So You Want to Write About International Law . . .

José E. Alvarez

Venues for Scholarship:

Practitioner-oriented publishers

NGO/Think Tank Reports

Student-edited and Peer Review Journals (specialized and general)

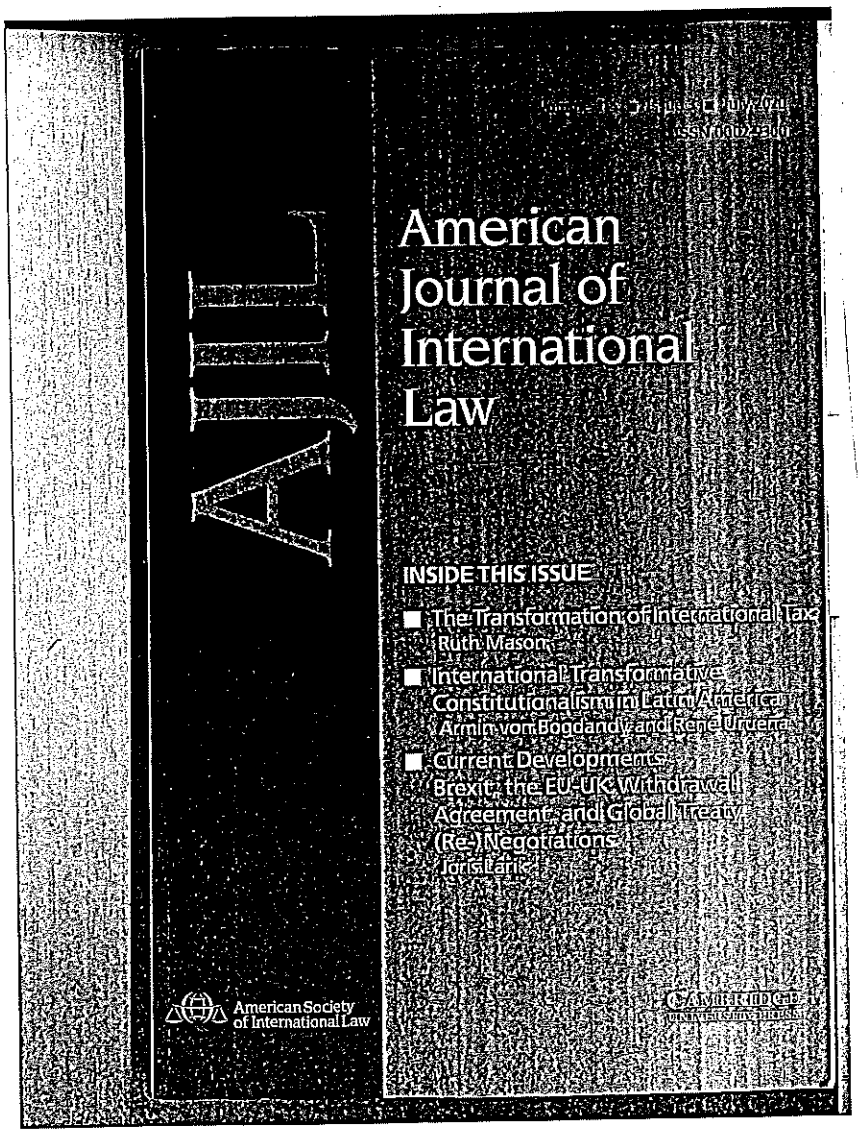
Book chapters in edited books (e.g., Oxford Handbook on X)

Scholarly books (for general or specialized audiences);

Treatises/Casebooks or other books designed for classroom use)

Types of publishers:

University Press Houses; Large publishers (e.g., CUP, OUP, Brill, Routledge, Springler); smaller houses (e.g., Hart and Edgar)



AJIL Unbound

VOL. 111 April 2017-March 2018

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Contemporary Practice of the United States Relating to International Law

Edited by John R. Crook

Contemporary Practice of the United States Relating to International Law

Edited by Kristina Daugirdas and Julian Davis Mortenson

Impact of the Web:

Progress of an Idea:
Tweet
Short/long 'blogs' (e.g., Opinio Juris; Just Security; AJIL Unbound; EJIL Talk!)
Public Policy Journals
Think tank/NGO Report
Published article/book chapter/book
Spin off tweets (see above) – rinse – repeat

Impact on Scholarship:

Adverse: See, e.g., Joseph Weiler, Editorial: Publish and Perish, 29 EJIL 673 (2018)

The West Bank and International Humanitarian Law on the Eve of the Fiftieth Anniversary of the Six-Day War

Overview of attention for article published in American Journal of International Law, May 2017

208

About this Attention Score

In the top 5% of all research outputs scored by Altmetric

MORE...

Mentioned by

10 news outlets
2 blogs
1 policy source
129 tweeters

Citations

10 Dimensions

Readers on

12 Mendeley

What is this page?

SUMMARY

Title	The West Bank and International Humanitarian Law on the Eve of the Fiftieth Anniversary of the Six-Day War
Published in	American Journal of International Law, May 2017
DOI	10.1017/ajil.2017.10
Authors	Theodor Meron

Twitter Demographics

The data shown below were collected from the profiles of **129** tweeters who shared this research output. Click here to find out more about how the information was compiled.

Geographical breakdown

Country	Count	As %
United Kingdom	22	17%
United States	10	8%
Australia	3	2%
Israel	2	2%
Chile	2	2%
Canada	2	2%

Demographic breakdown

Type	Count	As %
Members of the public	120	93%
Scientists	6	5%
Science communicators (journalists, bloggers, editors)	3	2%

Switzerland	2	2%
Palestine, State of	2	2%
Mexico	1	<1%
Other	14	11%
Unknown	69	53%

Mendeley readers

The data shown below were compiled from readership statistics for **12** Mendeley readers of this research output. Click here to see the associated Mendeley record.

Geographical breakdown

Country	Count	As %
Unknown	12	100%

Demographic breakdown

Readers by professional status	Count	As %
Student > Master	4	33%
Student > Ph. D. Student	3	25%
Other	2	17%
Professor > Associate Professor	1	8%
Unknown	2	17%

Readers by discipline	Count	As %
Social Sciences	4	33%
Arts and Humanities	2	17%
Computer Science	2	17%
Medicine and Dentistry	1	8%
Unknown	3	25%

Attention Score in Context

This research output has an **Altmetric Attention Score** of **208**. This is our high-level measure of the quality and quantity of online attention that it has received. This Attention Score, as well as the ranking and number of research outputs shown below, was calculated when the research output was last mentioned on **15 August 2020**.

ALL RESEARCH OUTPUTS	OUTPUTS FROM AMERICAN JOURNAL OF INTERNATIONAL LAW	OUTPUTS OF SIMILAR AGE	OUTPUTS OF SIMILAR AGE FROM AMERICAN JOURNAL OF INTERNATIONAL LAW
#86,934	#1	#3,134	#1
of 15,850,207 outputs	of 577 outputs	of 268,432 outputs	of 8 outputs

Altmetric has tracked 15,850,207 research outputs across all sources so far. Compared to these this one has done particularly well and is in the 99th percentile: it's **in the top 5% of all research outputs ever tracked** by Altmetric.

Trajectory of an Article in peer-review journal: EJIL

Number of article submissions: about 300-350 per year; of which some 250 are rejected (usually at preliminary 'screening' stage without being sent to peer review)(average time: up to 6 weeks).

If sent to peer review, submission must be withdrawn from other journals for consideration. Peer review (up to 6 months!)

Author gets Accept/Reject/Revise and Resubmit (most common) or Category 4: promising but needs general overhaul.

Once accepted (usually after revisions) goes into pipeline to be published (but can result in further 4 months delay).

Result: can take up to 12 months from initial submission to physical publication – hence newly adopted possibility: pre-publication on line for accepted articles in final edit; also no objection to pre-publication in unedited/non-final form in SSRN or comparable websites (e.g., University 'working paper' series).

Those subjected to peer review but rejected get 3-4 page detailed comments/suggestions for improvement.

Trajectory of An Article: AJIL

AJIL: 350-375 submissions per year. Exclusive submissions not required but if exclusive get expedited consideration.

Review initially undertaken by 7 student submission editors who write memo on MS strengths and weaknesses and recommend whether to accept, accept with revisions, or reject (average time: 5 days!).

Co-editors in chief then decide whether to send to double blind peer review (need at least 2 affirmative votes of AJIL board to accept) (average time: 2-3 weeks!).

Numbers in first six months of 2018: out of 194 MS submitted

MS with board review and final decisions: 12 (6.19%)

Accepted after revise and resubmit: 6

Rejected after peer review: 6

Rejected as inappropriate: 116 (59.79%)

Rejected without Board review but screened: 66 (34.02%)

Note: majority of MS that are rejected get feedback, including sometimes detailed reviews (particularly if sent to peer review; many sometimes be urged to contribute to AJIL Unbound)

Common Reasons for Rejection of Article Submissions:

(1) Wrong subject for particular law review (e.g., foreign law topic submitted to AJIL)
(2) Wrong audience (e.g., practitioner-oriented piece as lead article for AJIL)
(3) Wrong style/format (e.g., an 'editorial' for AJIL where editorials are restricted to members of AJIL board)
(4) Pre-emption/lacking in novelty
(5) Poor research (e.g., insufficient grounding in relevant literature)
(6) Absence of a clear thesis
(7) Failure to answer predictable counters to thesis
(8) Poor writing (e.g., poor English grammar, poor organization, informal writing)
(9) Insufficient source support
(10) Other

Remedies: CUP Tips for Authors/other journal options

Typical Suggestions for Revisions:

Need more research on X

Need more depth of discussion or develop arguments on X

Need more care in expressing arguments on X

Grammar/style/citation issues

Greater attention needed to counter-arguments on X

FACTS and FICTIONS:

Most articles in peer-reviewed journals like AJIL are written by academics (65 percent in 2018, last year as co-editor in chief of AJIL)

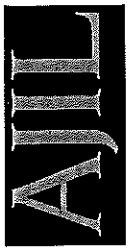
Much fewer articles (22 percent) are written or co-written by students (but see International Decisions, Book Reviews)

About same number (27 percent) are written or co-written by practitioners

The largest percentages (29 % and 11 % respectively) of articles in AJIL are written by authors based in the US and the UK

Most popular topics (circa 2017) of published articles in AJIL: international economic law (e.g., trade/investment); international legal theory; international criminal law; and law of armed conflict.

Least popular topics: African/Asia-Pacific/Latin American/East European perspectives; law of culture/gender/development.



Tips for first-time journal authors from Cambridge University Press and the *American Journal of International Law*

The *American Journal of International Law* (*AJIL*) encourages early career scholars to submit their work to the journal and has put this advice together in support of this.

Selecting a topic

- Consider the most interesting areas that have arisen in your research
- Remember several shorter pieces may do your work more justice than a book
- Read widely around your research area to see what is topical and what others are writing on
- Consider testing your topic at a conference before writing a full article
- Discuss your ideas with colleagues

Choosing an appropriate journal

- Read widely to give a clear sense of which are the relevant journals to your research field
- Read the scopes of journals carefully (often outlined inside a journal or on its webpages), if your article does not fit the scope of a journal it will likely be immediately rejected (*AJIL*'s scope focuses on public international law and closely related issues of global governance, transnational law, and national or sub-state law)
- Ask colleagues which journals they recommend for your particular topic
- Consider what kind of audience you are hoping for – if a large audience is important than a generalist journal might be most appropriate; if you want to reach those most interested in your field, then a specialist journal may be the best way to go
- If your piece is particularly innovative or provocative, look for journals that have a tendency to publish these kinds of work
- Keep in mind that there are some journals that particular favour early career scholars – look out for journals that offer a junior scholar's prize (e.g. *AJIL*'s Francis Deák Prize)
- Is ranking important – check with colleagues whether your school has its own ranking list of journals and whether Impact Factor is important? Law is a field with few ranking lists but those that seem to count most are the Clarivate Journal Citation Reports that publishes Impact Factors, Scopus' SCImago list and Washington and Lee's law journal rankings (*AJIL* is the highest ranking international law journal on these lists)

Deciding what type of content you wish to write

Remember that you are not limited to writing just research articles and for a first publication you may want to submit a shorter piece of content. For example, *AJIL* does not just publish lead articles and you may also want to consider:

- Submitting a short Current Developments or Notes & Comment piece

- Proposing writing an International Decision piece commenting on a recent court or tribunal decision to section editor David Stewart
- Suggesting a book you would like to review to section editor Richard Bilder who solicits all book review content
- Considering submitting a piece to *AJIL*'s online companion *AJIL Unbound* which publishes short essays (of no more than 3,000 words) written in a readable style accessible to policymakers, practitioners, and students

Writing your article in a way that is more likely to be published

- Write in clear English
- If English is not your first-language consider using a professional editing service
- Ask colleagues to proof-read your work
- Consider attending a writing workshop
- Your piece should present a detailed analysis rather than a simple narrative or commentary on a list of cases or legislation
- Make sure your argument flows logically, using clear headings to break up the text
- Take time to check your citations thoroughly
- Ensure you are happy that your article is complete, do not expect to finesse your text or add additional material at a later stage
- Once you have chosen a journal to submit to, follow that journal's instructions for authors or style guide to ensure the article is put into journal style (*AJIL* authors should follow *The Chicago Manual of Style (16th ed. 2010)*, *The Bluebook: A Uniform System of Citation (20th ed., 2015)* and the *AJIL Style Guide*)
- Closely follow the submission instructions for your chosen journal (e.g. some sections of *AJIL* require submission by email, some via ScholarOne electronic submission system)
- Ensure you have adhered to any word limit for your selected journal (30,000 words for *AJIL* lead articles and 11,000 for shorter pieces)
- If a journal requires work to be anonymised, please eliminate any author details and anonymise any citations that refer to your own work
- If a journal has an exclusive submission policy, please abide by this (*AJIL* commits to faster review of exclusive submissions)
- Be confident, remember articles are double-blind reviewed and junior scholars therefore have the same opportunity to be published as senior scholars

If you article is accepted

- Your article may be rejected before or after review, accepted, accepted with revisions or you may be invited to revise and resubmit. Take any recommendations for revisions seriously
- Expect your article to be edited by the journal's editorial team – treat these edits constructively, they have been made to bring the best out of your article
- Note any special requests (for example *AJIL* asks accepted authors to provide source materials for their quotes and certain citations via Dropbox within two weeks of acceptance)
- Respond to any queries from the editorial team or any copyeditor promptly
- Be ready to check proofs quickly (*AJIL* gives just three days for this process)
- Proof corrections should be limited to typos and errors of law, substantial changes to your article are not allowed by any journal at this stage
- Expect to be asked to transfer your copyright to the journal and complete any documentation relating to this with care
- Check the re-use and self-archiving policy of the journal carefully before considering re-publishing or archiving in a repository

If your article is rejected

AJIL receives 400 submissions each year for Lead Articles, Notes and Current Development pieces and only a tiny percentage of these are accepted so do not be discouraged by a rejection:

- Take on board any feedback then submit to another journal
- Do not rule out sending a different piece to the journal in the future

For more information see cambridge.org/core/journals/american-journal-of-international-law/information/instructions-contributors

NYU | LAW

International Law: General Sources: Outline

This guide lists essential sources for researching general aspects of international law. For specialized topics, such as human rights and international arbitration, see the guide International Law: Specialized Sources.

Guide Outline

To navigate this guide, use the tabs and dropdown tabs above or the links below. If you have additional questions, please visit or contact the NYU Law Library Reference Desk, Jeanne.Rehberg@nyu.edu or Sarah.Jaramillo@nyu.edu.

Databases

This guide provides links to a variety of databases, several of which are limited to NYU Law faculty and students. Information for NYU Law students and faculty on obtaining passwords for Westlaw, Lexis Advance and Bloomberg is available here.

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Subjects: International Law **Tags: foreign & international law, international law**

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THE CHAPEAU OF THE GENERAL EXCEPTIONS IN THE WTO GATT AND GATS AGREEMENTS: A RECONSTRUCTION

*By Lorand Bartels**

One of the most important issues in the law of the World Trade Organization is the right of WTO members to adopt measures for nontrade purposes. In the WTO's General Agreement on Tariffs and Trade (GATT 1994) and General Agreement on Trade in Services (GATS), this right is secured in general exceptions provisions,[1] which permit WTO members to adopt measures to achieve certain objectives, notwithstanding any other provisions of these agreements and also, in some cases, other WTO agreements.[2] These objectives include, most importantly, the protection of public morals, the maintenance of public order,[3] the protection of human, animal, or plant life or health, the enforcement of certain domestic laws, and the conservation of exhaustible natural resources.[4]

The right to adopt measures for these purposes is subject to various conditions, some of which are specific to the objective at issue. For example, a measure for conserving exhaustible natural resources needs to "relate to" that objective and be "made effective in conjunction with domestic restrictions on production or consumption of those resources,"[5] whereas a measure

* University of Cambridge. Email: lab53@cam.ac.uk. I would like to thank James Flett, Catherine Gascoigne, Joanna Gomula, Simon Lester, Gracia Marín Durán, Odette Murray, Laura Nielsen, Federico Ortino, Joost Pauwelyn, Julia Qin, Frieder Roessler, Marie Wilke, Michelle Zhang, and the editors for their useful comments. Opinions and errors remain my own.

[1] General Agreement on Tariffs and Trade 1994, Art. XX, Apr. 15, 1994 [hereinafter GATT 1994], Marrakesh Agreement Establishing the World Trade Organization [hereinafter WTO Agreement], Annex 1A, 1867 UNTS 187; General Agreement on Trade in Services, Art. XIV, Apr. 15, 1994, WTO Agreement, *supra*, Annex 1B, 1869 UNTS 183 [hereinafter GATS]. WTO legal texts are available at https://www.wto.org/english/docs_e/legal_e/legal_e.htm and reprinted in *The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations* (Cambridge University Press, 1999).

[2] The general exceptions also apply to obligations in related WTO agreements, sometimes expressly, as in the Agreement on Trade-Related Investment Measures, Art. 3, Apr. 15, 1994, WTO Agreement, *supra* note 1, Annex 1A, 1868 UNTS 186, and the Agreement on Trade Facilitation, Art. 24(7), WTO Doc. WT/L/931 (July 15, 2014) (not yet in force), and sometimes by implication, as in relation to certain obligations in accession protocols. *See, e.g.*, Appellate Body Report, China—Measures Affecting Trade Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, para. 415, WT/DS363/AB/R (adopted Jan. 19, 2010). Documents for WTO disputes are available at https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm#disputes.

[3] This exception is not included in GATT 1994, *supra* note 1, Art. XX.

[4] This last exception is not included in GATS, *supra* note 1, Art. XIV.

[5] GATT 1994, *supra* note 1, Art. XX(g).

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NOTES AND COMMENTS

INTERNATIONAL LAW IN CHINESE COURTS DURING THE RISE OF CHINA

*By Congyan Cai**

I. INTRODUCTION

The number of countries in which domestic courts are actively engaged with major public affairs has increased markedly since the early 1990s. In many transitional states, in particular, domestic courts have ruled on great constitutional controversies, which influence the national political process.[1] They have also taken an active role in the application of international law—especially human rights treaties—and at times treat such treaties as a "New Standard of Civilization."[2] In particular, domestic courts have at times invoked international law in becoming more aggressive toward the executive branch.[3] This trend has been one normative element inspiring some theorists to propose a new field known as comparative international law.[4] This article highlights a different set of elements that become manifest in assessing the rapid overall rise in references to, and application of, international law by courts in China in recent years.

While human rights treaties, a frequent focus of Western international lawyers when assessing practices of national courts, have hardly been applied by Chinese courts (which leads Nollkaemper to place Chinese courts and the courts of Afghanistan, Cuba, Iran, and North Korea in a group that he derides as playing "no role whatsoever in fulfilling" the protection of the international rule of law[5]), Chinese courts have significantly increased their application of international law over the past three decades, a trend that can be expected to accelerate. In contrast to existing research on the application of international law by Chinese courts, which focuses on purely textual analysis or case description and, more importantly, fails to explore the public policy underlying the courts' structural application of international law,[6] this article

* Professor of International Law, Xiamen University School of Law. This article is an additional contribution of the Symposium: *Exploring Comparative International Law* published in the American Journal of International Law (Vol.109, No.3, 2015).

[1] *See generally,* CONSEQUENTIAL COURTS: JUDICIAL ROLES IN GLOBAL PERSPECTIVE (Diana Kapiszewski, Gordon Silverstein & Robert A. Kagan eds., 2013).

[2] *See* Jack Donnelly, *Human Rights: A New Standard of Civilization?*, 74 INT'L AFF. 1 (1998).

[3] *See* THE ROLE OF DOMESTIC COURTS IN TREATY ENFORCEMENT (David Sloss ed., 2009); SHARON WEILL, THE ROLE OF NATIONAL COURTS IN APPLYING INTERNATIONAL HUMANITARIAN LAW (2014).

[4] *See* Symposium, *Exploring Comparative International Law*, 109 AJIL 467–550 (2015); Anthea Roberts, *Comparative International Law? The Role of National Courts in Creating and Enforcing International Law*, 60 INT'L & COMP. L.Q. 57 (2011).

[5] ANDRÉ NOLLKAEMPER, NATIONAL COURTS AND THE INTERNATIONAL RULE OF LAW 13, 55 (2011).

[6] *See* DAI RUIJUN (戴瑞君), GUOJI RENQUAN TIAOYUE DE GUONEI SHIYONG YANJIU: QUANQIU SHIYE (国际人权条约的国内适用研究:全球视野) [DOMESTIC IMPLEMENTATION OF INTERNATIONAL HUMAN

THE EMERGING RIGHT TO DEMOCRATIC GOVERNANCE

*By Thomas M. Franck**

> Legitimacy in 1991 flows not from the barrel of a gun but from the will of the people.
>
> *U.S. Secretary of State James A. Baker III*

> I know what real democracy is, what democracy is worth.
>
> *A thirty-seven-year-old Soviet lieutenant colonel who early on sided with anticoup forces*†

I. INTRODUCTION: THE POWER OF DEMOCRATIC LEGITIMACY

More than two centuries have elapsed since the signatories of the U.S. Declaration of Independence sought to manifest two radical propositions. The first is that governments, instituted to secure the "unalienable rights" of their citizens, derive "their just powers from the consent of the governed." We may call this the "democratic entitlement." The second proposition, perhaps less noted by commentators, is that a nation earns "separate and equal station" in the community of states by demonstrating "a decent respect to the opinions of mankind." The authors of the Declaration apparently believed that the legitimacy of the new Confederation of American States was not made evident solely by the transfer of power from Britain but also needed to be acknowledged by "mankind." This we may perceive as a prescient glimpse of the legitimating power of the community of nations.

For two hundred years, these two notions have remained a radical vision. The purpose of this essay is to demonstrate that the radical vision, while not yet fully word made law, is rapidly becoming, in our time, a normative rule of the international system. In the process, the two notions have merged. Increasingly, governments recognize that their legitimacy depends on meeting a normative expectation of the community of states. This recognition has led to the emergence of a community expectation: that those who seek the validation of their empowerment patently govern with the consent of the governed. Democracy, thus, is on the way to becoming a global entitlement, one that increasingly will be promoted and protected by collective international processes.

II. THE VALIDATION OF GOVERNANCE

Two recent events underscore this trend. The failure of the August coup in the Soviet Union, an event of inestimable human, political and historic import, demonstrates—for those sensitive to trends—that democracy is beginning to be seen as the *sine qua non* for validating governance. While President Boris Yeltsin of the Russian Republic and many Soviet citizens deserve primary credit for this

* Editor in Chief. The author wishes to express warm appreciation to many members of the Board of Editors for their helpful comments, as well as Paul Szasz, Robert Crouse, Gregory Fox, Dennis Sughrue, and the members of my honors seminar at the NYU Center for International Studies. Special thanks are due to the Filomen D'Agostino and Max E. Greenberg Research Fund of New York University School of Law.

† N.Y. Times, Aug. 22, 1991, at A15, col. 6; and *id.*, Aug. 21, 1991, at A9, col. 1.

TOWARDS RELATIVE NORMATIVITY IN INTERNATIONAL LAW?

*By Prosper Weil**

1. The purpose of this article is to examine, even at the risk of magnifying them somewhat for clarity, the potential dangers that some recent developments usually studied from other angles—the *jus cogens* theory, the distinction between international crimes and international delicts, the concept of a rule of general international law, the notion of obligation *erga omnes*—bring in their wake for the future of international law as a normative system intended to perform certain functions.

I. Pathology of the International Normative System

2. As an uncontroversial starting point, let us take the statement that "public international law is the aggregate of the legal norms governing international relations."[1] This shows that the concept of international law is defined by both its nature and its functions. Its nature is to be an "*aggregate of the legal norms*" that dictate what its subjects must do (prescriptive norms), must not do (prohibitive norms), or may do (permissive norms) and constitute for them a source of legal rights and obligations. Its functions lie in "*governing international relations.*" International law is therefore at once a "normative order" and a "factor of social organization."[2] These two facets are obviously interdependent. Thus, while the emergence of international law as a "normative order" is due to the need to fulfill certain functions, it will not be capable of actually fulfilling them unless it constitutes a normative order of good quality. In other words, the capacity of the international legal order to attain the objectives it was set up for will largely depend on the quality of its constituent norms. There can therefore be no indifference in regard to anything affecting international legal norms, since without norms of good quality international law would become a defective tool.

The Structural Weaknesses

3. As everyone knows, the international normative system, given the specific structure of the society it is called on to govern, is less elaborate and more rudimentary than domestic legal orders—which, of course, does not mean that it is their inferior or less "legal" than they: it is just different.

* Professor of Law, University of Paris.

This article is a modified and slightly expanded version in English of one published in 86 Rev. Générale Droit Int'l Public 5 (1982). It appears by kind permission of the editors and publisher of the *Revue Générale.*

[1] 1 P. Guggenheim, Traité de droit international public 1 (2d ed. 1967): "le droit international public est l'ensemble des normes juridiques qui règlent les relations internationales."

[2] 1 C. Rousseau, Droit international public 25–26 (1971).

LAWYERS, JUDGES, AND THE MAKING OF A TRANSNATIONAL CONSTITUTION

*By Eric Stein**

Tucked away in the fairyland Duchy of Luxembourg and blessed, until recently, with benign neglect by the powers that be and the mass media, the Court of Justice of the European Communities has fashioned a constitutional framework for a federal-type structure in Europe. From its inception a mere quarter of a century ago, the Court has construed the European Community Treaties in a constitutional mode rather than employing the traditional international law methodology. Proceeding from its fragile jurisdictional base, the Court has arrogated to itself the ultimate authority to draw the line between Community law and national law. Moreover, it has established and obtained acceptance of the broad principle of direct integration of Community law into the national legal orders of the member states and of the supremacy of Community law within its limited but expanding area of competence over any conflicting national law.

The European judicial process, characterized by a symbiotic relationship between national courts and the Court of Justice, is a complex dialectic process—even more intricate than that of a divided-power national judicial system such as in a federation. A great variety of participants interact in a number of fora, but the dominant groups are clearly the legal elite:

1. The judges of the Court of Justice, acting as a *collegium*.[1]

2. The Advocates General of the Court, "officers of the Court" assigned the principal task of stating in a public session their personal, independent opinion for the benefit of the Court, not unlike the Commissaires du Gouvernement at the French Conseil d'Etat.

3. The Legal Service of the executive Commission of the Communities, headed by the Director General, which determines the position of the Commission as plaintiff, defendant, or "*amicus curiae*" before the Court.[2]

4. The Legal Counsel and Director General at the Council of Ministers with his staff, performing corresponding tasks for the ministers and for the complex committee system under the Committee of the Permanent Representatives.

5. Lawyers in the national ministries and other offices of the member states, who advise their governments, and in effect formulate the positions

* Of the Board of Editors. I wish to acknowledge with appreciation the research assistance of Sabine Hackspiel, Cologne University, LLM University of Michigan.

A version of this article was prepared as a contribution to a volume in honor of Prof. Dr. Konrad Zweigert, Director of the Max Planck Institute for Foreign and Private International Law in Hamburg.

[1] No dissenting or other separate opinions are allowed.

[2] On the use of the term "*amicus curiae*" in this paper, see the penultimate paragraph of note 3 *infra*.

FEMINIST APPROACHES TO INTERNATIONAL LAW

*By Hilary Charlesworth, Christine Chinkin and Shelley Wright**

I. INTRODUCTION

The development of feminist jurisprudence in recent years has made a rich and fruitful contribution to legal theory. Few areas of domestic law have avoided the scrutiny of feminist writers, who have exposed the gender bias of apparently neutral systems of rules.[1] A central feature of many western theories about law is that the law is an autonomous entity, distinct from the society it regulates. A legal system is regarded as different from a political or economic system, for example, because it operates on the basis of abstract rationality, and is thus universally applicable and capable of achieving neutrality and objectivity.[2] These attributes are held to give the law its special authority. More radical theories have challenged this abstract rationalism, arguing that legal analysis cannot be separated from the political, economic, historical and cultural context in which people live. Some theorists argue that the law functions as a system of beliefs that make social, political and economic inequalities appear natural.[3] Feminist jurisprudence builds on certain aspects of this critical strain in legal thought.[4] It is much more focused and concrete, however, and derives its theoretical force from immediate experience of the role of the legal system in creating and perpetuating the unequal position of women.

There is no single school of feminist jurisprudence. Most feminists would agree that a diversity of voices is not only valuable, but essential, and that the search for, or belief in, one view, one voice is unlikely to capture the reality of women's experience or gender inequality. "One true story" cannot be told, and the promise is of "the permanent partiality of feminist inquiry."[5] As Nancy Hartsock has

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[1] *See, e.g.*, Olsen, *The Family and the Market*, 96 HARV. L. REV. 1497 (1983); Karst, *Women's Constitution*, 1984 DUKE L.J. 447; Lahey & Salter, *Corporate Law in Legal Theory and Legal Scholarship: From Classicism to Feminism*, 23 OSGOODE HALL L.J. 543 (1985); Scales, *The Emergence of Feminist Jurisprudence: An Essay*, 95 YALE L.J. 1373 (1986); Minow, *The Supreme Court October 1986 Term—Justice Engendered*, 101 HARV. L. REV. 47 (1987); Grbich, *The Position of Women in Family Dealing: the Australian Case*, 15 INT'L J. SOC. L. 309 (1987); Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 29–30 (1988); Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 831 (1990); R. GRAYCAR & J. MORGAN, THE HIDDEN GENDER OF LAW (1990).

[2] *See generally* D. N. MACCORMICK, LEGAL REASONING AND LEGAL THEORY (1978); J. W. HARRIS, LEGAL PHILOSOPHIES (1980).

[3] *E.g.*, Gordon, *New Developments in Legal Theory*, in THE POLITICS OF LAW 281 (D. Kairys ed. 1982).

[4] For a discussion of the major differences between feminist jurisprudence and the "liberal" and "critical" schools of jurisprudence, see West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988); *see also* West, *Feminism, Critical Social Theory and Law*, 1989 U. CHI. LEGAL F. 59; Polan, *Towards a Theory of Law and Patriarchy*, in THE POLITICS OF LAW, *supra* note 3, at 294, 295–96.

[5] S. HARDING, THE SCIENCE QUESTION IN FEMINISM 194 (1986); *see also* Bartlett, *supra* note 1, at 880–87.

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