

SPRING 2007



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INTERNATIONAL ORGANIZATIONS BULLETIN

*The Newsletter of the American Society of International Law (ASIL)
International Organizations Interest Group*

The International Organizations Interest Group is focused on inquiry into the practices and norms of different international organizations. The group has over 300 members, both within the United States and internationally. The group sponsors conferences, panels at the Annual Meeting of the American Society of International Law, and a newsletter. Its members have worked closely with other Interest Groups and organizations to establish a strong and mutually supportive group of scholars and practitioners who seek to understand and influence the evolving multilateral order.

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A Message from the Co-Chair

David Berry

I am pleased to be able to present the 2007 Spring Issue of the *International Organizations Bulletin*, which is the Newsletter of the International Organizations Interest Group of the American Society of International Law. This *IO Bulletin* issue contains two brief articles that I hope you will find of interest.

Changes

The International Organizations Interest Group is entering an exciting new period, now that membership in interest groups is open to all ASIL Members without charge. We look forward to growing stronger and more active in the years to come, both by sponsoring more panels, conferences and meetings, and by providing a forum for Members to meet, to share new and exciting information, and to collaborate on projects.

The Interest Group's Executive is about to change and so with some regret I inform you that Dr. Ralph Wilde, my Co-Chair, will be stepping down at our Business Meeting later this month (see below). Ralph has served as Co-Chair for a longer term than usual – three years – as a result of the unavailability of a Vice-Chair to move into the Co-Chair position during the 2006-2007 term. Ralph has been a strong Co-Chair and we will all miss his active campaigning and work for our Interest Group. But I am pleased to announce that Prof. Gregory H. Fox will be stepping into the 'lead' Co-Chair position at our Business Meeting. I look forward to continuing to work with him to strengthen and develop the International Organizations Interest Group.

Business Meeting

I am delighted to announce that we have secured a time slot for our annual Interest Group Business Meeting during the 101st Annual Meeting of the ASIL, which will be as follows:

Date: Thursday, March 29, 2007

Time: 8.00-8.55 AM (the main ASIL panels start promptly at 9.00 AM)

Location: The Fairmont Hotel, 2401 M St. NW, Washington, DC, 20037 [room to be announced]

A light breakfast will be served and so it will be a perfect way to start your first day of the *ASIL Annual Meeting*. During our Business Meeting we will: introduce Members to one another, discuss the purposes and aims of the Interest Group, hold elections for the Vice Chair/Chair Elect, and deal with any other matters related to the Interest Group. This is your chance to have your say, and I warmly invite you all to come and join us!

Elections of Vice Chair/Chair Elect

The International Organizations Interest Group elects a new Vice Chair/Chair Elect every year at its Business Meeting. Gregory Fox will be moving from the Vice Chair position to the 'lead' Co-Chair position, and I will be moving into the less active Co-Chair position. Sadly, Ralph Wilde leaves our Executive. As a result we have a vacancy in the Vice Chair/Chair Elect position, and I warmly welcome candidates for election.

The duties of the Vice Chair are limited, mainly involving consultation with the Co-Chairs regarding: (1) upcoming events and activities, (2) our *ASIL Annual Meeting* panel proposals, (3) Newsletter matters and (4) any procedural or other decisions. The Vice Chair will then move on to serve as Co-Chair for a further two years, thus

ensuring continuity within the leadership of the Interest Group.

Any Member who has an interest in serving in this position is asked to nominate herself or himself, either by e-mail to one of the Co-Chairs or orally at the above Business Meeting. At the Business Meeting, candidates are encouraged briefly to introduce themselves prior to the vote, and elections will be held immediately thereafter, by a simple show of hands.

Other Prospects

Other positions on the Executive also open are the two Co-Editor positions for this *IO Bulletin*. We welcome the continued longstanding service of Bryan MacPherson in this regard, but are certain that he would welcome assistance in his endeavours. Also, at our annual Business Meeting we are empowered to create any additional posts that are desired by the Members. Thus, more generally, if you would like to become more involved in the International Organizations Interest Group, for example, by proposing a Panel for the 2008 *Annual Meeting*, by Chairing an Interest Group Sub-Section, by submitting an article for the next issue of the *IO Bulletin*, or by getting involved in any other way, please contact me or Vice-Chair Gregory H. Fox!

I hope that your travels to Washington and elsewhere are safe. I look forward to seeing you in D.C. at the 2007 ASIL Annual Meeting!

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What if Iraq Were a State Party to the ICC?

Tom Syring *

Introduction

In a recent hearing involving the case of U.S. soldiers deployed to Iraq “[a] military prosecutor called four American infantrymen ‘war criminals’ [...] for killing three Iraqi men in a raid in May after handcuffing them, ‘cutting

them loose, telling them to run and shooting them.’”¹ After weighing the evidence the Army investigator “concluded that the slayings were premeditated and warranted the death

¹ *Prosecutor Calls Accused G.I.'s War Criminals*, NEW YORK TIMES, 5 August 2006, A8.

sentence.”² While those statements seem to underline the truism that wherever there is a war, there unfortunately is a fair chance that some form of war crimes will be committed, what is more important is what this tells us about the need and degree of actual prosecutions with respect to war crimes and other serious international crimes. At a time where an ever growing number of states is becoming party to the ICC³ and assuming the obligation *aut dedere aut judicare* (to extradite or prosecute), the probability of U.S. citizens, especially of U.S. soldiers engaged in war-related actions abroad, being exposed and subjected to the jurisdiction of the ICC is becoming increasingly less remote. Granted, with respect to Iraq the U.S. finds herself in a fairly unique situation as she has a huge number of forces on the ground. Also, it is accepted that as long as a state genuinely prosecutes its own citizens accused of those most serious crimes as stated in, e.g., Articles 5 *ff*, Rome Statute, there will neither be a need, nor call for international prosecutions or other state’s involvement.

But what if Iraq were a State Party to the ICC and the U.S. position in Iraq less dominant? Then genuine prosecution would not be a matter of choice, probably inspired by a current refocusing on the ethics of warfare in the wake of the disclosure of a series of military misconduct,⁴ but a matter of necessity, if the intent is to avert international jurisdiction over one’s citizens.

This article aims at inspiring renewed debate on a subject that the U.S. (and to a certain degree other countries) sooner or later may have to face, not just in theory – the binding force of the ICC and the relevance of Article 98 agreements in that respect.

The Binding Force of the ICC – U.S. Objections and Misperceptions

There are several ways in which a state may be affected by recent developments within international criminal law. The one receiving the most attention, not least from the United States, deals with the binding force the Rome Statute establishing the International Criminal Court may exert even on Non-party States,⁵ such as the U.S.⁶

² *Prosecutor Recommends Death Penalty for U.S. Soldiers*, ASSOCIATED PRESS, 2 September 2006, at: <http://www.wbz1030.com/pages/77757.php?contentType=4&contentId=199089> [09/10/2006].

³ As of now 104 states have ratified, or otherwise acceded to the Rome Statute, with Chad depositing its instrument of ratification on 1 November 2006 and becoming the most recent State Party as of 1 January 2007. 139 States are signatories.

⁴ *Cf.*, *Ethics Lessons for U.S. Iraq Troops*, BBC NEWS, 1 June 2006, at: <http://news.bbc.co.uk/2/hi/americas/5036686.stm> [01/15/2007].

⁵ And whether that status is due to a state not signing the Rome Statute in the first place, not duly ratifying, or even ‘un-

From the Clinton administration onwards, the U.S. concerns as well as misconceptions may be summarized by the testimony of the former U.S. Ambassador-at-Large for War Crimes Issues before the Senate Foreign Relations Committee. David Scheffer first correctly stated that the Rome Statute of the ICC “purports to establish an arrangement whereby U.S. armed forces operating overseas could be conceivably prosecuted by the international court even if the United States has not agreed to be bound by the treaty”, before erroneously concluding that “this is contrary to the most fundamental principles of treaty law.”⁷ Where this statement errs will be briefly addressed below.

It is true, indeed, that under Article 12 of the Rome Statute the refusal of the United States to become a State Party would not bar the ICC from issuing an indictment charging an American citizen with genocide, crimes against humanity or war crimes committed, e.g., while on a preemptive mission abroad unless the U.S., should such a situation arise, genuinely prosecutes the accused perpetrators.

It is incorrect however, that ICC jurisdiction over nationals of a Non-party State would violate the Vienna Convention on the Law of Treaties.⁸ Article 35 of the Convention provides: “A treaty does not create either obligations or rights for a third state without its consent.” But it would be “a distortion to say that the Rome Statute purports to impose obligations on non-party states.”⁹ Under the terms of the Rome Statute the contracting parties are required to, e.g., supply funding, extradite indicted persons to the ICC, and to provide evidence and other forms of cooperation to the Court. Those obligations, however, apply only to States Parties and as such they do not run counter to the Vienna Convention. That the U.S. thus may be affected

signing’ it as the U.S. did on 6 May 2002, when it officially revoked its initial signature, has no impact on the argument here: All those Non-party States may be equally affected by the Statute of the ICC, as will be depicted below.

⁶ Other, rather prominent Non-party States include Iran, Iraq, North Korea, originally describes as the ‘axis of evil’ by President Bush, and Syria (which eventually had been added to that list), but also U.S. ally Israel, to mention but a few. *Cf.* The President’s State of the Union Address, 29 January 2002, at: <http://www.whitehouse.gov/news/releases/2002/01/20020129-11.html> [01/20/2007].

⁷ *Hearing Before the Subcommittee on International Operations of the Senate Committee on Foreign Relations of the United States Senate*, 23 July 1998, 105th Cong., 2nd Sess., S. Hrg. 105-724, at 13 (statement of David Scheffer), at: <http://www.gpoaccess.gov/congress/index.html> [01/20/2007].

⁸ Vienna Convention on the Law of Treaties, 23 May 1969, UN Doc. A/Conf. 39/27 at 289 (1969), United Nations, Treaty Series (UNTS), Vol. 1155, p. 331.

⁹ Michael P. Scharf, *The ICC’s Jurisdiction over the Nationals of Non-party States: A Critique of the U.S. Position*, 64 LAW AND CONTEMP. PROBS., 67, 98 (2001).

by those States Parties' obligations is a separate issue, but none pertaining to the law of treaties.

Article 98 Agreements

As a matter of fact, in subsequent statements and acts the current administration, besides demonstrating its profound dislike of the ICC, has indirectly accepted that the Rome Statute may indeed affect even Non-party States.

The American Servicemembers' Protection Act (ASPA)¹⁰ addresses, as a matter of U.S. law, the relationship between the United States and the then (in 2002) recently established International Criminal Court.

“Among other things, the ASPA bars U.S. participation in UN peacekeeping operations unless the president is able to certify to Congress that U.S. service members are protected from the ICC – for example, through the United States' conclusion of bilateral agreements in which the states where U.S. forces will be deployed agree not to transfer members of those forces to the ICC.”¹¹

Furthermore, as of 1 July 2003, the ASPA bars any U.S. military assistance to most states¹² that have ratified the ICC treaty unless the president waives this requirement, which he is authorized to do in the case of states that have entered into such bilateral agreements with the United States, agreeing not to transfer U.S. armed forces personnel to the ICC.¹³ These arrangements assert that parties to the ICC may conclude such agreements pursuant to Article 98 (2) of the Rome Statute, which provides:

“The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.”

¹⁰ 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States, Public Law No. 107-206, §§ 2001-2015, 116 Stat. 820 (2002), now codified as 22 U.S.C. §§ 7421-7432.

¹¹ Sean D. Murphy, *Contemporary Practice of the United States Relating to International Law: U.S. Bilateral Agreements Relating to ICC*, 97 A.J.I.L., 200, 201. Cf. ASPA § 2005 (22 U.S.C. § 7424).

¹² NATO members or strategic non-NATO allies are exempted from the prohibition of military assistance.

¹³ ASPA § 2007 (22 U.S.C. § 7426).

As of now the United States has concluded such Article 98 agreements with at least 90 states¹⁴ and since little is known as to the behind-the-door bargaining – the really important issues from that point of view are most likely not included in the signed documents – one can only suspect what might have been involved in the conclusion of some of those treaties. Of course, a certain degree of bargaining is always involved when the making of treaties is at issue, and the one with the greater bargaining power (often the one with the stronger economy and/or a superior military force) may more easily impose contractual preconditions on the other party. But in some cases, i.e. where a country is desperate to secure its future by, e.g. joining an international organization, be it NATO, WTO, or the like, depending on the particular circumstances of the case it may have been subject to undue pressure by the other side. Whether or not Articles 49-53 of the Vienna Convention on the Law of Treaties may have been affected¹⁵ would be hard to evaluate, vary from case to case, and is for others to decide. But it is probably fair to assume that more than the ideal form of hegemony, hegemony by way of example, has been involved.¹⁶ Suffice it here to say that before claiming the

¹⁴ Cf. Spokesman Richard Boucher's statement during the Daily Press Briefing, Department of State, Washington, DC, of 23 June 2004: “We have, I think, 90, now, Article 98 agreements [...]”, at: <http://www.state.gov/r/pa/prs/dpb/2004/33845.htm> [01/27/2007]. As of 2 August 2006 that number is up to 101 according to data collected by the Coalition for the International Criminal Court (CICC). However, only 21 of these immunity agreements have so far been ratified by the respective parliaments (13 of which are States Parties to the ICC), 18 have reportedly entered into so-called executive agreements (9 of which are States Parties to the ICC). Cf. CICC, *Status of U.S. Bilateral Immunity Agreements by Region*, at: http://www.iccnw.org/documents/CICCFS_BIAstatus_Current.pdf [02/20/2007].

¹⁵ Dealing with fraud, coercion of a representative of a state, coercion of a representative of a state, coercion of a state by the threat or use of force, and treaties conflicting with a peremptory norm of general international law (*jus cogens*), respectively.

¹⁶ Cf., as an illustration of possible ‘persuasive forces’ at work: 56 out of 100 States Parties to the ICC did not sign any bilateral immunity agreement. 21 of those States Parties have lost U.S. aid in terms of military assistance as well as more general economic aid due to their refusal. In the case of Bolivia, e.g., the U.S. reportedly threatened to cut off all type of aid worth \$200 million dollars and even linked Bolivia's participation in a U.S. Free Trade Agreement with the Andean countries to the ratification of an Article 98 agreement. Cf. CICC reference *supra*, fn. 14. Bosnia-Herzegovina on the other hand had been persuaded to ratify such a bilateral treaty in exchange for future U.S. political support. According to reports by Agence France Press, in 2003 Sarajevo received guarantees that it would enter NATO's Partnership for Peace Program by

Rome Statute of the ICC violates the Vienna Convention on the Law of Treaties one could make a possibly stronger argument with respect to certain Article 98 agreements and that, by asserting the need to conclude such agreements, the U.S. inherently admits that it indirectly may be validly bound by the Rome Statute.

On a final note, as the most recent Sino-Latino rapprochements demonstrate, the U.S. is now increasingly concerned that the approach taken with respect to these bilateral immunity agreements might actually backfire. As China is emerging as a new global, economic player, and a series of elections in Latin America produced mainly U.S.-skeptical, populist, left-wing governments, there are a growing number of voices¹⁷ that finally see the Monroe doctrine¹⁸ put at risk by China earmarking billions of dollars for infrastructure, transport, energy and defense projects in the region, and Latin American countries willingly accepting what is offered.¹⁹ As one congressman claims “[t]here already are [Chinese] military exchanges and hardware being sold – or given to Latin American countries,”²⁰ and, indeed, Venezuela’s president Hugo Chavez e.g. has been quoted as “considering buying fighter aircraft from the Chinese,”²¹ as well as from Russia.²² Venezuela has been one of the many countries punished with a reduction in U.S. support, both in terms of money and military aid, for refusing to conclude an Article 98 agreement.²³

the end of the year: *Bosnia, U.S. sign non-extradition pact, defying EU opposition*, AFP, May 16, 2003.

¹⁷ For example, congressman Dan Burton, Republican chairman of the sub-committee on the Western Hemisphere, states: “We’re concerned about the leftist countries that are dealing with China [...] It’s extremely important that we don’t let a potential enemy of the U.S. become a dominant force in this part of the world”, quoted in *Chinese influence in Brazil worries U.S.*, BBC NEWS, 3 April 2006, at <http://news.bbc.co.uk/1/hi/world/americas/4872522.stm> [01/20/2007].

¹⁸ The corner stone of Washington’s political protectionism of its Latin American ‘backyard’, dating as far back as 1823 when president James Monroe decreed that no foreign power would have more influence there than the U.S. itself.

¹⁹ Cf. *supra*, fn. 17.

²⁰ Cf. Dan Burton, *ibid.*

²¹ *Venezuela threatens U.S. over F-16s*, BBC NEWS, 2 November 2005, at: <http://news.bbc.co.uk/1/hi/world/americas/4398914.stm> [01/22/2007].

²² *Chavez defends Russia arms deals*, BBC NEWS, 26 July 2006, at: <http://news.bbc.co.uk/2/hi/europe/5216906.stm> [01/22/2007].

²³ A complete list of those countries is available at: http://www.iccnw.org/documents/BIAdB_Current.xls [01/22/2007].

Conclusion

Even the ‘un-signing’ of a treaty establishing the ICC and subsequent U.S. efforts to conclude so-called Article 98 agreements cannot deny the fact that even the most powerful of states may be affected by the rules of international criminal law. If anything, recent U.S. behavior, defying as its point of departure has been, has unwittingly contributed to underpinning the status of those rules: Had the United States really been convinced – and been able to convince others – that the Rome Statute could not affect nationals of Non-party States, why the need to enter into bilateral immunity agreements? Ultimately, it would seem clear that nationals of Non-party States to the ICC also may be internationally tried for atrocities committed abroad.



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Recent Member Publications

- Errol Meidinger, *Beyond Westphalia: Competitive Legalization in Emerging Transnational Regulatory Systems*, in *HARD, SOFT AND PRIVATE LEGALITIES: THE INCREASE, VARIATION AND DIFFERENTIATION OF LAW-LIKE ARRANGEMENTS IN INTERNATIONAL RELATION* (Christian Brüttsch and Dirk Lehmkuhl eds., 2007) [http://papers.ssrn.com/sol3/papers.cfm?abstract_id=917952]
- Errol Meidinger, *Multi-Interest Self-Governance through Global Product Certification Programs*, in *RESPONSIBLE BUSINESS? SELF-GOVERNANCE IN TRANSNATIONAL ECONOMIC TRANSACTIONS*. (Olaf Dilling, Martin Herberg and Gerd Winter, eds., 2007) [http://papers.ssrn.com/sol3/papers.cfm?abstract_id=917956]
- MICHAEL G. SCHECHTER, *UNITED NATIONS GLOBAL CONFERENCES* (ROUTLEDGE, 2005)
- Norman Weiß, *Menschenrechtsschutz im Rahmen der OSZE dreißig Jahre nach der Schlußakte von Helsinki*, 10 *MENSCHENRECHTSMAGAZIN*, 256-271 (2005). [This text deals with the protection of human rights within the OSCE-System 30 years after the Final Act of Helsinki].
- Norman Weiß, *Der neugeschaffene Menschenrechtsrat der Vereinten Nationen*, 11 *MENSCHENRECHTSMAGAZIN*, 80-86 (2006). [This text briefly explains the newly created UN Human Rights Council].

State Responsibility and Piracy in the 21st Century

Benjie Gachette-Acunis *

Introduction

In the last forty years, there has been a proliferation of international conventions to stem the tide of piracy, including the 1958 Convention on the High Seas, the 1982 United Nations Convention on the Law of the Sea, and the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation¹. States who are party to these Conventions assume an affirmative duty to prevent and suppress piratical attacks. Although, such a duty may be satisfied through exercise of state criminal jurisdiction, it is also underpinned by the broader obligations existing under the laws of state responsibility.

Article 100 of the LOS Convention provides that a signatory State “co-operat[e] to the fullest possible extent in the repression of piracy...”² This provision, along with all other articles related to piracy in the LOS Convention, was copied verbatim from the 1958 Geneva Convention on the High Seas.³ Article 14 of the High Seas Convention, which became Article 100 of the LOS Convention, not only imposes a duty upon the signatory state to take appropriate measures against piracy, but arguably it also creates liability where a state is negligent in fulfilling that duty.⁴ This assertion finds support in the commentary to the International Law Commission’s draft Article 38.⁵ The commentary states in part that “any State having [the] opportunity [to] tak[e] measures against piracy, and

neglecting to do so, would be failing in a duty laid upon it by international law.”⁶ Furthermore, given that the Safety of Maritime Navigation Convention articulates an even more expansive definition of piracy, signatory states have the added responsibility to suppress violent acts at sea that are not only economically motivated (e.g. looting), but also politically motivated (e.g. maritime terrorism).⁷

By definition, piracy involves the commission of criminal acts at sea by a private individual.⁸ Ordinarily, the actions of a private individual are not imputable to the state. However, a state may incur liability (1) where it assumes an affirmative duty to prevent the alleged acts and is negligent in carrying out that duty⁹ and, (2) where there exists a causal link between its negligence and the injury.¹⁰ Liability as a consequence of a state’s failure to properly discharge its duty necessitates compensation to the affected state whose vessel was victimized by the pirate in question.¹¹

Under the doctrine of due diligence a State may also incur responsibility under international law for its failure to properly carry out its obligation to protect foreign vessels traversing its waters. The ILC does not address the doctrine of due diligence in its Draft Articles, however, the doctrine does find expression under the rubric of international human rights law, which obligates states to exercise due diligence

⁶ *Id.*

⁷ See Plant, *The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, 39 INT’L & COMP. L.Q. 27 (1990), and Halberstam, *Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety*, 82 AM. J. INT’L L. 269 (1988).

⁸ OPPENHEIM, INTERNATIONAL LAW, LAUTERPACHT 8TH ED. (1955), 613-14; See also, BRIERLY, THE LAW OF NATIONS (1928), 154, quoted in Harvard Research in International Law, *Comment to the Draft Convention on Piracy*, 26 A.J.I.L. SUPP. 749, 750 (1932).

⁹ Mellor, *Missing the Boat: The Legal and Practical Problems of the Prevention of Maritime Terrorism*, 18 AM. U. INT’L L. REV. 341, 370 (2002).

¹⁰ HALL, A TREATISE ON INTERNATIONAL LAW 65, 2D ED. (1884), 193.

¹¹ Johnson, *Piracy in Modern International Law*, 43 GROTIUS SOC’Y TRANSACTIONS 63, 65 (1957).

¹ United Nations Convention on the Law of the Sea, 1833 U.N.T.S. 3, U.N. Doc. A/CONF. 62/122; 21 I.L.M. 1261 (1982) [hereinafter LOS Convention]; Geneva Convention on the High Seas, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 83. (1958) [hereinafter, High Seas Convention]; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, March 10, 1988, at http://www.unodc.org/unodc/en/terrorism_convention_maritime_navigation.html (3/19/07) [hereinafter, Safety of Maritime Navigation Convention].

² *Id.*, art., 100 of the LOS Convention.

³ *Id.*

⁴ Crockett, *Toward a Revision of the International Law of Piracy*, 26 DE PAUL L. REV. 78, 97 (1976).

⁵ *Report of the International Law Commission to the General Assembly*, 2 UN GAOR Supp. (No. 9), UN Doc. A/3159 (1956).

in order to prevent attacks upon a person's life or liberty.¹² The duty of the state to exercise due diligence is particularly heightened where the organ in question is a highly organized and hierarchically structured group (e.g. army or navy).¹³ The rationale is that an organ or instrumentality of the state, often acts under executive order and is subject to the immediate, disciplinary control of the state.¹⁴

State responsibility under international law can also be traced to the development of the doctrines of attribution.¹⁵ Although, the law of state responsibility remains to be codified, the ILC has provisionally adopted selected parts of the Draft Articles on State Responsibility since its first session in 1949.¹⁶ The most recent version of the Draft Articles is a set that was adopted by the ILC's drafting committee in 2001.¹⁷ Under the doctrine of attribution, a state may be held responsible for the conduct of a private individual acting under the auspices of the State or an organ of the State.¹⁸ In other words, the actions of a private individual can be imputed to the State where the commission of the illegal act resulted from the individual's

¹² Velasquez Rodriguez Case, 1988 Inter-Am. Ct. H.R. (ser. C) No. 4 (July 29), at para. 166.

¹³ Prosecutor v. Tadic, IT-94-1-A, para. 120 (Int'l Crim. Trib. for the Fmr. Yugoslavia, Appeals Chamber, July 15, 1999), at <http://www.un.org/icty/tadic/appeal/judgement/tad-aj990715e.pdf>.

¹⁴ HALL, *supra* note 8, 194.

¹⁵ Hessbruegge, *The Historical Development of the Doctrines of Attribution and Due Diligence in International Law*, 6 N.Y.U. J. INT'L L. & POL. 265, 266 (2004).

¹⁶ *First Report on State Responsibility*, [1969] 1 Y.B. INT'L L. COMM'N 125, U.N. Doc. A/CN.4/217; *Second Report on State Responsibility*, [1970] 1 Y.B. INT'L L. COMM'N 97, U.N. Doc. A/CN.4/233; *Third Report on State Responsibility*, [1971] 1 Y.B. INT'L L. COMM'N 199, U.N. Doc. A/CN.4/246; *Fourth Report on State Responsibility*, [1972] 1 Y.B. INT'L L. COMM'N 71, U.N. Doc. A/CN.4/264; *Fifth Report on State Responsibility*, [1976] 1 Y.B. INT'L L. COMM'N 3, U.N. Doc. A/CN.4/291; *Sixth Report on State Responsibility*, [1977] 1 Y.B. INT'L L. COMM'N 39, U.N. Doc. A/CN.4/302; *Seventh Report on State Responsibility*, [1978] 1 Y.B. INT'L L. COMM'N 31, U.N. Doc. A/CN.4/307; *Eighth Report on State Responsibility*, [1979] 1 Y.B. INT'L L. COMM'N 3, U.N. Doc. A/CN.4/318.

¹⁷ *Report of the International Law Commission to the General Assembly*, U.N. GAOR, 56th Sess., Supp. No. 10, at 32, U.N. Doc. A/56/10 (2001) [hereinafter 2001 *Draft Articles on State Responsibility*]. See generally JAMES CRAWFORD, *THE INTERNATIONAL LAW COMMISSION'S ARTICLES ON STATE RESPONSIBILITY* (2002).

¹⁸ Christenson, *Attributing Acts of Omission to the State*, 12 MICH. J. INT'L L. 312, 322 (1991).

exercise of power having its source in state authority.¹⁹ If a private individual is determined to be a non-state actor, his conduct may still be imputed to the State if it can be found that the State was negligent in its duty to exercise due diligence in preventing the wrongful act.²⁰

Article 34 of the ILC's 2001 Draft Articles on State Responsibility (56th Session) further stipulates that where a State is responsible for an act that is recognized by the international community as wrongful, then it is obligated to make reparations either in the form of restitution, compensation, and/or satisfaction.²¹ Consequently, a State may seek compensation that is proportionate to the financial losses suffered by its citizens.

Conclusion

In conclusion, it is incumbent upon the international community to protect its waters. Consequently, where it can be found that a State Party to the LOS Convention, the High Seas Convention or the Safety of Maritime Navigation Convention has breached its duties, such a breach may give rise to State responsibility and the correlative duty of restitution.²²



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101ST ASIL ANNUAL MEETING

March 28-31, 2007

Washington, DC, USA

Sponsored by The American Society of International Law (ASIL). With almost a century of tradition and experience behind it, ASIL's Annual Meeting has become the most important gathering in the field of international law. More than 1,000 practitioners, academics, and students travel to Washington, D.C. each spring from all over the world to debate and discuss the latest developments in their field.

□ <http://www.asil.org/events/annualmeeting.html>

¹⁹ 2001 *Draft Articles on State Responsibility*, *supra* note 8, articles 5 and 6.

²⁰ See, HERSHEY, *THE ESSENTIALS OF INTERNATIONAL PUBLIC LAW* 162 (1918).

²¹ *Id.* art. 34.

²² HALL, *supra* note 8, 193.

Announcements

Conferences

THE FUTURE OF INTERNATIONAL LAW

April 6, 2007

San Francisco, CA, USA

An ASIL Regional Meeting, co-sponsored by ASIL-West and hosted by Golden Gate University School of Law. This event, concurrently held with the 17th Annual Fulbright Symposium, marks ASIL's second century and continues the discussion of the future of international law.

- http://www.ggu.edu/school_of_law/academic_law_programs/llm_jd_programs/llm_sjd_international_1_egal_studies/2007_fulbright_symposium

HOW OUR WORLD IS CHANGING: DIMENSIONS OF INTERNATIONAL MIGRATION

April 13-14, 2007

Pomona, CA, USA

The International Research Conference 2007, hosted by the International Center at California State Polytechnic University. Are our current migration issues a 'natural' by-product of economic globalization? Are they a result of climate change and other effects of environmental damage? Are political issues – human rights, communal violence, authoritarian regimes, fundamentalism, terrorism – the root cause? Is migration only a problem when cultural differences are not managed well? What kinds of national and international policies should be developed to handle the negative impacts of population movement? What kinds of discussions should be held and who should participate in them, prior to formulation of policy? These thematic issues and questions form the basis of the proposed conference on international migration. An inter-disciplinary forum is envisioned, with activities, papers and panels from a variety of contributors – scholars from all interested disciplines, community activists, students, diplomats, business leaders.

- <http://www.csupomona.edu/~international/conference/default.htm>

LEGAL ASPECTS OF WATER SECTOR REFORMS

April 20-21, 2007

Geneva, Switzerland

Following the first workshop in India in December 2006, this workshop in Geneva will analyze some of the international aspects of water law reforms, as they apply to

developing countries such as India and in a broader context. Papers are invited for this second workshop. It is open to all academics, policy makers and activists working across the spectrum of water law; water resources conservation; and water and environment related issues.

- <http://www.ielrc.org/water/>.

GLOBAL LEGAL STUDIES CONFERENCE

May 4-5

Chicago, IL, USA

A two-day conference on teaching legal skills to lawyers and law students who speak English as a second language will be held at The John Marshall Law School in Chicago on May 4-5, 2007. A copy of the preliminary program and other information about the conference is available at <<http://www.jmls.edu>> or from the Conference Co-Chair, Professor Mark Wojcik [7wojcik@jmls.edu]. The second biennial Global Legal Skills Conference includes panels and presentations with experts from across the United States, as well as from Mexico, Singapore, and Belarus.

- <http://www.jmls.edu/>

GOOD GOVERNANCE AND NON-STATE ACTORS IN INTERNATIONAL LAW: AN AFRICAN PERSPECTIVE

August 27-29, 2007

Pretoria, Republic of South Africa

The South African Branch of the International Law Association (SABILA) in conjunction with the VerLoren van Themaat Centre for Public Law Studies of the University of South Africa, invites you to participate in the International Law Association's 2007 Regional Conference on "Good Governance and Non-State Actors in International Law: An African Perspective," to be held at the University of South Africa, Sunnyside Conference Centre, Pretoria, Republic of South Africa from 27-29 August 2007. The conference aims at bringing together international lawyers from Africa and the rest of the world to discuss good governance as a developing phenomenon in international law with particular reference to the changing role of non-state actors in the international arena. Issues of human, rights, corporate governance, environmental law and sustainable development will be addressed through academic papers and panel discussions.

- <http://staging.uj.ac.za/law/Conferences/tabid/3965/Default.aspx>

MULTIFACETED GLOBALIZATION: TRENDS, CHALLENGES AND PROSPECTS

St. Petersburg, Russia

October 4-6, 2007

The School of International Relations of St. Petersburg State University is planning to hold an international conference for young researchers on 4-6 October 2007 in St. Petersburg, Russia. The conference will address the issue of globalization (economic, cultural, and environmental aspects) as well as local and regional aspects of the process. It will also focus on the challenges and prospects of the globalization process.

- <http://www.dip.pu.ru/project/071003/>

GLOBAL SECURITY CHALLENGES: WHEN NEW AND OLD ISSUES INTERSECT

October 19-20, 2007

Montreal, Canada

[The International Security and Arms Control Section (ISAC) of American Political Science Association and the International Security Studies Section (ISSS) of International Studies Association Conference 2007.]

In the post-Cold War era, considerable scholarly attention has been devoted to non-traditional security challenges such as pandemic diseases, environmental degradation, population growth, ethnic and religious conflicts, gender violence, transnational terrorism, and refugees. These threats often ignore borders, and so the intensification of globalization gives them new import. In the post-September 11th international system, there is a growing realization that new and old security challenges intersect and affect each other. The 2007 ISAC/ISSS conference seeks to address the dynamics resulting from the meeting of new and old security challenges. Panels and paper proposals are invited on a variety of themes relating to both traditional and non-traditional security challenges and their possible solutions.

- <http://www.mcgill.ca/politicalscience/isac/>

PEACE IN INTERNATIONAL RELATIONS

October 20-21, 2007

London, UK

The annual conference of *Millennium: Journal of International Studies* will take place on 20-21 October 2007 at the London School of Economics and Political Science (LSE). The conference will explore the concept of peace in International Relations (IR). The formative purpose of IR was not simply to understand the problem of war and prevent its reoccurrence, but to cultivate the conditions for peace. Over time this concern has been lost. The field of peace studies flourishes, but is somewhat detached from the core of IR theory. Consequently, peace has become under-

theorized within IR, and is addressed only tangentially in mainstream IR debates. The most prominent engagement with the concept of peace in recent IR scholarship, Democratic Peace Theory, simply defines peace as the absence of intentions for war. This conference aims to bring peace back in to the discipline, while providing a more sophisticated conceptualization of what peace might mean beyond the absence of interstate war. Yet the relationship between war and peace must not be ignored. An expanded notion of peace cannot lose sight of the paradoxical notion of making peace through war, a feature of international politics from the Pax Romana to wars of humanitarian intervention. The purpose of the conference is to provoke discussion and debate with a view to arriving at a richer understanding of peace and, in the process, to recapture a concept once at the heart of IR.

- <http://www.lse.ac.uk/Depts/intrel/millenn/FrameSet.html>

SECOND GLOBAL INTERNATIONAL STUDIES CONFERENCE, UNIVERSITY OF LJUBLJANA, SLOVENIA

July 23-26, 2008

Ljubljana, Slovenia

Theme: *What keeps us apart, what keeps us together? International Order, Justice, Values.* The theme of the conference connotes global tensions and dilemmas, as well as cooperative possibilities. Furthermore, the theme invites debates on patterns of inclusion and exclusion. Finally, we want to encourage looking at global and regional problems through different lenses and from varying perspectives. Our general aim is to bring together scholars from all parts of the world to examine the contrasting perspectives on global problems and to set the agenda for our future explorations of international relations, broadly conceived.

- <http://www.isanet.org/news/wisc.html>

Positions Available

LEGAL AND POLICY DIRECTOR

Legal and Policy Office

Deadline for applications: April 6, 2007

Human Rights Watch (“HRW”) is seeking a highly-qualified senior legal professional to head its international Legal and Policy Office. For more information, go to:

- http://hrw.org/jobs/legal_director_2007-03-05.htm

SENIOR LEGAL ADVISOR

Legal and Policy Office

Deadline for applications: April 6, 2007

Human Rights Watch (“HRW”) is seeking a highly-qualified legal professional for its Senior Legal Advisor position. For more information, go to:

- http://hrw.org/jobs/legal_seniorlegaladvisor_2007-03-05.htm

Note

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