

**Anton's Weekly Digest of
International Law Scholarship***

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

(Some abstracts in this Bulletin have been significantly edited for brevity)

**Fact-Finding in Inter-State Adjudication**

**[Saju Jacob](#)**

*affiliation not provided to SSRN*

*[The Modern Law Review, Vol. 59, Issue 2, pp. 207-224, 2011](#)*

All analogies are imperfect in this respect, and yet the whole of our reasoning from experience is reasoning from extremely imperfect analogies between past and present occurrences. The question is not, are the conditions of the two problems the same? for that may always be answered in the negative but do they resemble each other closely enough for the old solution to be so modified as to apply to the new problem, or to suggest an analogous solution which may be applied to it?

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**International Assistance and Cooperation for Access to Essential Medicines**

**[Emily A. Mok](#)**

Georgetown University Law Center

*Health & Human Rights, Vol. 12, p. 73, 2010*

*[Georgetown Public Law Research Paper No. 11-23](#)*

Access to essential medicines is a critical problem that plagues many developing countries. With a daunting number of domestic constraints technologically, economically, and otherwise, developing

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\* Prepared by Donald K. Anton, The Australian National University College of Law, with the assistance of ANU College of Law students: Emily Kerr, Caitlin Powell, Kate Robinson & Jean Yuan. 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.

\* Information contained in the digest is current to 5.00 pm (local Canberra time) the day before issue.

countries are faced with a steep uphill battle to meet the human rights obligation of providing essential medicines immediately. To meet these challenges, the international human rights obligations of international assistance and cooperation can play a key role to help developing countries fulfill the need for access to essential medicines. This article seeks to highlight and expand upon the current understanding of international assistance and cooperation for access to essential medicines through a review of obligations identified in international human rights law and a synthesis of official guidance provided on the matter.

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### **The International Court of Justice and the Security Council of the United Nations: A Changing Relationship**

**James Gerard Devaney**

*affiliation not provided to SSRN*

The relationship between the International Court of Justice and the Security Council of the United Nations has always been one of many nuances. In examining the current state of this relationship, Part 1 sets out to illustrate that, in designating the Court and the Council to be principal organs, the Organisation's constitutive instrument essentially casts the Court and the Council as equals. Formally, the Court has no explicit power of review and inversely the Council must at least take the Court's judgments into consideration. However, . . . this static conceptualisation of the relationship no longer reflects reality in several fundamentally important ways. In fact, contemporary scholarship increasingly voices concerns regarding a revitalised Security Council unrestrained in the exercise of its functions. . . .

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### **Valuing the Future: Intergenerational Discounting, its Problems, and a Modest Proposal**

**Stephen Gary Marks**

Boston University - School of Law

*Boston Univ. School of Law Working Paper No. 11-12*

This article examine how intergenerational investment projects, such as, investments related to global warming, natural resources, energy, etc., should be undertaken. In particular, it examines two popular prescriptions: 1) In making intergenerational investments, policymakers should use a zero discount rate. 2) In making intergenerational investments, policymakers should use the market rate. The article shows that neither of these prescriptions are correct. Indeed, the article suggests that using present-value discounting at all is extremely problematic. Instead, the best we can probably do is to adopt a simple algorithm: set certain minimal goals for future generations: clean air, potable water, sufficient energy supplies, a nontoxic environment, etc., and then analyze the most cost-effective way of achieving those goals.

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### **The Alien Tort Statute and the Law of Nations**

**Anthony J. Bellia Jr.**

Notre Dame Law School

**Bradford R. Clark**

George Washington University Law School

*University of Chicago Law Review, Vol. 78, 2011*

*Notre Dame Legal Studies Paper No. 10-12*

Courts and scholars have struggled to identify the original meaning of the Alien Tort Statute (ATS). As enacted in 1789, the ATS provided "[t]hat the district courts... shall... have cognizance... of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States." . . . In 2004 in *Sosa v. Alvarez-Machain*, the Supreme Court addressed the statute for the first time and took a more restrictive approach than lower courts. . . . In this Article, we argue that neither the

broader approach initially endorsed by lower federal courts nor the more restrictive approach subsequently adopted by *Sosa* fully captures the original meaning and purpose of the ATS. In 1789, the United States was a weak nation seeking to avoid conflict with other nations. Every nation had a duty at the time to redress certain violations of the law of nations committed by its citizens or subjects against other nations or their citizens - from the most serious offenses (such as those against ambassadors) to more mundane offenses (such as violence against private foreign citizens). If a nation failed to redress such violations, then it became responsible to the other nation, and gave the other nation just cause for war. . . . The ATS authorized federal court jurisdiction over claims by foreign citizens against U.S. citizens for intentional torts to person or personal property. The statute thereby provided a self-executing means for the United States to avoid military reprisals for the misconduct of its citizens. Neither the ATS nor Article III, however, authorized federal court jurisdiction over claims between aliens. . . . Despite suggestions that the true import of the ATS may never be recovered, the original meaning of the statute is relatively clear in historical context: the ATS limited federal court jurisdiction to suits by aliens against U.S. citizens, but encompassed any intentional tort to an alien's person or personal property.

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### **Global Corporate Governance: Soft Law and Reputational Accountability**

**Kevin Jackson**

Fordham University

*Brook Journal of International Law, Vol. 35, No. 1, p. 42, 2010*

In contradistinction to hard law enforcement regimes, emergent civil regulations are connected to the "rule of reputation," which links accountability to a firm's reputational capital. Operating internationally and confronted with pressure to self-regulate, the reputation of a global business enterprise has become one of its most valuable intangible assets.

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### **Ban on Minarets from the Standpoint of Swiss Constitutional Law and Public International Law (Jus Cogens)**

**Giovanni Distefano**

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**Pascal Mahon**

University of Neuchatel - Faculty of Law

*Journal of Sharia & Law, Vol. 45, pp. 69-84, January 2011*

The Swiss vote on the 29th of November, 2009 turned the popular initiative against constructing minarets into a law with a 60% majority of voters. The vote reflects xenophobia and the negative image of Islam or Islamophobia held by the proponents of the initiative. This article deals at the same time with the Swiss Constitutional Law aspects and Public International Law issues, notably the conflict with some of its peremptory norms (jus cogens).

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### **Directives in EU Legal Systems: Whose Norms are They Anyway?**

**Julie Dickson**

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*European Law Journal, Vol. 17, No. 2, pp. 190-212, 2011*

This article is concerned with whether the concept of a legal system long a centrepiece of state-based legal theories is a useful conceptual tool in theorising the contemporary EU and its legal relations with its Member States. The focus lies particularly with EU directives, and with what the character and operation of this distinctive type of EU norm can tell us as regards the existence of and relations between legal systems in the EU. I argue for the view that the EU is comprised of distinct but

interacting legal systems at EU and national level, and claim that the character and operation of directives supports this view. Throughout the discussion I try to bring the conceptual tools of analytical legal philosophy to bear on puzzles generated by EU law and its relations with national law, in order to show that a sound analysis of aspects of the EU can benefit from abstract legal philosophical reflection, and vice versa.

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### **Review of Relationships Between Trade Liberalization and Poverty in Developing Countries**

**Issam A.W. Mohamed**

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The current paper reviews relationships trade liberalization and issues of welfare in developing countries. The structure of WTO is historically reviewed then impacts on developing countries are foresighted. It is concluded that interests on the simple people level can be affected by trade restrictions and barriers. Disparities on income generated from trade are seen. That is obvious in the recent data on the siphoning of surpluses through the ruling elites. That is, especially true in developing countries that refrain from joining the WTO. The stunning news of hundreds of billions in dollars stuffed by certain leaders, dethroned or still ruling reveal unprecedented corruption. The primary aim of the WTO is to enhance trade between countries, globally with a minimization of possible hindrances or obstacles, with especial regard to allow small producers, farmers or herders to have a fair portion of their products. That calls for enforcing transparency parameters on members of the WTO. Moreover, such call for transparency cannot be achieved without democracy, whereas under totalitarian regimes such freedoms of production, justice, equal shares, press freedom and criticism are not feasible. Without application of true democracy, there shall always be crisis in production, civil wars, sabotage and dis-enhancement for small producers to produce.

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### **You Have No Sovereignty Where We Gather – Wikileaks and Freedom, Autonomy and Sovereignty in the Cloud**

**Balázs Bodó**

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. . . Being Anonymous in the context of Wikileaks has a double promise: it promises to liberate the subject from the existing power structures, and in the same time it allows the exposure of these structures by opening up a space to confront them. The Wikileaks coerced transparency, however, is nothing more than the extension of the Foucauldian disciplinary power to the very body of state and government. While anonymity removes the individual from existing power relations, the act of surveillance puts her right back to the middle. The ability to place the state under surveillance limits and ultimately renders present day sovereignty obsolete. It can also be argued that it fosters the emergence of a new sovereign in itself. I believe that Wikileaks (or rather, the logic of it) is a new sovereign in the global political/economic sphere. But as it stands now, Wikileakistan shares too much with the powers it wishes to counter. The hidden power structures and the inner workings of these states within the state are exposed by another imperium in imperio, a secretive organization, whose agenda is far from transparent, whose members, resources are unknown, holding back an indefinite amount of information both on itself and on its opponents. I argue that it is not more secretive, one sided transparency which will subvert and negate the control and discipline of secretive, one sided transparency, it is anonymity. The subject's position of being "a multiplicity that can be numbered and supervised", its state of living in a "sequestered and observed solitude" (Foucault 1979) can only be subverted if there is a place to hide from surveillance. I argue that maybe less, and not more transparency is the path that leads to the aims of Wikileaks.

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### **A Valid International Problem vs. A Valid International Law: Shifting modes of Responsibility in International Criminal Law**

**Cassandra Steer**

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. . . The central question of this paper is: by what process does the normative content of ICL develop, in particular modes of liability, and what does this mean in terms of valid sources of ICL? Some important questions which will be considered whether the principle of legality should prevent shifts in recognized modes of responsibility, or whether the problems particular to the international nature of ICL warrant acceptance of such shifts. The conclusion asserts that if a concept in ICL cannot be found directly in one of the sources of international law, there is in fact another way by which the normative content of international criminal law is being developed. A dynamic feedback process between domestic and international law-makers can be observed, based on a communication model of law-making in international law. The controversial notion of Joint Criminal Enterprise (JCE) is taken as a case study for how this process of law-making takes place, including difficulties with application of a traditional doctrine of sources. . . .

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

**Paolo Galizzi**

Fordham University - School of Law

**Alena Herklotz**

Fordham University - School of Law

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

[\*Fordham Law Legal Studies Research Paper No. 1748063\*](#)

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

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### **The Development of International Norms to Enhance Space Security Law in an Asymmetric World**

**P.J. Blount**

National Center for Remote Sensing, Air, and Space Law, University of Mississippi School of Law  
*2009 Proceedings of the International Institute of Space Law, p. 153, 2010*

Space security is becoming an increasingly important and challenging issue for the international space law. This paper discusses how, in lieu of hard international norms found in the form of treaties, custom, and adjudicatory decisions, soft international law norms are being developed. This is attributable to the emerging organization of space activities in which States have asymmetric interest. To cope with this law is evolving through the development of soft norms both through the international incidents methodology and through the development of political agreements.

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### **Re-Introducing Walther Schücking**

**Christian J. Tams**

University of Glasgow, School of Law

Walther Schücking who died seventy-five years ago, in August 1935, was one of most prominent international lawyers of his generation, and yet an outsider among the German legal academic establishment. He was a progressive liberal who placed great trust in the civilising role of international law, and yet, when serving as a World Court judge from 1930-1935, seemed to integrate

quickly into what is with some reason regarded as the Court's most conservative period. A century ago, Schücking addressed fundamental questions that still haunt international lawyers today, and gave answers that were said to be "destined to become the law of the future", and yet his influence on the codification and progressive development of the 'international law of the future' after World War II was negligible. So who was Walther Schücking, and in what respect, if any, is he part of a European Tradition in International Law? The following short piece aims to re-introduce Walther Schücking, and to put the case, seventy-five years after his death, for a renewed engagement with his work.

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### **How the European Legal System Works: Override, Non-Compliance, and Majoritarian Activism in International Regimes**

[Alec Stone Sweet](#)

Yale University - Yale Law School and Yale Political Science

[Thomas L. Brunell](#)

University of Texas at Dallas - Department of Political Science

A striking feature of European integration and governance over the past fifty years has been the crucial role played by the European Court of Justice (ECJ). The ECJ is a Trustee court, rather than a simple Agent of the Member States, with the power to determine the scope of its own authority. In a recent paper, Carrubba et al., having examined the ECJ rulings on some 3,176 legal questions rendered over an 11-year period, claim that the decision-making of the European Court of Justice (ECJ) has been constrained - systematically - by the threat of override on the part of Member State Governments, acting collectively, and the threat of non-compliance on the part of any single State. They also purport to have found strong evidence in favor of Intergovernmentalist, but not Neofunctionalist, integration theory. We undertake original analysis of the same data. We conclusively demonstrate that the threat of override is not credible, and that the legal system is activated, rather than paralyzed, by noncompliance. We also explore what happened when MSG sought to override the Court - they failed - and organize a contest between the rival theories. In a head-to-head showdown, Neofunctionalism wins in a landslide. Finally, the analysis provides statistical support for the view that the ECJ engages in majoritarian activism. When Member States urge the Court to censor a defendant State for noncompliance, the ECJ tends to do so. The conclusion draws out implications of our findings for research on the two other international regimes that exhibit effective judicial review: the World Trade Organization and the European Convention on Human Rights.

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### **The Significance of Domestic Environmental Regulatory Regimes in Evaluating Breaches of Minimum Standards of Treatment; Lessons Learned from Glamis Gold v. United States**

[Jennifer Mullins](#)

Journal of Gender, Social Policy & the Law; American University Washington College of Law

*Journal of Arab Arbitration, Vol. 15, p. 21, December 2010*

Domestic regulatory regimes are increasingly important in international commercial and investor-state arbitration. Over a year ago, the arbitral tribunal in *Glamis Gold v. United States*, found that a Canadian mining company doing business in the United States was treated in accordance with minimum standards of treatment in part due to the strong, relatively transparent environmental regulatory regimes in place. This article argues that Latin American countries would benefit from similarly strong regulatory regimes, especially in cases involving the environment, because they offer transparency and cohesion – two elements that counter accusations of arbitrary and unfair treatment. Part II provides a brief background on Chapter Eleven of NAFTA, relevant U.S. regulatory regimes, and the *Glamis* decision. Part III explores the minimum standards of treatment framework under NAFTA, identifies elements of regulatory regimes that comply with this framework, and suggests where these are lacking in Latin American regimes. Part IV concludes that Latin American



governments should look to the United States as a model for regulation more likely to withstand the scrutiny of alleged violations of minimum standards of treatment in international arbitral tribunals.

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### **Offsetting and the Consumption of Social Responsibility**

**Ezra Rosser**

American University - Washington College of Law

[\*Washington University Law Review, Vol. 89, 2011\*](#)

[\*American University, WCL Research Paper No. 2011-07\*](#)

*National Poverty Center, University of Michigan Working Paper No. 2011*

This Article examines the relationship between individual consumption and consumption-based harms by focusing on the rise in consumption offsetting. Carbon offsets are but the leading edge of a rise in consumer options for offsetting externalities associated with consumption. Moving from examples of quasi offsetting to environmental offsetting and the possibility of poverty offset institutions, I argue that offsetting provides a valuable mechanism for individuals to correct for the harms associated with consumption. This article makes two major contributions to how we understand the relationship between consumption and social responsibility. First, it identifies an emerging offsetting phenomenon in seemingly discrete market practices and gives suggestions for improving upon them. Second, it suggests that by taking seriously both consumption and externalities, progress can be made on everything from the environment to global poverty. Offsetting, while not getting at all moral or societal obligations, does root such obligations in the shared activity, and perhaps belief, of Americans: consumption.

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### **Exploring the Efficacy of Human Rights Models for Positive Rights: The Case of the Right to Food**

**Michelle Jurkovich**

The George Washington University

Much of the human rights literature assumes that it is analytically useful to think about human rights norms as of the same type. Risse, Ropp, and Sikkink (1999), for example, wrote one of the foundational texts for the human rights literature arguing that they created a model of "human rights change" which mapped the socialization process of "human rights norms" in a way that was "generalizable across cases irrespective of cultural political, or economic differences of the countries" (pp. 3 & 6). Yet the specific human rights campaigns they examined were all of one type – they were all addressing negative human rights. A closer look at the literature reveals that these scholars are not alone in addressing "human rights norms" as of one type. And yet, positive rights, or human rights which require the government to act to solve a social problem (i.e. right to food, right to clean water, right to education) are different in several important ways from negative rights (i.e. asking governments to stop doing something which is infringing on human rights). This paper examines these key analytic differences and explores how well some of our current models (specifically Risse, Ropp, and Sikkink's "spiral model" and Keck and Sikkink's (1998) "boomerang model") might hold up when explaining the trajectory of one specific positive human rights campaign: the right to food. Specifically, this paper will look at three key differences between positive and negative rights which may affect the usefulness of the spiral and boomerang models: the difficulty of assigning blame to "violations" of positive rights, the increased costs of successful state, business, and/or transnational advocacy network (TAN) coordination for problem-solving of positive rights, and the underlying philosophical differences in negative vs. positive rights debates regarding the responsibility and obligations of the government vis-a-vis its people.

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**The Article 12 (3) Declaration of the Palestinian Authority, the International Criminal Court and International Law****Professor Malcolm N. Shaw QC**

University of Leicester, UK

This article analyses the validity of the Palestinian Authority Declaration of February 2009 purporting to accept the jurisdiction of the ICC under article 12 (3) of the Rome Statute, which requires the declarant be a State. After reaffirming that Palestine is currently not a State under public international law, the article examines the arguments claiming that Palestine should be regarded as a State for the purposes of the Rome Statute whether because the Statute should be taken as incorporating non-state entities or on account of the existing jurisdictional capacity of the PA. It is concluded that neither argument is sustainable. No reasonable interpretation of 'State' in article 12 (3) in the light of the object and purpose of the Rome Statute can extend that term to include non-State entities of whatever hue, while no acceptable reading of the existing jurisdictional capacity of the PA can encompass anything approximating to the satisfaction of the required criteria. Attempts to stretch the interpretation of article 12 (3) beyond the credible might well have deleterious consequences for the Court.

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**Four Varieties of Social Responsibility: Making Sense of the 'Sphere of Influence' and 'Leverage' Debate Via the Case of ISO 26000****Stepan Wood**

York University, Osgoode Hall Law School; Robert Schuman Centre for Advanced Studies, European University Institute; York University - Institute for Research and Innovation in Sustainability

*Osgoode CLPE Research Paper No. 14/2011*

One of the key controversies in social responsibility discourse is whether an organization's responsibility should be based on its capacity to influence other parties or only on its actual contribution to social and environmental outcomes. On one side of the debate are those who argue that the limits of an organization's responsibility should be defined in terms of its "sphere of influence" (SOI): the greater the influence, the greater the responsibility to act. On the other side are those who reject the SOI approach as ambiguous, misleading, normatively undesirable and prone to strategic manipulation. Foremost among the critics is the United Nations Secretary General's Special Representative for business and human rights, Professor John Ruggie, who rejects SOI as a basis for defining the boundaries of the business responsibility to respect human rights. The newly published ISO 26000 guidance standard on social responsibility was at the centre of this controversy during its final stages of drafting. This paper examines how the concept of SOI is articulated in ISO 26000 and the extent to which it responds to the concerns identified by critics. It proposes a four-part matrix of "influence-based" responsibility, defined by the intersection of two distinctions that are often elided in SR discourse: the distinction between "influence as impact" and "influence as leverage," on one hand, and the distinction between negative and positive responsibility, on the other. The paper argues that ISO 26000 avoids the conceptual ambiguity identified by critics by defining SOI exclusively in terms of "leverage"; that it avoids the main operational ambiguity identified by its critics by eschewing the problematic concept of "proximity;" that it embraces all four varieties of social responsibility to varying degrees, repudiating the normative claim that social responsibility is only negative and impact-based; and that it provides at least a partial response to the problem of strategic gaming.

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**Governments, Financial Markets, and International Human Rights: The State's Role as Shareholder****Salar Ghahramani**

Penn State

*Yale Journal of International Affairs, Vol. 6, No. 1, pp. 85-95, 2011*

The role of state-sponsored entities as participants in the financial markets is often overlooked in the human rights discourse. This paper will examine the role of the state in financial markets not as the lawmaker, regulator, or utilizer of hard power, but as an equity investor of publicly-traded companies. In particular, the study will consider how government organs such as public pension funds and sovereign wealth funds can pursue international human rights objectives and impact international affairs.

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**Rational Treaties: Article II, Congressional-Executive Agreements, and International Bargaining****John Yoo**

University of California at Berkeley School of Law

*Cornell Law Review, Vol. 97, No. 1, 2011*

This paper examines the continuing difference between the Constitution's Article II treaty, and the congressional-executive agreement's statutory process, to make international agreements. Rather than approach the problem from a textual or historical perspective, it employs a rational choice model of dispute resolution between nation-states in conditions of weak to little enforcement by supranational institutions. It argues that the choice of a treaty or congressional-executive agreement can make an important difference in overcoming various difficulties in bargaining that arise from imperfect information and commitment problems.

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**International Investment Disputes, Nationality and Corporate Veil: Some Insights from Tokios Tokelés and TSA Spectrum De Argentina****Antoine Martin**

University of Surrey

*Transnational Dispute Management, Vol. 8, No. 1, February 2011*

Article 25 of the International Centre on the Settlement of Investment Dispute Convention limits the jurisdiction of the Centre to legal disputes arising directly out of an investment between a contracting state and a 'national' of another contracting state. Treaty protection, that is, is conditioned by the recognition of the 'foreign' nature of an investment, by way of either a place of incorporation or a control test. In practice, arbitrators recently had to elaborate on the significance of 'nationality' and to establish what constitutes a 'foreign' investment. Arbitral tribunals have had to consider cases opposing host-states to their own nationals as well as to foreign investors who allegedly did not have the nationality of the other Contracting Party. This comment compares facts and corporate structures in Tokios Tokelés v. Ukraine and TSA Spectrum v. Argentina Republic as well as the differences in BIT provisions explaining the tribunals' respective findings. Two questions are also considered. First, does ICSID arbitrators' jurisdiction encompass lifting the corporate veil in the absence of an explicit authorisation to do so in the Convention? Second, notwithstanding 'BIT-shopping' discussions which overall remain policy-oriented, should the real source of authority of the investment be looked for in claims opposing states to their own nationals?

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**Antinomies and Change in International Dispute Settlement: An Exercise in Comparative Procedural Law****Ingo Venzke**

New York University School of Law; Max Planck Society for the Advancement of the Sciences - Max Planck Institute for Comparative Public Law and International Law

Institutions for the settlement of international disputes are products of competing interests and aspirations. They testify to rivalling and changing ideas about international order. They bear witness to incremental shifts in the antinomies that underlie their concrete shape. International judicial institutions, specifically their procedural law, respond to conceptions of what international dispute settlement is about, what it is for and what it actually does. While international adjudication could for long plausibly be understood as a sporadic affair concerned rather exclusively with the successful resolution of disputes between immediate parties, the quantitative increase in international adjudicators and in international decisions over the past two decades has gone hand in hand with a shift in quality. International courts and tribunals have developed international norms in their practice, shaping legal regimes and conditioning the legal situation of all those who are subject to the law. The article exposes multiple antinomies and change in the procedural law of key international courts and tribunals in this light. The main task will be the comparative study of recent trends in procedural law in light of legitimacy problems stemming from the systemic effects of international adjudication. Issues of transparency and publicness, third party intervention and amicus curiae submissions, and avenues of judicial review are most significant in this regard. These trends harbour valuable potentials for improvement but also considerable perils. The article concludes with a sketch of the possible future dynamics.

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**International Cooperation: The Key to Space Security****P.J. Blount**

National Center for Remote Sensing, Air, and Space Law, University of Mississippi School of Law  
*2010 Proceedings of the International Institute of Space Law*

One of the primary purposes of the Outer Space Treaty and its progeny was to increase international peace and security by creating a secure environment in which States could interact. The agreement itself was meant to enhance international peace and security as envisioned by the Charter of the United Nations, which is one of the primary reasons for the aspirational language found within the Outer Space Treaty. Of course, this treaty was negotiated in a geopolitical context in which two opposing superpowers saw strategic advantage in normalizing interactions in space. Today, the geopolitical situation has vastly changed from that at the beginning of the space age; however, the law has not. While many view this lack of change in the space law regime as destabilizing, This paper argues that the key to space security law can still be found in the Outer Space Treaty. The concept of international cooperation is at the heart of the Outer Space Treaty's space security regime, and re-grounding space security law in this concept is vitally important to adapting the law to the changed geopolitical situation. This paper will explore the idea of international cooperation as envisioned in the Outer Space Treaty, and then discuss its implications for the development of space security and its legal regime.

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**In Legal Limbo: Post-Legislative Guidance as a Challenge for European Administrative Law****Joanne Scott**

University College London - Faculty of Laws  
*Common Market Law Review, Vol. 48, No. 2, 2011*

Post-legislative guidance is a ubiquitous feature of European environmental law. It serves to elaborate upon the meaning and implications of European framework norms. This paper presents a case study

concerning the development of post-legislative guidance. This serves to exemplify the practical effects that guidance may have, the substantive flaws with which it may be imbued, and the procedural shortcomings to which its adoption may give rise. This case study operates in the area of climate change and at the intriguing intersection between national, European and international hard and soft law. The paper also explores the case law of the European courts, explaining why it is that despite the practice of these courts in privileging substance over form in deciding which measures to treat as susceptible to judicial review, guidance documents will nearly always escape their scrutiny. It argues that this case law is premised upon a series of distinctions that operate to obscure the nature and impact of guidance as a governance form. In view of the substantive and procedural shortcomings with which guidance may be imbued, this paper argues that there is a need for enhanced opportunities for European-level judicial review and it considers concretely what this might mean for the case law of the European Court.

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### **Women Address the Problems of Peace Agreements**

**Christine Bell**

Transitional Justice Institute, University of Ulster

*WOMEN, PEACEMAKING AND CONSTITUTIONS, R. Coomaraswamy & D. Fonseka. New Delhi: Women Unlimited, 2005*

*Transitional Justice Institute Research Paper No. 11-03*

This article discusses the gendered dynamics of peace negotiations and peace processes. I examine the different pre-negotiation, framework and implementation stages of peace processes and the different difficulties for women which arise at each stage. The article sets out strategies for inclusion for women at each stage of a peace process, drawing on Northern Ireland as a case study.

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### **Access to Therapeutic Opioids: A Plan of Action for Donors, NGOs, and Governments**

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**Corey S. Davis**

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**Scott Burris**

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*Temple International & Comparative Law Journal, Vol. 24, No. 2, 2010*

*Temple Law School Working Paper Series*

Throughout the world, millions of people suffer pain caused by late-stage HIV/AIDS, cancer and other conditions; and millions more suffer the harms associated with addiction to illicit opioids, particularly heroin. Medical best practice recognizes that therapeutic opioids are central to the treatment of severe pain, and indispensable in palliative care. Likewise, long-term pharmacotherapy (referred to here as Medication Assisted Treatment or MAT) is proven to be an effective treatment for opioid dependence; and to significantly reduce the risks of HIV/AIDS and other harms associated with injection drug use. As a result, the World Health Organization (WHO) includes opioid medications that are commonly used to treat both pain and opioid dependence on its list of essential medicines. Despite widespread recognition that opioid medications are necessary for medical treatment, severe global inequality in access to these medicines persists. . . . A significant driver of access inequality is imbalanced drug policy. In countries throughout the world, restrictive national policies emphasize prevention of drug dependence at the expense of ensuring access to essential opioid medicines. . . . Over the past two decades, an informal coalition of dedicated international non-governmental organizations (NGOs) and United Nations programs have worked with advocates in a number of countries to expand access to therapeutic opioids. In recent years, both state parties to the international drug conventions and the international drug control organs have affirmed their support for access. With broad agreement in theory, all that now stands in the way of large-scale change at

the international level is the lack of a unifying vision and a clear, adequately funded action plan. . . . [W]e argue that moderate international investment can transform the current international consensus for improved therapeutic opioid access into meaningful reform.

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**Translation of *Murawwaja Islāmī Baynkārī awr Jamhūr Ulamā kay Mawqaf kā Khulāṣa* (A Collective Fatwa Against Islamic Banking)**

**Shoaib A. Ghias**

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Translation of Jāmia Ulūm Islāmiyya, Banūrī Town, "Murawwaja Islāmī Baynkārī awr Jamhūr Ulamā kay Mawqaf kā Khulāṣa." Bayyināt 71, no. 9 (2008).

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**Stretching Too Far? Developing Countries and the Role of Flexibility Mechanisms Beyond Kyoto**

**Harro Van Asselt**

University of Oxford; VU University Amsterdam

**Joyeeta Gupta**

Institute for Environmental Studies (IVM)

*Stanford Environmental Law Journal, Vol. 28, No. 2, 2009*

In light of the recently launched negotiations on the future of the international legal framework addressing global climate change, it is important to understand the effectiveness of elements of proposed legal architectures. This Article focuses on a potential key element of a future climate regime, namely market-based flexibility mechanisms. The current functioning of flexibility mechanisms can be criticized on a number of grounds. In particular, this Article argues that the use of these mechanisms does not sufficiently take into account the interests and circumstances of developing countries. It outlines a range of concerns with respect to the use of flexibility mechanisms in general, and the Clean Development Mechanism (CDM) in particular. It argues that although flexibility mechanisms have certain virtues, they are not necessarily the best means to meet the various objectives and principles of the climate regime. Alleviating these concerns will be a key challenge in broadening participation in a future international climate change agreement. Therefore, the Article presents and discusses a number of suggestions on how to address these concerns in a future climate change treaty, and identifies the challenges in doing so. It concludes that although flexibility mechanisms are likely to remain a part of any future agreement, there are ways to address developing country concerns, in particular through reforming the CDM. However, doing so requires making new tradeoffs. Greater involvement of developing countries in the use of flexibility mechanisms by extending the coverage of international emissions trading to developing countries will require more fundamental changes to the design of the legal architecture of flexibility mechanisms.

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**Privatizing International Law**

**Paul B. Stephan III**

University of Virginia School of Law

The old understanding of international law as something created solely by and for sovereigns is defunct. Today the production and enforcement of international law increasingly depends on private actors, not traditional political authorities. As with other public services that we used to take for granted – schools, prisons, energy utilities and transportation networks – privatization has come to international law. The tasks of this paper are both positive and normative. It both locates the privatization process within a broader model of law production and uses criteria supplied by that theory to assess its value. It argues that innovation in the production of international law may achieve considerable benefits. Changes in international economics and politics make experimentation

imperative. At the same time, some forms of privatization pose considerable risks without corresponding benefits. The question whether international law applies at all to particular conduct is fundamental and has profound consequences. It involves a choice between legal systems, not simply a choice among applicable rules. Privatization that destabilizes the domain of international law, i.e., that makes it less clear where international rules apply, produces high costs that require exceptional justification. In particular, the last portion of the paper traces through a range of areas where the political branches, through statutes, have given different directions as to the application of international law in lawsuits. I argue that courts should follow these directions, not only because of a general obligation to fulfill statutory intent, but because disregard of them will confuse the general issue of when international law applies. Thus the courts should not expand the domain of international law when statutory law indicates otherwise, and should not demur from applying international law where legislation invokes it, no matter what private litigants seek and whether or not courts generally wish to contribute to the development of international law. As simple and straightforward as these propositions may seem, they resolve many pressing current disputes.

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### **Peace Agreements or Pieces of Paper: UN Security Council Resolution 1325 and Peace Negotiations and Agreements**

**Christine Bell**

Transitional Justice Institute, University of Ulster

**Catherine O'Rourke**

Transitional Justice Institute (University of Ulster)

*Transitional Justice Institute Research Paper No. 11-0*

On the 31 October 2000 UNSC Resolution 1325 was adopted. The resolution provided for a range of measures aimed at the inclusion of women in the prevention, management and resolution of conflict. In particular, several of the resolution's provisions addressed the role of women and gender in peace negotiations and agreements. This piece examines whether and how Resolution 1325 has impacted on the drafting of peace agreements. We analyse explicit references to women and gender in peace agreements from 1990 to 2010, providing a quantitative and qualitative assessment of the extent to which women and gender are addressed.

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### **Implementation as the Best Way to Tackle Corruption: A Study of the UNCAC and the AUC 2003**

**Antoine Martin**

University of Surrey

*Surrey Law Working Paper No. 07/2011*

Adopted in 2003, the African Union Convention on Preventing and Combating Corruption (AUC), and the United Nations Convention Against Corruption (UNCAC) are the most recent examples of international initiatives aiming at tackling corruption. The adoption of these conventions is an important step in the fight against corruption and this working paper considers to what extent they represent a strong basis for tackling corruption, as well as why strong implementation measures remain essential. Section 1, examines the scope of the two conventions, highlights the lack of a legal definition of corruption as well as strong similarities with regards to the conventions' objectives, and considers the limits of the means of actions provided by the conventions. Section 2 examines how practical measures such as codes of conduct, asset declarations, social and economic reforms, reliance on the private sector or cooperation, are suitable to tackle corruption. The paper concludes with the argument that strict implementation of existing measures remains the best mean to fight corruption in developing countries.

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**Choosing to Prosecute: Expressive Selection at the International Criminal Court****Margaret M. DeGuzman**

Temple University - James E. Beasley School of Law

*Temple University Legal Studies Research Paper*

The International Criminal Court (ICC) has the mandate to "end impunity" for serious international crimes around the world but the budget to prosecute only a few cases per year. This high degree of selectivity represents one of the greatest threats to the Court's legitimacy. Every selection decision the Court makes is scrutinized and many have been strongly condemned. States that supported the creation of the Court have become critical and one has threatened to withdraw from the regime. Unlike national courts, which are expected to prosecute most serious crimes, the ICC's legitimacy rests on perceptions of relevant audiences that it is selecting the "right" crimes and defendants for prosecution. The scholarly and advocacy discourse surrounding the problem of the ICC's selectivity currently focuses on the role of politics in selections, with critics charging that the prosecutor is improperly influenced by political considerations and the prosecutor protesting that his decisions are apolitical. This Article argues that such debates miss the ICC's fundamental problem: that its creators failed to endow it with goals and priorities to undergird its choices. In light of this deficiency, current efforts to address the ICC's selectivity by ensuring good process through independence, impartiality, objectivity, and transparency are bound to fail. Instead, what is needed is sustained dialogue among the ICC's various constitutive communities about what the institution should be seeking to accomplish. This Article contributes to that process by proposing an expressive theory of ICC selection. While the dominant theories of ICC action – retribution, deterrence, and restorative justice – provide partial justifications for its work, such theories are inadequate as rationales for selection decisions. Instead, the ICC should select crimes and defendants for prosecution according to their ability to maximize its expressive impact. Through a dialogic process of norm expression, reaction, and adjustment, the Court will ideally generate increased consensus around its work over time. If it fails to do so, the ICC's demise will at least result from the inability of the international community to agree about the Court's core mission rather than its failure to conceptualize fully an agenda for the institution.

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**The Rule of Law at the Crossroads: Consequences of Targeted Killing of Citizens****Ryan Patrick Alford**

Ave Maria School of Law

*Utah Law Review, Forthcoming*

In December 2010 (in *Al-Aulaqi v. Obama*) a District Court held that the President's decision to authorize the targeted killing of American citizen could not be reviewed in any court. The article discusses whether this decision is compatible with the vision of the rule of law embodied in the Constitution and the Bill of Rights, which is illuminated with an explanation of the historical analysis of the key influences on the Framers. It concludes that the *Al-Aulaqi* decision is a more significant threat to our constitutional order than the indefinite detention enjoined by *Hamdi v. Rumsfeld*, and accordingly this warrants a vigorous response from the legal profession.

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**No Such Thing as Cosmopolitanism: Field-Dependent Consequences in International Administrative Governance and Criminal Justice****Nicholas Dorn**

Erasmus University Rotterdam - Erasmus School of Law

*RETHINKING THE LIBERAL PEACE: EXTERNAL MODELS AND LOCAL ALTERNATIVES*, Shahrbanou Tadjbakhsh, ed., Abingdon: Routledge, Cass Peacekeeping Series, Forthcoming

Cosmopolitan and communitarian questions formerly posed in relation to wars between democracies (the core tradition of the Liberal Peace literature) have been supplemented by questions about



democracies that go to war on non-democracies or intervene in regional conflict situations – and by questions about what happens next, in terms of stabilisation, democratisation and development. The claim made here is that the consequences for post-conflict states differ between, on the one hand, cosmopolitan involvement in international administrative measures of governance and, on the other hand, cosmopolitan involvement in the creation of international criminal tribunals. When cosmopolitan impulses are articulated as an aspect of international administrative governance, as in Bosnia and Herzegovina, a form of 'administrative cosmopolitanism' is produced, the unintended consequences of which include state in-capacitating and de-democratisation. By contrast, international criminal tribunals have a smaller political footprint upon transitional societies, thus the consequences of 'legal cosmopolitanism' for democracy and human rights may on balance be positive, or at least not negative. This chapter argues for cosmopolitan discourses and practices to be evaluated not in terms of any essential quality but in terms of contexts; not in terms of intentions but in terms of effects; and not in terms of the moral pedagogics and legal powers to which transitional populations are subjected, but rather in terms of the extent to which cosmopolitan forces hold themselves subject to law. This chapter is in part II of Shahrbanou Tadjbakhsh's edited book. The book as a whole presents a critical analysis of the liberal peace project and offers possible alternatives and models. In the past decade, the model used for reconstructing societies after conflicts has been based on liberal assumptions about the pacifying effects of 'open markets' and 'open societies'. . . .

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### **Supervised Independence and Post-Conflict Sovereignty: The Dynamics of Hybridity in Kosovo's New Constitutional Court**

**Steven Hill**

Johns Hopkins University, Hopkins-Nanjing Center

**Paul Linden-Retek**

Yale University - Law School

This Essay uses the conceptual framework of hybridity to analyze the early experience of the Constitutional Court of the Republic of Kosovo. While recognizing the difficulties in ensuring an effective form of hybridity and the legitimate integration of international standards into domestic law, this Essay aims to show that the new example of Kosovo's Constitutional Court — and the engagement of the International Civilian Office as part of the Comprehensive Proposal for the Kosovo Status Settlement (CSP) arrangement — offers useful instruction on how international institutions can serve to consolidate, rather than undermine, democratic legitimacy in post-conflict contexts. Drawing on insights from both local and international actors involved in designing and establishing the Constitutional Court, this Essay re-examines the potential to reach beyond the international-national dichotomy and to understand the foundations of sustainable and legitimate capacity-building in the implementation of hybrid arrangements.

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### **The Reality of Social Rights Enforcement**

**David Landau**

Florida State University - College of Law

Despite the American refusal to include socio-economic rights in the U.S. constitution or to enforce them, the vast majority of constitutions around the world now include these rights, and courts are enforcing them in increasingly aggressive and creative ways. Scholars have produced a large and theoretically rich literature on the topic. Virtually all of this literature assumes that social rights enforcement is about the advancement of impoverished, marginalized groups. Moreover, the consensus recommendation of that literature, according to scholars like Cass Sunstein and Mark Tushnet, is that courts can enforce socio-economic rights but should do so in a weak-form or dialogical manner, whereby they point out violations of rights but leave the remedies to the political branches. These scholars argue that by behaving this way, courts can avoid severe strains on their democratic legitimacy and capacity. Based on an in-depth case study of Colombia, which draws on

my extensive fieldwork within that country, and on evidence from other countries including Brazil, Argentina, Hungary, and India, I argue that both the assumption and the consensus recommendation are wrong. In fact, most social rights enforcement has benefitted middle- or upper- class groups, rather than the poor. Courts are far more likely to protect pension rights for civil servants or housing subsidies for the middle class than they are to transform the lives of marginalized groups. Moreover, the choice of remedy used by the court has a huge effect on whether impoverished groups feel any impact from the intervention. Super-strong remedies like structural injunctions are the most likely ways to transform bureaucratic practice and to positively impact the lives of poorer citizens. The solution to the socio-economic rights problem is to make remedies stronger, not weaker.

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### **The Cancún Climate Conference**

**Elizabeth Burleson**

Florida State University College of Law; London School of Economics

**Cesare P.R. Romano**

Loyola Law School Los Angeles

*Insights, Vol. 15, No. 41, January 21, 2011*

*FSU College of Law Public Law Research Paper*

The United Nations Climate Change Conference, held from November 29 to December 11, 2010, in Cancún, Mexico, relaunched the United Nation's multilateral facilitation role.

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### **Global Governance and Democratization within and Beyond Borders: The Role of an Inclusive International Civil Society in Post-Conflict States**

**Jerry Pubantz**

University of North Carolina (UNC) at Greensboro

Historically, implementing democracy has been a domestic concern. Recent events in Egypt, Tunisia, Yemen, Bahrain, and Iran reflect variations of the traditional pattern for democratic change within a closed society. Yet, as the world edges into the 21st century, democratization with the companion promotion of human rights and development, particularly in what are often perceived to be deteriorating, post-conflict, or failed states, has become a central activity of the international community, heavily dominated by intergovernmental organizations (IGOs) and international civil society (ICS).

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### **How the Third World Sees Constitutionalism in International Law?**

**Prabhakar Singh**

Jindal Global Law School (JGLS)

*Jindal Global Legal Research Paper No. 1/2011*

Contemporary International law/relations scholarship typifies three approaches: constitutional, global administrative and pluralist. Constitutional vocabularies have been used to address the United Nations (UN) Charter, the WTO, and the European Union (EU). Today's diverse legal regimes arguably present harmonisational problems within international law's monism-dualism ideology. With EU's increasing assertion as a normatively strong dualist laboratory, new scholarship is replacing constitutionalism by - as I like to call it - dualism plus as the preferred but defensive ideology. Consequently, international constitutionalism's definition now stands upside down. Both international and constitutional law are colonial gifts. In the World Trade Organisation's (WTO) India-Quantitative Restriction Case, India - this observation can be extended for the Third World in general - was seen to be slightly obsessed with a constitutional imagery. After the European Court of Justice's (ECJ) Kadi judgement, pluralism and constitutionalism stand in opposite camps. Understandably, the issues

involved defy conclusion and constitutionalism as an ideology remains, as is often the case, an inconclusive question for an eternally observing Third World.

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### **Protecting Expressions of Folklore within the Right to Culture in Africa**

**Enyinna Sodiemye Nwauche, LL.M.**

Rivers State University of Science and Technology (RSUST) - Faculty of Law

*Potchefstroom Electronic Law Journal, Vol. 13, No. 4, 2010*

This paper explores the protection of expressions of folklore within the right to culture in Africa by considering three issues, which are the increased understanding of the right to culture in national constitutions and the recognition that customary law is a manifestation of the right to culture; an expanded understanding of the substantive content of the article 15(1) of the International Covenant for Economic, Social and Cultural Rights as part of the right to culture; and the recognition of the rights of indigenous peoples marked significantly by the 2007 United Nations Declaration of the Rights of Indigenous People. The paper demonstrates how a human rights regime may assist in overcoming some of the deficiencies in the national protection of expressions of folklore in Africa.

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### **The Dispute Over Pinnacle Islands (Senkaku/Diaoyu) - A Legal Analysis (A Disputa Pelo Arquipélago Do Pináculo (Senkaku/Diaoyu) Uma Análise Jurídica) (in Portuguese)**

**Diogo De Sousa e Alvim**

University of Macau - Faculty of Law

In this article, I propose an analysis of the dispute concerning the Pinnacle Islands (Senkaku/Diaoyu). These Islands are claimed by China and Japan and have recently caused controversy when a Chinese fishing vessel was intercepted by the Japanese navy and its captains put in captivity. I will first start with a short history of the situation, given that the main arguments used by the contestant parties are historical. I will then focus on the legal arguments used by both parties and conclude that Japanese arguments seem to be stronger than Chinese. After that I will analyse the advantages that the control over these Islands give to the country that controls them. I will finish with an analysis of the legal instruments these two countries may use to resolve this dispute, concluding that negotiation would be the one that guarantees more advantages to both sides.

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### **U.S. Anti-Suit Injunctions in Support of International Arbitration: Five Questions American Courts Ask**

**Chetan Phull**

University College London - Faculty of Laws; Queen's University - Faculty of Law

*Journal of International Arbitration, Vol. 28, No. 1, pp. 21-50, 2011*

International arbitration is an increasingly popular dispute resolution mechanism, however, the threat of foreign court intervention unremittingly remains. It is therefore important for a party seeking to enforce an arbitration agreement to know which jurisdictions are most amenable to protecting arbitration agreements, and what courts in these jurisdictions consider material in deciding whether to issue an anti-suit injunction (ASI) against the party seeking to sidestep arbitration through a foreign court order. In the United States, courts in certain jurisdictions in particular have shown a willingness to protect arbitration agreements through ASIs, in the presence of certain factors. The author has uncovered five fact-specific questions from the case law produced by these courts that are material to the courts' issuance of ASIs. In the abstract, the questions consider: actual refusal to arbitrate and parallel foreign litigation; recognition and enforcement of an arbitration award enjoined by a "competent authority" under the New York Convention; the res judicata effect of U.S. judgments; the strong public policy in favor of arbitration; and bad faith by the party seeking to hinder arbitration. The additional element of whether an ASI to enforce an arbitration agreement is

requested from an offensive versus defensive position is also considered in the discussion of the five questions.

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### **Intolerable Abuses: Rendition for Torture and the State Secrets Privilege**

**D. A. Jeremy Telman**

Valparaiso University School of Law

*Valparaiso University Legal Studies Research Paper*

In *Mohamed v. Jeppesen Dataplan, Inc.*, the Ninth Circuit, sitting en banc, issued a 6–5 opinion dismissing a complaint brought by five men claiming to have been victims of the U.S. government's extraordinary rendition program, alleged to involve international kidnapping and torture at foreign facilities. Procedurally required to accept plaintiffs' allegations as true, the court nonetheless dismissed the complaint before discovery had begun based on the state secrets privilege and the Totten doctrine, finding that the very subject matter of plaintiffs' complaint is a state secret and that the defendant corporation could not defend itself without evidence subject to the privilege. This Article contends that courts should almost never dismiss suits based on the state secrets privilege and should never do so in a case like *Jeppesen Dataplan*, in which plaintiffs did not need discovery to make out their prima facie case alleging torts by the government or its contractors. While much has been written on the state secrets privilege since 9/11, this Article focuses on the role of the Totten doctrine in transforming the state secrets privilege into something like a government immunity doctrine. . . . While the Article thus offers fundamental critiques of both the Totten doctrine and the state secrets privilege, it does not advocate disclosure of state secrets. Rather, in a concluding section, the Article draws on federal statutory schemes relating to the introduction of classified information in trials and offers numerous alternatives to judgment in favor of the government and its contractors before discovery has begun in cases implicating state secrets. Congress has repeatedly empowered courts to make decisions that protect government secrecy while facilitating limited access to secret information when necessary in the interests of justice and open government. In some cases, the government's inability to defend itself may necessitate the socialization of the costs associated with national security secrets, but that result is preferable to forcing plaintiffs to bear all the costs of government secrecy.

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### **Copenhagen Summit - The Legal Implications**

**Janani Shankar**

NALSAR University of Law

The paper deals with the evolution of the international environmental treaty law in the context of climate change. It also brings to light the success and failures of world cooperation in the field of environment. One of the highlights of this piece is the critical analysis of the text of the Copenhagen Accord which was drafted during the recently concluded climate change talks in Denmark. The author feels that though the outcomes of the conference of Parties last year did not result in any significant addition to the preceding treaties, it could form the basis for a legally binding deal at the next COP summit which is to take place in Mexico. One of the major arguments put forth in the paper is that concrete results can be achieved not by successful legal agreements but through change in the way people view the environment. The paper begins by explaining the role played by The United Nations as a quasi legislative body in addressing and formulating laws in the international community. It focuses on the legal order of the United Nations. Then it moves ahead and evaluates the 2 major treaties negotiated by the United Nations, the United Nations Framework Convention on Climate Change (UNFCCC) 1992 and the Kyoto Protocol, 1997. It presents the various issues which arose before the UN international forum during the negotiation of these treaties. Then it examines where the Copenhagen deliberations figure in the overall picture of the climate change battle and also critically analyses the text of the Copenhagen Accord, finally the author gives some suggestions as to

how the work of these treaties can be made more useful and concludes with a reminder that only an internal change can bring about a meaningful difference.

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### **The Legality Principle in Sentencing at the ECCC: Making Up Law as it Goes Along**

**Mark D. Kielsgard**

City University Hong Kong

*Asian Journal of International Law, Forthcoming*

Sui generis hybrid international criminal tribunals must conduct business without institutional memory and are only as effective or fair as their constitutive documents allow. The sparse guidance provided for the international crimes court in Cambodia creates uncertainty and arguably ambiguous standards that infringe upon the legality principle and undermine efforts for *nulla poena sine lege*.

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### **Preventive Detention in the Law of Armed Conflict: Throwing Away the Key?**

**Diane Webber**

*affiliation not provided to SSRN*

*Journal of National Security Law and Policy, Forthcoming*

Nine years after 9/11, the "clear legal framework for handling alleged terrorists" promised by President Obama in 2009 is still undeveloped and "the country continues to hold suspects indefinitely, with no congressionally approved mechanism for regular judicial review." Should terrorists be treated as criminals, involving traditional criminal law methods of detection, interrogation, arrest and trial? Or should they be treated as though they were involved in an armed conflict, which would involve detention and trial in accordance with a completely different set of rules and procedures? Neither model is a perfect fit to deal with twenty-first century terrorism. This paper reviews the framework to detain suspected terrorists preventively under the law of armed conflict together with legislation proposed by Senator Lindsey Graham and a prospective Executive Order on detention. The paper concludes that the law relating to detention is still unclear, with many unanswered questions and the current law of armed conflict, even if it were amended by the proposed draft legislation, does not provide an adequate blueprint to deal with current and future detention challenges.

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### **A Coordinated Judicial Response to Counter-Terrorism?: Counter-Examples**

**Rayner Thwaites**

Victoria University of Wellington

*MAPPING TRANSATLANTIC SECURITY RELATIONS: THE EU, CANADA, AND THE WAR ON TERROR*,  
Mark B. Salter, ed., Routledge, 2010

The chapter assesses Eyal Benvenisti's claim that courts from prominent democratic states have reacted consistently to counter-terrorism measures, coordinating outcomes across national jurisdictions. This claim is conjoined with another, namely that the availability of identical or similar norms (grounded in international law and human rights law) has facilitated this coordination effort. The chapter criticises the suggested phenomena of a 'globally coordinated move' on the part of 'national courts from prominent democratic states' by way of counter-examples. The counter-examples are drawn from cases that are enlisted by Benvenisti as examples of this inter-judicial coordination effort, namely the Supreme Court of Canada's 2007 decision in *Charkaoui* and the House of Lords 2004 *Belmarsh* decision (*A v. Secretary of State for the Home Department*). The relationship of *Charkaoui* to the English and American decisions in *Hardial Singh* and *Zadvydas* is also assessed. The argument is that key instances of reliance on comparative authority and international human rights law in *Charkaoui* (including claims of compatibility with *Belmarsh*), while not simply decorative, do not maintain the level of consistency between the national courts needed to support claims of an 'inter-judicial coordination effort' in response to state counter-terrorism measures.

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**Integrating Sustainable Development Planning and Climate Change Management: A Challenge to Planners and Land Use Attorneys****Patricia Salkin**

Albany Law School

**John R. Nolon**

Pace University - School of Law

*Planning and Environmental Law, Vol. 63, p. 3, March 2011*

This essay is based on our new book, *Climate Change and Sustainable Development Law in a Nutshell* (West 2011) which describes the close relationship between sustainable development and climate change management. It begins with a discussion of recent discussions and agreements at the international level and it provides a brief history of sustainable development and climate change policy. The article then explores national and local strategies to address sustainable development goals. Local planning and zoning, transit oriented development, energy efficiency and green infrastructure issues are also addressed.

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**Private Law 2.0: On the Role of Private Actors in a Post-National Society****Jan M. Smits**

Maastricht University Faculty of Law - Maastricht European Private Law Institute (M-EPLI); University of Helsinki - Center of Excellence in Foundations of European Law and Polity

*Hague Institute for the Internationalisation of Law and Eleven International Publishing, 2011**Maastricht Faculty of Law*

This paper - delivered as the author's inaugural lecture on the 2010-2011 Maastricht-HiiL Chair on the Internationalisation of Law and therefore directed towards a general audience - challenges the prevailing paradigm that people's rights and obligations are primarily set by national law. The State monopoly in setting the law is rapidly being replaced by a multitude of new lawmakers that do not only include European and supranational institutions, but also private organisations. This phenomenon leads to the normative question how to deal with this emerging post-national private law. The approach chosen in this lecture is a functional one: the idea of codification is unpacked in terms of its functions. This means that it is established to what extent the functions that national codification of private law had in the past can be met in a different way in the future. To this end, attention is also paid to the role of legislators, private actors and law professors.

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**Non-State Actors in International Criminal Law****Cassandra Steer**

University of Amsterdam; Cornell University - School of Law

*NON-STATE PARTICIPANTS IN THE INTERNATIONAL LEGAL ORDER, Jean d'Aspremont, ed., Routledge, Oxford, Spring 2011*

The process by which the normative content of international criminal law is formed is essentially an ad-hoc process of comparative law in action. Because of the nascence and rudimentary nature of this branch of international law, much is left unclear in the statutes of international tribunals. Applicable treaties deal with some aspects of the crimes but leave much of the criminal law doctrine up to individual participants in the process of law-making. What results is an inevitable divergence in the understanding, development and application of some normative notions such as modes of responsibility. Individual participants (judges, lawyers, academic commentators) apply notions from the domestic systems they are familiar with, and diverging views of the law ensue. This borrowing from domestic systems can contribute to the formation of the normative content of international criminal law - in fact it has always done so - however the critique I have is that the selection and



application can be arbitrary and threaten due process concerns, which are paramount in any criminal justice system. The solution I propose is to consciously apply (and perhaps require) a comparative law methodology as a kind of minimum restraint on this process.

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### **An Evaluation of Financial Action Task Force Recommendation 6 as a Measure to Combat Corruption**

**Fredrick Oduol Oduor**

Deakin University

International political corruption has been a major problem historically and continues to be a fundamental problem with regard to financial crime. The advent of the internet and technological development has further played an ambivalent role in fueling the problem. Some individuals within proximity to state coffers have often turned out to be kleptomaniacs in relation to accessing public funds directly or indirectly for personal benefit. This discourse analyses recommendation 6 of the Financial Action Task Force (FATF) as a measure to combat corruption. The measure attempts to categorise such 'potential kleptomaniacs' as PEP's (Politically Exposed Persons). In particular the paper extrapolates on the logic behind such categorisation and further highlights the politics, economics, merits, demerits and loopholes inherent in recommendation 6.

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### **The Meta-Regulation of Transnational Private Regulation**

**Jacco Bomhoff**

London School of Economics - Law Department; Leiden University - Leiden Law School

**Anne Meuwese**

Tilburg University

*Journal of Law and Society, Vol. 38, Issue 1, pp. 138-162, 2011*

This article starts from the assertion that Transnational Private Regulatory Regimes (TPRRs) construct relationships of recognition with the plurality of public and private normative orders and actors that surround them. We argue that the strategies and norms adopted to manage these relationships are reflexive responses to competing legitimacy demands and to issues of regulatory conflict and that they have a meta-regulatory character. More specifically, we explore two disciplines and professional fields, Better Regulation (BR) and Private International Law (PIT), as direct sources of meta-norms and as more indirect sources of inspiration for meta-regulatory strategies. Building on literature that has cast transnational governance and conflict of laws thinking as abstract repositories of potentially useful meta-regulatory ideas, we explore the actual potential for and limitations of the migration of disciplinary practices and perspectives in the context of TPR.

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### **Challenges and Opportunities in U.S. Immigrant Detention Policy Reform: Addressing the Need for Legally Enforceable Standards to Protect Human Rights**

**Jose Villalobos**

University of Texas at El Paso

*Western Political Science Association 2011 Annual Meeting Paper*

In recent years, immigrant rights advocates have criticized certain policies of the U.S. Immigration and Custom Enforcement (ICE) system of immigration detention, including the widespread use of private contractors, the lack of proper oversight, the grouping of violent criminals and non-violent undocumented immigrants (particularly minority women and children) in holding cells, and the neglect of detained immigrants in need of medical attention. In reviewing these developments, I contend that the Obama administration must take more substantive steps towards reforming the existing system, particularly by instituting legally enforceable standards with penalties for

performance failures, moving away from private contractors, and applying effective rulemaking for better long-term management and monitoring of U.S. detention facilities.

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### **Questioning the Preemptory Status of the Prohibition of the Use of Force**

James A. Green

It is incontrovertible that the prohibition of the unilateral use of force is a fundamental aspect of the United Nations (U.N.) era system for governing the relations between states. Given this fact, the prohibition, as set out most crucially in Article 2(4) of the U.N. Charter, is often seen as the archetypal example of a *jus cogens* norm (a "peremptory norm" of general international law). Certainly, an overwhelming majority of scholars view the prohibition as having a peremptory character. Similarly, the International Law Commission (ILC) has taken this view and it is arguable that the International Court of Justice (ICJ) has also done so. Indeed, one judge of the ICJ stated in an individual opinion that "[t]he prohibition of the use of force. . . is universally recognized as a *jus cogens* principle, a peremptory norm from which no derogation is permitted." This Article questions this widely held view: Is the prohibition of the use of force in fact a *jus cogens* norm? It should be stressed at the outset that the position taken here is not necessarily that the prohibition is a norm that has failed to achieve peremptory status. Instead, it is argued that there are significant difficulties with such a conclusion and that, as a result, the widespread uncritical acceptance of the prohibition as a *jus cogens* norm is concerning. The aim of this Article is to test the prohibition against the criteria for the establishment of peremptory status, and to then critically examine the various problems that become apparent when one does so.

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### **Global Warring and the Permanent Dry: How Heat Threatens Human Security in a Warmer World**

**Jennifer Marlow**

University of Washington - School of Law; Three Degrees Project

**Jennifer Krencicki Barcelos**

University of Washington - School of Law; Three Degrees Project

*Seattle Journal of Environmental Law, Vol. 1, 2011*

This essay will attempt to correct the oversimplification of climate justice as a crisis culminating in waves of climate refugees. Instead, we focus on how heat increases vulnerability of cultures, institutions, lifestyles, occupations, human rights, and community viability due to both rising global average temperatures and the resulting destabilizing societal consequences of inequity in a warmer world. It will illuminate the ways in which heat is the biggest climate-driven threat to global human security, particularly in non-island regions and states where social stability and improved development hold tremendous geopolitical importance. The essay will then discuss ways in which current legal and political responses are inadequately prepared to handle heat vulnerability. We propose that human security should become a central factor in new institutions being conceived around climate-induced social and political issues, ranging from crop failure to, in a worst-case scenario, voluntary or forced climate-induced displacement.

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### **An Environmental Justice Framework for Indigenous Tourism**

**Kyle Powys Whyte**

Michigan State University - Department of Philosophy

*Journal of Environmental Philosophy, Vol. 7, No. 2, pp. 75-92, 2010*

Environmental tourism is a growing practice in indigenous communities worldwide. As members of indigenous communities, what environmental justice framework should we use to evaluate these practices? I argue that, while some of the most relevant and commonly discussed norms are fair

compensation and participative justice, we should also follow Robert Figueroa's claim that "recognition justice" is relevant for environmental justice. I claim that from Figueroa's analysis there is a "norm of direct participation," which requires all environmental tourism practices to feature a forum for meaningful representation and consideration. This claim motivates a distinction between practices that should be termed "mutually advantageous exploitation" and those that should be termed "environmental coalition development." We need to ask ourselves whether we should continue to tolerate mutually advantageous exploitation and how we can increase the number of practices that develop coalitions.

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### **The Mutual Push and Pull of Environment and Sovereignty: A Review**

**Vito De Lucia**

Faculty of Law, University of Tromsø

*ENVIRONMENT EDUCATION: GLOBAL ISSUES AND POLICIES: VOLUME II, S. D. Banik and S. K. Basu, eds., New Delhi, A.P.H. Publishing Corporation, 2009*

The mounting pressure of transboundary environmental issues (regional, inter-regional, global) has led to the realization of the fundamental interdependence of States. Many observers have begun to talk of a process of erosion of sovereignty, and of the porosity of territory and of the fragility of territorial integrity as regards environmental phenomena such as air and water pollution. While sovereignty is still the founding principle of interstate relations, and while State consent still forms the basis of international legal obligations, the substance of many facets of the international order shows a less monolithic picture. Following Liftin (1998) this article will unbundle the concept into its components, in order to discern which is affected and how. Selected principles of international environmental law are reviewed, so as to show whether and to which extent sovereignty is compatible with the rights and obligations arising under international environmental law, and how such obligations are compressing and limiting sovereignty. Finally, the two Polar regimes are briefly reviewed and compared, in order to highlight their differences and see whether and to which extent sovereign rights have influenced those differences. Brief conclusions are then drawn.

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### **Respect for Nature: The Capabilities Approach**

**Thom Brooks**

Newcastle University - Newcastle Law School

*Ethics, Policy and Environment (forthcoming)*

In "Respect for Everything," David Schmidtz offers powerful arguments in favor of a respect for nature over species egalitarianism. While I accept much of his account, I argue that his understanding of respect may be too thin to perform its proper task. Instead, our use of respect should be grounded in the capabilities approach. This approach offers us a more substantive perspective through which we might best conceive respect. I will begin with an outline of the main argument in favour of respect for nature (and against species egalitarianism). The discussion will then close with how we might better understand respect.

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### **Political Institutions and Judicial Role in Comparative Constitutional Law**

**David Landau**

Florida State University - College of Law

*Harvard International Law Journal, Vol. 51, No. 2, 2010*

Comparative constitutional law scholarship has largely ignored political institutions. It has therefore failed to realize that radical differences in the configuration of political institutions should bear upon the way courts do their jobs. This paper develops a comparative theory of judicial role that focuses on broad differences in political context, and particularly in party systems, across countries. I use the

jurisprudence of the Colombian Constitutional Court (supplemented by briefer studies of the Hungarian and South African Constitutional Courts) to demonstrate how differences in political institutions should impact judicial role. Because Colombian parties are unstable and poorly tied to civil society, the Colombian Congress has difficulty initiating policy, monitoring the enforcement of policy, and checking presidential power. The Court has responded by taking many of these functions into its own hands. I argue that the Court's actions are sensible given Colombia's institutional context, even though virtually all existing theories of judicial role in American and comparative public law would find this kind of legislative-substitution inappropriate. Existing theories rest upon assumptions about political institutions that do not hold true in much of the developing world. The American focus on the anti-democratic nature of judicial action assumes a robust constitutional culture outside the courts and a legislature which does a decent job representing popular will – both assumptions tend to be false in newer democracies. The case studies demonstrate that comparative public law scholars must be attentive to political context in order to build tools suitable for evaluating the work of courts outside the United States.

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### **Foreign Citizens in Transnational Class Actions**

**Jay Tidmarsh**

Notre Dame Law School

**Linda Sandstrom Simard**

Suffolk University Law School

*Cornell Law Review, No. 97, 2012*

*Notre Dame Legal Studies Paper No. 10-11*

*Suffolk University Law School Research Paper No. 11-10*

This Article addresses an increasingly important question: When, if ever, should foreign citizens be included as members of an American class action? The existing consensus holds that courts should exclude from class membership those foreign citizens whose country does not recognize an American class judgment. Our analysis begins by establishing that this consensus is flawed. Rather, to minimize the costs associated with relitigation in a foreign forum, we must distinguish between foreign claimants who are likely to commence a subsequent foreign proceeding from those who are unlikely to do so; distinguishing between those who come from recognizing and nonrecognizing countries creates needless inefficiency. Using standard tools of economic analysis, we examine the benefits and costs of the consensus rule and compare them to the costs and benefits of other possible rules. In this comparison, the consensus rule tends to perform poorly. As a matter of theory, the most efficient rule for deciding which foreign citizens to include and exclude is evident, but real-world informational constraints frustrate the application of this rule in practice. Because no rule regarding the inclusion and exclusion of foreign citizens is the most efficient in all situations, we propose that courts use rebuttable presumptions: include foreign citizens with claims that are not individually viable and exclude foreign citizens with claims that are viable.

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### **Protecting Traditional Knowledge – Does Secrecy Offer a Solution?**

**Lee-ann Tong**

University of Cape Town (UCT)

*Potchefstroom Electronic Law Journal, Vol. 13, No. 4, 2010*

The shortcomings of using the intellectual property system to safeguard the interests of traditional knowledge holders have received considerable attention. Laws that guard against the disclosure of secret traditional knowledge to non-community members may offer a low-cost and accessible way for traditional communities to prevent the misappropriation of their traditional knowledge. This paper reviews the concerns that may arise when holders of traditional knowledge attempt to rely on claiming unfair competition and contract laws to protect their traditional knowledge.

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**Terrorism as Crime: Toward a Lawful and Sustainable Detention Policy****Jonathan Hafetz**

Seton Hall Law School

*Jonathan Hafetz, HABEAS CORPUS AFTER 9/11: CONFRONTING AMERICA'S NEW GLOBAL DETENTION SYSTEM, Chapter 12, NYU Press, 2011*

The book from which this chapter is excerpted traces the history of the habeas corpus litigation after 9/11 that challenged the military detention and trial of prisoners in the "war on terror." Preceding chapters make the case for a broad conception of habeas corpus review, discussing the gaps left by the Supreme Court's decision in *Boumediene v. Bush* and arguing why habeas jurisdiction should extend to any detention by or at the behest of the United States. This chapter explains why habeas corpus review also is, in many respects, the start, not the end, of the conversation about law and national security. The chapter thus addresses a question at the heart of much of the habeas corpus litigation: who may be detained as a combatant and what is the legitimate scope of the government's military detention power. The chapter advocates a criminal law model rather than a military model in the treatment of suspected terrorists. The chapter thus considers and rejects arguments for indefinite executive detention, military commissions, or other alternative forums to the criminal justice system, such as national security courts. Finally, the chapter describes how the criminal justice system provides an important check not only against unlawful detention but also against torture and other mistreatment.

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**Why Law Matters: Corporate Social Irresponsibility and the Futility of Voluntary Climate Change Mitigation****Beate Sjøfjell**

Department of Private Law - Faculty of Law, University of Oslo

*European Company Law, Vol. 8, No. 2, 2011*[\*University of Oslo Faculty of Law Research Paper No. 2011-04\*](#)

Corporate Social Responsibility (CSR) encompasses an enormous complexity of debate and private and public initiatives. This article deals with one section of the debate, with the definition of CSR commonly accepted by business and legislators as the starting point. CSR in a sustainable development perspective could be seen as dealing with and bringing together two inter-related issues: firstly, legal compliance and secondly, the company's responsibility for going beyond such compliance, with the legal rules forming the floor and the voluntary part of CSR being a striving beyond that – a race to the top. In that sense CSR would encompass and form a bridge between hard law, soft law and ethical obligations. . . . However, the business lobbyists have captured the CSR concept and ensured that the definition legislators subscribe to is that of CSR as a voluntary activity. The business message may be said to be: 'Do not legislate us, and we are willing to talk about how we behave'. This is not meant to ignore that good is done in the name of CSR. And certainly the CSR movement has led to or been a part of a process where no business leader with respect for herself will claim that her company disregards CSR. However, as this article will argue, defining CSR through delimitation against legal obligations is deceptive and detrimental to the development of a sustainably and socially responsible business and has contributed to giving CSR a bad name. This article goes on to address several of the problems associated with this voluntary CSR concept, forming an argument to show why law matters, and specifically why company law has to be involved in addressing the necessity of getting companies to contribute to climate change mitigation. The article concludes with some reflections on the CSR contribution to a truly responsible business debate.

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**Harmonization of European Civil Procedure - Policy Perspectives****Gerhard Wagner**

University of Bonn; Erasmus School of Law; University of Chicago Law School

European Civil Procedure is a rapidly growing field, judged by the numbers of directives and regulations churned out by the European Commission over the past decade. However, the practical impact of legislative acts passed under the powers of Art. 81 TFEU remains very limited. These measures of "horizontal harmonization" create uniform rules for disputes of any kind, yet they remain confined to cross-border cases. As the Commission moved beyond the issues of international jurisdiction and enforcement of foreign judgments, it placed European institutions alongside the national ones, which continued to govern domestic disputes. This results in duplicative sets of procedural rules which place a heavy burden on the judges who have to work with them. Another thread of European legislation does not bear the label of civil procedure at all, but purports to harmonize the domestic system of law enforcement and protection of subjective rights in selected substantive areas, such as intellectual property rights, competition law, and consumer law. Such measures of "vertical harmonization" remain confined to specific kinds of disputes, but they apply regardless of whether the dispute is international or domestic. In doing so, their practical impact is much greater than the one of horizontal measures. For European lawmakers, it is essential to keep in mind that the policies of law enforcement and protection of property rights deeply involve principles of civil procedure and that account must be made for this in drafting pertinent legislation.

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**EU Regulatory Approaches to Cross-Border Mergers: Exercising the Right of Establishment****Thomas Papadopoulos**

University of Oxford

*European Law Review, No. 1, pp. 71-97, 2011*

This article will discuss Union regulatory approaches to cross-border mergers in the light of the fundamental freedom of establishment (Art.49 TFEU). The aim of this article is to explore the dynamics and the impact on the internal market of the multi-faceted interaction between the secondary Community legislation and the ECJ's case law on cross-border mergers. It is argued that only a thorough understanding of this interaction could reveal the benefits of the internal market at the area of cross-border mergers. The conduct of a cross-border merger falls within the protective scope of the freedom of establishment (SEVIC ruling). Moreover, Cross-border Mergers are regulated by the Cross-Border Mergers Directive and by the European Company Statute (SE Statute). Emphasis will be given to the relationship between the ECJ's case law and these Community regulatory measures. The relationship between the SE Statute and the Cross-Border Mergers Directive will also be analysed. The importance of the Cross-border Mergers Directive lies in the procedural rules which were established. In this way, companies will be truly facilitated as regards exercising their right of establishment.

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**ECJ Advocate General Rejects EU Patent Litigation Scheme****Enrico Bonadio**

City University London; The City Law School of City University London

*Journal of Intellectual Property Law & Practice, Vol. 5, No. 12, p. 826, 2010*

Opinion 1/09 of the Advocate General, Juliane Kokott, 2 July 2010. The Advocate General of the Court of Justice of the European Union (ECJ) has found that the EU centralized patent litigation system recently proposed by the Council of the European Union does not comply with EU law. In her opinion, among the various incompatibilities, she stressed that the proposed linguistic system would violate the rights of defence. This opinion constitutes a blow to the efforts to finally reach the long-awaited



EU patent litigation scheme (as envisaged in the Draft Agreement on the European and Community Patents Court). This blow will be even stronger, should the ECJ confirm her opinion.

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### **When Foreigners Infringe Patents: An Empirical Look at the Involvement of Foreign Defendants in Patent Litigation in the U.S.**

**Marketa Trimble**

University of Nevada, Las Vegas - William S. Boyd School of Law

*Santa Clara Computer and High Technology Law Journal, Vol. 27, No. 3, 2011*

*UNLV William S. Boyd School of Law Legal Studies Research Paper*

This paper presents results from a multiple-year project concerned with the involvement of foreign (non-U.S.) entities in U.S. patent litigation. A comparison of data from 2004 and 2009 that cover 5,407 patent cases filed in U.S. federal district courts in those two years evidences an increase in the number of cases involving foreign defendants, and thus an increasing potential for cross-border enforcement problems. With this basic finding the research supports the proposition advanced by a number of intellectual property scholars in the U.S. and abroad that rules need to be established to facilitate a smooth process for recognition and enforcement of foreign judgments in intellectual property cases. The research fills a significant gap in the existing literature, which has relied so far on only isolated individual cases to illustrate cross-border enforcement problems; comprehensive empirical evidence has not existed to show a growing need for improved rules for recognition and enforcement. In addition to providing this missing evidence the paper uses data concerning the involvement of foreign defendants to reveal remarkable facts about the changing landscape of patent litigation in the U.S.

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### **Colonialism and Islamic Law**

**Ebrahim Moosa**

Duke University - Department of Religion

*ISLAM AND MODERNITY: KEY ISSUES AND DEBATES, pp. 158-181, Muhammad Khalid Masud,*

*Armando Salvatore, Martin Van Bruinessen, eds., Edinburgh University Press, 2009*

Islamic law and its encounters with colonialism.

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### **Property Rights and Traditional Knowledge**

**John T. Cross**

University of Louisville - Louis D. Brandeis School of Law

*Potchefstroom Electronic Law Journal, Vol. 13, No. 4, 2010*

For the past several decades, there has been a push to provide some sort of right akin to an intellectual property right in traditional knowledge and traditional cultural expression. This push has encountered staunch resistance from a number of different quarters. Many of the objections are practical. However, underlying these practical concerns is a core philosophical concern. A system of traditional knowledge rights, this argument suggests, simply does not satisfy the basic rationale for granting property rights in intangibles like inventions and expressive works. Intellectual property is meant to encourage innovation and creative activity. Most traditional knowledge, by contrast, is not innovative, at least in the same sense as the inventions and works that qualify for patents and copyrights. At present, the "anti-property" camp seems to have the better of the argument, as even the World Intellectual Property Organisation has abandoned the notion of true property rights. This article seeks to refute this philosophical objection to a property model for traditional knowledge. It argues that the classic philosophical argument justifying intellectual "property" namely, that property rights are justified only as a way to spur innovation and other creative activity is incorrect in two ways. First, the argument misstates the main goal of an intellectual property system. While

intellectual property may serve as an incentive for innovation, society's primary concern is not the innovation per se, but instead the dissemination of knowledge. Second, there may be policy reasons other than the development of knowledge that can justify intellectual property-like rights. . . .

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### **Courts as Diplomats: Encouraging an International Patent Enforcement Treaty Through Extraterritorial Constructions of the Patent Act**

**Timothy A. Cook**

University of Virginia School of Law

*Virginia Law Review, Vol. 97, No. 5, September 2011*

Although patent rights confer substantial market control within their territorial scope, globalization is increasingly threatening the value of patent protection. Under the current regime, innovators who enter the global marketplace must obtain patent protection in each jurisdiction where they hope to market their product, and they must litigate infringement claims separately in each of those states. The prohibitive cost of this regime has led many scholars and intellectual property law officials to call for a global patent enforcement treaty, but, despite years of negotiations, all efforts to draft such an agreement have failed.

This Note examines the role that U.S. courts may play in promoting a global patent enforcement treaty. Drawing on an emerging line of statutory interpretation scholarship that encourages courts to rely on default rules that will promote desirable political action, it examines the two primary sources of judicial power in international patent law: extraterritorial application of the Patent Act and supplemental jurisdiction over foreign patent infringement claims. After concluding that a treaty-eliciting interpretive rule is appropriate in the context of a global patent enforcement treaty, the Note contends that a presumption in favor of extraterritoriality for the Patent Act is the more efficient way to provoke discord among the major economic powers and prod the international community to address the needs of innovators in the global economy.

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### **Water in Gaza: Problems and Prospects**

**Clemens Messerschmid**

*affiliation not provided to SSRN*

*Birzeit University Working Paper No. 2011/19 (ENG) – CPE Module*

Messerschmid starts by comparing conditions in the West Bank, which is rich in groundwater of excellent quality but largely under Israeli control, with conditions in Gaza, which has hardly any appreciable recharge from rain and a water supply that is almost entirely contaminated. The coastal aquifer constitutes the only source of water directly available to the Gaza Strip itself, given its total, forced separation from the West Bank. Decreasing water levels increase the natural inflows of saline groundwater and the largest source of pollution resides in the large amounts of untreated or insufficiently treated waste water infiltrating into the aquifer. The 1967 occupation, compounded by the total siege in place since 2007, has prevented the building of a single modern and sufficiently sized waste water treatment plant, so pollution has increased. In exploring solutions, he says that local and international experts urge waste water treatment, transfers from the West Bank aquifer, and most of all, desalination. In reality, he says, waste water treatment will only meet a very small percentage of needs; transfer from the West Bank is politically and physically unrealistic (Israel will prevent it; the Hebron area itself faces a water shortage); and desalination, a hugely expensive project, subjects Gaza to constant Israeli blackmail through the threat to destroy plants or to withhold the energy, inputs, or expertise needed to run them. The only solution, he concludes, is one whereby legal pressure and economic incentives bring about equitable water sharing by way of transfers from Israel.

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**The American Law Institute's Model Penal Code and European Criminal Law****Markus D. Dubber**

University of Toronto - Faculty of Law

It has been suggested that the American Law Institute's Model Penal Code might serve as a model for a European Model Penal Code, or at least for the project of assembling general principles of European criminal law. This paper presents a critical analysis of the Model Penal Code project, paying particular attention to the form of the project, rather than its substance, on the assumption that the idea, and the drafting, of the Model Penal Code would be of greater interest to a European criminal law project than its content, a systematic and comprehensive general part and a representative special part of "American criminal law."

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**The Political Branches and The Law of Nations****Anthony J. Bellia Jr.**

Notre Dame Law School

**Bradford R. Clark**

George Washington University Law School

*Notre Dame Law Review, Vol. 85, No. 5, p. 1795, 2010**GWU Legal Studies Research Paper No. 535**GWU Law School Public Law Research Paper No. 535*

In the late eighteenth and early nineteenth centuries, the U.S. Supreme Court went out of its way to follow background rules of the law of nations, particularly the law of state-state relations. As we have recently argued, the Court followed the law of nations because adherence to such law preserved the constitutional prerogatives of the political branches to conduct foreign relations and decide momentous questions of war and peace. Although we focused primarily on the extent to which the Constitution obligated courts to follow the law of nations in the early republic, the explanation we offered rested on an important, but largely overlooked, predicate - that the political branches were free to make law in derogation of the law of nations, and that such law would bind U.S. courts as the supreme law of the land. In this Article, we explain how Supreme Court decisions applying the law of nations necessarily presupposed that the political branches may depart from the law of nations in their respective constitutional powers. Because decisions regarding when and whether to adhere to - or depart from - the law of nations "are rather questions of policy than of law," the Constitution's allocation of powers assigned such decisions to the political branches of the federal government. In addition, we offer a separation of powers rationale for why the Court has sometimes limited executive power according to the law of nations while leaving Congress free to depart from such law. On this account, judicial enforcement of the law of nations against the Executive Branch appears to track the Court's understanding of the Constitution's allocation of powers between Congress and the President. Because the Constitution assigns all foreign affairs powers to Congress and the President, however, the Court has never suggested that courts could enforce the law of nations to constrain the collective constitutional power of the political branches.

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**The Right to Life and the Right to Health: Any Nexus?****A.K.A Kolawole**

Olabisi Onabanjo University - Faculty of Law

*OIDA International Journal of Sustainable Development, Vol. 2, No. 5, pp. 95-106, 2011*

The current trend is that all human rights are indivisible, interdependent and interrelated. Civil and political rights, economic, social and cultural rights and the environmental rights are all interdependent upon one another and none of these rights is superior or inferior to the other. However in most nations, civil and political rights are justiciable, while the economic, social and

cultural rights which are termed "progressive in nature" are non-justiciable Whereas, all nations' municipal laws recognize the right to life as a fundamental human right, the right to health is not so recognized by most nations. In recent times, the rampant incidents of foods and drugs contamination leading to death of citizens of such nations have led to an outcry for the justiciability of the ESC rights. One wonders, of what essence is the right to life when the citizens' right to good health through food and drugs remain unguaranteed? This paper examines the nature of ESC rights. It focuses on the right to health and its direct incidence or impact on the right to life. The paper demonstrates that food and drug contaminations leading to the death of persons proves that the right to health is not inferior to the right to life and thus ought to be made justiciable.

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### **Can Traditional Knowledge Be Effectively Covered Under a Single 'Umbrella'?**

**Andre Van der Merwe**

DM Kisch Inc.

*[Potchefstroom Electronic Law Journal, Vol. 13, No. 4, 2010](#)*

Andre van der Merwe a Senior Director of DM Kisch Incorporated and practising Intellectual and Patent attorney, delivered the key-note address (here published as an oratio), posing the question whether traditional knowledge, for which there is no unambiguous definition, can effectively be protected under a single umbrella." After considering the matter from inter alia historical, philosophical and legal perspectives, he suggests a solution based on a multi-disciplinary approach.

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### **Does Domestic Polarization Affect the Credibility of International Commitment?**

**Jong Hee Park**

University of Chicago - Department of Political Science

**Kentaro Hirose**

University of Chicago - Department of Political Science

We study the effect of the partisan polarization of foreign policy on a state's ability to make credible commitments in international bargaining. In our model, both states know that after an agreement is reached, a new government to enforce the agreement is elected within a promise-making state. The incentive for the newly elected government to comply with the agreement depends on the domestic (partisan) and international (reputational) costs of noncompliance, both of which vary across parties. The equilibrium analysis shows that an agreement is less likely as a partisan divide increases. When a partisan divide is substantial, our model shows that the possibility of reaching an agreement is larger under a hawkish negotiator than a dovish negotiator. Episodes from the negotiations between the U.S. and North Korea over North Korea's nuclear weapons program provide support for our theory.

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### **Implementing Farmers' Rights under the FAO International Treaty on PGRFA: The need for a Broad Approach based on Biocultural Heritage**

Alejandro Argumedo, Krystyna Swiderska, Michel Pimbert, Yiching Song, Ruchi Pant

The FAO Treaty on Plant Genetic Resources for Food and Agriculture (PGRFA) seeks to protect Farmers' Rights through equitable benefit-sharing from the use of farmers' crop varieties. It recognises the enormous contribution that indigenous and local communities and farmers have made to the conservation and development of crop genetic resources. Yet the ability of farmers to continue this role is seriously threatened - not only by a lack of benefit-sharing, but by a lack of secure rights to land and genetic resources and policies that promote industrial agriculture and monocultures. This paper argues for a broad approach to the protection of farmers rights, which goes beyond benefit-sharing, to include protection of farmers' customary rights over genetic resources and associated landscapes, cultural values and customary laws, on which the continued conservation and

improvement of crops by farmers depends. It draws on research by IIED and partners in Peru, Panama, India, China and Kenya.

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**Environmental Law Goes Global: Taking Back Eden: Eight Environmental Cases That Changed the World, by Oliver A. Houck**

Robert V. Percival

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**The Most Recent Take on 'Take': U.S. v. Apollo Energies & the Migratory Bird Treaty Act**

**Katharine E. Hoeksema**

Vermont Law School

Feathers continue to fly as courts debate just how far the Migratory Bird Treaty Act's talons extend, most recently when applied to the industry sector. This note examines the possible implications of requiring the government to prove proximate cause under the misdemeanor provision of the Migratory Bird Treaty Act (MBTA). The Tenth Circuit is the most recent federal appeals court to analyze the misdemeanor takings provision of the MBTA in *United States v. Apollo Energies, Inc.* Absent a proximate cause element, the court held the MBTA misdemeanor provision violated the Due Process clause of the Fourteenth Amendment of the United States Constitution. To understand the implications of *Apollo*, the first part of this note will provide the statute's history and provisions, including the general interpretation of the MBTA's misdemeanor provision as a strict liability offense. The second part will explore two energy cases decided prior to *Apollo*, in which the courts refused to convict oil companies under the MBTA. In the third section, I will discuss the recent *Apollo* decision whose proximate cause requirement purports to solve many of the concerns expressed by the prior courts. These concerns include: fear that the MBTA will be used to prosecute absurd bird deaths resulting from collisions with cars and windows; a lack of statutory notice as to what may lead to MBTA prosecution; and too much reliance on prosecutorial discretion when deciding whether to charge an MBTA violation. The fourth section explores whether *Apollo* really does solve such concerns and whether requiring the government to prove proximate cause actually dulls the MBTA's talons and goes against legislative intent. Lastly, proposals are offered which could help Congress and the Fish and Wildlife Service (the agency tasked with enforcing the statute) to clarify their statutory intent. These include amending the MBTA itself, raising the misdemeanor penalty, imposing an industry wide bird fee, and adding a permit provision for bird takings within the energy industry.

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**Is There Tax Competition in ASEAN?**

**Achmad Tohari**

Faculty of Economics and Business - Airlangga University

**Anna Retnawati**

Faculty of Economics and Business - Airlangga University

*Bulletin for International Taxation, Vol. 64, No. 1, 2010*

As a regional group, the Association of Southeast Asian Nations (ASEAN) wants to enhance its collective competitiveness to attract foreign capital. At an individual country level, each member country offers incentives to encourage foreign investors. These two interests often conflict in any event. This article demonstrates that although there has been a significant decrease in statutory and effective tax rates in recent years, tax competition in ASEAN is not clearly evident.

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**Is the European Medical Products Authorisation Regulation Equipped to Cope with the Challenges of Nanomedicines?**

Barbel R. Dorbeck-Jung & Nupur Chowdhury

This article analyses the emerging European regulatory activities in relation to nanopharmaceuticals. The central question is whether the regulatory responses are appropriate to cope with the regulatory problems nanomedicinal development is posing. The article explores whether the medical product regulations are robust enough, whether there are certain regulatory gaps, and whether the competent bodies have the expertise to evaluate nanomedicinal products when approval is applied for. Based on a social-constructive approach, the article identifies significant regulatory actors, their ideas on regulatory problems, and preliminary governance responses to them. It finds that the current dynamic regulatory structure appears robust enough to adapt to some of the technological challenges posed by nanomedicines. It concludes that regulators have not yet responded adequately to regulatory gaps related to definitions, classification and specific safety, quality, and efficacy standards that nanopharmaceutical development seems to require. As a consequence of these deficiencies legal certainty, a principle of high priority in European medical regulation policy, cannot be sufficiently provided.

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**The Three Degrees Conference: One Year Later**

**Jennifer Krencicki Barcelos**

University of Washington - School of Law; Three Degrees Project

**Gregory Alan Hicks**

University of Washington - School of Law

**Jennifer Marlow**

University of Washington - School of Law; Three Degrees Project

*Washington Law Review, Vol. 85, No. 2, 2010*

Increasing drought, the spread of tropical disease, storm surges with rising duration and severity, and unprecedented human dislocation will reduce food security and access to fresh water, promote the spread of disease beyond normative ranges, and uproot millions of people who inhabit coastal regions. It is certain that the survival ability of many of the world's indigenous and most disadvantaged peoples is at stake. And yet, the law is inadequately prepared to deal with these human impacts of climate change. The application of both codified and customary international and domestic law will be critical in addressing the massive human and humanitarian crises ignored by technical market solutions to climate change, moderate political reforms, and stalled treaty efforts. The legal community is in a unique position to spearhead innovative adaptations to climate change to account for the basic protection of fundamental human rights. Numerous scholars have suggested that human rights law may provide the most adequate and responsible remedy for climate-related impacts, and yet others debate its utility in the climate context.

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**Hazardous Activities and Civil Strict Liability: The Regulator's Dilemma**

**Gerard Mondello**

French National Center for Scientific Research (CNRS) - Institut de droit et d'économie de la firme et de l'industrie (IDEFI)

*FEEM Working Paper No. 21.2011*

This paper addresses the conditions for setting up strict civil liability schemes. For that it compares the social efficiency of two main civil liability regimes usually enforced to protect the environment: the strict liability regime and the "capped strict liability scheme". First, it shows that the regulator faces an effective dilemma when he has to enforce one of these schemes. This because the social cost of a severe harm (and the associated optimum care effort) is determined independently of any liability regime. This independency has economic consequences. First, victims and polluters pit one against



another about the liability regime that the government should enforce. Hence, financially constrained polluters prefer the ceiling of responsibilities while victims wish to extend the amount of redress under a "standard" strict liability. Economic criteria for enforcing a regime rather than another one are lacking. Second, the paper shows that implementing civil strict liability rules may be done by setting up care standards as for instance in the nuclear or the maritime sectors and demanding to the injurers to comply with them. We show that this goal can be achieved by resorting to some friendly monitoring corresponding to frequent random controls with low fines rather than few controls that should involve heavy fines.

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### **A Critical Analysis of the Fraud Triangle for Sustainable Development in Africa**

**Emma Ik Okoye**

*affiliation not provided to SSRN*

*The University Advanced Research Journal, No. 1, April-June 2009*

This paper focused on the relevance of the "Fraud Triangle" for sustainable development in Africa. To achieve this objective, a critical review of extant literature was made and it was observed that the fraud triangle exposes to management the conditions that could cause people to be involved in fraudulent practices. Armed, with this information, management is able to effectively design and formulate policies and strategies for the prevention and detection of fraud. As the risks of fraud are minimized or eliminated, an organization becomes more effective and efficient in the production, distribution and promotion of products that are environmental friendly for sustainability.

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### **Contemporary International Law Issues: Emergence of the World Wide Web – A Glimpse into the Social Reality of the Peoples Republic of China**

**David M. Cantor**

*affiliation not provided to SSRN*

. . . Is access to information a fundamental value that human beings demand? The analysis of global flows of information is no novel subject. One could probably argue that its origins are as old as the Ten Commandments, and yet the nature of the subject itself is continuous and ever evolving. It is highly unlikely that the ancient prophets would have been able to envision the world we live in today – a world where invisible connections transcend traditional notions of time and space. Today, innovation in communication technology continues to transform the global flows of information at a staggering pace. Accordingly, there exist as many clever labels as academic scholars who have attempted to encapsulate and define the momentum of the times that we live in; the "digital age", an "information society", "new information society", a "global village", era of "globalization." As well as we who live in it: "global citizens", "millennials", "netizens", and so on. The passion to innovate is as relentless as its effect. This paper strives to comprehend certain aspects of this effect – in particular, the emergence of the world-wide-web and its contemporary social consequences. And in observing this relationship, what role, if any, does international law have?

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### **Environmental Substance Abuse: The Substantive Competence of Social Science Empirical Environmental Policy Research**

**Mark K. Atlas**

*affiliation not provided to SSRN*

In a 2002 article, social science scholars criticized legal scholars for violating empirical analysis principles in law review articles. Their review of hundreds of empirical law review articles led to a pervasively grim assessment of these articles and their authors, concluding that empirical legal scholarship was deeply flawed, with serious problems of inference and methodology everywhere. In essence, the 2002 article argued that although legal scholars' articles might be substantively

competent (i.e., knowledgeable about the law and facts), they were, at best, methodologically incompetent. This Report reverses the 2002 article's focus, assessing the substantive competence of social science empirical research articles, ignoring their methodological competence. This Report focuses on about 550 social science articles from peer-reviewed journals since the 1960's that used quantitative research to study United States domestic environmental policies and practices. The 2002 article examined aspects of law review articles at which legal researchers might be deficient but at which social science researchers should be competent. This Report does the opposite by focusing on what legal researchers should be most expert – determining the relevant laws, government policies, and facts. Consequently, just as the 2002 article evaluated whether law review articles violated empirical research rules, this Report evaluates whether social science environmental policy articles were incorrect or incomplete about the relevant laws, government policies, or facts. Although the 2002 article concluded that every empirical law review article was fatally flawed methodologically, this Report does not conclude that every social science environmental policy article was fatally flawed substantively. However, the overwhelming majority of those articles were substantively uninformed, amateurish, shoddy, and/or deceptive. Anyone with a basic understanding of the environmental laws, policies, facts, and/or data relevant to any particular article would conclude after only a brief review that the article was seriously flawed. Unfortunately, social science journals publishing environmental policy articles have been like runaway trains of invalid research that keep picking up new passengers. This Report explains in detail the substantive problems with each of these articles.

## II. Books

### [Climate Governance at the Crossroads: Experimenting with a Global Response after Kyoto](#)

(Oxford Univ. Press, 2011)  
Matthew J. Hoffmann

The global response to climate change has reached a critical juncture. Since the 1992 signing of the United Nations Framework Convention on Climate Change, the nations of the world have attempted to address climate change through large-scale multilateral treaty-making. These efforts have been heroic, but disappointing. As evidence for the quickening pace of climate change mounts, the treaty-making process has sputtered, and many are now skeptical about the prospect of an effective global response. Yet global treaty-making is not the only way that climate change can be addressed or, indeed, is being addressed.

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### [National Security Implications of Climate Change for U.S. Naval Forces](#)

(National Academies Press, Mar. 2011)  
Committee on National Security Implications of Climate Change for U.S. Naval Forces; National Research Council

In response to the Chief of Naval Operations (CNO), the National Research Council appointed a committee operating under the auspices of the Naval Studies Board to study the national security implications of climate change for U.S. naval forces. In conducting his study, the committee found that even the most moderate current trends in climate, if continued, will present new national security challenges for the U.S. Navy, Marine Corps, and Coast Guard. While the timing, degree, and consequences of future climate change impacts remain uncertain, many changes are already underway in regions around the world, such as in the Arctic, and call for action by U.S. naval leadership in response. The terms of reference (TOR) directed that the study be based on Intergovernmental Panel on Climate Change (IPCC) scenarios and other peer-reviewed assessment. Therefore, the committee did not address the science of climate change or challenge the scenarios on which the committee's findings and recommendations are based. This report addresses both the

near- and long-term implications for U.S. naval forces in each of the four areas of the terms of reference (TOR), and provides corresponding findings and recommendations. This report and its findings are recommendations are organized around six discussion areas--all presented within the context of a changing climate.

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**One Nation Under Surveillance**

(Oxford Univ. Press, Feb. 24, 2011)

Simon Chesterman

What limits, if any, should be placed on a government's efforts to spy on its own citizens in the interests of national security? By reframing the relationship between privacy and security One Nation Under Surveillance offers a framework to defend freedom without sacrificing liberty.

Hardback | 320 pages

978-0-19-958037-8

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**International Relations and the European Union**

(Oxford Univ. Press, Feb. 2011, Second Edition)

Edited by Christopher Hill and Michael Smith

International Relations and the European Union uniquely incorporates the study of the EU's world role into the wider field of International Relations. New chapters on the EU's relationships with emerging world powers, and its stance on energy and environmental policy confirm the second edition as the leading textbook on this subject.

Paperback | 584 pages

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**Politics in the European Union**

(Oxford Univ. Press, Feb. 17, 2011, Third Edition)

Ian Bache, Stephen George, and Simon Bulmer

With new chapters on the Lisbon Treaty, environmental policy, and freedom, security and justice, the third edition of Politics in the European Union is fully up-to-date, and remains an essential textbook for students of EU Politics.

Paperback | 656 pages

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**The Evolution of EU Law**

(Oxford Univ. Press, Feb. 17, 2011, Second Edition)

Edited by Paul Craig and Gráinne de Búrca

The new edition of this influential textbook gathers leading lawyers and political scientists to provide an overview of the changing legal picture in Europe, including the reforms instigated by the Lisbon Treaty negotiations. Authors analyse the evolution of the law across time, giving readers a clearer understanding of how the EU is developing.

Paperback | 984 pages

978-0-19-959296-8

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**Osama Bin Laden**

(Oxford Univ. Press, Feb. 24, 2011)

Michael Scheuer

Osama Bin Laden was and remains America's most formidable and implacable enemy. And yet no one has written a serious assessment of his influence over world events in the last decade. In *Osama bin Laden* Scheuer provides an objective and authoritative portrait of bin Laden that will show him to be a man of remarkable leadership skills, strategic genius, and considerable rhetorical abilities. For ten years, he has eluded capture despite being the most hunted man in the world.

Hardback | 288 pages  
978-0-19-973866-3

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### **UW Law Library Recent International Law and Relations Acquisitions**

- U.S. Office of the Special Inspector General for Iraq Reconstruction. Guidance needed for use of residual Iraqi vested and seized asset funds. Arlington, VA: U.S. Office of the Special Inspector General for Iraq Reconstruction, 2010. 16
- Bernstorff, Jochen von and Dunlap, Thomas. The public international law theory of Hans Kelsen: believing in universal law. Cambridge, England: Cambridge University Press, 2010. 324 p.
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- Epps, Valerie and Graham, Lorie. International law: examples and explanations. Austin, TX: Wolters Kluwer, 2011. 425 p.
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- International Criminal Court Review Conference, Kampala, Uganda, May 31-June 11, 2010, a joint committee staff trip report prepared for the use of the Committee on Foreign Relations, United States Senate, 111th Congress, 2nd session, September 2, 2010. 18
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- The responsibility to protect and international law. Edited by Alex J. Bellamy, Sara E. Davies and Luke Glanville. Leiden, Netherlands: Martinus Nijhoff Publishers, 2011. 224
- Sinclair, Adriana. International relations theory and international law: a critical approach. Cambridge, England: Cambridge University Press, 2010. P. 201
- U.S. Congressional-Executive Commission on China. China's Far West: conditions in Xinjiang one year after demonstrations and riots, roundtable before the Congressional-Executive Commission on China, 111th Congress, 2nd session, July 19, 2010. 34

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- The Future of the Korean and European Union Constitutions: A Comparative Analysis of Rights of the Accused (Donald D.A. Schaefer)
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**DePaul Journal for Social Justice, Volume 4, Number 1, Fall 2010**

- The UN Security Council Ad Hoc Rwanda Tribunal: International Justice or Juridically-Constructed "Victor's Impunity"? (Peter Erlinder) p.131

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Special Issue (2011): The Law and Development Institute 2010 Inaugural Conference

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*Jai S. Mah*

WTO Rules and Agricultural Development Cooperation between Developed and Developing Countries

*Won-Mog Choi*

International Trade and Development Law: A Legal Cultural Critique

*Colin Picker*

Special and Differential Treatment, Trade and Sustainable Development

*Maureen Irish*

International Development Disputes

*Tomer Broude*

Law and Development in the Islamic World: New Possibilities  
*Salim Farrar*

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Record 1.

TI: International comparative analyses of healthcare risk management

AU: Sun, Niuyun; Wang, Li; Zhou, Jun; Yuan, Qiang; Zhang, Zongjiu; Li, Youping; Liang, Minghui; Cheng, Lan; Gao, Guangming; Cui, Xiaohui

JN: Journal of Evidence-Based Medicine

PD: February 2011

VO: 4

NO: 1

PG: 22-31(10)

PB: Blackwell Publishing Asia

IS: 1756-5383

URL: <http://www.ingentaconnect.com/content/bpl/jebm/2011/00000004/00000001/art00005>

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

Record 2.

TI: The UK's dysfunctional relationship with medical migrants: the Daniel Ubani case and reform of out-of-hours services

AU: Simpson, Julian M; Esmail, Aneez

JN: British Journal of General Practice

PD: 1 March 2011

VO: 61

NO: 584

PG: 208-211(4)

PB: Royal College of General Practitioners

IS: 0960-1643

URL: <http://www.ingentaconnect.com/content/rcgp/bjgp/2011/00000061/00000584/art00017>

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

Record 3.

TI: Consistency in the Armed Enforcement of Human Rights: A Moral Necessity?

AU: Dobos, Ned

JN: Journal of Moral Philosophy

PD: February 2011

VO: 8

NO: 1

PG: 92-109(18)

PB: BRILL

IS: 1740-4681

URL: <http://www.ingentaconnect.com/content/brill/jmp/2011/00000008/00000001/art00006>

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

Record 4.

TI: International Ethics and the Responsibility to Protect

AU: Doyle, Michael W.

JN: The International Studies Review

PD: March 2011

VO: 13

NO: 1

PG: 72-84(13)

PB: Blackwell Publishing Ltd

IS: 1521-9488

URL: <http://www.ingentaconnect.com/content/bpl/misr/2011/00000013/00000001/art00009>

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

Record 5.

TI: An Elementary Consideration of Humanity? Linking Trade-Related Intellectual Property Rights to the Human Right to Health in International Law

AU: Forman, Lisa

JN: The Journal of World Intellectual Property

PD: March 2011

VO: 14

NO: 2

PG: 155-175(21)

PB: Blackwell Publishing Ltd

IS: 1422-2213

URL: <http://www.ingentaconnect.com/content/bsc/jwip/2011/00000014/00000002/art00003>

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

Record 6.

TI: Cultural values and gender gap: a cross-national analysis

AU: Yeganeh, Hamid; May, Diane

JN: Gender in Management: An International Journal

PD: 15 March 2011

VO: 26

NO: 2

PG: 106-121(16)

PB: Emerald Group Publishing Limited

IS: 1754-2413

URL: <http://www.ingentaconnect.com/content/mcb/gm/2011/00000026/00000002/art00001>

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

Record 7.

TI: The Tenth Anniversary of the Chinese Journal of International Law

AU: Yee, Sienho

JN: Chinese Journal of International Law

PD: March 2011

VO: 10

NO: 1

PG: 1-1(1)

PB: Oxford University Press

IS: 1540-1650

URL: <http://www.ingentaconnect.com/content/oup/chjil/2011/00000010/00000001/art00001>

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

Record 8.

TI: President Obama's 2010 United States National Security Strategy and International Law on the Use of Force

AU: Gray, Christine

JN: Chinese Journal of International Law

PD: March 2011

VO: 10



NO: 1

PG: 35-53(19)

PB: Oxford University Press

IS: 1540-1650

URL: <http://www.ingentaconnect.com/content/oup/chjil/2011/00000010/00000001/art00003>

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

Record 9.

TI: The Good, the Bad or the Ugly? A Critique of the Decision on Jurisdiction and Competence in Tza Yap Shum v. The Republic of Peru

AU: Shen, Wei

JN: Chinese Journal of International Law

PD: March 2011

VO: 10

NO: 1

PG: 55-95(41)

PB: Oxford University Press

IS: 1540-1650

URL: <http://www.ingentaconnect.com/content/oup/chjil/2011/00000010/00000001/art00004>

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

Record 10.

TI: The Isayeva Cases of the European Court of Human Rights: The Application of International Humanitarian Law and Human Rights Law in Non-International Armed Conflicts

AU: Tamura, Eriko

JN: Chinese Journal of International Law

PD: March 2011

VO: 10

NO: 1

PG: 129-140(12)

PB: Oxford University Press

IS: 1540-1650

URL: <http://www.ingentaconnect.com/content/oup/chjil/2011/00000010/00000001/art00006>

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

Record 11.

TI: Exploring the Legal Basis of a Human Rights Approach to Climate Change

AU: Wewerinke, Margreet; Doebller, Curtis F.J.

JN: Chinese Journal of International Law

PD: March 2011

VO: 10

NO: 1

PG: 141-160(20)

PB: Oxford University Press

IS: 1540-1650

URL: <http://www.ingentaconnect.com/content/oup/chjil/2011/00000010/00000001/art00007>

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

Record 12.

TI: The International Law of the Sea

AU: Tanaka, Yoshifumi

JN: Chinese Journal of International Law

PD: March 2011

VO: 10

NO: 1

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PB: Oxford University Press

IS: 1540-1650

URL: <http://www.ingentaconnect.com/content/oup/chjil/2011/00000010/00000001/art00010>

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

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TI: Compliance surveys: an effective tool to validate smoke-free public places in four jurisdictions in India [Notes from the field]

AU: Lal, P.G.; Wilson, N.C.; Singh, R.J.

JN: The International Journal of Tuberculosis and Lung Disease

PD: April 2011

VO: 15

NO: 4

PG: 565-566(2)

PB: IUATLD

IS: 1027-3719

URL: <http://www.ingentaconnect.com/content/iuatld/ijtld/2011/00000015/00000004/art00027>

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

Record 14.

TI: Insulating the Constitution: Yong Vui Kong v Public Prosecutor [2010] SGCA 20

AU: Ganesh, Aravind

JN: Oxford University Commonwealth Law Journal

PD: Winter 2010

VO: 10

NO: 2

PG: 273-292(20)

PB: Hart Publishing

IS: 1472-9342

URL: <http://www.ingentaconnect.com/content/hart/ouclj/2010/00000010/00000002/art00005>

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

Record 15.

TI: The 'New Protectionism': Industrial Policy Barriers to Cross-Border Mergers and Acquisitions

AU: Hemphill, Thomas A.

JN: Competition Change

PD: June 2010

VO: 14

NO: 2

PG: 124-148(25)

PB: Maney Publishing

IS: 1024-5294

URL: <http://www.ingentaconnect.com/content/maney/com/2010/00000014/00000002/art00003>

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

Record 16.

TI: Corporate Mobility in Private International Law and European Community Law: Debunking Some Myths

AU: Panayi, Christiana HJI

JN: Yearbook of European Law

PD: 2009

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NO: 1

PG: 123-176(54)

PB: Oxford University Press

IS: 0263-3264

URL: <http://www.ingentaconnect.com/content/oup/yel/2009/00000028/00000001/art00005>

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

Record 17.

TI: The Preliminary Reference Procedure and Questions of International and National Law

AU: Broberg, Morten

JN: Yearbook of European Law

PD: 2009

VO: 28

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PG: 362-389(28)

PB: Oxford University Press

IS: 0263-3264

URL: <http://www.ingentaconnect.com/content/oup/yel/2009/00000028/00000001/art00010>

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

Record 18.

TI: Freedom to Choose the Legal Means for Implementing UN Security Council Resolutions and the ECJ Kadi Judgment: A Misplaced Argument Hindering the Enforcement of International Law in the EC

AU: Pavoni, Riccardo

JN: Yearbook of European Law

PD: 2009

VO: 28

NO: 1

PG: 626-636(11)

PB: Oxford University Press

IS: 0263-3264

URL: <http://www.ingentaconnect.com/content/oup/yel/2009/00000028/00000001/art00021>

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

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AU: Scheinin, Martin

JN: Yearbook of European Law

PD: 2009

VO: 28

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PG: 637-653(17)

PB: Oxford University Press

IS: 0263-3264

URL: <http://www.ingentaconnect.com/content/oup/yel/2009/00000028/00000001/art00022>

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Record 20.

TI: Binding the EU to International Human Rights Law

AU: de Jesus Butler, Israel; De Schutter, Olivier

JN: Yearbook of European Law

PD: 2008

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PG: 277-320(44)

PB: Oxford University Press

IS: 0263-3264

URL: <http://www.ingentaconnect.com/content/oup/yel/2008/00000027/00000001/art00010>

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Record 21.

TI: Specialised Anti-Corruption Institutions: Review of Models Edition complete - ISBN

9789264039803 - Fr. a paraitre

AU:

JN: SourceOCDE Economies en transition

PD: March 2008

VO: 2008

NO: 2

PG: i-144(145)

PB: Organisation for Economic Co-operation and Development

IS: 1683-2450

URL: <http://www.ingentaconnect.com/content/oecd/16832450/2008/00002008/00000002/2808032e>

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

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TI: Specialised Anti-Corruption Institutions: Review of Models Complete Edition - ISBN

9789264039803

AU:

JN: SourceOECD Transition Economies

PD: March 2008

VO: 2008

NO: 2

PG: i-144(145)

PB: Organisation for Economic Co-operation and Development

IS: 1608-0157

URL: <http://www.ingentaconnect.com/content/oecd/16080157/2008/00002008/00000002/2808031e>

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

Record 23.

TI: Specialised Anti-Corruption Institutions: Review of Models Complete Edition - ISBN

9789264039803

AU:

JN: SourceOECD Emerging Economies

PD: March 2008

VO: 2008

NO: 4

PG: i-144(145)

PB: Organisation for Economic Co-operation and Development

IS: 1608-0173

URL: <http://www.ingentaconnect.com/content/oecd/16080173/2008/00002008/00000004/2808031e>

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

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9789264039803

AU:

JN: SourceOECD Governance

PD: March 2008

VO: 2008

NO: 4

PG: i-144(145)

PB: Organisation for Economic Co-operation and Development

IS: 1608-0246

URL: <http://www.ingentaconnect.com/content/oecd/16080246/2008/00002008/00000004/2808031e>

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

Record 25.

TI: Specialised Anti-Corruption Institutions: Review of Models Edition complete - ISBN

9789264039803 - Fr. a paraître

AU:

JN: SourceOCDE Economies émergentes

PD: March 2008

VO: 2008

NO: 4

PG: i-144(145)

PB: Organisation de Coopération et de Développement Economiques

IS: 1683-2329

URL: <http://www.ingentaconnect.com/content/oecd/16832329/2008/00002008/00000004/2808032e>

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

Record 26.

TI: Specialised Anti-Corruption Institutions: Review of Models Edition complete - ISBN

9789264039803 - Fr. a paraître

AU:

JN: SourceOCDE Gouvernance

PD: March 2008

VO: 2008

NO: 4

PG: i-144(145)

PB: Organisation for Economic Co-operation and Development

IS: 1683-2388

URL: <http://www.ingentaconnect.com/content/oecd/16832388/2008/00002008/00000004/2808032e>

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Record 27.

TI: Principles of Reception of International Law in Community Law

AU: Holdgaard, Rasmussen

JN: Yearbook of European Law

PD: 2006

VO: 25

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PG: 263-314(52)

PB: Oxford University Press

IS: 0263-3264

URL: <http://www.ingentaconnect.com/content/oup/yel/2006/00000025/00000001/art00007>

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Record 28.

TI: Social Contingency: An Avenue for Engaging Regulation Theory with System Theory

AU: Kessler, Oliver

JN: Competition Change

PD: June 2006

VO: 10  
NO: 2  
PG: 213-229(17)  
PB: Maney Publishing  
IS: 1024-5294  
URL: <http://www.ingentaconnect.com/content/maney/com/2006/00000010/00000002/art00008>  
Click on the URL to access the article or to link to other issues of the publication.

Record 29.  
TI: HOW FAR OFFSHORE? MONACO AS A FINANCIAL CENTRE  
AU: DONAGHY, MATTHEW; CLARKE, MICHAEL  
JN: Competition Change  
PD: March 2003  
VO: 7  
NO: 1  
PG: 3-21(19)  
PB: Maney Publishing  
IS: 1024-5294  
URL: <http://www.ingentaconnect.com/content/maney/com/2003/00000007/00000001/art00001>  
Click on the URL to access the article or to link to other issues of the publication.

Record 30.  
TI: Multilateralism, bilateralism and unilateralism: a critical commentary on the EU's triple-track approach to the international dimension of competition policy  
AU: Davison, Leigh; Johnson, Debra  
JN: European Business Review  
PD: 1 February 2002  
VO: 14  
NO: 1  
PG: 7-19(13)  
PB: Emerald Group Publishing Limited  
IS: 0955-534X  
URL: <http://www.ingentaconnect.com/content/mcb/054/2002/00000014/00000001/art00001>  
Click on the URL to access the article or to link to other issues of the publication.

Record 31.  
TI: International complications  
AU: Seadle, Michael  
JN: Library Hi Tech  
PD: 1 September 1999  
VO: 17  
NO: 3  
PG: 326-332(7)  
PB: Emerald Group Publishing Limited  
IS: 0737-8831  
URL: <http://www.ingentaconnect.com/content/mcb/238/1999/00000017/00000003/art00013>  
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#### **IV. Blogs (select items)**

Peter Spiro, Takeaways from the Raymond Davis Episode, [Opinio Juris](#) (Mar. 16, 2011)

Dan Firger, Europe's Climate Roadmap, [Climate Law Blog](#) (Mar. 16, 2011)

Louis M. Soloman, The Risks That Technology Poses To Discovery in International Litigation, [OneWorld: International Practice Blog](#) (Mar. 16, 2011)

Gregory Toloraya, No Way North for Japan: Kuril Islands Fracture Russo-Japan Relations, [East Asia Forum](#) (Mar. 16, 2011)

Gabor Rona, A Fine Precedent for Obama Military Commissions, [Human Rights First](#) (Mar. 16, 2011)

John Hemmings, Kuril Islands Dispute: Russo-Japan Relations at Their Lowest Ebb Since the Cold War, [East Asia Forum](#) (Mar. 15, 2011)

Rosalind English, Libel Tourists Beware – Reform is on its Way, [UK Human Rights Blog](#) (Mar. 16, 2011)

Fernando Teson, War and Liberty, [Bleeding Heart Libertarians](#) (Mar. 15, 2011)

Roger Alford, Guatemalans Bring Class Action Against United States for Syphilis Medical Experiments, [Opinio Juris](#) (Mar. 15, 2011)

Bruce Ackerman, A Statement of Private Manning's Detention, [Balkanization](#) (Mar. 15, 2011)

Edith Garwood, March 21<sup>st</sup> Key Date in Human Rights Council for Gaza Conflict Victims, [Human Rights Now](#) (Mar. 15, 2011)

Elizabeth Ashamu, African Commission Challenge to CIA Rendition, [IntLawGrrls](#) (Mar. 15, 2011)

Jayshree Bajoria, The Dilemma of Humanitarian Intervention, [Council on Foreign Relations Backgrounder](#) (Mar. 14, 2011)

Paoloa Garcia Rey, Domestic Violence as a Human Rights Violation, [ACLU Blog of Rights](#) (Mar. 14, 2011)

Jorge G. Castañeda, The Trouble with BRICs, [Deep Dive](#) (Mar. 14, 2011)

Jeffrey D. McCausland, Change in the Middle East: A Longer View, [Carnegie Council](#) (Mar. 14, 2011)

CA, Libya and the International Criminal Court (ICC), [Peace Palace Library](#) (Mar. 14, 2011)

Former State Dept. Chief P.J. Crowley's Statement on Resignation, [ACSBlog](#) (Mar. 14, 2011)

Michael Davidson, Promoting Clean Energy Through Strategic International Cooperation, [NRDC Switchboard](#) (Mar. 14, 2011)

Jack Goldsmith, My Last Word on Article 75, [Lawfare](#) (Mar. 14, 2011)

Melina Padron, A Reform Too Far? The Human Rights Roundup, [UK Human Rights Blog](#) (Mar. 14, 2011)

John Bellinger, Further Thoughts on the White House Statement About Article 75, [Lawfare](#) (Mar. 13, 2011)

Cindy Galway Buys, WTO AB Issues Report in US-China Anti-Dumping and CDV Dispute, [International Law Prof Blog](#) (Mar. 13, 2011)



William A. Schabas, Denial of Residence to HIV Positive Individual is Discrimination Under the European Convention of Human Rights, [PhD Studies in Human Rights](#) (13 Mar 2011)

Ross Garnaut, Climate Change: Where Are We At Globally Now?, [East Asia Forum](#) (Mar. 13, 2011)

Mia Swart, African Lessons on Terror Detention, [IntLawGrrls](#) (Mar. 12, 2011)

Peggy McGuinness, The Libya Crisis and the ICC, [Opinio Juris](#) (Mar. 11, 2011)

Kevin Jon Heller, Why the US Declaration on AP I Will Not Prevent the Admission of Hearsay, [Opinio Juris](#) (Mar. 11, 2011)

Kevin Jon Heller, Darfuri Rebels to Stand Trial (Maybe), [Opinio Juris](#) (Mar. 11, 2011)

Taryn Kiekow, Iceland's Whaling Draws International Rebuke, [NRDC Switchboard](#) (Mar. 11, 2011)

Simon Lester, The Appellate Body and Double Remedies, [International Economic Law and Policy Blog](#) (Mar. 11, 2011)

Simon Lester, New AD/CVD Proposals in Australia: Burden Shifting and Presumptions, [International Economic Law and Policy Blog](#) (Mar. 11, 2011)

Kenneth Anderson, Does French Recognition Have Any International Law Consequences?, [Opinio Juris](#) (Mar. 11, 2011)

Louis M. Solomon, U.S. District Court Preliminarily Enjoins Non-U.S. Plaintiffs From Enforcing Non-U.S. Judgment Against U.S. Company, [OneWorld: International Practice Blog](#) (Mar. 11, 2011)

Jaya Ramji-Nogales, Selecting Special Rapporteurs, [IntLawGrrls](#) (Mar. 11, 2011)

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