinis) p.31-57
- The Concept of Law in Transnational Arbitral Legal Orders and some of its Consequences (Thomas Schultz) p.59-85
- The Representation of States before ICSID Tribunals (Sébastien Manciaux) p.87-96

- The MFN Clause in Investment Arbitration: Treaty Interpretation Off the Rails (Zachary Douglas) p.97-113
- How Narrow are Narrow Dispute Settlement Clauses in Investment Treaties? (August Reinisch) p.115-174
- The Interplay of International Dispute Resolution Mechanisms: the Softwood Lumber Controversy (Leonila Guglya) p.175-207
- Consumer Arbitration in the EU: A Forced Marriage with Incompatible Expectations (Maud Piers) p.209-230
- On 'Good Faith Use of Dictionary in the Search of Ordinary Meaning under the WTO Dispute Settlement Understanding'—A Reply to Professor Chang-Fa Lo (Isabelle Van Damme) p.231-239
- A Taxonomy of International Rule of Law Institutions (Cesare P.R. Romano) p.241-277

.....

### [International Organization](#)

Volume 65 - Issue 01, 2011

#### Research Articles

##### [Mapping the Sovereign State: Technology, Authority, and Systemic Change](#)

Jordan Branch

[International Organization](#) / [Volume 65](#) / [Issue 01](#), pp 1 -36

Published online: 08 February 2011

DOI:10.1017/S0020818310000299 ([About DOI](#))

[Abstract](#)  [View PDF](#) [View HTML](#)

##### [Who Supports Global Economic Engagement? The Sources of Preferences in American Foreign Economic Policy](#)

Helen V. Milner and Dustin H. Tingley

[International Organization](#) / [Volume 65](#) / [Issue 01](#), pp 37 -68

Published online: 08 February 2011

DOI:10.1017/S0020818310000317 ([About DOI](#))

[Abstract](#)  [View PDF](#) [View HTML](#)

##### [Vetting the Advocacy Agenda: Network Centrality and the Paradox of Weapons Norms](#)

R. Charli Carpenter

[International Organization](#) / [Volume 65](#) / [Issue 01](#), pp 69 -102

Published online: 08 February 2011

DOI:10.1017/S0020818310000329 ([About DOI](#))

[Abstract](#)  [View PDF](#) [View HTML](#)

##### [International Politics and the Spread of Quotas for Women in Legislatures](#)

Sarah Sunn Bush

[International Organization](#) / [Volume 65](#) / [Issue 01](#), pp 103 -137

Published online: 08 February 2011

DOI:10.1017/S0020818310000287 ([About DOI](#))

[Abstract](#)  [View PDF](#) [View HTML](#)

##### [Explaining Public Support for the Use of Military Force: The Impact of Reference Point Framing and Prospective Decision Making](#)

Héctor Perla

[International Organization](#) / [Volume 65](#) / [Issue 01](#), pp 139 -167

Published online: 08 February 2011

DOI:10.1017/S0020818310000330 ([About DOI](#))

[Abstract](#)  [View PDF](#) [View HTML](#)

Review Essay

[The End of an Era in International Financial Regulation? A Postcrisis Research Agenda](#)

Eric Helleiner and Stefano Pagliari

[International Organization](#) / [Volume 65](#) / [Issue 01](#), pp 169 -200

Published online: 08 February 2011

DOI:10.1017/S0020818310000305 ([About DOI](#))

[Abstract](#)  [View PDF](#) [View HTML](#)

.....

[International Arbitration Law Review, Volume 13, Number 6, 2010](#)

Articles

- Arbitrating in "Developing" Arbitral Jurisdictions: A Discussion of Common Themes and Challenges Based on Experiences in India and Indonesia (NICHOLAS PEACOCK) p.221
- Public Policy in Singapore: An Unruly Horse Rears its Head—AJT v AJU (PAUL TAN) p.234
- Early, Active and Effective Case Management in Arbitration: A Call to Reject Procedural Order No.1 (DEVIKA KHANNA) p.237
- The Meaning of International Award under Indonesian Arbitration Law (HUALA ADOLF) p.241

.....

[International Journal on Minority and Group Rights](#)

Volume 18, Number 1, 2011

[Jurisprudence of the European Court of Human Rights Regarding Indigenous Peoples: Retrospect and Prospects](#)

pp. 1-37(37)

Author: Koivurova, Timo

[Self-determination and Indigenous Women - "Whose Voice Is It We Hear in the Sámi Parliament?"](#)

pp. 39-62(24)

Author: Kuokkanen, Rauna

[Indigenous Peoples in Indonesia: At Risk of Disappearing as Distinct Peoples in the Rush for Biofuel?](#)

pp. 63-92(30)

Author: Colbran, Nicola

[Language Rights in Relations with Public Administration: European Perspectives](#)

pp. 93-113(21)

Author: Ulasiuk, Iryna

[Implementing Negotiated Agreements: The Real Challenge to Intrastate Peace](#)

pp. 115-118(4)

Author: Bell, Christine

[Universal Minority Rights - A Commentary on the Jurisprudence of International Courts and Treaty Bodies](#)

pp. 119-121(3)

Author: Ringelheim, Julie

[Understanding the Distinction between Human Rights Violations per se and those Ethnically-Motivated: A Reply to Kjetil Tronvoll's Rejoinder](#)

pp. 123-127(5)

Author: Assefa, Getachew

[Rejoinder to Getachew Assefa's Reply to Kjetil Tronvoll's Rejoinder](#)

pp. 129-129(1)

Author: Tronvoll, Kjetil

.....

[Journal of International Peacekeeping](#)

(Vol. 15, nos. 1-2, February 2011)

- Tim McCormack, Why Consider Legal Challenges for International Policing?
- James Watson, Mark Fitzpatrick, & James Ellis, The Legal Basis for Bilateral and Multilateral Police Deployments
- Tony Murney, Sue-Ellen Crawford, & Andie Hider, Transnational Policing and International Human Development - A Rule of Law Perspective
- Boris Kondoch, The Applicability of Human Rights Standards to International Policing
- Katarina Grenfell, Accountability in International Policing
- Bruce 'ossie' Oswald, Detention by United Nations Peacekeepers: Searching for Definition and Categorisation
- Marjan Malešić, Civilian Crisis Management in the EU - Structural and Functional Aspects
- Muriel Asseburg & Ronja Kempin, ESDP in Practice: Crisis Management without Strategic Planning
- Daniel Keohane, Lessons from EU Peace Operations
- Frederik Naert, Legal Aspects of EU Military Operations
- Cedric De Coning & Karsten Friis, Coherence and Coordination The Limits of the Comprehensive Approach

.....

[International Journal of Law in Context, Volume 7, Issue 1, March 2011](#)

(select articles)

- Incorporating social rights in development: transnational corporations and the right to water (Anna F. S. Russell) p.1-30
- Pandora's box?: humanitarian intervention and international law (Aidan Hehir) p.87-94

.....

[Climate Law, Volume 1, Number 2, 2010](#)

- Early experience with the Kyoto compliance system: Possible lessons for MEA compliance system design (Meinhard Doelle) p.237-260
- Power, responsibility, and accountability: Rethinking the legitimacy of institutions for climate finance (Athena Ballesteros, Smita Nakhooda, Jaco....) p.261-312
- Does self-interest skew state reporting of greenhouse gas emissions? A preliminary analysis based on the first verified emissions estimates under the Kyoto Protocol (Alexander Zahar) p.313-324
- Reflections on climate politics in a sunburnt country (Greg Picker) p.325-327
- Book reviews (Abbe E.L. Brown) p.329-342

.....

### Climate Law, Volume 1, Number 1, 2010

- The continuing importance of climate change litigation (Hari M. Osofsky) p.3-29
- "Six honest serving-men": Climate change litigation as legal mobilization and the utility of typologies (Navraj Singh Ghaleigh) p.31-61
- Arbitrating climate change: Regulatory regimes and investor-state disputes (Kate Miles) p.63-92
- The protection of property rights under the European Convention on Human Rights and the promotion of low-carbon investments (Anatole Boute) p.93-132
- Holding countries to account: The Kyoto Protocol's compliance system revisited after four years of experience (Sebastian Oberthür and René Lefeber) p.133-158
- United we stand, divided we fall: The potential role of the principle of loyal cooperation in ensuring compliance of the European Community with the Kyoto Protocol (Javier de Cendra de Larragán) p.159-176
- International climate treaties: The case for pessimism (Ole Røgeberg, Steinar Andresen and Bjart Holtsmark) p.177-197
- Case note: Republic of Poland v. Commission (Case T-183/07, 23 September 2009) (Javier de Cendra de Larragán) p.199-206
- Expectations, reality, and future: A negotiator's reflections on COP 15 (Achala Chandani) p.207-225
- Book reviews (R.V. Anuradha) p.227-235

.....

### European Yearbook of International Economic Law

Vol. 2, 2011

- Part I Topics
  - Special Focus I: The State and the Global Economy
  - Karle M. Meessen, Distinguished Essay: Governmental Decision-Making in the World Economy
  - Fabian Amtenbrink, Central Bank Challenges in the Global Economy
  - Ludwig Gramlich, An International Normative Framework for Sovereign Wealth Funds?
  - Heike Schweitzer, Sovereign Wealth Funds: Market Investors or "Imperialist Capitalists"? The European Response to Direct Investment by Non-EU State-Controlled Entities
  - Rosa M. Lastra, The Role of the IMF as a Global Financial Authority
  - Andreas Falke, No Ado About Nothing: Obama's Trade Policies After 1 Year
  - Special Focus II: Climate Change and International Economic Law
  - Alexander Proelss & Kerstin Güssow, Carbon Capture and Storage from the Perspective of International Law
  - Wolfgang Weiß, Biofuels and WTO Law
  - Erich Vranes, Climate Labelling and the WTO: The 2010 EU Ecolabelling Programme as a Test Case Under WTO Law
  - Mireille Cossy, Environmental Services and the General Agreement on Trade in Services (GATS): Legal Issues and Negotiating Stakes at the WTO
  - Kierstyn Inglis, European Union Competences and Actions in International Environment Law: Recent Developments and Current Challenges
- Part II Regional Integration
  - Colin M. Brown, The European Union and Regional Trade Agreements: A Case Study of the EU-Korea FTA
  - Tomer Broude, MENA: The Question of Palestinian Observership and Accession to the WTO

- Stephen Clarkson, Integration and Disintegration in North America: The Rise and Fall of International Economic Law in One Region
- Colin McCarthy, African Regional Economic Integration: Is the Paradigm Relevant and Appropriate?
- Félix Peña, Regional Integration in Latin America: Some Lessons of 50 Years of Experience
- Prasit Aekaputra, Report on the ASEAN Economic Cooperation and Integration
- Part III International Economic Institutions
  - Claudia Schmucker & Katharina Gnath, From the G8 to the G20: Reforming the Global Economic Governance System
  - Edwini Kessie, The Doha Development Agenda at a Crossroads: What Are the Remaining Obstacles to the Conclusion of the Round: Part II?
  - Andreas Krallmann, WTO Dispute Settlement – The Establishment of 'Binding Guidance' by the Appellate Body in US Stainless Steel and Recent Dispute Settlement Rulings

.....

**[Agora International Journal of Juridical Sciences, Volume 5, Number 1, 2010](#)**

(select articles)

- ANALYSIS CONFLICTS OF JURISDICTION IN CRIMINAL PROCEEDINGS TO THE EUROPEAN UNION LEGAL FRAMEWORK (Mihaela Agheniței; Ion Flămânzeanu)
- INTERNATIONAL SPECIALIZED BODIES AND THEIR ROLE IN COMBATING VIOLENT CRIMES (Carmina Aleca; Lavinia Olah)
- THE HARMONISATION BETWEEN NATIONAL LEGISLATION AND EUROPEAN JUDICIAL NORMS CASE STUDY: CLIMATE CHANGE (Gabriela Bologa; Judit Balint (Platon))
- TAX HEAVENS IN THE CONTEXT OF GLOBALIZATIONS (Aida Cîmpeanu; Duret Gabriela; Pîrju Sergiu; Andrișan Daniel)
- FREE MOVEMENT OF LABOUR WITHIN THE COMMUNITY (Constantin Luiza Andra)
- NEW WORLD ORDER (Creț Vasile)
- EVENTS PRECEDING THE ESTABLISHMENT OF THE NORTH ATLANTIC ALLIANCE PACT (Creț Vasile; Pantea Mădălina)
- NATIONAL AND EUROPEAN CITIZENSHIP (Andra Dascălu; Daniela Iancu)
- CERTAIN ASPECTS OF THE RIGHT TO LIFE IN THE CEDO JURISPRUDENCE (Andra Dascălu; Lavinia Olah)
- A SHORT REFLECTION ON THE EUROPEAN CONSTRAINT OF DOMESTIC LAW (Ramona Duminică)
- FREE MOVEMENT OF THE GOODS, REFLECTING THE PRINCIPLE OF MUTUAL RECOGNITION OF SINGLE MARKET (Maria Gheorghe Isabela; Grațîela Ana-Maria Marcu)
- TRANSPOSITION OF EUROPEAN POLICY OF ENVIRONMENTAL PROTECTION IN ROMANIA (Elena Georgescu; Nadia Popescu; Simona Duțu)
- GENERAL PRINCIPLES OF COMMUNITY LAW (Georgeta Modiga; Gina Livioara Goga)
- EUROPEAN DEVELOPMENT COOPERATION AND THE ROLE OF NONSTATE ACTORS (Alina Angela Manolescu)
- NEW GOVERNANCE FOR NEW THREATS: THE TRANSNATIONAL COOPERATION IN SOUTH EASTERN EUROPEAN COUNTRIES (Alina Angela Manolescu)
- INTERNATIONAL RULE OF LAW, EUROPEAN RULE OF LAW AND THEIR INFLUENCES ON NATIONAL LEGISLATIONS (Alexandru Florin Măgureanu)
- EUROPEAN CITIZENSHIP VERSUS NATIONAL CITIZENSHIP (Camelia Nicoleta Olteanu)
- THE EFFECTS OF THE COMMUNITY LAW ON THE LAW SUITS DEALING WITH THE "POLLUTION TAX" (Mădălina Amalia Pașca)
- STATE SOVEREIGNTY IN THE CONTEXT OF GLOBALIZATION (Iuliana Savu)
- THE GLOBALIZATION OF FLOWS, MAJOR TRENDSETTER OF INTERNATIONAL MIGRATION (Maria Stoicovici)

- WHO ARE THE MIGRANTS OF TODAY? (Maria Stoicovici)
- THE ROMANIAN LEGAL SYSTEM IN THE CONTEXT OF EUROPEAN INTEGRATION (Anca Tătăran)
- THE ROLE OF OPERATIONAL PLANS AND PROGRAMS IN THE IMPLEMENTATION OF REGIONAL DEVELOPMENT POLICIES (Gabriela Bologa; Maria Rosca (Agape))

.....

**International Journal for the Semiotics of Law, Volume 24, Number 1, March 2011**

(select articles)

- Linguistic Justice in International Law: An Evaluation of the Discursive Framework (Jacqueline Mowbray) p.79-95
- Hybrid Texts and Uniform Law? The Multilingual Case Law of the Court of Justice of the European Union (Karen McAuliffe) p.97-115

.....

**Australian Feminist Law Journal, Volume 33, December 2010**

(select article)

- RAPE IN CONFLICT, RAPE IN PEACE: QUESTIONING THE REVOLUTIONARY POTENTIAL OF INTERNATIONAL CRIMINAL JUSTICE FOR WOMEN'S HUMAN RIGHTS (Kiran Grewal) p.57

.....

**University of Louisville Law Review, Volume 47, Number 4, 2009**

(select article)

- The Libel Tourist and the Ugly American: Free Speech in an Era of Modern Global Communications (David F. Partlett) p.629

.....

**Houston Law Review, Volume 47, Number 4, 2010**

(note)

NOTES

- THE ALIEN TORT STATUTE AND CUSTOMARY INTERNATIONAL LAW: THE JUDICIAL ALBATROSS HANGING AROUND THE EXECUTIVE'S NECK (Jonathan B. Lancton) p.1081

.....

**Legislation and Policy Brief, Volume 3, Issue 1, 2011**

(select article)

- War Courts: Terror's Distorting Effects on Federal Courts (Collin P. Wedel)

.....

**George Washington Journal of Energy and Environmental Law, Volume 2, Number 1, January 2011**

(select items)

Articles

- Creating Law for Next Generation Energy Technologies (Adrian J. Bradbrook) p.17
- Fossil Aquifers: A Common Heritage of Mankind (Renee Martin-Nagle) p.39

## Essays

- Energy and Climate Change: Key Lessons for Implementing the Behavioral Wedge (Amanda R. Carrico, Michael P. Vandenberg....) p.61

## Notes

- Go Offshore Young Man! The Categorical Exclusion Solution to Offshore Wind Farm Development on the Outer Continental Shelf (Nathaniel C. Giddings) p.75
- Sustainable Solutions: An Integrated Approach to REDD Project Planning (Sarah McKim) p.87

.....

[American University Law Review](#)

Volume 59 Issue 5: June 2010

## Piracy Symposium: Articles

[PDF](#)[Rationality, Pirates, and The Law: A Retrospective](#)

Peter T. Leeson

[PDF](#)[How Piracy Has Shaped the Relationship Between American Law and International Law](#)

Joel H. Samuels

[PDF](#)[Countering Persistent Contemporary Sea Piracy: Expanding Jurisdictional Regimes](#)

Joseph M. Isanga

[PDF](#)[Fighting Piracy With Private Security Measures: When Contract Law Should Tell Parties to Walk the Plank](#)

Jennifer S. Martin

[PDF](#)[Salvage Awards on the Somali Coast: Who Pays for Public and Private Rescue Efforts in Piracy Crises?](#)

Geoffrey Christopher Rapp

[PDF](#)[Mugged Twice?: Payment of Ransom on the High Seas](#)

Lawrence Rutkowski, Bruce G. Paulsen, and Jonathan D. Stoian

[PDF](#)[The Somali Piracy Problem: A Global Puzzle Necessitating A Global Solution](#)

Milena Sterio

.....

[University of Botswana Law Journal, Volume 9, June 2009](#)

(select articles)

- Peacekeeping in Africa: Problems and Prospects (L. Juma) p.3
- From the Organisation of African Unity to the African Union: Rethinking the Framework for Inter-state Cooperation in Africa in an Era of Globalisation (T. Maluwa) p.49

.....

[University of Botswana Law Journal, Volume 8, December 2008](#)

(select articles)

- The Legal Framework for Regional Integration in the Southern African Development Community (C. Ng'ong'ola) p.3
- Alternative Sentencing under African Human Rights Instruments and Mechanisms: Lessons for Southern Africa (J.D. Mujuzi) p.47
- International Human Rights, Women, Gender and Culture: Perspectives from Africa (A. Griffiths) p.79
- Convention on the Elimination of all Forms of Discrimination Against Women and the African Woman: Progress in the Fight Against HIV/AIDS in Southern Africa? (F. Shu-Acquaye) p.103

.....

[Canterbury Law Review, Volume 15, Number 2, 2009](#)

(select articles)

- Connecting the Common-Law Mind and Sovereignty-Talk, With Shakespeare's King Richard II as an Analogical Source (Richard Dawson) p.237
- The Treaty of Waitangi in New Zealand's Law and Constitution (John Hopkins) p.368

.....

[Journal of South African Law, 2010, Number 4](#)

(select articles)

- External public policy, the incidental question properly so-called and the recognition of foreign divorce orders (Neels) p.671
- The constitutional crisis of the 1950s revisited (Barrie) p.736
- The security council and North Korea's 2009 nuclear test (Strydom) p.790

.....

[European Journal of Risk Regulation, Issue 2, 2010](#)

(select articles)

MINI-SYMPOSIUM ON THE VOLCANIC ASH CRISIS

- The European Regulatory Response to the Volcanic Ash Crisis between Fragmentation and Integration (Alberto Alemanno) p.101
- Alice's Adventures in Volcano Land: The Use and Abuse of Expert Knowledge in Safety Regulation (Vincent M. Brannigan) p.107

ARTICLES

- Defining Nanomaterials for the Purpose of Regulation within the European Union (Diana Bowman, Joel D'Silva and Geert van Calster) p.115
- An Assessment of the EU Approach to Medical Device Regulation against the Backdrop of the US System (Bernhard Lobmayr) p.137

REPORTS

- Recent Developments in EU Biotech Regulation: A Possible Solution to the Deadlock on Authorizations of GM Crops? (Vessela Hristova) p.151
- The first GMO Case in Front of the US Supreme Court: To Lift or Not to Lift the Alfalfa Planting Ban? (Alberto Alemanno) p.152
- How to Avoid International Trade Conflicts (Nico Jaspers) p.167

.....

European Journal of Law and Technology, Volume 1, Number 3, 2010

(select articles)

- Participatory democracy and information and communications technology: A legal pluralist perspective (Michael Anthony C. Dizon)
- The Legality of the Data Retention Directive in Light of the Fundamental Rights to Privacy and Data Protection (Lukas Feiler)

.....

German Law Journal, Volume 12, Number 1, January 2011

(select articles)

## Part 3: The State, Liberal Rights, and Social Movements

- Legal Disintegration and a Theory of the State (William H. Clune) p.186-205
- "Flexible You Say. Doesn't Sound Like Property to Me": A Comment on William H. Clune (Gert Brüggemeier) p.206-209
- Divide and Conquer: The Legal Foundations of Postwar U.S. Labor Policy (Joel Rogers) p.210-230
- Fragmented and Centralized Bargaining in Europe: A Comment on Joel Rogers (Ninon Colneric) p.231-233
- Liberal Rights and Critical Legal Theory (Frances M. Olsen) p.234-246
- Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law (Kimberle W. Crenshaw) p.247-284
- Rights Discourse and Social Progress: A Comment on Kimberle W. Crenshaw (Konstanze Plett) p.285-289

## Part 4: Critical Legal Studies in the United States

- Some Current Controversies in Critical Legal Studies (Mark Tushnet) p.290-299
- Down by Law: Irony, Seriousness, and Reason (Günter Frankenberg) p.300-337
- A Rotation in Contemporary Legal Scholarship (David Kennedy) p.338-375

## Part 5: Politische Rechtslehre in Germany

- "And God Laughed...": Indeterminacy, Self-Reference and Paradox in Law (Gunther Teubner) p.376-406
- The Pragmatic and Functional Indeterminacy of Law (Klaus Günther) p.407-429
- Government Assistance in the Exercise of Basic Rights (Procedure and Organization) (Erhard Denninger) p.430-450
- The Effective Enjoyment of Rights (Richard E. Parker) p.451-464
- Proceduralization of the Category of Law (Rudolf Wiethölter) p.465-473
- Comment on Rodolf Wiethölter's "Materialization and Proceduralization in Modern Law", and "Proceduralization of the Category of Law" (Duncan Kennedy) p.474-487
- Rationality Potentials of Law - Allocative, Distributive and Communicative Rationality (Ulrich K. Preuss) p.488-515
- Social Construction and System in Legal Theory: A Response to Professor Preuss (Karl E. Klare) p.516-524
- From Universalistic Law to the Law of Uncertainty: On the Decay of the Legal Order's "Totalizing Teleology" as Treated in the Methodological Discussion and its Critique from the Left (Karl-Heinz Ladeur) p.525-547
- Law and Uncertainty: A Comment on Karl-Heinz Ladeur (Gerald Frug) p.548-553
- Socio-Theoretically Based Legal Science and Critical Legal Studies: Points of Contract and Divergencies (Christian Joerges) p.554-598

.....

# NATIONAL SECURITY & FOREIGN RELATIONS LAW eJOURNAL

Vol. 8, No. 7: Jan 17, 2011

[OREN GROSS, EDITOR](#), ED.

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

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.....

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(select articles)

### SYMPOSIUM—A Common Morality for the Global Age: In Gratitude for What We are Given

- In Gratitude for What We are Given: A Common Morality for the 'Global Age'? (William J. Wagner) p.7
- Human Nature and Human Culture (Kenneth Schmitz) p.87
- Respect for Human Dignity as a Fundamental Aspect of Moral Responsibility (Gilbert Meilaender) p.119
- Response (John Grabowski) p.129
- Natural Law, God, and Human Rights (Robert P. George) p.131
- Response (Joseph E. Capizzi) p.135
- Quest for a Global Morality as Kantian Diversion (Kevin Hart) p.243
- Response (Robert L. Wilken) p.257
- Legal Concepts and Applications Theory and Practice of Human Rights: Ancient and Modern (V. Bradley Lewis) p.277
- Response (Father David Hollenbach, S.J.) p.297
- Natural Right, Authority, and Power: The Theological Trajectory of Human Rights (Jean Porter) p.299
- Response (Brian Tierney) p.315
- International Justice as Equal Regard and the Use of Force: Are We Fighting for the Same Things? (Jean Bethke Elshtain) p.319
- Response (W. Cole Durham, Jr.) p.335
- Global Problems, Global Responsibilities: Accepting and Assigning Liabilities for Environmental Harms (Reverend William Schweiker) p.341
- Response (Heather Elliott) p.361

#### IV. Blogs (select items)

Harvard International Law Journal, Vol. 52(1): Online Symposium, [Opinio Juris](#) (continuing)

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## VII. Media/Press Releases (select items)

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