

**Anton's Weekly Digest of
International Law Scholarship***(available on <http://donanton.org>)(email subscription available at <http://mailman.anu.edu.au/mailman/listinfo/intlawprofessors>)**Vol. 2, No. 7
(17 Feb 2011)**

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

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

**Systems Pluralism and Institutional Pluralism in Constitutional Law: Rethinking National, Supranational, and Global Governance****[Daniel Halberstam](#)**

University of Michigan Law School

[U of Michigan Public Law Working Paper No. 229](#)

This essay responds to the challenge of global governance by rethinking our traditional understanding of constitutional law as the consolidation and settlement of authority. The essay teases out the various ways in which the practice of constitutionalism is open to claims from outside the system and lacks ordering through hierarchy within. Understanding these elements of openness yields a more accurate picture of the practice of constitutional law. It also suggests a pluralist practice that is more true to the ideals of constitutionalism than the traditional model of consolidation and hierarchy itself.

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**The Role of Consent and Uncertainty in the Formation of Customary International Law****[Niels Petersen](#)**

Max Planck Institute for Research on Collective Goods

[MPI Collective Goods Preprint, No. 2011/4](#)

While treaty norms only bind states that have explicitly consented to a treaty, the case is less clear with customary international law. According to the prevailing opinion in international law scholarship, states are not bound by a customary norm if they have persistently objected to the formation of the

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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](#).

norm. This contribution will show that the concept of persistent objection cannot be consistently applied to all areas of international law. It proposes a classification of three different types of norms – norms protecting a common good, norms of coordination and norms related to ethical values. In each of these three fields, the considerations for whether states can be bound against their expressed will differ. In the case of common goods, state consent is perceived as an epistemological tool in order to cope with uncertainty. Dissent is, therefore, no compelling reason for a state not to be bound by a specific norm. Norms of coordination basically protect the expectations of other states, so that only such states are bound that do not explicitly object. The most difficult case is ethical norms, where states have a margin of discretion in balancing competing rights and interests, but cannot inhibit the validity of the norm through individual objection.

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### **Negotiating Around Tradeoffs: Alternative Institutional Designs for Climate Finance**

**Arunabha Ghosh**

*affiliation not provided to SSRN*

*ECP Report No. 10*

The primary question addressed in this paper is: How would different governance priorities affect the institutional arrangements for a credible financing mechanism in the climate regime? The paper argues that tradeoffs are inevitable in climate finance negotiations, so it is important to recognise them upfront and organise negotiations around the priorities that different sets of countries identify. Such a process would generate alternative institutional designs, each offering a different balance of voice in governance, scale of funding, and timely action.

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### **Climate Change, Food Security, and Agrobiodiversity: Toward a Just, Resilient, and Sustainable Food System**

**Carmen G. Gonzalez**

Seattle University - School of Law

The global food production system is in a state of profound crisis. Decades of misguided aid, trade and production policies have resulted in an unprecedented erosion of agrobiodiversity that renders the world's food supply vulnerable to catastrophic crop failure in the event of drought, heavy rains, and outbreaks of pests and disease. Climate change threatens to wreak additional havoc on food production by increasing the frequency and severity of extreme weather events, depressing agricultural yields, reducing the productivity of the world's fisheries, and placing pressure on scarce water resources. . . . This article examines the underlying causes of the crises in the global food system, and recommends specific measures that might be adopted to address the distinct but related problems of food insecurity, loss of agrobiodiversity, and climate change. The article concludes that the root cause of the crises confronting the global food system is corporate domination of the food supply and the systemic destruction of local food systems that are healthy, ecologically sustainable, and socially just. The article argues that small-scale sustainable agriculture has the potential to address the interrelated climate, food, and agrobiodiversity crises, and suggests specific measures that the international community might take through law and regulation to promote sustainable agricultural production.

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### **International Law, Secularism and the Islamic World**

**Adrien K. Wing**

University of Iowa - College of Law

*American U. Int'l L. Rev., Vol. 24, p. 407, 2009*

This article discusses International law, secularism, and the Islamic world from the perspective of Global Critical Race Feminism (GCRF). After providing a brief overview of GCRF, Part I introduces

fundamentalism as a current trend in the Muslim world. Part II discusses illustrations of Muslims in several societies where this religious-secular tension exists focusing on France, Turkey, Tunisia, and Palestine. Tunisia and Turkey are discussed in particular interest because they are the two predominantly Muslim countries that have chosen, for many years, to be secular in most aspects of their legal systems. The Article concludes with some practical suggestions as to how Americans can address the complexities which will be raised as the futures of the United States and the Muslim world become more intertwined.

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### **Resurrecting Siyar Through Fatwas? (Re) Constructing 'Islamic International Law' in a Post-(Iraq) Invasion World**

**Shaheen S. Ali**

University of Warwick

*Warwick School of Law Research Paper*

*Journal of Conflict & Security Law, Oxford University Press, 2009*

This article seeks to explore the impact of the Iraq war on Siyar or 'Islamic international law' from a range of Muslim perspectives by raising some critical questions and addressing these through the lens of a selection of Fatwas solicited by Muslims from a range of countries and continents, on the Iraq war and its implications for popular understandings of Siyar and Jihad. This article suggests that the Iraq war presents an opportunity to revisit and potentially revive historical Siyar pronouncements of a dichotomous world, Li.e. dar-al-harhb and dar-al-Islarnm. I argue that in so doing, this discourse has invigorated the notions of a universal Ummah within the normative framework of Siyar hitherto marginalized by ascendancy of the nation state, international organizations and contemporary Muslim state practice. Finally, I argue that a wider Internet access to Muslim communities in the global South has facilitated a modified institution of ifta to reflect popular understandings of Siyar and Jihad and influence its reformulation in the backdrop of the Iraq war.

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### **Still Up to the Challenge? International Trade Issues Facing the Basel Convention as it Enters its Third Decade**

**Robert Shuman-Powell**

University of Maryland School of Law

The Basel Convention is inarguably a noble effort to combat the grave threat to human and environmental health posed by hazardous wastes, but it has failed in at least one of its fundamental objectives: to minimize the movement of hazardous waste across international borders. Is the framework of the Convention sufficient to achieve its goals as well tackle emerging issues in international trade? The first half of the paper provides generous background information about the Basel Convention including: - its origins and purpose - a case study of the infamous Khian Sea incident - the organization and scope of the treaty - how the treaty employs trade measures to minimize trade in hazardous waste - how the Convention approaches compliance and dispute resolution - the future implementation of the Convention via the New Strategic Framework to be addressed at COP10 - proposed provisions including the Basel Ban Amendment and the Protocol on Liability and Compensation. The second half of the paper discusses the Basel Convention's strengths and analyzes its shortcomings. It also suggests improvements for the Convention to succeed in its original and assumed objectives. Topics addressed include: - the incorporation the Precautionary Principle into the treaty - inconsistent standards in Annex IX - the circumvention of the convention by traders of e-waste and ship breaking - hazardous wastes outside of the Convention such as ship wastes and radioactive waste - the failure of the treaty's trade measures to achieve its objectives - the potential conflict of the treaty's trade measures with the WTO Agreements - inadequacies of the Basel Compliance Mechanism - the lack of a dispute settlement system. . . .

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**Property Rights, Human Rights, and the New International Trade Regime****Razeen Sappideen**

University of Western Sydney

*The International Journal of Human Rights, Forthcoming*

This paper advances the view that the underlying purpose of the WTO agreements is as much about empowering the multinational corporation (MNC) to operate freely as it is about promoting free trade between nations. The empowerment of MNC on such a grand scale has had downside effects on least developed countries (LDC) who when seeking IMF and IBRD assistance are required to apply for membership to the WTO. The paper explores this problem with particular reference to the limited liability of the MNC in respect of personal injury based tort liability, and the need to access much needed basic medicines by LDC. It highlights in this context the conflict between the interests of the MNC and LDC, and of human rights and property rights, and examines ways of addressing these problems.

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**Threshold Constraints and Laws of War****James Fallows Tierney**

University of Chicago - Law School

International humanitarian law (IHL) rules forge a balance between deontological humanitarian concerns on one hand, and consequentialist military-advantage concerns on the other hand. Yet the literature provides inadequate theoretical foundations for the balances these rules make at a structural level. In this paper, I explain how the standard humanitarian account and the first-wave economic account cannot alone explain the diversity of rules and principles observed in the formal doctrine and in state practice. States' revealed preference for norms fleshing out those "minimum standards" can not be brushed aside as mere "behavioral regularities." Many of these minimum standards are the result of purely instrumental coordination, since all belligerents are better off with full compliance under conditions of transparency and effective enforcement. But recognizing that states sometimes act for non-instrumental reasons supplements rather than falsifies claims that states act rationally under other circumstances. By adopting and deploying recent advances in law and economics that seek to bridge the gap between consequentialist and deontological moral theories, I show how the complex system of the laws of war are the product of both kinds of concerns.

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**Global Commitments to Human Rights in National Courts in the Age of Obama****Adrien K. Wing**

University of Iowa - College of Law

*Southern Cross Law Review, Vol. 13, p.25, 2009-2010**U Iowa Legal Studies Research Paper No.11-10*

This article was the Kirby lecture presented in March 2009 at the Southern Cross University in Sydney, Australia. Adrien Wing's keynote speech was in support of Australian retired Justice Michael Kirby's legacy that national courts can and should gain strength from international law. The author advances the idea that the interaction of international and national law is one of the greatest challenges in the century ahead, and many countries including the United States and Australia are just in the infancy of realizing this important fact. There is also a slow, but growing, worldwide trend (even in some common law jurisdictions) to use international law more in the national courts. It is the author's hope, and many others around the world, that President Obama will be a man of change in terms of urging the fostering of a greater synergy between American and international law.

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**Legal Integration in the Andes: Law-Making by the Andean Tribunal of Justice****Karen J. Alter**

Northwestern University - Department of Political Science

**Laurence R. Helfer**

Duke University - School of Law

*European Law Journal*, Vol. 17, No. 5, 2011

The Andean Tribunal of Justice (ATJ) is a copy of the European Court of Justice (ECJ), and the third most active international court. This article reviews our findings based on an original coding of all ATJ preliminary rulings from 1984 to 2007, and over forty interviews in the region. We then compare Andean and European jurisprudence in three key areas: whether the tribunals treat the founding integration treaties as constitutions for their respective communities, whether the ATJ and ECJ have implied powers for Community institutions that are not expressly enumerated in the founding treaties, and how the tribunals conceive of the relationship between Community law and other international agreements that are binding on the Member States.

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**Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention****Won Kidane**

Seattle University School of Law

*Vanderbilt Journal of Transnational Law*, Vol. 44, No. 1, January 2011*Seattle University School of Law Research Paper No. 11-05*

This Article provides a critical appraisal of the newly adopted African IDPs Convention. In particular, it offers a detailed analysis of the Convention's transformation of the UN Guiding Principles into legally binding rules for the management of the phenomenon of internal displacement in Africa. By definition, internally displaced persons (IDPs) are persons who have not crossed international frontiers and are citizens of the state within which they find themselves. Although their conditions may be similar to refugees, who are necessarily aliens to the host community, their legal status is not analogous. At the most basic level, there is no doctrinal agreement on whether "IDP" is a legal status at all. This has created a fundamental doctrinal dilemma. The Article analyzes the merits of the arguments for and against according IDPs a distinctive legal status analogous to refugees. It also provides a detailed discussion of the important provisions that define the rights and responsibilities of IDPs and the various state and non-state actors during the three most important phases – before displacement, during displacement, and after return.

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**Institutional Investor Influence on Global Climate Change Disclosure Practices****Julie Cotter**

University of Southern Queensland

**Muftah M. Najah***affiliation not provided to SSRN*

Using a stakeholder engagement perspective, we investigate the collective influence of institutional investors on a comprehensive set of climate change disclosures for a global sample of large companies. The proposition tested in this paper is that the influence of these powerful stakeholders is positively associated with climate change disclosure via corporate communications channels. We find that the extent and quality of climate change disclosures to be associated with three indicators of corporate responsiveness to institutional investor expectations about the disclosure of this information. These are completion and publication of the Carbon Disclosure Project (CDP) questionnaire on CDP's website, indications in corporate communications that CDP activities have influenced climate change disclosures, and the extent and quality of climate change information provided in CDP questionnaire responses.

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**Modelling the Principle of Proportionality (German)****Christoph Engel**

Max Planck Institute for Research on Collective Goods

[MPI Collective Goods Preprint No. 2011/2](#)

The novel part of this paper is a model of the principle of proportionality, as the cornerstone of the doctrine of fundamental rights. German law, and with some modifications also the law of the European Community and the European Convention on Human Rights, do not categorically outlaw interventions into fundamental freedoms and human rights (as, in principle, the US doctrine). Rather a state measure that is classified as an intervention comes under the scrutiny of the Constitutional Court, the European Court of Justice or the European Court of Human Rights. All courts clear interventions only if government can show that they serve a legitimate aim, and that the concrete measure is conducive to this aim, is least intrusive, and appropriately balances the importance of the legitimate aim with the severity of the intervention. While the doctrine on all these elements is rich, many questions are unsettled. This paper uses simple concepts from microeconomic theory to formalize the steps, and thereby to clarify the doctrine.

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**Limitations on Universality: The 'Right to Health' and the Necessity of Legal Nationality****Lindsey Kingston***affiliation not provided to SSRN***Elizabeth F. Cohen**

Syracuse University

**Christopher P. Morley**

SUNY Upstate Medical University, Dept Family Medicine

*LIMITATIONS ON UNIVERSALITY: THE 'RIGHT TO HEALTH' AND THE NECESSITY OF LEGAL NATIONALITY, Vol. 10, No. 11, Lindsey N. Kingston, Elizabeth F. Cohen and Christopher P. Morley, eds., BMC International Health and Human Rights, 2010*

[Western Political Science Association 2010 Annual Meeting Paper](#)

The right to health, including access to basic healthcare, has been recognized as a universal human right through a number of international agreements. Attempts to protect this ideal, however, have relied on states as the guarantor of rights and have subsequently ignored stateless individuals, or those lacking legal nationality in any nation-state. While a legal nationality alone is not sufficient to guarantee that a right to health care is accessible, an absence of any legal nationality is almost certainly a obstacle in most cases. There are millions of so-called stateless individuals around the globe - usually members of racial or ethnic minority groups - who are, in effect, denied medical citizenship in their countries of residence. A central motivating factor for this essay is the fact statelessness as a concept is largely absent from the medical and human rights literature. The goal for this discussion, therefore, is primarily to illustrate the need for further monitoring of health access issues by the medical and human rights communities, and for a great deal more research into the effects of statelessness upon access to healthcare. This is important both as a theoretical issue, in light of the recognition by many of healthcare as a universal right, as well as an empirical fact that requires further exploration and amelioration.

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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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**Consider the Censor****Derek E. Bambauer**

Brooklyn Law School

*Wake Forest Journal of Law & Policy, Forthcoming*  
*Brooklyn Law School, Legal Studies Paper No. 218*

WikiLeaks is frequently celebrated as the whistleblowing heir of the Pentagon Papers case. This Essay argues that portrayal is false, for reasons that focus attention on two neglected aspects of the case. First, the New York Times relied on a well-defined set of ethical precepts shared by mainstream journalists to contextualize the Papers and to redact harmful information. Second, American courts acted as neutral arbiters of the paper's judgment, and commanded power to enforce their decisions. WikiLeaks lacks both protective functions to regulate its disclosures. The Essay suggests that WikiLeaks is a bellwether: an exemplar of the shift in power over data generated by plummeting information costs. While that trend cannot realistically be reversed, the Essay offers two responses to the problems that WikiLeaks and its progeny create. First, established media outlets must continue to act as gatekeepers governed by strong journalistic ethics, even in an environment of ubiquitous access to raw data. Second, governments should consider, and debate, the possibility of using technological countermeasures – cyberattacks – against intermediaries threatening to disclose especially harmful data. There are times when the censor should win.

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**International Regime on Access and Benefit Sharing: Where are We Now?****Reji K. Joseph**

Research and Information System for Developing Countries

*Asian Biotechnology and Development Review, Vol. 12, No. 3, pp. 77-94, 2010*

Limitations of the national law in remedying biopiracy led to the negotiations on an international regime on Access and Benefit Sharing. The deliberations were stuck for a long time due to the extreme divergent views of the developed countries on the one hand and of the biodiversity rich developing countries on the other. A compromise was reached recently during the tenth COP at Nagoya, Japan, after more than six years of negotiations. To what extent did the developing countries succeed in meeting their demands? This paper provides an overview of the positions held by the developed countries, the biotech and pharmaceutical industries and the developing countries during the negotiations and makes an assessment of the provisions of the Nagoya Protocol to see if the developing countries really stand to gain.

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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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## **Iraq's Constitutional Mandate to Justly Distribute Water: The Implications of Federalism, Islam, International Law and Human Rights**

**Sharmila Murthy**

Carr Center for Human Rights Policy, Harvard Kennedy School

*George Washington International Law Review, Vol. 42, 2011*

With the impending water crisis in Iraq as a backdrop, this article examines the implications of Iraq's constitutional mandate to ensure the "just distribution" of water. In 2005, Iraq adopted a new Constitution with a federal structure that was intended to balance power between its Shia, Sunni and Kurdish communities. Water is a unique case study for understanding Iraq's federal structure because under the Constitution, power over water is shared between Iraq's federal and regional governments, but not with governorates not incorporated into regions. Because water is not equally distributed across Iraq, jurisdictional disputes over this increasingly scarce resource could exacerbate the fragile ethnic-sectarian tensions that had led Iraq to adopt a federal system of government in the first place. This article suggests that such conflicts could be mitigated by Iraq's constitutional mandate to ensure the "just distribution" of water. Islamic law and international law, both of which are referenced in Iraq's constitution, offer guidance on how the "just distribution" obligation should be interpreted. This article concludes that Iraq should develop a domestic policy that embraces the principles of "equitable and reasonable utilization" in international transboundary water law. Drawing on Islamic and human rights law, Iraq should also interpret its "just distribution" requirement as incorporating a human right to water.

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## **EU and U.S. Solutions to Systemic Risk and Their Potential Influence on a World Trade Organization Approach**

**Benjamin Austrin-Willis**

*affiliation not provided to SSRN*

*Georgetown Law and Economics Research Paper*

As the 2008 financial crisis spread globally, it became widely apparent that an essential ingredient to preventing future systemic crises was reform of the regulation of financial markets. Two ambitious initiatives for regulatory reform are the European Union's European System of Financial Supervision and the United States' Dodd-Frank Wall Street Reform and Consumer Protection Act. These two approaches to addressing systemic risk differ greatly in both their specificity and the level of authority they entrust to centralized regulators. They provide distinct models on which a potential global



systemic risk regulator could be based – a regulator that could be formed via the World Trade Organization, which has successfully liberalized global trade and has a role in global finance. This paper explores the EU and U.S. systemic risk regulatory models and explains why the EU approach is better suited for adaptation to the WTO.

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### **Twenty-First-Century Loving: Nationality, Gender, and Religion in the Muslim World**

**Adrien K. Wing**

University of Iowa - College of Law

*Fordham Law Review*, Vol. 76, p. 2895, 2008

*U Iowa Legal Studies Research Paper No. 11-08*

This essay highlights the intersection of three identities; nationality, gender, and religion, to show how a twenty-first-century *Loving v. Virginia* issue still exists in many nations. In a number of countries, interfaith marriages are still generally frowned upon due to customary and/or religious norms, and in some places, such unions are illegal or impossible. Interfaith marriages of any kind can be as problematic and as deadly as they have been for centuries. In many Muslim countries, it is legally forbidden for Muslim women to marry non-Muslim men. This essay answers the questions; will this ancient, deeply rooted prohibition join the fate of the Virginia antimiscegenation statute in *Loving*? Will such laws be legislated out of existence any time in the near future? Even if the legal prohibitions were lifted, would ongoing de facto norms still hinder Muslim women from choosing marital partners freely?

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### **The US-Australia Free Trade Agreement: The Interface between Partisan Politics and National Objectives**

**Tor Krever**

University of Cambridge - Faculty of Law

*Australian Journal of Political Science*, Vol. 41, No. 1, 2006

The literature on the drivers behind bilateral treaties implies an assumption that international treaties are entered into primarily to achieve national objectives, not partisan political goals. This paper investigates whether this assumption is valid, using as a case study the recently enacted US-Australia Free Trade Agreement. A stated original purpose for the agreement – increasing access to the US market for Australian agricultural products – would yield significant economic benefits for Australia. However, when it became clear that this goal would not be achieved, the objective of the Australian government shifted. The most plausible explanation for the shift is that domestic political objectives had moved to the fore and prompted the government to pursue and adopt the treaty despite some evidence that it might not be in the national interest to do so.

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### **China's Path to the Center Stage of WTO Dispute Settlement: Challenges and Responses**

**Wenhua Ji**

Mission of China to the WTO

**Cui Huang**

Zhejiang University - College of Public Administration

*Global Trade and Customs Journal*, Vol. 5, No. 9, pp. 365-377, 2010

In 2009, China stood at the center stage of the World Trade Organization (WTO) dispute settlement, accounting alone for half of new disputes. From three perspectives, this article examines China's endeavors since WTO accession to respond challenges and support its meaningful participation in WTO dispute settlement. On ideological level, the prevailing attitude toward WTO dispute settlement in China remains legalistic and positive, but this article observes that pragmatism is rising and may lead to inconsistencies of China's behavior in the future. Concerning institution and capacity building,

China is currently equipped with initially fledgling internal mechanisms, growing in-house legal capacities and expanding societal supports, and has swelling potentials to compete with its fellow WTO members. However, outside legal expertise is still needed. On the issue of government and industry interaction, China has established a formal mechanism, but its utility has not yet been proven, with only one unsatisfactory instance suggesting reform is needed, not just more time. This article argues that China will likely continue to be a leading actor in WTO dispute settlement and suggests that developing country members might benefit from a consideration of China's experience.

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### **Transparency in EU Antidumping Investigations: The European Ombudsman Misses an Opportunity**

**Maurizio Gambardella**

*affiliation not provided to SSRN*

*Global Trade and Customs Journal, No. 6:3, March 2011*

A recent case presented an opportunity for the European Ombudsman to enhance transparency by allowing access to the confidential file in an antidumping investigation. The Ombudsman's decision is the first ruling under Regulation 1049/2001 regarding public access to European Parliament, Council, and Commission documents insofar as the antidumping investigation is concerned. In its decision, the Ombudsman found no maladministration by the European Commission in refusing the access. The Ombudsman's decision, however, is not without fault. The Ombudsman has afforded too much deference to the Commission and has thereby eroded the integrity of the decision-making process and it has failed to faithfully implement the policy embodied in transparency regulations.

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### **The Constitution and the Laws of War During the Civil War**

**Andrew Kent**

Fordham University - School of Law

*Notre Dame Law Review, Vol. 85, No. 5, p. 1839, 2010*

*Fordham Law Legal Studies Research Paper*

This Article uncovers the forgotten complex of relationships between the U.S. Constitution, citizenship and the laws of war. The Supreme Court today believes that both noncitizens and citizens who are military enemies in a congressionally-authorized war are entitled to judicially-enforceable rights under the Constitution. The older view was that the U.S. government's military actions against noncitizen enemies were not limited by the Constitution, but only by the international laws of war. On the other hand, in the antebellum period, the prevailing view was U.S. citizenship should carry with it protection from ever being treated as a military enemy under the laws of war. This Article documents how this antebellum understanding about the protection of U.S. citizenship was challenged and overthrown during the first years of the Civil War. As articulated by Union statesmen, members of Congress, lawyers, soldiers and publicists, the rebels by seceding and seeking to throw off their allegiance to the United States and its Constitution, had forfeited their right to be protected by the Constitution. Henceforth, all military actions against them would be governed only by the loose standards of the international laws of war - the standards always applicable to foreign enemies. But if, at its option, the United States chose at times to deal with the rebels not as military enemies but as wayward citizens committing civil crimes like treason, then these citizens retained their pre-war constitutional entitlements. Thus the way the United States choose to respond to the rebels determined the applicable legal regime - whether the Constitution and other municipal protections would apply, or only the harsh laws of war. Starting in 1863 in the Prize Cases, and continuing until the end of the century, the Supreme Court decided over 300 cases arising out of the war. The Court adopted and articulated the theories about the relationship between the Constitution, citizenship, and the international laws of war that had been first developed out of the court in the early years of the war. These legal doctrines and understandings prevailed into the mid-twentieth century, until developments like the civil rights revolution and the increasing sense of judicial supremacy began to

set the stage for today's judicial management of the U.S. government's relationship with military enemies under the aegis of the Constitution.

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**The Role of Textiles Monitoring Body in the Agreement on Textile and Clothing and its Significance in International Trade**

**Swapneshwar Goutam**

*affiliation not provided to SSRN*

*Journal of International Commercial Law and Technology, Vol. 5, No. 1, 2010*

Textiles and clothing are among the sectors where developing and least developing countries have the most to expand from multilateral trade liberalization. The Textile Monitoring Board (TMB), one of the adjudicator forums for disputes resolution under the accord, faces a significant challenge in carrying out this duty because of the agreement on Textile and Clothing. The aim of this article is to discuss the role of the TMB in resolving the transnational disputes and its status in resolving international trade dispute aspects. This article focuses on the working and function of TMB in contemporary days. The article analyses cases, which show the weakness of the TMB in resolving disputes. Lastly, this paper argues for a transparent international trade deals.

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**EU Antitrust Enforcement Powers and Procedural Rights and Guarantees: The Interplay Between EU Law, National Law, the Charter of Fundamental Rights of the EU and the European Convention on Human Rights**

**Wouter P. J. Wils**

European Commission; King's College London - School of Law

*World Competition: Law and Economics Review, Vol. 34, No. 2, June 2011*

*Concurrences, May 2011*

*2nd Annual International Concurrences Conference, 'New Frontiers of Antitrust', Paris, February 11, 2011*

This paper deals with the powers of the European Commission and the competition authorities of the EU Member States to enforce Articles 101 and 102 TFEU, and with the procedural rights and guarantees that circumscribe or limit these powers. It focuses in particular on the interplay between the different sources of law governing these matters: EU and national legislation, the Charter of Fundamental Rights of the EU, the European Convention on Human Rights, and the case-law of the EU Courts and the European Court of Human Rights.

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**Intellectual Property Rights and Green Technology Transfer: German and U.S. Perspectives**

**Robert V. Percival**

University of Maryland - School of Law

**Miranda Schreurs**

University of Maryland

*Johns Hopkins University American Institute for Contemporary German Studies Policy Report No. 45*

*University of Maryland Legal Studies Research Paper No. 2011-11*

This paper surveys various strategies for promoting the development and deployment of green energy technologies.

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**Ethiopia's Armed Intervention in Somalia: The Legality of Self-Defense in Response to the Threat of Terrorism****Awol Kassim Allo**

University of Glasgow - School of Law

*Denver Journal of International Law and Policy, Vol. 39, No. 1, p. 139, 2010*

Whereas there are debates among some academic circles that the events of 9/11 have constituted a change in the law of self-defense, this article argues against the possibility, even of the desirability, of such an assertion. By situating the law of self-defense in the context of 'terrorism' and the threat thereof, this article argues that Ethiopia's claim for a lawful exercise of its right to self-defense falls short of the requirements of the law even if Ethiopia was neither questioned nor condemned by the United Nations Security Council or the African Union.

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**Limitations on Universality: The 'Right to Health' and the Necessity of Legal Nationality****Lindsey Kingston***affiliation not provided to SSRN***Elizabeth F. Cohen**

Syracuse University

**Christopher P. Morley**

SUNY Upstate Medical University, Dept Family Medicine

*LIMITATIONS ON UNIVERSALITY: THE 'RIGHT TO HEALTH' AND THE NECESSITY OF LEGAL NATIONALITY, Vol. 10, No. 11, Lindsey N. Kingston, Elizabeth F. Cohen and Christopher P. Morley, eds., BMC International Health and Human Rights, 2010**Western Political Science Association 2010 Annual Meeting Paper*

The right to health, including access to basic healthcare, has been recognized as a universal human right through a number of international agreements. Attempts to protect this ideal, however, have relied on states as the guarantor of rights and have subsequently ignored stateless individuals, or those lacking legal nationality in any nation-state. While a legal nationality alone is not sufficient to guarantee that a right to health care is accessible, an absence of any legal nationality is almost certainly a obstacle in most cases. There are millions of so-called stateless individuals around the globe - usually members of racial or ethnic minority groups - who are, in effect, denied medical citizenship in their countries of residence. A central motivating factor for this essay is the fact statelessness as a concept is largely absent from the medical and human rights literature. The goal for this discussion, therefore, is primarily to illustrate the need for further monitoring of health access issues by the medical and human rights communities, and for a great deal more research into the effects of statelessness upon access to healthcare. This is important both as a theoretical issue, in light of the recognition by many of healthcare as a universal right, as well as an empirical fact that requires further exploration and amelioration.

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**Reframing Indigenous Cultural Artifacts Disputes: An Intellectual Property-Based Approach****Cortelyou C. Kenney**

University of California, Berkeley School of Law

*Cardozo Arts & Entertainment Law Journal, Vol. 28, p. 501, 2011*

Indigenous cultural artifacts are traditionally seen through the prism of physical property. Disputes over a spectrum of objects from human remains to sacred objects center around who has title and possession, when import and export can be prevented, and under what circumstances remuneration or repatriation are appropriate. Museums, countries of origin, and indigenous descendants fight bitterly over these issues, which are often difficult to resolve given the finite, and highly rivalrous, nature of the objects in question. This Article fundamentally reframes the debate. It posits that

artifacts are not just physical property, governed by a physical-property paradigm, but also a species of intellectual property that can be regulated independently of physical status. The IP-based approach to indigenous artifacts asks not who has title to the objects, but how information generated by and related to such objects in the course of research, restoration, curation, display, and handling ought to be treated. Because it is easier to share an idea than a thing, the IP-based approach offers a foothold into longstanding disputes that have proven intractable under the physical-property paradigm and its winner-take-all stakes. It also suggests a more nuanced reading of the history underlying these objects, which may facilitate increased dialogue through recognition of multidimensional rights and obligations of all parties. Along the way it provides a limiting principle to the expansion of intellectual property rights not previously available in the context of intangible heritage such as songs and ceremonies: the objects themselves. In so doing, it may enable all sides to find previously overlooked common ground.

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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 Shell 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 against 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 of 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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### **China's Experience in Dealing with WTO Dispute Settlement: A Chinese Perspective**

**Wenhua Ji**

Mission of China to the WTO

**Cui Huang**

Zhejiang University - College of Public Administration

*Journal of World Trade, Vol. 45, No. 1, pp. 1-37, 2011*

The year 2009 witnessed the rise of China as one of the major players in World Trade Organization (WTO) dispute settlement since it alone accounted for half of the fourteen new WTO disputes initiated in that year. This paper examines China's growing involvement in major WTO dispute settlement activities and concludes that China's participation has been a gradually evolving process. This article explains that China's defensive and offensive positions are generally balanced and argues that China seems to approach WTO disputes on a case-by-case basis rather than by applying any preset litigation avoidance strategy. When faced with negative rulings, China has so far been quite restrained in its reactions and has generally maintained a good record of compliance, but China's future behaviour in this regard may not always be as consistently positive. As to overall performance, this paper demonstrates that China's record has been typical of the bigger WTO Members. Finally, it would be unfair to assess this record only with reference to the global ranking of China's trade volumes and economic size while ignoring China's short period of WTO membership and lack of historical experience in international dispute settlement proceedings.

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**International Tax Policy in the Context of Integration and Trade: The Case of the US Free Trade Agreements****Irma Johanna Mosquera Valderrama**

Faculty of Law

*Forfaitair Fiscaal Studenten Maandblad, The Netherlands, April 2006*

By means of the Free Trade Act of 2002, the Congress of the United States ("US") granted to the President a 'Trade Promotion Authority' to negotiate free trade agreements ("FTA"). Under this authority, the FTAs concluded by the President are subject to up-or-down vote at the Congress. In other words, the Congress may accept or reject the FTA without any amendments. This authority has been and still is extensively used by the President. As a result, an unprecedented number of FTAs have been concluded or are in the process of being concluded by the US with other countries. . . . In this article, I argue that the study of the relationship of taxation and trade requires a new approach given to the following features, namely: the importance given by the United States and developing countries to conclude US FTA and the problems faced by the WTO multilateral agreements. In this context, the first aim of this article is to analyze the features of the US FTA and its influence in the work carried out at international level by the WTO. The second aim is in the light of the extensive use of FTA by the United States, to revisit the different theories of scholars on the relationship of taxation and trade. Finally, this paper aims to answer the following two questions: Can the WTO be the institutional vehicle to achieve coordination in tax law? Are FTAs the response to a new international trade and tax policy? . . .

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**The Sustainable Corporation and Shareholder Profits****Judd F. Sneirson**

Hofstra University School of Law

*Wake Forest Law Review, Vol. 46, 2011**Hofstra Univ. Legal Studies Research Paper No. 11-05*

What is a sustainable corporation and why aren't there more of them? This paper argues that corporate law's traditional focus on shareholder profits stifles sustainability efforts inasmuch as sustainable corporations take a broader view of the firm and its goals. The paper also weighs alternatives for increasing sustainable corporations' numbers and encouraging corporations of all stripes to act more sustainably. These include imposing sustainability on corporations, requiring sustainability disclosures, and raising awareness that sustainable business practices fully comport with corporate laws and even typically enhance long-term firm value for all of a corporation's stakeholders.

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**The Fragmentation of Geopolitical Space: What Secessionist Movements Mean to the Present-Day State System****Simone Florio**

University of Granada - Facultad Ciencias Políticas y Sociología

The last century witnessed an extraordinary multiplication of sovereign states. Epochal changes such as the dissolution of 20th century empires, the decolonization process, and the end of the Cold War determined the division of the world landscape into nearly two hundreds separate polities. But the trend to geopolitical fragmentation holds momentum: partially recognized and de facto states constitute big challenge for international order, while a conspicuous number of active secessionist projects keep threatening the territorial integrity of many countries. This article reviews the complex questions that the trend to geopolitical fragmentation is posing to the global society, reviewing a number of normative secession theories and evidencing in them a relative easing about new state formation. Given the current regime of sovereign states framing a global approach to the problems



posed by separatist groups seems hardly conceivable; for the time being it seems instead likely that the international community will keep accepting new states on a case-by-case basis, often in response to Great Power interests or non-negotiable nationalist projects, without advancing international law on state creation or global standards of statehood as a whole. This article supports the claim that adopting a global perspective and more functional attitudes towards geopolitical restructuring are paramount for effectively dealing with violence deriving from the clash of nationalist separatist drives and state-centric conservatism.

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**From Hong Kong to Basel: International Environmental Regulation of Ship-Recycling  
Takes One Step Forward and Two Steps Back**

**Saurabh Bhattacharjee**

West Bengal National University of Juridical Sciences (NUJS)  
*Trade, Law & Development, Vol. 1, No. 2, p. 193, 2009*

The increasing dominance of developing countries like India, China, Bangladesh and Pakistan in the global ship-breaking industry illustrates the paradoxical nature of economic globalization. While such operations provide access to employment and cheap material resources, they also pose serious long-term and irreversible harm to local environment and human health. In addition, the transnational character of the ship-breaking trade has militated against effective domestic oversight of its environmental hazards and has turned international regulation into an imperative.

This article reviews the international attempts to mitigate the environmental concerns underlying ship-breaking. The Basel Convention on the Transboundary Movement of Hazardous Wastes 1989 was one such attempt which however suffered from certain gaps in its implementation. These lacunae in the Basel regime have led to the adoption of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships in May 2009. The paper compares the key features of this new Convention with the Basel regime and infers that while the former has made few significant breakthroughs in oversight of trade in end-of-life ships, not only does it ignore certain basic norms of international environmental law including the 'polluter pays principle' but it also contains the same gaping holes that were discovered during the application of Basel Convention to ship-breaking.

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**Achieving Good Water Governance**

**Elizabeth Burleson**

Florida State University College of Law; London School of Economics  
*WATERS AND WATER RIGHTS, Chapter 25, R. Beck and A. Kelly, eds. LexisNexis/Matthew Bender, 2011*  
*FSU College of Law, Public Law Research Paper No. 482*

Public participation ranging from information sharing to decision-making remains central to equitable and effective water management. Involving directly and indirectly affected individuals in decision-making facilitates trust and can establish partnerships. It also helps ensure that vital considerations are not bypassed. Providing the public with information and the opportunity to become educated about proposed projects includes a full explanation of environmental, socio-economic, and public health implications. While the challenges are formidable, there is a clear need to transition to climate resilient water policies and inclusive good governance.

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**The EU Should Not Shy Away from Setting Co2-Related Targets for Transport****Christian Egenhofer**

Centre for European Policy Studies (CEPS)

*CEPS Policy Brief No. 229*

Transport is the only sector in the EU in which greenhouse gas emissions continue to rise. Unless this trend can be reversed, the EU will have little chance of reaching its objectives in the context of global obligations on industrialised countries to reduce emissions between 80% and 95% by 2050 compared to 1990. Many different solutions exist, including, for example, new technology such as electrification of road transport, modal shift, optimising existing technologies and policy measures and more radical measures such as binding GHG emissions targets. While there is some merit to all of these approaches, this Policy Brief argues that current EU policy thinking is not (yet) bold enough to credibly tackle the GHG emissions challenge from transport. . . .

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**The New Biopower: Poverty Reduction Strategy Papers and the Obfuscation of International Collective Responsibility****Celine Tan**

University of Birmingham - Birmingham Law School

*Development Studies Association Conference - Poverty Reduction as Development Morality: Theory and Practice, 2010*

As successors to structural adjustment programmes, Poverty Reduction Strategy Papers (PRSPs) were introduced in 1999 as preconditions for World Bank and International Monetary Fund (IMF) concessional financing and for debt relief. This paper considers the impact of the PRSP framework on the constitution of global economic governance, in particular its effect in foreclosing possibilities for a radical revision of the rules and institutions of international economic law. The paper argues that the PRSP project not only reframes fundamental tenets of international cooperation and global communal responsibility but also establishes a new disciplinary framework for third world state engagement with the global economy and the international law which sustains it. Consequently, the danger of the PRSP project is that the discourse and methods of resistance against the injustices of the international order have been appropriated to distil such dissent through qualified operationalising of contestable notions of 'participation,' 'ownership,' 'partnership' and 'poverty reduction,' disabling the resurgence of any form of emancipatory politics in the international economic order, whether through a state-led NIEO-style revival or cosmopolitan social movement.

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**Human Rights and Intellectual Property: Mapping the Global Interface****Laurence R. Helfer**

Duke University - School of Law

**Graeme W. Austin**

University of Arizona - James E. Rogers College of Law

*Cambridge University Press, 2011**Arizona Legal Studies Discussion Paper No. 10-18*

'Human Rights and Intellectual Property: Mapping the Global Interface' explores the intersections between intellectual property and human rights law and policy. The relationship between these two fields has captured the attention of governments, policymakers, and activist communities in a diverse array of international and domestic political and judicial venues. These actors often raise human rights arguments as counterweights to the expansion of intellectual property in areas including freedom of expression, public health, education, privacy, agriculture, and the rights of indigenous peoples. At the same time, the creators and owners of intellectual property are asserting a human rights justification for the expansion of legal protections. The book explores the legal, institutional, and political implications of these competing claims in three ways: (1) by offering a framework for

exploring the connections and divergences between these subjects; (2) by identifying the pathways along which jurisprudence, policy, and political discourse are likely to evolve; and (3) by serving as a teaching and learning resource for scholars, activists, and students. This excerpt contains the book's table of contents, preface, and concluding chapter.

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**Environmental and Human Rights to Water in the Murray Darling Basin: The Federal Water Act 2007, the Water Amendment Act 2008 and Lessons from International Water and Trade Law**

**[Vinoli Thampapillai](#)**

Australian National University (ANU)

The Murray Darling Basin, Australia, famously described as Australia's food bowl, suffered intense drought for the period 2001 to mid 2010. In late 2010 and early 2011 the drought ended, punctuated by severe flooding in the Northern basin and Southern Basin. Following a succession of water trading reforms which delivered limited gains during a period high water scarcity from the mid 1990s to 2004, the Australian Federal government recognized a need to engage in centralized management of the water resources of the Murray Darling Basin in 2007, enacting the Water Act 2007. . . . The legislation was subsequently refined by the Water Amendment Act 2008, breaking ground by expressly recognizing the human right to water to serve critical human needs in water planning alongside delivering rights in environmental water flows which had been established in the original Federal law. The Water Act 2007 is also unique in setting mandatory requirements to produce socio-economic risk management strategies to address the impacts of sustainable diversion cuts to be made for the delivery of environmental flows under section 22, Items 3 and 5. In these two respects the Water Act 2007 and Water Amendment Act 2008 seek to balance human rights to water in environmental flows, property, drinking water and for broader socio-economic security goals. However room for reform within the Water Act 2007 and the Water Amendment Act 2008 remains. Two seminal principles of international water law which remains in its entirety customary law are missing, namely, the principles of reasonable and equitable utilization and no significant harm. The two legal principles are inherently bound to one another and express recognition of these principles is now clearly necessary for the management of disputes between Basin states. Furthermore both pieces of legislation, having been drafted during a period of extreme drought, now require a second set of amendments making express reference to the linkages between flood mitigation strategies and drought management.

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**Evolving General Principles of International Commercial Contracts: The Unidroit Principles and Favor Contractus**

**[Nicole Kornet](#)**

Maastricht European Private Law Institute (M-EPLI); Maastricht University - METRO Institute;  
Maastricht University - Faculty of Law

*[Maastricht Faculty of Law Working Paper Series](#)*

*Maastricht European Private Law Institute Working Paper No. 2011/07*

It has been suggested that favor contractus constitutes a basic idea or general principle underlying the Unidroit Principles of International Commercial Contracts (UPICC). This principle aims to preserve the contractual relation by limiting the number of situations in which the existence or validity of the contract is questioned or in which it may be terminated. The focus of this paper is on the interplay between favor contractus and the traditional principles of freedom of contract and pacta sunt servanda. This is done by focusing on two particular problems in international contract practice: the battle of forms and unforeseen changed circumstances (hardship). Addressing these problems is particularly interesting because the UPICC introduce innovative provisions to deal with these situations. Within these innovative provisions, it is possible to detect the underlying idea of favor contractus, in particular the policies to favour the existence of a binding agreement in the context of the battle of forms and to preserve the contractual relation in case of hardship. At the same time, the

rules dealing with the battle of forms seem to stretch the traditional rules on contract formation and challenge to a certain degree, the principle of freedom of contract. Likewise, the provisions dealing with hardship tend to clash with the principle of pacta sunt servanda. It is consequently interesting to see how these innovative rules dealing with particular problems relevant to international trade practice lead to the adaptation – or the evolution – of traditional principles of contract law or even the emergence of a new principle.

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### **The Sustainable Corporation and Shareholder Profits**

**Judd F. Sneirson**

Hofstra University School of Law

*Wake Forest Law Review, Vol. 46, 2011*

*Hofstra Univ. Legal Studies Research Paper No. 11-05*

What is a sustainable corporation and why aren't there more of them? This paper argues that corporate law's traditional focus on shareholder profits stifles sustainability efforts inasmuch as sustainable corporations take a broader view of the firm and its goals. The paper also weighs alternatives for increasing sustainable corporations' numbers and encouraging corporations of all stripes to act more sustainably. These include imposing sustainability on corporations, requiring sustainability disclosures, and raising awareness that sustainable business practices fully comport with corporate laws and even typically enhance long-term firm value for all of a corporation's stakeholders.

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### **Staving Off the Climate Crisis: The Sectoral Approach Under the Clean Air Act**

**Teresa Clemmer**

Vermont Law School

*Environmental Law, Vol. 40, No. 4, 2010*

The challenge before us is unprecedented. Global climate change demands a transformation of our entire economy and energy system within just a few short years in order to preserve a healthy natural world and a sustainable way of life for our children and grandchildren. The good news is that the technological solutions are well within reach. The bad news is that our system of democratic governance in the United States is so paralyzed that it may be incapable of meeting this challenge. Nevertheless, we already have some powerful tools that will enable us to make substantial progress toward a brighter future. The Clean Air Act is a broad federal statute consisting of many different programs and approaches. . . . In short, this Article urges EPA to focus its attention on regulating greenhouse gas emissions on a sector-by-sector basis under the Clean Air Act. Moreover, in light of the urgency of the climate crisis, this Article also urges Congress to reject any legislative proposal that would strip EPA of these effective regulatory tools.

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### **Multidimensional Governance and the BP Deepwater Horizon Oil Spill**

**Hari M. Osofsky**

University of Minnesota - Twin Cities - School of Law

*Minnesota Legal Studies Research Paper*

This Article explores the governance challenges posed by the BP Deepwater Horizon oil spill, and proposes strategies for developing more inclusive, responsive institutions to help meet them. It begins by analyzing the incident through five core dimensions - vertical, horizontal, direction of hierarchy, cooperativeness, and public-private - to demonstrate the multi-level, multi-actor interactions taking place in offshore drilling and oil spill regulation. It then explains the ways in which the complex interactions in these dimensions translate into four core governance challenges: scientific and legal uncertainty, simultaneous overlap and fragmentation, the difficulties of balancing efficiency and inclusion, and inequality and resulting injustice. The Article next integrates eight different

conceptual approaches to propose three core strategies for better multidimensional governance - hybridity, multiscalar inclusion, and responsiveness - and evaluates reform proposals made in the aftermath of the BP Deepwater Horizon oil spill in light of them. It considers how citizens' councils, regulatory burden-shifting, voluntary industry-based regulatory institutions, and independent scientific and technical review bodies could complement efforts to make the federal process more rigorous and adaptive. The Article concludes by discussing the broader applicability of its analysis of multidimensional governance challenges.

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### **Throwing Precaution to the Wind: NEPA and the Deepwater Horizon Blowout**

**Sandra B. Zellmer**

University of Nebraska at Lincoln - College of Law

**Robert L. Glicksman**

George Washington University - Law School

**Joel A. Mintz**

Nova Southeastern University

*Journal of Energy and Environmental Law, 2011*

On April 20, 2010, BP's Deepwater Horizon oil platform blew up. Eleven workers were killed in the explosion. When the platform sank to the bottom of the Gulf of Mexico two days later, oil erupted out of the riser - a 5,000-foot pipe connecting the platform to the well on the ocean floor. After a number of failed attempts to stop the leak, BP eventually capped the well in July, three months after the explosion. Nearly 5,000,000 barrels of oil were released into the Gulf, making the Deepwater Horizon the largest offshore oil spill in world history. In this paper, we uncover some of the regulatory failures that led to the disaster. We focus on the National Environmental Policy Act of 1969 (NEPA), and describe how the government's failure to take NEPA seriously reveals significant flaws in the oil and gas program as a whole. The precautionary nature of NEPA's "look before you leap" mandate was completely undercut by the failure to prepare a "worst case analysis," by the abuse of categorical exclusions, and by over-reliance on flawed assumptions provided by the industry. We assess how these shortcomings resulted in disaster, and suggests reforms to ensure that all potential risks of harm are identified and analyzed in a rigorous, accurate, and unbiased manner before a project like the Deepwater Horizon goes forward.

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### **The Reality and Hyperreality of Human Rights: Public Consciousness and the Mass Media**

**Eric Heinze**

Queen Mary University of London, School of Law

*EXAMINING CRITICAL PERSPECTIVES ON HUMAN RIGHTS: THE END OF AN ERA? R. Dickenson et al., eds., Cambridge University Press, 2011*

*Queen Mary School of Law Legal Studies Research Paper Series*

Most human rights scholarship remains highly formalist, with a focus on norms and institutions. However, at least as powerful as, if not more powerful than, those norms and institutions, are the mass media. Consonant with David Kennedy's concern that rights discourse can privilege some interests at the expense of others, the media must be seen as the force that overwhelmingly decides which norms and abuses count, and which are neglected. Public consciousness of human rights emerges not out of political reality, but out of a media-generated 'hyper-reality', impermeable to some of the world's most heinous abuses. The media remain immune from the values of even-handedness that are conceptually presupposed by human rights law. In principle, human rights shun any zero-sum game, whereby the rights of one person or group may be traded off against those of another. The media not only plays that game, but must play it, as a matter of sheer time and resources. A 'Hollywoodisation' of rights still further contributes to forging a hyper-reality that remains at odds with the realities of global human rights.

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**Tax Claims in Transnational Insolvencies: A 'Revenue Rule' Approach****Jonathan M. Weiss**

University of California, Los Angeles (UCLA)

*Virginia Tax Review, Vol. 30, No. 1, p. 261, 2010*

This article addresses the issue of how foreign tax claims should be treated in the context of a transnational insolvency. Generally, in a transnational insolvency, the home country of the debtor pools the assets of the debtor and distributes them in accordance with its bankruptcy laws. While this may result in detrimental outcomes to non-home countries, the predictability which it promotes has been accepted as a worthwhile goal. However, this cooperation does not extend to foreign tax claims which are asserted in bankruptcy, and this lack of cooperation threatens both the policy goals and the practical results of transnational insolvencies. In fact, this gap in the law has been recognized both by leading bankruptcy scholars and by influential organizations such as the American Law Institute and the United Nations. Thus, this article analyzes the reasons behind the reluctance to enforce foreign tax claims, both in the bankruptcy context and in general. It then develops several solutions, which, if implemented, would successfully allow for the enforcement of foreign tax claims in bankruptcy in a manner which would not only mitigate the policy concerns of nations, but would actively promote acknowledged policy goals in both the bankruptcy and tax contexts.

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**Forced Marriage and the Exoticization of Gendered Harms in United States Asylum Law****Jenni Millbank**

University of Technology, Sydney - Faculty of Law

**Catherine Dauvergne**

UBC Faculty of Law

*Columbia Journal of Gender and Law, Vol. 19, No. 3, 2011*

While claims of forced marriage or pressure to marry represent only a tiny portion of refugee claims overall, they provide an illuminating sliver reflecting the major recurring themes in gender and sexuality claims from recent decades. Refusal to marry is a flashpoint for expressing non-conformity with expected gender roles for heterosexual women, lesbians and gay men. This paper presents results from our study of 168 refugee decisions from Australia, Canada, the United Kingdom and the United States where part of the claim for refugee protection concerned actual or threatened forced marriage. In the present discussion, we highlight our findings from the cases from the United States while detailed findings regarding the broader international data set are published elsewhere. We find that the United States is far behind Australia, Canada and the United Kingdom in terms of analyzing gender-related persecution. In addition to not finding a single case with a straightforward holding that forced marriage in and of itself could constitute persecution, we also did not find any engagement with international human rights standards. Of the few cases that were successful on a substantive basis, we found that the underlying facts reflect an extreme exoticization of the women involved.

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**Using 'Cap and Trade' to Contain Systemic Financial Risk****Alistair Milne**

City University of London - Cass Business School - Faculty of Finance

Systemic risk depends upon aggregate exposure for the entire financial sector, as well as the pattern of exposures between firms. There is a parallel with global warming, where the rise in the Earth's temperature depends upon the aggregate volume of CO2 and other greenhouse gases in the atmosphere. This suggests that 'cap and trade,' issuing licenses that limit aggregate financial sector ratios but allowing firms to trade licenses with each other so that their individual contributions can vary, is a useful approach to containing systemic financial risk. In particular it avoids potentially costly

direct control of individual firm liabilities. Cap and trade does not appear difficult to implement for controlling aggregate maturity mismatch, and unlike many other regulations can be introduced on a jurisdiction by jurisdiction basis, without being undermined by cross-border arbitrage or by the movement of risk into the unregulated sector. The main requirement is a comprehensive liability register, which will in any case be very useful to regulators both for risk monitoring and for resolution of failed institutions. Industry will object that this requires a major change in their business models, but this could reduce financial market volatility and hence provide further benefits to investors.

## II. Books

### British Year Book of International Law

(Volume 80, 2009)

- Hugh Thirlway, The Law and Procedure of the International Court of Justice, 1960-1989. Supplement, 2009: Parts Seven and Eight
- Shabtai Rosenne, Capacity to Litigate in the International Court of Justice: Reflections on Yugoslavia in the Court
- Jorge E. Viñuales, Foreign Investment and the Environment in International Law
- Jörg Kammerhofer, Gaps, the Nuclear Weapons Advisory Opinion and the Structure of International Legal Argument Between Theory and Practice
- Kristian Wohlström, On Disillusionment and Its Limits: Images of the Interwar Legal Project in International Relations and International Law

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### Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics

(Oxford Univ. Press 2011)

James Kraska

In *Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics*, Commander James Kraska analyzes the evolving rules governing freedom of the seas and their impact on expeditionary operations in the littoral, near-shore coastal zone. Coastal state practice and international law are developing in ways that restrict naval access to the littorals and associated coastal communities and inshore regions that have become the fulcrum of world geopolitics. Consequently, the ability of naval forces to project expeditionary power throughout semi-enclosed seas, exclusive economic zones (EEZs) and along the important sea-shore interface is diminishing and, as a result, limiting strategic access and freedom of action where it is most needed. Commander Kraska describes how control of the global commons, coupled with new approaches to sea power and expeditionary force projection, has given the United States and its allies the ability to assert overwhelming sea power to nearly any area of the globe. But as the law of the sea gravitates away from a classic liberal order of the oceans, naval forces are finding it more challenging to accomplish the spectrum of maritime missions in the coastal littorals, including forward presence, power projection, deterrence, humanitarian assistance and sea control. The developing legal order of the oceans fuses diplomacy, strategy and international law to directly challenge unimpeded access to coastal areas, with profound implications for American grand strategy and world politics.

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### Global Migration Governance

(Oxford Univ. Press, 2011)

Edited by Alexander Betts

In the context of the growing politicization of migration a debate has emerged in policy and academia on the need to develop global governance on migration to facilitate better inter-state cooperation.



This book provides an introduction to the institutions, politics, and normative dimensions of different aspects of international migration.

Hardback | 368 pages

6 January 2011 | 978-0-19-960045-8

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**Democratic Peacebuilding: Aiding Afghanistan and other Fragile States**

(Oxford Univ. Press, 2011)

Richard J. Ponzio

Democratic Peacebuilding considers the evolution of international peacebuilding since the cold war and why, in particular, international peacebuilders frequently face difficulties in spreading democratic practices and the rule of law in war-torn societies.

Hardback | 320 pages

27 January 2011 | 978-0-19-959495-5

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**Principles of International Financial Law**

(Oxford Univ. Press 2011)

Colin Bamford

International financial law is a conceptually complex subject, with many transactions affected by the law of more than one country. This book provides a clear guide to the principles underlying common law financial transactions and the rules applied to them which have developed from a number of different practice areas. An understanding of these principles is necessary for lawyers to predict the reasoning the courts will apply in the case of disputes. It is also critical for those who are developing new financial products or security structures. The book will cover a number of separate topics, which fall into two categories, firstly concepts that underpin areas of legal rules, for example the legal character of an obligation to pay money, or the nature of a fiduciary duty, and secondly explanation of the evolution of particular legal structures, where an understanding of the structure is crucial to the practical task of using it such as the development of the legal structure of tradable bonds.

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**International Humanitarian Law and International Human Rights Law**

(Oxford Univ. Press 2011)

Orna Ben-Naftali, ed.

- Orna Ben-Naftali, Introduction: Pas de Deux
- Yuval Shany, Human Rights and Humanitarian Law as Competing Legal Paradigm for Fighting Terror
- Marco Sassóli, The Role of Human Rights and International Humanitarian Law in New Types of Armed Conflicts
- Marko Milanovic, Norm Conflicts, International Humanitarian Law and Human Rights Law
- Orna Ben-Naftali, Pathological Occupation: Normalizing the Exceptional Case of the Occupied Palestinian Territory (OPT) and Other Legal Pathologies
- Andrea Gioia, The Role of the European Court of Human Rights in Monitoring Compliance with Humanitarian Law in Armed Conflict
- Ana Filipa Vrdoljak, Cultural Heritage in Human Rights and Humanitarian Law
- Paola Gaeta, Are Victims of War Crimes Entitled to Compensation?
- Christine Bell, Post-conflict Accountability and the Reshaping of Human Rights and Humanitarian Law

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**International Authority and the Responsibility to Protect**

(Cambridge Univ. Press 2011)

Anne Orford

The idea that states and the international community have a responsibility to protect populations at risk has framed internationalist debates about conflict prevention, humanitarian aid, peacekeeping and territorial administration since 2001. This book situates the responsibility to protect concept in a broad historical and jurisprudential context, demonstrating that the appeal to protection as the basis for de facto authority has emerged at times of civil war or revolution - the Protestant revolutions of early modern Europe, the bourgeois and communist revolutions of the following centuries and the revolution that is decolonisation. This analysis, from Hobbes to the UN, of the resulting attempts to ground authority on the capacity to guarantee security and protection is essential reading for all those seeking to understand, engage with, limit or critique the expansive practices of international executive action authorised by the responsibility to protect concept.

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**Creating Capabilities: The Human Development Approach**

(Harvard Univ. Press, March 2011)

Martha C. Nussbaum

If a country's Gross Domestic Product increases each year, but so does the percentage of its people deprived of basic education, health care, and other opportunities, is that country really making progress? If we rely on conventional economic indicators, can we ever grasp how the world's billions of individuals are really managing? In this powerful critique, Martha Nussbaum argues that our dominant theories of development have given us policies that ignore our most basic human needs for dignity and self-respect. For the past twenty-five years, Nussbaum has been working on an alternate model to assess human development: the Capabilities Approach. She and her colleagues begin with the simplest of questions: What is each person actually able to do and to be? What real opportunities are available to them? The Capabilities Approach to human progress has until now been expounded only in specialized works. *Creating Capabilities*, however, affords anyone interested in issues of human development a wonderfully lucid account of the structure and practical implications of an alternate model. It demonstrates a path to justice for both humans and nonhumans, weighs its relevance against other philosophical stances, and reveals the value of its universal guidelines even as it acknowledges cultural difference. In our era of unjustifiable inequity, Nussbaum shows how—by attending to the narratives of individuals and grasping the daily impact of policy—we can enable people everywhere to live full and creative lives.

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**Eurolegalism: The Transformation of Law and Regulation in the European Union**

(Harvard Univ. Press, April 2011)

R. Daniel Kelemen

Despite western Europe's traditional disdain for the United States' "adversarial legalism," the European Union is shifting toward a very similar approach to the law, according to Daniel Kelemen. Coining the term "eurolegalism" to describe the hybrid that is now developing in Europe, he shows how the political and organizational realities of the EU make this shift inevitable. The model of regulatory law that had long predominated in western Europe was more informal and cooperative than its American counterpart. It relied less on lawyers, courts, and private enforcement, and more on opaque networks of bureaucrats and other interests that developed and implemented regulatory policies in concert. European regulators chose flexible, informal means of achieving their objectives, and counted on the courts to challenge their decisions only rarely. Regulation through litigation—central to the U.S. model—was largely absent in Europe. But that changed with the advent of the European Union. Kelemen argues that the EU's fragmented institutional structure and the priority it has put on market integration have generated political incentives and functional pressures that have

moved EU policymakers to enact detailed, transparent, judicially enforceable rules—often framed as “rights”—and back them with public enforcement litigation as well as enhanced opportunities for private litigation by individuals, interest groups, and firms.

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### **The Pre-Investigation Stage of the ICC: Criteria for Situation Selection**

(Duncker & Humblot 2011)

Ignaz Stegmiller

With the first part of this study Ignaz Stegmiller provides an introduction to the problem of pre-investigations, the second part gives an overview of the OTP's structure. Part III addresses how the selection process is performed. In this part, the complexity of pre-investigations is revealed. The three trigger mechanisms - State referrals, SC referrals, and the proprio motu mechanism - are illustrated, Self-referrals are critically analyzed and the author argues that the Prosecutor should use his proprio motu power more frequently. Perceptions of OTP's lack of independence must be rebutted. The proprio motu tool could have a great share in that, while the self-referral practice is associated with nepotism. Part IV analyses the criteria used to select situations including Article 53. As regards admissibility, the two notions of complementarity and gravity can be distinguished. Bearing in mind the inactivity criterion, complementarity is basically analyzed in a threefold manner: (1) as a rule whereby situations and cases are admissible if the State remains inactive; (2) exceptions as found in articles 17 (1) (a)-(c), 20 (3), which can lead to inadmissibility; (3) in turn, article 17 (2), (3) provides "exceptions to the exceptions" if a State is unwilling or unable to genuinely carry out proceedings. Gravity is a very complex notion. The author differentiates two concepts: "legal" and "relative" gravity. Legal gravity must then be linked to article 53 (1) (b) and relative gravity is part of article 53 (1) (c)'s assessment of the "interest of justice." Only a broad application of the "interest of justice" gives the OTP the flexibility that it needs. Parts V and VI then summarize the most important results of this study.

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### **Sahara occidental: Quels recours juridiques pour les peuples sous domination étrangère? Western Sahara: Which legal remedies for peoples under foreign domination?**

(Bruylant 2010)

Vincent Chapaux

It is hard to deny: Sahrawis have the right to self determination. The decisions of the United Nations along with the advisory opinion of the International Court of Justice made that clear more than 30 years ago. Besides that, the Sahrawis are granted as having numerous other rights deriving from human right law, international criminal law, natural resources law, ... The wide range of Sahrawis rights contrasts however with the paucity of their implementation in courtrooms around the world. So much so that one wonders if the domestic and international judicial systems themselves should be held responsible, in that they do not provide the appropriate means to ensure the implementation of the rights that their respective legal systems claim to offer. The symposium organized at the Université Libre de Bruxelles aimed to put this hypothesis to the test by providing a broad overview of the different courts which, around the world, may contribute to the implementation of the rights of the Sahrawis. The approach was of a pragmatic kind. The aim was to isolate the solutions that the judicial world can offer to a conflict that drags on. At a more general and theoretical level, this meeting tried to offer a reflection on the political role that law can play for peoples living under foreign domination. This volume brings together the proceedings of this symposium. They have also been published in the *Revue belge de droit international*, vol. 2010/1.

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Jonathan. Habeas corpus after 9/11: confronting America's new global detention system. New York: New York University Press, 2011. 323 p. ISBN: 081473703x

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- F. Naert, *International Law Aspects of the EU's Security and Defence Policy, with a Particular Focus on the Law of Armed Conflict and Human Rights*, Intersentia, Antwerp 2010, xxviii + 682 pp., € 125. ISBN 978-90-5095-771-7. (Gloria Fernández Arribas) p.507-510
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DOI:10.1017/S0922156510000695 ([About DOI](#))[Abstract](#)  [View PDF](#) [View HTML](#)

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- Human rights in courts of Northern Ireland 2009-10 (Brice Dickson and Terence McCleave) p.411

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**Jersey and Guernsey Law Review, Volume 13, Issue 3, October 2009**

(select items)

## MISCELLANY

- Deportation and human rights revisited

## ARTICLES

- One or two steps from sovereignty (Philip Bailhache)

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**Original Law Review, Volume 6, Number 2, 2010**

- An Island of Captives: BVI and its not so Little Secrets (James McConvill)
- Do Human Rights Promote Prosperity (Mirko Bagaric)

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**NUJS Law Review, Volume 3, Number 2, 2010**

(select articles)

- PRE-BRITISH HUMAN RIGHTS JURISPRUDENCE (Justice B.N. Srikrishna) p.129
- ISLAM, TERRORISM AND MODERN LIBERAL SOCIETIES (Mohammed Saif-Alden Wattad) p.143
- INDIA'S RESPONSE TO CLIMATE CHANGE: THE 2009 COPENHAGEN SUMMIT AND BEYOND (Autri Saha & Karan Talwar) p.159
- INTER-COUNTRY ABDUCTIONS AND PRIVATE INTERNATIONAL LAW (Abhijit Kumar Pandey & Roshan Santhalia) p.229

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**Frontiers of Law in China, Volume 6, Number 1, March 2011**

(select items)

- A generalization of the obligation to prevent: From genocide convention to racial discrimination convention (Jie Song and Qingjiang Kong) p.1-16
- Study on the contest between free trade and trade protection in the current global economic recession: A perspective of public international law (Xueping Li) p.17-34
- Rise and fall of trade multilateralism: A proposal for "WTO à la carte" as an alternative approach for trade negotiations (Zhixiong Huang) p.35-43
- Retrospection and perspective of foreign investment legislation in China (1979–2009) (Rungen Qiu) p.131-160

**European Law Review, Volume 35, Number 6, December 2010**

## Articles

- Can Soft Law Bodies be Effective? The Special Case of the European Systemic Risk Board (Eilís Ferran) p.751
- EU Accession to the ECHR: Implications for Judicial Review in Strasbourg (Tobias Lock) p.777
- Risk and Beyond: EU Regulation of Nanotechnology (Maria Lee) p.799
- Victimising Third Parties: The Equality Directives, the European Convention on Human Rights, and EU General Principles (Michael Connolly) p.822
- Analysis and Reflections Delegated legislation after the Treaty of Lisbon: An analysis of Article 290 TFEU (Bart Driessen) p.837

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**Alternative Law Journal, Volume 35, Number 2, 2010**

(select articles)

- Wild law: The philosophy of Earth Jurisprudence (Peter Burdon)
- The right to health: The Convention on the Rights of Persons with Disabilities (Penny Weller)

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**Food and Drug Law Journal, Volume 65, Issue 4, 2010**

(select articles)

- Codex—What's All the Fuss? (F. Edward Scarbrough) p.631
- EU Orphan Regulation—Ten Years of Application (Geneviève Michaux) p.639
- Global Regulatory Standards for the Approval of Biosimilars (Barbara Mounho, et al) p.819

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**Journal of Environmental Law**

March 2011; Vol. 23, No. 1

## Articles

Noga Morag-Levine

Is Precautionary Regulation a Civil Law Instrument? Lessons from the History of the Alkali Act

J Environmental Law 2011 23: 1-43; doi:10.1093/jel/eqq025.

<http://jel.oxfordjournals.org/cgi/content/abstract/23/1/1?etoc>

Aine Ryall

Access to Environmental Information in Ireland: Implementation Challenges

J Environmental Law 2011 23: 45-71; doi:10.1093/jel/eqq030.

<http://jel.oxfordjournals.org/cgi/content/abstract/23/1/45?etoc>

Brian Jack

Enforcing Member State Compliance with EU Environmental Law: A Critical Evaluation of the Use of Financial Penalties

J Environmental Law 2011 23: 73-95; doi:10.1093/jel/eqq023.

<http://jel.oxfordjournals.org/cgi/content/abstract/23/1/73?etoc>

Elizabeth A. Kirk and Kirsty L. Blackstock

Enhanced Decision Making: Balancing Public Participation against 'Better Regulation' in British Environmental Permitting Regimes

J Environmental Law 2011 23: 97-116; doi:10.1093/jel/eqq024.

<http://jel.oxfordjournals.org/cgi/content/abstract/23/1/97?etoc>

## Analysis

Stuart R. Harrop

'Living In Harmony With Nature'? Outcomes of the 2010 Nagoya Conference of the Convention on Biological Diversity  
J Environmental Law 2011 23: 117-128; doi:10.1093/jel/eqq032.  
<http://jel.oxfordjournals.org/cgi/content/abstract/23/1/117?etoc>

William Howarth

Diffuse Water Pollution and Diffuse Environmental Laws: Tackling Diffuse Water Pollution in England, Report by the Comptroller and Auditor General, HC 186, Session 2010-2011, 6 July 2010  
J Environmental Law 2011 23: 129-141; doi:10.1093/jel/eqq031.  
<http://jel.oxfordjournals.org/cgi/content/abstract/23/1/129?etoc>

## Significant EU Cases

Vanessa Edwards

Significant EU Environmental Cases: 2010  
J Environmental Law 2011 23: 143-154; doi:10.1093/jel/eqr001.  
<http://jel.oxfordjournals.org/cgi/content/full/23/1/143?etoc>

## Reviews

Duncan French

Multilateral Environmental Agreements: Legal Status of the Secretariats. By BHARAT H DESAI  
J Environmental Law 2011 23: 155-157; doi:10.1093/jel/eqq026.  
<http://jel.oxfordjournals.org/cgi/content/full/23/1/155?etoc>

Jacqueline Peel

Regulating Health and Environmental Risks under WTO Law: A Critical Analysis of the SPS Agreement. By LUKASZ GRUSZCZYNSKI  
J Environmental Law 2011 23: 157-160; doi:10.1093/jel/eqq027.  
<http://jel.oxfordjournals.org/cgi/content/full/23/1/157?etoc>

Antonia Layard

Lawscape: Property, Environment and Law. By NICOLE GRAHAM  
J Environmental Law 2011 23: 160-164; doi:10.1093/jel/eqq028.  
<http://jel.oxfordjournals.org/cgi/content/full/23/1/160?etoc>

Priscilla Schwartz

Contemporary Issues in International Environmental Law. By MALGOSIA FITZMAURICE  
J Environmental Law 2011 23: 164-167; doi:10.1093/jel/eqq029.  
<http://jel.oxfordjournals.org/cgi/content/full/23/1/164?etoc>

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**Journal for European Environmental & Planning Law, Volume 7, Number 2, September 2010**

- Fill in the Gaps: EU Sanctioning Requirements to Improve Member State Enforcement of EU Environmental Law (Meeus, Roel) p.135-162

- The Relevance of Environmental Justice for the Legal Framework in the European Union (Vanheusden, Bernard) p.163-175
- What's Up and What's Next in the Arena of Pollution Control? The New E-PRTR as a Tool towards Innovative Climate and Environmental Conservation Approaches (Bünger, Dirk) p.177-199
- Deadlocks of International Climate Policy—An Assessment of the Copenhagen Climate Summit (Sterk, Wolfgang; Arens, Christof; Borbon....) p.201-219
- A Common Heritage: EU Environmental Law and National Judges (Burgues, Julio Garcia; Heermann, Werner;....) p.221-233
- Recent Developments in EU Environmental Policy and Law (Mertens, Kathleen) p.235-241

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### **European Journal of Migration and Law, Volume 12, Number 3, 2010**

(select items)

- Judicial Protection and the New European Asylum Regime (Staffans, Ida) p.273-297
- EU Citizenship: Revisiting its Meaning, Place and Potential (de Waele, Henri) p.319-336
- Whose European Citizenship in the Stockholm Programme? The Enactment of Citizenship by Third Country Nationals in the EU (Carrera, Sergio; Wiesbrock, Anja) p.337-359

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### **Journal of Legal Anthropology, Volume 1, Number 2, 2010**

(select article)

- Contradictory Discourses of Protection and Control in Transnational Asylum Law (Carol Bohmer & Amy Shuman) p.211-229

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### **Utrecht Law Review, Volume 6, Issue 3, November 2010**

Special on Euroscepticism and Multiculturalism

- Introduction - Euroscepticism and multiculturalism (Frank van Schendel, Irene Aronstein) p.1-7
- Constitutionalizing secularism, alternative secularisms or liberal-democratic constitutionalism? A critical reading of some Turkish, ECtHR and Indian Supreme Court cases on 'secularism' (Veit Bader) p.8-35
- National and constitutional identity before and after Lisbon (Leonard F.M. Besselink) p.36-49
- Multiculturalism, Europhilia and harmonization: harmony or disharmony? (Ruth Sefton-Green) p.50-67
- Beyond Euroscepticism: on the choice of legal regimes as empowerment of citizens (Jan M. Smits) p.68-74
- Diverse cultures and official laws: multiculturalism and Euroscepticism? (Esin Örüçü) p.75-88
- Student Papers
- 'The Union shall respect cultural diversity and national identities' Lisbon's concessions to Euroscepticism – true promises or a booby-trap? (Irene Aronstein) p.89-111

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### **Religion and Human Rights, Volume 5, Numbers 2-3, 2010**

- Forms of Hate Speech and the Convention on the Elimination of all Forms of Racial Discrimination (ICERD) (Thornberry, Patrick) p.97-117
- The Limitations on Critical Thinking on Religious Issues under Article 20 of ICCPR and its Relation to Freedom of Expression (Eltayeb, Mohamed Saeed M.) p.119-135

- Freedom of Expression and Advocacy of Group Hatred (Lerner, Natan) p.137-145
- Limits to the Restrictions to Freedom of Expression—Criteria and Application (Schmidt, Mogens) p.147-151
- Combating Discrimination and Intolerance with a Free Speech Framework (Callamard, Agnès) p.153-169
- Expression and Hate Speech in the ICCPR: Compatible or Clashing? (Ghanea, Nazila) p.171-190

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**Bulletin of the Atomic Scientists**

(Feb. 16, 2011)

LAWRENCE J. KORB AND ALEXANDER H. ROTHMAN

**Pakistan doubles its nuclear arsenal: Is it time to start worrying?**

FISSILE MATERIALS WORKING GROUP

**Congress's nuclear terrorism shortfall**

INTERVIEW

**Ronald Deibert: Tracking the emerging arms race in cyberspace**

RACHEL CLEETUS

**Finding common ground in the debate between carbon tax and cap-and-trade policies**

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**IGENTA Database Articles on International Law**

(Feb. 15, 2011)

Record 1.

TI: Terrorism, Torture, and Refugee Protection in the United States

AU: Fullerton, Maryellen

JN: Refugee Survey Quarterly

PD: 31 January 2011

VO: 29

NO: 4

PG: 4-30(27)

PB: Oxford University Press

IS: 1020-4067

URL: <http://www.ingentaconnect.com/content/oup/refqtl/2011/00000029/00000004/art00002>

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

Record 2.

TI: Anti-Terrorism Measures and Refugee Law Challenges in Canada

AU: Crpeau, Francois

JN: Refugee Survey Quarterly

PD: 31 January 2011

VO: 29

NO: 4

PG: 31-44(14)

PB: Oxford University Press

IS: 1020-4067

URL: <http://www.ingentaconnect.com/content/oup/refqtl/2011/00000029/00000004/art00003>

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

## Record 3.

TI: Refugee Protection, Counter-Terrorism, and Exclusion in the European Union

AU: Guild, Elspeth; Garlick, Madeline

JN: Refugee Survey Quarterly

PD: 31 January 2011

VO: 29

NO: 4

PG: 63-82(20)

PB: Oxford University Press

IS: 1020-4067

URL: <http://www.ingentaconnect.com/content/oup/refqtl/2011/00000029/00000004/art00004>

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

## Record 4.

TI: Complicity and Culpability and the Exclusion of Terrorists From Convention Refugee Status Post-9/11

AU: Simeon, James C.

JN: Refugee Survey Quarterly

PD: 31 January 2011

VO: 29

NO: 4

PG: 104-137(34)

PB: Oxford University Press

IS: 1020-4067

URL: <http://www.ingentaconnect.com/content/oup/refqtl/2011/00000029/00000004/art00006>

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

## Record 5.

TI: Presentation and Interpretation of the Art of Others: the case of Amerindians

AU: Rostkowski, Joelle

JN: Museum International

PD: September 2010

VO: 62

NO: 3

PG: 31-40(10)

PB: Blackwell Publishing Ltd

IS: 1350-0775

URL: <http://www.ingentaconnect.com/content/bpl/muse/2010/00000062/00000003/art00007>

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

## Record 6.

TI: Immunities of State Officials, International Crimes, and Foreign Domestic Courts

AU: Akande, Dapo; Shah, Sangeeta

JN: European Journal of International Law

PD: November 2010

VO: 21

NO: 4

PG: 815-852(38)

PB: Oxford University Press

IS: 0938-5428

URL: <http://www.ingentaconnect.com/content/oup/ejilaw/2010/00000021/00000004/art00002>

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



## Record 7.

TI: Sovereign Immunity: Rule, Comity or Something Else?

AU: Finke, Jasper

JN: European Journal of International Law

PD: November 2010

VO: 21

NO: 4

PG: 853-881(29)

PB: Oxford University Press

IS: 0938-5428

URL: <http://www.ingentaconnect.com/content/oup/ejilaw/2010/00000021/00000004/art00003>

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

## Record 8.

TI: Third State Responsibility for Human Rights Violations

AU: Bird, Annie

JN: European Journal of International Law

PD: November 2010

VO: 21

NO: 4

PG: 883-900(18)

PB: Oxford University Press

IS: 0938-5428

URL: <http://www.ingentaconnect.com/content/oup/ejilaw/2010/00000021/00000004/art00004>

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

## Record 9.

TI: The Role of Atypical Acts in EU External Trade and Intellectual Property Policy

AU: Grosse Ruse-Khan, Henning; Jaeger, Thomas; Kordic, Robert

JN: European Journal of International Law

PD: November 2010

VO: 21

NO: 4

PG: 901-939(39)

PB: Oxford University Press

IS: 0938-5428

URL: <http://www.ingentaconnect.com/content/oup/ejilaw/2010/00000021/00000004/art00005>

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

## Record 10.

TI: Doing Justice to the Political: The International Criminal Court in Uganda and Sudan

AU: Nouwen, Sarah M. H.; Werner, Wouter G.

JN: European Journal of International Law

PD: November 2010

VO: 21

NO: 4

PG: 941-965(25)

PB: Oxford University Press

IS: 0938-5428

URL: <http://www.ingentaconnect.com/content/oup/ejilaw/2010/00000021/00000004/art00006>

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

## Record 11.

TI: The Concept of International Law in the Jurisprudence of H.L.A. Hart

AU: Payandeh, Mehrdad  
JN: European Journal of International Law  
PD: November 2010  
VO: 21  
NO: 4  
PG: 967-995(29)  
PB: Oxford University Press  
IS: 0938-5428  
URL: <http://www.ingentaconnect.com/content/oup/ejilaw/2010/00000021/00000004/art00007>  
Click on the URL to access the article or to link to other issues of the publication.

Record 12.  
TI: EU Obligation to the TRIPS Agreement: EU Microsoft Decision  
AU: Subramanian, Sujitha  
JN: European Journal of International Law  
PD: November 2010  
VO: 21  
NO: 4  
PG: 997-1023(27)  
PB: Oxford University Press  
IS: 0938-5428  
URL: <http://www.ingentaconnect.com/content/oup/ejilaw/2010/00000021/00000004/art00008>  
Click on the URL to access the article or to link to other issues of the publication.

Record 13.  
TI: Imperfect Justice at Nuremberg and Tokyo  
AU: Sellars, Kirsten  
JN: European Journal of International Law  
PD: November 2010  
VO: 21  
NO: 4  
PG: 1085-1102(18)  
PB: Oxford University Press  
IS: 0938-5428  
URL: <http://www.ingentaconnect.com/content/oup/ejilaw/2010/00000021/00000004/art00012>  
Click on the URL to access the article or to link to other issues of the publication.

Record 14.  
TI: Victor Kattan. From Coexistence to Conquest, International Law and the Origins of the Arab-Israeli Conflict, 1891-1949  
AU: Sabel, Robbie  
JN: European Journal of International Law  
PD: November 2010  
VO: 21  
NO: 4  
PG: 1103-1109(7)  
PB: Oxford University Press  
IS: 0938-5428  
URL: <http://www.ingentaconnect.com/content/oup/ejilaw/2010/00000021/00000004/art00013>  
Click on the URL to access the article or to link to other issues of the publication.

Record 15.  
TI: Elsa Stamatopoulou. Cultural Rights in International Law  
AU: Vadi, Valentina Sara

JN: European Journal of International Law

PD: November 2010

VO: 21

NO: 4

PG: 1111-1115(5)

PB: Oxford University Press

IS: 0938-5428

URL: <http://www.ingentaconnect.com/content/oup/ejilaw/2010/00000021/00000004/art00015>

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

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### **INGENTA Database Articles on International Law**

(Feb. 11, 2011)

#### Record 1.

TI: Negotiating Free Association between Western Sahara and Morocco: A Comparative Legal Analysis of Formulas for Self-Determination

AU: Spector, Samuel J.

JN: International Negotiation

PD: 2011

VO: 16

NO: 1

PG: 109-135(27)

PB: Martinus Nijhoff Publishers

IS: 1382-340X

URL: <http://www.ingentaconnect.com/content/mnp/iner/2011/00000016/00000001/art00006>

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

#### Record 2.

TI: The Legal Basis for Bilateral and Multilateral Police Deployments

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

JN: Journal of International Peacekeeping

PD: February 2011

VO: 15

NO: 1-2

PG: 7-38(32)

PB: Martinus Nijhoff Publishers, an imprint of Brill

IS: 1875-4104

URL: <http://www.ingentaconnect.com/content/mnp/joup/2011/00000015/F0020001/art00002>

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

#### Record 3.

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

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

JN: Journal of International Peacekeeping

PD: February 2011

VO: 15

NO: 1-2

PG: 39-71(33)

PB: Martinus Nijhoff Publishers, an imprint of Brill

IS: 1875-4104

URL: <http://www.ingentaconnect.com/content/mnp/joup/2011/00000015/F0020001/art00003>

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

## Record 4.

TI: The Applicability of Human Rights Standards to International Policing

AU: Kondoch, Boris

JN: Journal of International Peacekeeping

PD: February 2011

VO: 15

NO: 1-2

PG: 72-91(20)

PB: Martinus Nijhoff Publishers, an imprint of Brill

IS: 1875-4104

URL: <http://www.ingentaconnect.com/content/mnp/joup/2011/00000015/F0020001/art00004>

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

## Record 5.

TI: Accountability in International Policing

AU: Grenfell, Katarina

JN: Journal of International Peacekeeping

PD: February 2011

VO: 15

NO: 1-2

PG: 92-117(26)

PB: Martinus Nijhoff Publishers, an imprint of Brill

IS: 1875-4104

URL: <http://www.ingentaconnect.com/content/mnp/joup/2011/00000015/F0020001/art00005>

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

## Record 6.

TI: Legal Aspects of EU Military Operations

AU: Naert, Frederik

JN: Journal of International Peacekeeping

PD: February 2011

VO: 15

NO: 1-2

PG: 218-242(25)

PB: Martinus Nijhoff Publishers, an imprint of Brill

IS: 1875-4104

URL: <http://www.ingentaconnect.com/content/mnp/joup/2011/00000015/F0020001/art00010>

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

## Record 7.

TI: International Legal Hierarchy Revisited The Status of Obligations Erga Omnes

AU: Linderfalk, Ulf

JN: Nordic Journal of International Law

PD: January 2011

VO: 80

NO: 1

PG: 1-23(23)

PB: Martinus Nijhoff Publishers

IS: 0902-7351

URL: <http://www.ingentaconnect.com/content/mnp/nord/2011/00000080/00000001/art00001>

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

## Record 8.

TI: Challenge or Confirmation? The Role of the Swedish Parliament in the Decision-making on the Use of Force

AU: Osterdahl, Inger

JN: Nordic Journal of International Law

PD: January 2011

VO: 80

NO: 1

PG: 25-93(69)

PB: Martinus Nijhoff Publishers

IS: 0902-7351

URL: <http://www.ingentaconnect.com/content/mnp/nord/2011/00000080/00000001/art00002>

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

## Record 9.

TI: The Law of Armed Conflict: International Humanitarian Law in War

AU: Hartmann, Jacques

JN: Nordic Journal of International Law

PD: January 2011

VO: 80

NO: 1

PG: 121-123(3)

PB: Martinus Nijhoff Publishers

IS: 0902-7351

URL: <http://www.ingentaconnect.com/content/mnp/nord/2011/00000080/00000001/art00004>

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

## Record 10.

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

AU: Howland, Douglas

JN: Journal of the History of International Law

PD: January 2011

VO: 13

NO: 1

PG: 1-5(5)

PB: Martinus Nijhoff Publishers

IS: 1388-199X

URL: <http://www.ingentaconnect.com/content/mnp/jhil/2011/00000013/00000001/art00001>

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

## Record 11.

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

AU: Lorca, Arnulf Becker

JN: Journal of the History of International Law

PD: January 2011

VO: 13

NO: 1

PG: 7-73(67)

PB: Martinus Nijhoff Publishers

IS: 1388-199X

URL: <http://www.ingentaconnect.com/content/mnp/jhil/2011/00000013/00000001/art00002>

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

## Record 12.

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

AU: Chen, Li

JN: Journal of the History of International Law

PD: January 2011

VO: 13

NO: 1

PG: 75-116(42)

PB: Martinus Nijhoff Publishers

IS: 1388-199X

URL: <http://www.ingentaconnect.com/content/mnp/jhil/2011/00000013/00000001/art00003>

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

## Record 13.

TI: Contraband and Private Property in the Age of Imperialism

AU: Howland, Douglas

JN: Journal of the History of International Law

PD: January 2011

VO: 13

NO: 1

PG: 117-153(37)

PB: Martinus Nijhoff Publishers

IS: 1388-199X

URL: <http://www.ingentaconnect.com/content/mnp/jhil/2011/00000013/00000001/art00004>

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

## Record 14.

TI: Sovereignty and the Chinese Red Cross Society: The Differentiated Practice of International Law in Shandong, 1914-1916

AU: Reeves, Caroline

JN: Journal of the History of International Law

PD: January 2011

VO: 13

NO: 1

PG: 155-177(23)

PB: Martinus Nijhoff Publishers

IS: 1388-199X

URL: <http://www.ingentaconnect.com/content/mnp/jhil/2011/00000013/00000001/art00005>

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

## Record 15.

TI: The Wilsonian Challenge to International Law

AU: Smith, Leonard V.

JN: Journal of the History of International Law

PD: January 2011

VO: 13

NO: 1

PG: 179-208(30)

PB: Martinus Nijhoff Publishers

IS: 1388-199X

URL: <http://www.ingentaconnect.com/content/mnp/jhil/2011/00000013/00000001/art00006>

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

## Record 16.

TI: Beyond International Law: The Theories of World Law in Tanaka Kotaro and Tsuneto Kyo

AU: Doak, Kevin M.

JN: Journal of the History of International Law

PD: January 2011

VO: 13

NO: 1

PG: 209-234(26)

PB: Martinus Nijhoff Publishers

IS: 1388-199X

URL: <http://www.ingentaconnect.com/content/mnp/jhil/2011/00000013/00000001/art00007>

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

## Record 17.

TI: Schutz vor Armut in der EMRK?

AU: Schmahl, Stefanie; Winkler, Tobias

JN: Archiv des Völkerrechts

PD: December 2010

VO: 48

NO: 4

PG: 405-430(26)

PB: Mohr Siebeck

IS: 0003-892X

URL: <http://www.ingentaconnect.com/content/mohr/avr/2010/00000048/00000004/art00001>

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

## Record 18.

TI: Sovereignty, National Security and International Treaty Law The Standard of Review of International Courts and Tribunals with regard to 'Security Exceptions'

AU: Eisenhut, Dominik

JN: Archiv des Völkerrechts

PD: December 2010

VO: 48

NO: 4

PG: 431-466(36)

PB: Mohr Siebeck

IS: 0003-892X

URL: <http://www.ingentaconnect.com/content/mohr/avr/2010/00000048/00000004/art00002>

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

## Record 19.

TI: Trade and Environment. Fundamental Issues in International Law, WTO Law, and Legal Theory

AU: Krajewski, Markus

JN: Archiv des Völkerrechts

PD: December 2010

VO: 48

NO: 4

PG: 502-504(3)

PB: Mohr Siebeck

IS: 0003-892X

URL: <http://www.ingentaconnect.com/content/mohr/avr/2010/00000048/00000004/art00005>

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



## Record 20.

TI: Die erzwungene Gegengabe Fragen des Internationalen Privatrechts und der Inhaltskontrolle bei der kommerziellen Verwertung von Open Source Software nach der GNU General Public License Version 3

AU: Elkemann-Reusch, Ilva

JN: Zeitschrift fuer Geistiges Eigentum / Intellectual Property Journal

PD: December 2010

VO: 2

NO: 4

PG: 413-452(40)

PB: Mohr Siebeck

IS: 1867-237X

URL: <http://www.ingentaconnect.com/content/mohr/zge/2010/00000002/00000004/art00004>

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

## Record 21.

TI: Economic Policy and Conflict in Africa

AU: Tandon, Yash

JN: Journal of Peacebuliding and Development

PD: Fall 2004

VO: 2

NO: 1

PG: 6-20(15)

PB: Journal of Peacebuilding and Development

IS: 1542-3166

URL: <http://www.ingentaconnect.com/content/jpd/jpd/2004/00000002/00000001/art00002>

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

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Rosalind English, Why Be Nice? Human Rights Under Pressure, [UK Human Rights Blog](#) (Feb. 16, 2011)

Alasdair Henderson, Protesting Here and Risk Persecution There, [UK Human Rights Blog](#) (Feb. 16, 2011)

John C. Dehn & Kevin Jon Heller, Targeted Killing: The Case of Anwar Al-Aulaqi, [PENNumbra](#) (Feb. 15, 2011)(See also [Opinio Juris](#))

Robert Chesney, Hank Crumpton's Keynote Address at the Texas International Law Journal's Symposium on Air & Missile Warfare, [Lawfare](#) (Feb. 15, 2011)(with video link)

Alek Nomi, The (Uncertain) Future of China's Pipelines in Sudan and Burma, [EarthRights International](#) (Feb. 15, 2011)

Ingrid, A Cyberian Crossroads, [Peace Palace Library](#) (Feb. 15, 2011)

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Ed Bates, Controversy Over Prisoners' Rights Vote in UK, [ECHR Blog](#) (14 Feb 2011)

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William A. Schabas, Prosecuting Duvalier for Crimes Against Humanity, [PhD Studies in Human Rights](#) (12 Feb 2011)

Matrix Media Update, Revised and Revisited: A Human Right to Internet Access?, [Inform's Blog](#) (12 Feb 2011)

Irin Papanicolaou, Mauritius v. United Kingdom: Submission of the dispute on the Marine Protected Area around the Chagos Archipelago to arbitration, [EJIL: Talk!](#), (Feb. 11, 2011)

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Kelly Buchanan, The Legal Ramifications of the Current Political Crisis in Egypt, [In Custodia Legis](#) (Feb. 10, 2011)

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Laurence L. Delina, [Informational Governance of Climate Change Organisations](#), Centre for Development Informatics, Institute for Development Policy and Management, SED (Feb. 2011)

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