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Abstracts from the International Law Interest Group

One Law for All Subjects of International Law: Fostering Workable Models of Accountability of International Organisations

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Abstract
States set up international governmental organisations (IGOs) as a means of conducting international relations. As a result, IGOs play an important role in nurturing collective security; they shape the international economy and set parameters for the development of specific regimes in an increasingly specialised system of international law. IGOs may therefore be liable for potentially wrongful acts (negligent advice, violations of international humanitarian law, abuses of human rights, etc) vis-a-vis member and non-member states as well as injured individuals. There are few works on the subject and the International Law Commission has only recently undertaken the review of the responsibility of IGOs as a follow up to its previous study of state responsibility. The scope of this paper is to assess traditional principles governing the international responsibility of IGOs and develop new mechanisms fostering more adequately the accountability of IGOs under international law. The paper intends to identify the challenges facing the international community in the creation of rules applicable to the responsibility of IGOs on the international plane, review the current legal literature on the subject and offer a few models and recommendations for an effective implementation of the principles governing the international responsibility of IGOs for wrongful acts.

Choice of Law in International Tort Cases

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Abstract
The rules as to which law applies to resolve a torts case involving more than one jurisdiction are complex. The High Court has taken numerous approaches to this issue, including an initial reliance on the law of the forum, before a gradual move to the law of the place of the wrong as the only, or primary, choice of law rule. This paper compares the latest position in Australia with that in other countries, including the United Kingdom, United States, and Canada. While generally the author agrees with the most recent pronouncements by the High Court on the correct choice of law rule, some suggestions for modification of the existing rules are offered. The High Court has hinted in its recent decisions that some issues remain to be resolved in this area, and the question of the role of policy and interest analysis in this context is an interesting one to which the paper will refer.

Military necessity and cultural heritage in Iraq

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Abstract

This paper concerns a critical analysis of the doctrine of military necessity in international humanitarian law and its application to the protection of cultural heritage. It takes as its context the armed conflict in Iraq, and questions whether the doctrine of military necessity in customary and conventional international law provides an appropriate level of protection for cultural heritage. In particular, the development of this doctrine as a prohibition on the means and methods of waging warfare and its subsequent appearance as a justification or permissive doctrine to allow for the evasion of substantive humanitarian rules will be considered. The nature of the doctrine of military necessity in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict will be evaluated.

The Relation between Public International Law and Private International Law in the Internet Context

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Abstract

The relation between private international law and public international law has gained little attention. Indeed, in legal education, the two disciplines are treated as two completely separate subjects and, in my experience, comparisons of the two fall outside the curriculum. This practice has always been unfortunate, but is becoming untenable in light of Internet technology. When the Australian High Court had to decide whether a Victorian court could claim jurisdiction over a US publishing company based on allegedly defamatory material available online, it was faced with essentially the same dilemma as a French court was when it had to decide whether or not to claim criminal jurisdiction over a US web auctioneer – private international law and public international law face the same problems in the Internet context.

Rise of Territorial State and the Treaty of Westphelia

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Abstract

The objective of this paper is to see how territorial State system emerged and the role of the treaty of Westphalia in relation to the establishment of the territorial State system. The paper commences with a discussion on the significance of territoriality followed by origin and concept of territory. Anti-Hegimonial concept and Westphalia settlement is studied next. The paper then moves on to present Westphalia as a pioneer of territorial state practice and its importance in relation to growth of national consensus. The

changing trend of territoriality is also discussed. The paper concludes that in terms of progressive development of modern state system the significance of the treaty of Westphalia is enormous.

Sharia Law and Choice of Law Clauses in International Contracts

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Abstract
Islamic banking holds itself out to the international trading community as providing financial services which comply with principles of Sharia law. Contracts between banker and client will refer to Sharia and employ Islamic contract types. As with many other international contracts, they will normally contain a choice of law clause stipulating the applicable or governing law of the contract.This paper examines the interplay between Sharia principles and choice of law clauses,referring to two recent English decisions, Islamic Investment Company of the Gulf (Bahamas) Ltd v Symphony Gems NV (unreported, 13th February 2002)and Beximco Pharmaceuticals Ltd v Shamil Bank of Bahrain EC [2004]EWCA Civ 19,[2004] 2Lloyd's Rep.1. It will be seen that the reasoning and outcomes in those decisions are in accord with attitudes that generally prevail in Anglo-Commonwealth jurisdictions.

The emergence of the new autonomous corporate warrior class and its implications for humanity.

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Abstract
The Post-Cold War rise of private military contractors and their impact on the laws of war, in particular International Humanitarian Law, requires investigation. The repercussions for the Geneva Conventions, state sovereignty and accountability are considerable. This article is aimed at uncovering some of the implications this growing phenomenon has for society. Issues surround the sufficiency of the current international laws for regulation of private military contractors acting in war zones. The development of the laws of war from the Christian ages through Rousseau's 'social contract' to the current times of corporate privatisation of previously held sovereign state domains is considered. The likelihood of subjecting private military contractors to prosecution for war crimes in the current climate of regulation is minimal. The idea of states using private military contractors for inappropriate gains is discussed along with the threat created by this phenomenon to the stability of national armies. The author concludes the need for review and control of the privatisation of the military is urgent.

“One Law for All (Except the USA): American Exceptionalism in Theory and Practice”

Wade Mansell

Abstract

This paper will consider the attitude of the current US administration to international law. It will argue that the singular position of the neo-conservatives risks putting the entire international law regime in jeopardy by refusing to accept as meaningful the distinction between international law and international relations. By examining the position of a number of legally qualified members of the Bush administration (including John Bolton, Alberto Gonzales and John Yoo), some of the supporting neo-conservatives in the administration, (including Donald Rumsfeld and Paul Wolfowitz) and approving academics (particularly Michael Glennon and possibly Michael Ignatieff) the argument will be made that the implications of the neoconservative position is at best unpredictable and at worst immensely destabilizing to world order. It will also be argued that such results cannot be in the interests of the United States itself.