

AMERICAN JOURNAL OF INTERNATIONAL LAW

Vol. 116

January 2022

No. 1

CONTENTS

PAGE

Lead Articles

The Global Evolution of Foreign Relations Law

Kevin L. Cope, Pierre-Hugues Verdier, and Mila Versteeg

1

The constitutional rules that govern how states engage with international law have profound implications for foreign affairs, yet we lack comprehensive data on the choices countries make and their motivations. We draw on an original dataset that covers 108 countries over a nearly two-hundred-year period to map countries' foreign relations law choices and trace their evolution. We find that legal origins and colonial legacies continue to account for most foreign relations law choices. A small number of models emerged in the nineteenth and early twentieth century in Western Europe, subsequently spread through colonial channels, and usually survived decolonization. Departures from received models are rare and usually associated with major political shifts. Prominent political science accounts that emphasize how states design their foreign relations law strategically to enhance their international credibility or entrench democracy or human rights appear to have limited explanatory power over the bulk of foreign relations law today.

Disability, Human Rights Violations, and Crimes Against Humanity

William I. Pons, Janet E. Lord, and Michael Ashley Stein

58

Persons with disabilities have historically been subjected to egregious human rights violations. Yet despite well-documented and widespread harms, one billion persons with disabilities remain largely neglected by the international laws, legal processes, and institutions that seek to redress those violations, including crimes against humanity (CAH). This Article argues for the propriety of prosecuting egregious and systemic human rights violations against persons with disabilities as a CAH, and, in addition, asserts the necessity of ensuring the accessibility of international criminal processes to those individuals. The UN Security Council's recent acknowledgement of the enhanced risk that persons with disabilities experience during armed conflict, the growing evidence of widespread human rights violations against them, and an ongoing effort to forge a UN convention on the prevention and punishment of CAH make these arguments especially timely.

Complex Designers and Emergent Design: Reforming the Investment

Treaty System

Anthea Roberts and Taylor St John

96

How do actors undertake institutional design in complex systems? Scholars recognize that many international regimes are becoming increasingly complex. Yet relatively little is known about how actors design or redesign institutions amid this complexity. As participant-observers in the UN negotiations on investment treaty reform, we have watched state officials and other participants grapple with this question for several years. To help explain what we have observed, we conceptualize these participants as complex designers-actors who seek to design and redesign institutions within complex adaptive systems. We then formulate three emergent design principles that seem to guide their approach as they aim to create: flexible structures, balanced content, and adaptive management processes. In a dynamic era marked by unpredictability, division, and complex transnational challenges, we believe these concepts may prove to be increasingly relevant in global governance.

International Decisions

Edited by Julian Arato

Climate Protection Act Case (Helmut Philipp Aust)

150

Federal Constitutional Court of Germany (*Bundesverfassungsgericht* (BVerfG)) on climate change as a fundamental constitutional right, the intertemporal dimension of constitutional rights in Germany, and Germany's obligation to cooperate with other states to mitigate climate change under international law, including under the Paris Agreement.

General Dynamics v. Libya (Christopher Harris and Cameron Miles)

157

UK Supreme Court on notice requirements applicable to the enforcement of international arbitral awards against sovereign states, the international law of state immunity, and comity.

Contemporary Practice of the United States Relating to International Law

Edited by Kristen E. Eichensehr

The United States, Australia, and the United Kingdom Announce "AUKUS"

Alliance Focused on Indo-Pacific Security

165

Biden Administration Pushes for Multilateral Cooperation and Domestic Action to Combat Climate Change

171

United States Indicts Iranian and Chinese Government Agents for Targeting Individuals in the United States

179

Huawei's Meng Wanzhou Released to China After Entering into Deferred Prosecution Agreement with U.S. Justice Department

184

United States Grapples with Aftermath of Withdrawal from Afghanistan

190

Biden Administration Continues Efforts to Change Immigration Policy Amidst Surges of Migrants and Court Losses

197

Recent Books on International Law

Edited by Richard B. Bilder

Book Reviews

- Búzás, Zoltán I. *Evading International Norms: Race and Rights in the Shadow of Legality*.
(Laurence R. Helfer) 206
- Weiss, Edith Brown. *Establishing Norms in a Kaleidoscopic World*.
(Martti Koskenniemi) 211
- Schiff Berman, Paul (ed.). *The Oxford Handbook of Global Legal Pluralism*.
(Jaya Ramji-Nogales) 214
- Stephan, Paul, and Sarah Cleveland. *The Restatement and Beyond: The Past, Present, and Future of U.S. Foreign Relations Law*.
(David Moore) 219
- Jones, Craig. *The War Lawyers: The United States, Israel, and Juridical Warfare*.
(Kevin Heller) 224

Books Received 233

Corrigendum 235