# Human Rights in War: On the Entangled Foundations of the 1949 Geneva Conventions

**Boyd van Dijk**

The relationship between human rights and humanitarian law is one of the most contentious topics in the history of international law. Most scholars studying their foundations argue that these two fields of law developed separately until the 1960s. This article, by contrast, reveals a much earlier cross-fertilization between these disciplines. It shows how “human rights thinking” played a critical generative role in transforming humanitarian law, thereby creating important legacies for today’s understandings of international law in armed conflict.

# A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice

**Dan Efrony and Yuval Shany**

This article evaluates acceptance of the Tallinn Rules by states on the basis of eleven case studies involving cyberoperations, all occurring after the first Tallinn Manual was published in 2013. Our principal findings are that (1) it is unclear whether states are ready to accept the Tallinn Rules; (2) states show uneven interest in promoting legal certainty in cyberspace; and (3) a growing need for coordinated response to cyberattacks may induce states to consider more favorably the Tallinn Rules.

# Domestic Investment Statutes in International Law

**Jarrod Hepburn**

Alongside now-controversial investment treaties, many states also maintain domestic investment statutes. Although these laws offer protections similar to investment treaties and are increasingly applied in investor-state arbitration, they have—unlike the treaties—attracted limited scholarly scrutiny. This article argues that investment statutes can plausibly be characterized either as unilateral acts in international law or as domestic law. The article examines the significant consequences that follow from these characterizations, providing the first comprehensive analysis of these hybrid statutes.

# International Decisions

**Francis Karioko Muruatetu v. Republic (Jacqueline Mwangi)**

Supreme Court of Kenya on the constitutionality of the mandatory death penalty
Ingabire Victoire Umuhoza v. The Republic of Rwanda (Harrison Mbori) 713

African Court of Human and Peoples’ Rights on the rights to a fair trial and to freedom of expression

Jesner v. Arab Bank (Rebecca J. Hamilton) 720

Supreme Court of United States on corporate liability under the Alien Tort Statute

Google Inc. v. Equustek Solutions Inc. (Jennifer Daskal) 727

Supreme Court of Canada on the appropriateness and scope of a global website takedown order

Contemporary Practice of the United States Relating to International Law
Edited by Jean Galbraith

Trump Administration Imposes Sanctions on Russia for Chemical Weapons Use, While More Generally Sending Mixed Signals Regarding NATO and Russia 735

U.S. Supreme Court Upholds Presidential Proclamation Restricting Entry of Individuals from Covered Countries 741

United States Withdraws from the UN Human Rights Council, Shortly After Receiving Criticism About Its Border Policy 745

Tariff-Based Disputes Continue to Characterize Trump Administration Trade Policies 751

D.C. Circuit Upholds Injunction Barring the Involuntary Transfer to an Unidentified Third Country of a U.S. Citizen Alleged to be an Enemy Combatant 759

Historic Meeting in Singapore Marks a Change in Relations between the United States and North Korea and Generates a North Korean Commitment to Work Toward Denuclearization 763

Recent Books on International Law

Review Essay
The International Law of Property (José E. Alvarez) 771

Bonnitcha, Jonathan, Lauge N. Skovgaard Poulsen and Michael Waibel. The Political Economy of the Investment Treaty Regime;

Upham, Frank K. The Great Property Fallacy: Theory, Reality, and Growth in Developing Countries

Book Reviews
Sloss, David L. The Death of Treaty Supremacy: An Invisible Constitutional Change (David P. Stewart) 779

Spiro, Peter J. At Home in Two Countries: The Past and Future of Dual Citizenship (Liav Orgad) 789

Roberts, Anthea. Is International Law International? (Katerina Linos) 795

Cao, Lan. Culture in Law and Development: Nurturing Positive Change (Jane Stromseth) 798

Books Received 804

International Legal Materials, Contents, Vol. 57, No. 4 808
Imperfect Alternatives: Institutional Choice and the Reform of Investment Law
Sergio Puig and Gregory Shaffer
361
This Article applies the theory of comparative institutional analysis to evaluate the trade-offs associated with alternative mechanisms for resolving investment disputes. We assess the trade-offs in light of the principle of accountability under the rule of law, which underpins the goals of fairness, efficiency, and peace that are attributed to investment law. The Article makes two recommendations: first, reforms should address complementarity between domestic and international institutions; second, institutional choices should respond to the different contexts that states face.

Essay
Incremental, Systemic, and Paradigmatic Reform of Investor-State Arbitration
Anthea Roberts
410

Editorial Comment
Closing the Accountability Gap: Concrete Steps Toward Ending Impunity for Atrocity Crimes
Theodor Meron
433

In Memoriam
In Memoriam David D. Caron (1952–2018)
Charles N. Brower
452

International Decisions
Edited by Harlan Cohen
Inter-American Court of Human Rights Advisory Opinion OC 23/17 of November 15, 2017 (Angeliki Papantoniou) 460
Advisory Opinion of the Inter-American Court of Human Rights on the relationship between human rights and the environment
Slowakische Republik (Slovak Republic) v. Achmea B.V. (Björn Arp) 466
Court of Justice of the European Union judgment on compatibility of intra-European investment treaty arbitration provision with European Union law
Prosecutor v. Bemba, et al. (Jonas Nilsson) 473
International Criminal Court Appeals Chamber judgment regarding convictions and sentences for offenses against administration of justice
Inter-American Court of Human Rights Advisory Opinion OC-24/17 of November 24, 2017 (Nicolás Carillo-Santarelli)

Advisory Opinion of the Inter-American Court of Human Rights concerning gender identity, same-sex relationships, and the rights of LGBTI persons

Contemporary Practice of the United States Relating to International Law
Edited by Jean Galbraith

Congress Enacts the Clarifying Lawful Overseas Use of Data (CLOUD) Act, Reshaping U.S. Law Governing Cross-Border Access to Data

Trump Administration Expels Russian Diplomats and Imposes Russia-Related Sanctions

U.S. Supreme Court Holds that a Provision of the Foreign Sovereign Immunities Act Does Not Lift Immunity from the Attachment of Iranian Artifacts

U.S. Tariffs on Steel and Aluminum Imports Go into Effect, Leading to Trade Disputes

United States Moves Forward with Tariffs and Requests WTO Consultations in Response to Certain Trade Practices by China

Developments Relating to U.S. Trade Negotiations—KORUS, NAFTA, and Trade Promotion Authority

President Trump Withdraws the United States from the Iran Deal and Announces the Reimposition of Sanctions

United States Bombs Syrian Government Facilities in Response to Chemical Weapons Use

Recent Books on International Law

Book Reviews
Zidar, Andraž and Jean-Pierre Gauci (eds.). *The Role of Legal Advisers in International Law* (John R. Crook)

Barron, David J. *Waging War: The Clash Between Presidents and Congress 1776 to ISIS* (Saikrishna Bangalore Prakash)

Otto, Dianne (ed.). *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Teemu Ruskola)


Books Received

International Legal Materials, Contents, Vol. 57, No. 3

Erratum
The *Jus ad Bellum*'s Regulatory Form

Monica Hakimi

This article argues that a form of legal regulation is embodied in decisions at the UN Security Council that condone but do not formally authorize specific military operations. Such decisions sometimes inflect or go beyond what the *jus ad bellum* permits through its general standards—that is, under the prohibition of cross-border force and small handful of exceptions. Recognizing that this form of regulation is both part of the law and different in kind from regulation through the general standards should change how we think about the *jus ad bellum*.

Specially-Affected States and the Formation of Custom

Kevin Jon Heller

Although the United States has relied on the ICJ’s doctrine of specially-affected states to claim that it and other powerful states in the Global North play a privileged role in the formation of customary international law, the doctrine itself has never been systematically developed by the ICJ or by legal scholars. This article fills that lacuna by addressing two questions: (1) what makes a state “specially affected”?; and (2) what is the importance of a state qualifying as “specially affected” for the formation of custom? It concludes that a theoretically coherent understanding of the doctrine would gives states in the Global South significant power over custom formation.

Notes and Comments

- The Specially-Affecting States Doctrine
  Shelly Aviv Yeini
  244

- The 2017 Judicial Activity of the International Court of Justice
  Christine Gray
  254

International Decisions

*Khlafia and Others v. Italy* (Jill I. Goldenziel)

European Court of Human Rights judgment on the rights of migrants

*STC 3729/2017. Upon Unconstitutionality Actions 3729, 3751; Against Legislative Bill Bulletin No. 9895-11.* (Ángel R. Oquendo)

Decision by the Constitutional Court of Chile on abortion

*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* (Jason Rudall)

International Court of Justice judgment on compensation for environmental damage
Contemporary Practice of the United States Relating to International Law

Edited by Jean Galbraith*

Executive Branch Imposes Limited Russia-Related Sanctions After Statutory Deadlines 296
Time-Limited Provisions of the Foreign Intelligence Surveillance Act Reauthorized Through 2023 303
President Trump Recognizes Jerusalem as the Capital of Israel 306
Trump Administration Ends Participation in Global Compact on Migration, Citing Concerns Regarding U.S. Sovereignty 311
United States Reaches Agreement to Limit Arctic Fishing 313
Trump Administration Continues Push to Reshape American Trade Relations by Imposing Tariffs on Steel and Aluminum Imports 315
Responses by the United States to Attacks on the Rohingya in Burma 322
President Trump Issues Executive Order Keeping the Guantánamo Bay Detention Camp Open 326

Recent Books on International Law

Book Reviews

Putnam, Tonya L. Courts Without Borders: Law, Politics and U.S. Extraterritoriality (Peter D. Trooboff and Mawuse Barker-Vormawor) 335
Borch, Fred L. Military Trials of War Criminals in the Netherlands East Indies 1946–1949 (Gary Solis) 349

Books Received 355

International Legal Materials, Contents, Vol. 57, No. 1, No. 2 358

* The section editor has been corrected since original publication. An erratum notice detailing this change was also published (DOI: 10.1017/ajil.2018.57).
Customary International Law: A Third World Perspective
B. S. Chimni

The article offers an alternative account of the evolution, formation, and function of customary international law (CIL) from a third world perspective. It argues that there is an intimate link between the rise, consolidation, and expansion of capitalism in Europe since the nineteenth century and the development of CIL that is concealed by the supposed distinction between “formal” and “material” sources of CIL. In fact, both “traditional” and “modern” CIL sustain the short-term and systemic interests of global capitalism. It proposes a “postmodern” conception of CIL that would contribute to the global common good.

Editorial Comment
Multilateralism’s Life Cycle

Harlan Grant Cohen

Notes and Comments
Behavioral Aspects of the International Law of Global Public Goods and Common Pool Resources
Anne van Aaken

International Decisions
Edited by Ingrid Wuerth

Prime Minister v. Parliament of Catalonia (Asier Garrido-Muñoz)
Spanish Constitutional Court decision on Catalan independence

Ghana v. Ivory Coast (Nuwan Peiris)
Judgement by a Special Chamber of the International Tribunal for the Law of the Sea concerning maritime boundary delimitation

Contemporary Practice of the United States Relating to International Law
Edited by Jean Galbraith

Tensions Rise Between the United States and North Korea
United States Lifts Economic Sanctions on Sudan
United States Imposes Broad Economic Sanctions on Venezuela After Constitutional Crisis
United States Gives Notice of Withdrawal from UNESCO, Citing Anti-Israel Bias
Presidential Proclamation Indefinitely Restricting Entry of Individuals from Designated Countries Is Fully Implemented Amid Ongoing Legal Challenges
U.S. District Court Convicts Mohammad Jabbateh of Perjury and Immigration Fraud for Concealing His Role as Former Liberian Warlord “Jungle Jabbah” 118
President Trump Refuses to Recertify Iran Nuclear Deal, But No Sanctions Are Reimposed on Iran 120

Recent Books on International Law

Book Reviews
Alvarez, José E. The Impact of International Organizations on International Law (Ian Johnstone) 126
Shaw, Malcolm N. Rosenna’s Law and Practice of the International Court 1920–2015; Thirlway, Hugh. The International Court of Justice (Stephen M. Schwebel) 133
Priemel, Kim Christian. The Betrayal: The Nuremberg Trials and German Divergence (Jochen A. Frowein) 134
Marceau, Gabrielle (ed.). A History of Law and Lawyers in the GATT/WTO (Meredith Kolsky Lewis) 136

Books Received 147

International Legal Materials, Contents, Vol. 56, No. 6 150