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CONTENTS

PAGE

Horizontal Human Rights Law

John H. Knox

1

Human rights have traditionally been seen as vertical, establishing rights for individuals and obligations for states. Recent proposals seek to reorient human rights law horizontally, imposing obligations directly on corporations and other private actors. These proposals fail to appreciate the horizontal effects of existing human rights law, and risk undermining its structure and opening the door to new restrictions on human rights.

Nondiscrimination in Trade and Investment Treaties: Worlds Apart or Two Sides of the Same Coin?

Nicholas DiMascio & Joost Pauwelyn

48

International trade and investment treaties both use national treatment provisions to prohibit discrimination against foreigners, but do so for different reasons. As disputes increasingly cross the boundary between trade and investment, the origin, evolution, and goals of the treaties require somewhat different applications of national treatment. At its core, however, national treatment prohibits only discrimination based on nationality, so in both contexts proof of a legitimate policy objective should vindicate a domestic law against a charge of discrimination.

Editorial Comment

The ILO Convention on Freedom of Association and Its Future in the United States

Steve Charnovitz

90

Notes and Comments

William D. Rogers (1927–2007)

Charles N. Brower

108

International Decisions

Edited by Daniel Bodansky

Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras) (Coalter G. Lathrop)

113

International Court of Justice judgment on sovereignty over disputed islands, and delimitation of the territorial sea, exclusive economic zone, and continental shelf

Guyana/Suriname (Stephen Fietta)

119

Law of the Sea Convention Annex VII Arbitral Tribunal decision on delimitation of the territorial sea, exclusive economic zone, and continental shelf, and on duties pending delimitation

Evans v. United Kingdom (Orna Ben-Naftali and Iris Canor)

128

European Court of Human Rights decision on right to withdraw consent to the storage and use of embryos

Massachusetts v. Environmental Protection Agency (Jonathan M. Zasloff)

134

U.S. Supreme Court opinion on authority of the Environmental Protection Agency to regulate emissions of greenhouse gases

R. v. Hape (Pierre-Hugues Verdier)

143

Canadian Supreme Court judgment on extraterritorial application of constitutional right against unreasonable search and seizure

<i>Nishimatsu Construction Co. v. Song Jixiao et al.; Kō Hanako et al. v. Japan</i> (Mark A. Levin) Japanese Supreme Court decisions on private claims against Japan and its nationals for wartime acts of forced labor and sexual slavery	148
--	-----

Contemporary Practice of the United States Relating to International Law

Edited by John R. Crook

United States and Iraq Establish Principles for Future Relationship, Agree to Negotiate Implementing Agreements During 2008	155
Ninth Circuit Bars Suit Against Caterpillar for Selling Bulldozers to the Israeli Defense Forces	158
Ninth Circuit Finds Vienna Convention on Consular Relations Does Not Establish Rights Enforceable Under U.S. Civil Rights Law	159
U.S. Congress and Administration Consider Responses to Excessive Uses of Force by U.S. Security Firms	161
U.S. State Governments Join International Carbon Action Partnership on Global Cap-and-Trade Carbon Markets	162
U.S. Positions in International Climate Change Negotiations	164
Law of the Sea Treaty Reported out of Committee; Timing and Prospects for Full Senate Action Unknown	168
Continued U.S. Navy Operations Against Pirates off Somalia	169
Possible Looming Conflict with EU Regulation of Greenhouse Gas Emissions from Civil Aviation; United States Prefers ICAO Action	171
United States Supports Expedited Accelerate Phase-out of HCFCs	173
United States Imposes New Economic Sanctions on Several Countries	174
Secret Justice Department Memos Said to Sanction "Severe" Interrogation Tactics	177
U.S. Efforts to Identify and Deport Human Rights Abusers	179
Developments Relating to Continued Detentions at Guantánamo Bay	181
Second Circuit Issues Divided Ruling on "Aiding and Abetting" Rights Violations	183
Army Snipers Acquitted of Murder Charges in Killings of Iraqis Using Disputed Tactics	185
Congressional Initiative to Deem Killings of Armenians as Genocide Stalls in House	186
Continuing U.S. and Multilateral Efforts to Curb Iran's Nuclear Program	187
U.S. Policy Regarding Landmines	190
United States and Russia Reaffirm Support for INF Treaty	191
United States and Canada Arbitrate a Softwood Lumber Dispute in the London Court of International Arbitration	192
United States Ratifies Hague Convention on Intercountry Adoption	194
Brief Notes	195

Recent Books on International Law

Edited by Richard B. Bilder

Book Reviews

Drumbl, Mark A. <i>Atrocity, Punishment, and International Law</i> (Robert D. Sloane)	197
Hathaway, James C. <i>The Rights of Refugees Under International Law</i> (Penelope Mathew)	206
Fassbender, Bardo. <i>Der offene Bundesstaat: Studien zur auswärtigen Gewalt und zur Völkerrechtssubjektivität bundesstaatlicher Teilstaaten in Europa</i> (Detlev F. Vagts)	211
Drahozal, Christopher R., and Christopher S. Gibson. <i>The Iran-U.S. Claims Tribunal at 25: The Cases Everyone Needs to Know for Investor-State & International Arbitration</i> (George H. Aldrich)	213
Aghahosseini, Mohsen. <i>Claims of Dual Nationals and the Development of Customary International Law: Issues Before the Iran-United States Claims Tribunal</i> (Richard M. Mosk)	215
O'Keefe, Roger. <i>The Protection of Cultural Property in Armed Conflict</i> (Ronald J. Bettauer)	220
Luck, Edward C., and Michael W. Doyle (eds.). <i>International Law and Organization: Closing the Compliance Gap</i> (Peter M. Haas)	226
Cummins, Sally J. (ed.). <i>Digest of United States Practice in International Law, 2005</i> (Kelly Vinopal)	233

Books Received

International Legal Materials. Contents, Vol. XLVI, No. 6 (Nov. 2007); Vol. XLVII, No. 1 (Jan. 2008)	239
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