

Message from the Co-Chairs

This year, we are happy to welcome Lucie Olejnikova to the ILRIG Board! She was elected to the position of Secretary in our spring election. Lucie is a Foreign and International Law Librarian and Lecturing Fellow at Duke University School of Law where she teaches Research Methods in International, Foreign and Comparative Law, co-teaches a section of the first year required Legal Analysis, Research and Writing course, and also coordinates the research portion and co-teaches Legal Analysis, Research and Writing for International Students. We are honored to have such a qualified and enthusiastic colleague join the board. Welcome Lucie!

During the summer, ILRIG co-sponsored a workshop with the Foreign and Comparative Law Special Interest Section (FCIL-SIS) of the American Association of Law Libraries (AALL). The full-day workshop was held on July 16, 2016 at the Chicago-Kent College of Law in Chicago. "Two Sides to the United Nations: Working with Public and Private International Law at the U.N." was a sold out event, and by all accounts, a smashing success. We are grateful to ASIL for agreeing to co-sponsor the workshop and hope that we will continue working closely with our AALL colleagues in the future.

We are looking forward to a promising year as we prepare for the 2017 ASIL Annual Meeting. As you might know, every three years, each interest group is awarded a guaranteed program slot at the Annual Meeting. ILRIG is assigned one in 2017. To help us select a topic for our educational programming, this past May we distributed an online survey to our members. We identified 19 specific international law topics and asked the membership to select up to three topics that they would like to see drive the programming at the next Annual Meeting. We also included an "other" category and received 14 "other" topics.

Once we closed the survey, the Board Members examined the results. There was a strong sentiment to offer programming on some aspect of international human rights and also strong representation for criminal law. We also compared the top subjects against what other interest groups would be guaranteed programming for this coming spring. Our thoughts in that regard were to avoid duplicative programming, or, perhaps, join forces with another interest group to create a mini-track on a special topic.

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The launch of EISIL in 2004 provided an award-winning searchable internet database for international law.

Message from the Co-Chairs (continued)

At the end of the day, we decided to propose a program on the history of international criminal courts and tribunals. We are tentatively titling the program: National Law, International Courts, and Global Justice: Resources, History and Development of International Criminal Tribunals. We envision that the program will review how the practice of international criminal law has evolved over the decades and how tribunals and domestic courts shape research in this area. Attendees will become familiar with major trends in international criminal justice and the internal operations of the courts. We believe that the program strongly represents the membership sentiments to focus on human rights and criminal law topics, and also serves the 2017 ASIL theme: What International Law Values.

If you are interested in becoming involved in the program, please contact one of the co-chairs. Otherwise, we look forward to seeing you all in the spring!

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Update on ASIL's Electronic Information System for International Law (EISIL)

**Barbara Bean, Michigan State University College of Law
and Don Ford, University of Iowa School of Law**

Since 2012, Barbara Bean and Don Ford have served as de facto coordinators of the EISIL database.

Many ILRIG members are long-time users and supporters of ASIL's Electronic Information System for International Law, known by its acronym EISIL. EISIL, a collaborative, web-based, searchable database of international legal resources, has been in service since 2004. Although aware of EISIL's unique, librarian-driven features, most law librarians do not know EISIL's history of development and operation. In this article we will tell EISIL's story, which is really the story of law librarians dedicated to organizing international law and making it available to the public, world-wide.

We wish we did not have to start this article on a down note. Because of the developments described below, EISIL has become seriously degraded as a resource for international legal research. EISIL editors have been unable to add new content to the database for almost four years. Existing content has not been updated to reflect new developments (for example, the entry into force of an international agreement). Many links to material on the database are now broken, as editors have not been allowed to perform link checking and updating duties. In its current condition, EISIL does not reflect well on ASIL, and researchers cannot rely on its accuracy. In order not to mislead users, we have recommended to ASIL that the database be suppressed from public view until it can be brought up to date with new content, and existing errors fixed.

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EISIL has become seriously degraded as a resource for international legal research.

EISIL Update (continued)

If the necessary improvements can be made, together with the overwhelming majority of our colleagues, we believe EISIL will continue to have great value, as evidenced by usage statistics discussed below.

EISIL: The Concept

The idea of creating a searchable database of international legal documents and related resources emerged in the late 1990s. ASIL obtained Mellon Foundation funding in 2000 to develop such a database. The launch of EISIL in 2004 provided an award-winning searchable internet database for international law.

EISIL's unique features include:

- EISIL's homepage presents 14 international law subjects on a single screen and leads to nested subtopics within each of the subjects;
- EISIL provides access to and searchability of high quality sources: primary documents, websites of related organizations, and research resources;
- EISIL provides the added value of primary source bibliographic information vetted by expert FCIL law librarians;
- Legal citations that are hard to find for international sources are included for most primary documents.

EISIL Leadership

EISIL development was spearheaded by Charlotte Ku, ASIL Executive Director, 1994-2006; Jill Watson, ASIL librarian; and Marci Hoffman, at the time the FCIL librarian at Georgetown Law Library. Jill and Marci served as project managers after the database was launched in 2004 until they handed over their duties in 2006 to Kelly Vinopal, Jill's successor as ASIL librarian.

EISIL's Funding and Development

EISIL's development costs were paid for with grants from both the Ford and Mellon Foundations. We don't have access to exact amounts of the grants, but have been told it was a total of approximately \$200,000. It is our understanding that grant funds were not used to pay salaries, but to fund ASIL's development of internet information resources.

A series of meetings was held to gain input from interested parties: international lawyers, editors of ILM and AJIL, representatives of the Library of Congress, IGOs, universities, research institutes and think tanks, and online academic content providers (such as JSTOR). The database was constructed by Northern Lights, a leading database developer, using the software package In-Link which was customized for EISIL by Northern Lights. Initially, Northern Lights hosted the database; in 2005, hosting was transferred to Servepath: becoming GoGrid, and now a part of Datapipe: <https://www.datapipe.com/gogrid/>, because of that company's greater capacity.

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Bringing EISIL back to its original quality will require a technological upgrade. The database design and syndetic structure are still good.

EISIL Update (continued)

EISIL's Ongoing Operations

Once created, EISIL was maintained by administrators (initially Jill Watson and Marci Hoffman) who relied on a team of volunteer librarian editors to update and maintain the database. Each librarian was responsible for the records in one or more of the subject categories. Librarians were not compensated for their work, but received the choice of complimentary registration to the annual conference or ASIL membership.

EISIL editors performed periodic (semi-annual) reviews and editing of the records in their categories. This included amending descriptions, adding citation information, and deciding if any records should be discarded. The particulars of editors' duties included:

- Perform the quarterly check of broken links listed in reports that were generated by the database and sent to the editors (Linkchecker function). This function keeps the database up to date.
- Review all existing records in their categories and update with any new information deemed relevant.
- Add new records on a quarterly basis. This is done in conjunction with a report on suggested new resources that is sent to all EISIL editors not only as recommendations, but as a resource that each editor can use to find additional primary documents and resources. The editors evaluate both their own recommendations and those sent to them for suitability. The editors then create the necessary bibliographic information for records that are ultimately selected. Tracking down legal citations for records can be time consuming, but adds tremendous value to the bibliographic records, as citations for international legal instruments can be hard to find.

Although the amount of time spent on EISIL work varied, it is estimated that the editors averaged five hours a week on EISIL, although the work was not spread evenly throughout the year.

Certain editors served as EISIL administrators and had complete access to all functions of the database. They performed regular reviews of the entire database to make sure that the content was of high quality, up to date, and consistent across the categories. It is estimated that the two original administrators each spent ten hours a week on EISIL administrative work. Jill Watson, as an ASIL employee, probably spent even more time and she initially served as webmaster before ASIL hired a webmaster.

The initial administrators were Jill Watson and Marci Hoffman. In 2006, the responsibilities were turned over to the new ASIL librarian, Kelly Vinopal. Following ASIL's reorganization at the end of 2010, the responsibility for EISIL was added to Djurdja Lazic's responsibilities. Djurdja was initially hired to be managing director of International Legal Materials. In early 2013, her title was changed to Director of Publications, Information Resources & the Holtzmann Research Center for International Arbitration and Conciliation. Djurdja left ASIL in May of 2014, and we understand that she has not been replaced.

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*EISIL is
too
valuable to
lose.*

EISIL Update (continued)

Barbara Bean and Don Ford have been serving as de facto EISIL coordinators since 2012. By the middle of 2012, EISIL started to have significant technical problems, apparently resulting from the degrading of software that is now over a decade old, and likely obsolete. Just as the new team of editors was trained in 2012, it became dangerous to add records or edit existing records for fear of crashing the database. From time to time, editors were allowed to work on the database for brief periods, but they were told several years ago not to do any more updates to EISIL. There has been no Linkchecker run for several years. Don, who assembles and suggests new content, has been amassing new content for several years, but the editors have not been able to add any new content to EISIL. This situation has been very frustrating, as the editors are among the many academic law librarians around the country who have relied as users on the quality and reliability of EISIL. For years, EISIL has been a staple of international legal research classes at law schools. However, we have been told by several librarians that they no longer recommend EISIL to their students.

Over the past several years, Don and Barbara have had telephone and written communications with ASIL management about the problems with EISIL. In April of 2015, we prepared a report from which much of this article is drawn and recommended that ASIL seek a new platform provider. Since that has not happened, we now feel that we have no choice but to recommend that the database be suppressed from public view.

EISIL's World Wide User Base

Despite the problems with EISIL, according to the free analytics website Similar Web, in February 2015 there were approximately 10,000 visitors to the EISIL website, with an average visit time of 3 minutes 18 seconds, and an average of 3 page views. These are surprisingly high usage statistics given that EISIL has not been updated in some time. According to the 2015 statistics, the main users were from the USA (34.96%); United Kingdom (16.29%); Australia (4.95%); Turkey (4.04%); and Norway (3.89%). Additional usage statistics are available from SimilarWeb, but only for a fee.

However, even if EISIL continues to be used by researchers, its current poor quality concerns us. Because it is available on the webpage of a respected organization, we believe that users accord it more credibility than it deserves. Ultimately it reflects poorly on ASIL, as well as on the editors whose names are associated with it.

EISIL's Uncertain Future

EISIL was created through a lot of effort and with the support of two important grants to create a new method of delivering legal sources that made locating and retrieving international law resources immeasurably easier. For the past decade, EISIL has enjoyed a strong reputation and been regarded as an important research tool. The bibliographic and citation information set it apart. It remains a valuable resource today, with unique strengths.

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EISIL Update (continued)

Bringing EISIL back to its original quality will require a technological upgrade. The database design and syndetic structure are still good. However, the degrading technology and lack of ASIL staff to administer the database have resulted in a decline in its reliability and quality.

As this article makes clear, ASIL itself must continue to play the central role in operating and maintaining EISIL. The editors (all employed by other institutions) are there to create, maintain, and update content, but are not in a position to contract with a new platform provider. Once ASIL has a new platform in place, an ASIL employee with excellent web skills should become EISIL's administrator. This employee might be one of the current staff members, a recently retired librarian or one on family leave or part-time status, or possibly an intern pursuing a masters/doctorate in library or information science. We are confident that a team of volunteer editors can be found to assist the administrator to bring the database back to full strength. We would hope that after a busy transition period the maintenance schedule and duties would settle into a manageable routine. EISIL is too valuable to lose.

International Trade and Legal Research: the Legacy of Professor John H. Jackson

Marylin Raisch, Georgetown University Law Center

On April 29, 2016, Georgetown Law celebrated the life of Professor John H. Jackson, Manley O. Hudson Medal Winner and recipient of many other awards in his distinguished career in international law. Educated at Princeton and the University of Michigan Law School, he in fact, as stated in the leaflet for his memorial service, "shaped world trade law as it exists today." In addition to his role as a scholar and author of the seminal casebooks and textbooks in both trade law and international economic law, Professor Jackson was curious. In his tribute to John Jackson, spoken at the memorial, one of his colleagues described his finding documents and probing into materials in the libraries and document storage areas of the universities where he began his teaching career. This seems to have stimulated his penchant for bibliography as the underpinnings of sound research in a discipline. For this reason I would like to offer the International Legal Research Interest Group a particular aspect of Professor Jackson as I knew him, the portrait of the conscientious teacher and mentor of students, and also, most appropriately, a friend of libraries and information management. He appreciated the careful keeping of knowledge and the record of research both in the scholarly university context as well as that of law practice. Indeed, the description of him that resonated for me in the tribute published in the *American Journal of International Law* was that of the pragmatic concern for how dispute resolution would actually work, through institutions as well as a kind of constitutional framework,¹ and this approach was essentially implemented in the WTO. Far from focusing on narrow rules, he kept international economic law and trade "under the subject heading," as it were, of international law.

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Educated at Princeton and the University of Michigan Law, [John H. Jackson] in fact, as stated in the leaflet for his memorial service "shaped world trade law as it exists today."

Legacy of John H. Jackson (continued)

As founding editor of the *Journal of International Economic Law* and founder also, at Georgetown, of the Institute for International Economic Law (IIEL), he reached out to the law library as the place where he could get the practical help he needed to keep track of the very trends in economic law that he had so successfully integrated with traditional public international law. He worked with me and my predecessors to have a bibliography on international law prepared annually for the journal, and indeed it has appeared each year since 2001 as the Book Survey in the March issue, accompanied in some years by additional specialized bibliographies on financial regulation or dispute settlement. And as John Jackson was well aware of technological developments in information, a Website Survey has appeared along with it to track electronic information sources as well.

Each year, often in the fall, I would meet with John in his office; he began by offering tea and proceeded to review what he would like to see on the website of the IIEL and to discuss and promote other projects. He was keen to develop sources for the history of the WTO. These efforts continue, and all that really slows down the process of documenting that history with web-based platforms for documents or oral history is the inevitable need to find the time and support to bring it forward. This is something I feel committed to do as our FCIL web presence here opens up more space to promote international law.

The other memorable moment that I recall centers upon the Academy of the WTO. He included a research presentation, and he included the librarian and often staff in its annual dinner for the faculty of that almost week-long program. The year of the financial crisis, the late fall of 2008 following the Lehman Brothers bankruptcy and all that followed, there was a sense of grim reality and yet lively analysis of what had occurred. The financial system, like the trading system, was literally at a crucial juncture and the discussions were urgent and the issues so real. It was a kind of seminar atmosphere that John Jackson fostered and enjoyed. He would pass out written questions left at our places on the dining table for the diners to ponder, and he and his colleagues would immediately become engaged in an exciting exploration.

I learned a great deal and was honored to be assisting Professor Jackson and his students in searches for historical developments. He looked for the origins of principles relating to sovereignty and treaties as well as many other such foundational questions that he brought into the study of international regulatory regimes such as trade under the WTO. Whether tracing the origin of a very specific phrase in treaty interpretation or simply compiling a list of new books classified into subtopics of international economic law, I found myself deepening my own knowledge of sources. John liked to get everyone involved, not just in his own work but in the questions, always the questions. I am grateful to him for that opportunity and his acknowledgment of the role of the library.

¹Donald McRae, *In Memoriam: John H. Jackson (1932–2015)*, 110 Am. J. Int'l L. 260, 265 (2016).

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Home State Interests in the Regulation of Sovereign Wealth Funds

Temitope Tunbi Onifade, University of Calgary¹

Depending on peculiarities, a government may pool a sovereign wealth fund (SWF) for several purposes, including long-term savings, economic resilience, developmental projects, and justice-based goals. Whatever the purpose might be, there is a common ground: the idea is to promote some home state interests. As such, the essence of SWFs is to advance their home state interests.

Using a documentary review and synthesising relevant literature, this article argues that the regulation of SWF has not focused on home state interests, but rather host state interests. The attention has been on the structure, transparency, and governance of investments going into host states—primarily the United States of America (USA),² with American policymakers and scholars calling for increased regulation,³ and Europe, with European countries prescribing restrictions as well as investment and transparency principles.⁴ As such, the current regulation of SWFs has emphasized transnational implications but has failed to sufficiently entrench home state interests that form the essence of these funds. While these transnational implications are important, home state interests take priority. The problem could be explored further.

Santiago Principles

The climax of SWF regulation started with the inauguration of the International Working Group of Sovereign Wealth Funds (IWG), established at a meeting of International Monetary Fund (IMF) member states having SWFs between 30 April and 1 May 2008 in Washington, D.C., USA.⁵ The mandate of the IWG was to “identify and draft a set of generally accepted principles and practices (GAPP) that properly reflects their investment practices and objectives, and [the IWG] agreed on the Santiago Principles at its third meeting.”⁶ It eventually released a document entitled the “Sovereign Wealth Funds Generally Accepted Principles and Practice,” otherwise known as the Santiago Principles, in October 2008.

A first look at the Santiago Principles would suggest they are adequate, but this is far from true. They are organized in three parts: Part I outlining the principles, Part II discussing them, and Part III listing the appendices and references. They focus on three broad areas: “(i) legal framework, objectives, and coordination with macroeconomic policies, (ii) institutional framework and governance structure, and (iii) investment and risk management framework.”⁷ A fine design, one would say.

Moreover, some of the principles are captivating and could entrench home state interests of SWFs by giving people a say and protecting their economic liberties. Principle 1 recommends that the legal framework of SWFs be sound and support SWFs to achieve

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Sovereign Wealth Funds (continued)

their stated objectives. Principle 2 builds on principle 1 by stating that the policy purpose of SWFs should be clearly defined and publicly disclosed. Principle 3 also urges that where SWFs have domestic macroeconomic implications, national fiscal and monetary authorities should regulate them to ensure coherence with the existing policy framework. Other principles focus on the issues of transparency, accountability, and efficiency. What, then, could be wrong?

First, because the primary agenda behind the principles is the regulation of the interstate and not the intrastate activities of SWFs,⁸ they do not provide for what happens where domestic and foreign objectives of SWFs clash. SWFs are owned by home states but are more operational within host states. Domestic objectives mostly focus on national interests such as social welfare, economic resilience, development, intergenerational justice, and intragenerational justice, while foreign investment objectives are essentially designed to ensure the realisation of the domestic objectives through profitability, transparency, and accountability. However, these foreign investment objectives, constituting the “means,” have been receiving far more attention than the domestic objectives which make up the “ends.” The implication of this is that, without a reaffirmation of the primary domestic objectives of SWFs, governments and fund managers may continue to prioritize foreign investment objectives. This puts host state interests before home state interests.

Second, the Santiago Principles are designed to improve the regulation of SWFs without noting the peculiarities of non-renewable natural resource funds (NNRFs) as a subset. NNRFs are a peculiar type of SWF, given the nature of their source. While SWFs generally address economic resilience and development interests, NNRFs as a subset further present intergenerational- and intragenerational-justice ramifications that may stem from resource depletion—because non-renewable natural resources could be depleted, every generation has a stake that could be acknowledged through NNRF distribution schemes. This difference makes NNRFs a more normative subset of SWF. Therefore, the general regulation of SWFs is unsuited to reflect the justice-based peculiarities of NNRFs.

One could argue that Principle 1 of the Santiago Principles reflects the peculiarities of NNRFs by stating that the legal frameworks of SWFs should support their policy objectives.⁹ This might be true where national policies domesticate this principle. However, where national policies fail to do so, even if due to political misfeasance, the principle becomes helpless. This brings to mind the utility the principle might have if it specifically advocated for home state interests, which might then advance justice-based goals. In any case, the obvious reason for the provision’s abstract nature is that it is designed as a general principle that could govern SWF investments,¹⁰ not home state interests.

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Sovereign Wealth Funds (continued)

Third, the fact that the Santiago Principles are voluntary undertakings makes them inadequate for SWF regulation within home states. The IWG has no legal authority to enforce them within domestic boundaries, and as such, the principles are invariably subject to national discretion.¹¹ Where states decide to go against them, there are no virile remedies. Potential enforcement strategies may include the use of diplomatic strategies such as trade and import sanctions, but these sanctions are currently more active within the mainstream international trade and investment frameworks, not the SWF framework. SWFs currently have no clear identity within these international economic frameworks. As a result, there is low domestic compliance. For instance, compliance with the Santiago Principles as at 2010 was between 50 and 60 percent, and was uneven among signatories.¹²

OECD Declaration

The Organisation for Economic Co-operation and Development (OECD) also has a guidance collection that governs SWFs. This consists of three documents: (1) OECD Declaration on Sovereign Wealth Funds and Recipient Country Policies, made in 2008;¹³ (2) Guidance that Reaffirms the Relevance of Long Standing OECD Investment Principles,¹⁴ first adopted in 1961; and (3) Guideline for Recipient Country Investment Policies Relating to National Security, approved in 2008.¹⁵ The OECD Declaration is the most important for the regulation of SWFs.

Ministers representing thirty-three countries developed the 2008 declaration at the OECD Meeting of the Council at Ministerial Level in June 2008 based on the 1961 guidelines, providing for the investment principles of non-discrimination, transparency, and liberalization,¹⁶ together with the 2008 guidelines for protecting host countries adopted along with it, providing for nondiscrimination, transparency/predictability, regulatory proportionality, and accountability. The declaration serves as a twin document of the Santiago Principles.

Like the Santiago Principles, the declaration focuses mainly on the transnational implications of SWFs. In fact, its primary concern is the behaviour of recipient countries, including the prevention of protectionist barriers, avoidance of investment discrimination, and the creation of investment safeguards,¹⁷ which focus on mainstream international trade and investment issues.¹⁸ Therefore, the declaration is less helpful for advancing home state interests.

Arguably, its most relevant provision for home state enforcement is on how countries and SWFs should enhance transparency and accountability. Unfortunately, the declaration does not stipulate strategies for achieving this. It might have left this out believing that the Santiago Principles had covered it, oblivious of the principles' limitations. Also, this provision focuses on making SWFs attractive at the international stage, not how they could achieve their home state essence.

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Sovereign Wealth Funds (continued)

The declaration shares other problems with the Santiago Principles. It treats all SWFs the same, giving no acknowledgement to the peculiarities of NNRFs and, as such, treating them like noncommodity funds. This removes the unique interests underlying NNRFs from the equation and might lead to conclusions based on inchoate assumptions. Further, the declaration is not enforceable within domestic boundaries. Where citizens oppose how governments handle SWFs, the declaration does not provide for how this opposition could be addressed or the authority with jurisdiction, perhaps because it is pointless to do this as an international regulatory instrument with no binding force within domestic jurisdictions.

Policy Blueprint

Some policy analysts have made attempts to augment the fundamentals of the Santiago Principles and the OECD declaration. The most popular is by Truman, who developed a blueprint based on a scoreboard for the practices of 44 SWFs as at 2008.¹⁹

Truman identified the two major tensions that SWFs have caused within the international economic community. First, SWFs reflect the redistribution of wealth by showcasing the financial wherewithal of countries that have traditionally not been major economic forces.²⁰ Second, they show governments as the owners of redistributed wealth, marking the arrival of state actors to a global market initially dominated by the private sector and run by market forces.²¹

Truman evaluates similar elements of SWFs like the Santiago Principles and OECD Declaration. These include the structure, governance, accountability and transparency, and management behaviour of SWFs. However, he gives home state interests more attention than the Santiago Principles and OECD Declaration by ascertaining whether SWFs provide confidence and accountability to citizens of home states.²² Nevertheless, his work equally omits the peculiarities of NNRFs.

Key Observations

One could see that the key problem with the prevailing SWF regulations is the failure to adequately entrench home state interests. In particular, they have failed to reckon with the peculiar nature of NNRFs as an embodiment of home state interests.

This problem is striking because, given the current level of discretion governments have in natural-resources governance, adequate regulation is critical for the protection of the interests of citizens. SWFs may be created without specific expenditure channels stipulated in law or other policy instruments, thus subjecting them to government discretion, which could be easily abused.²³ Hence, without clear and assertive regulatory principles enforceable within home states, governments could exploit SWFs indiscriminately, as seen in many developing countries.²⁴ Even in developed countries, which often enjoy presumptions suggesting otherwise, there are instances of government dealings contrary to people's interests—perhaps the most notable of which are from Alberta, Canada.²⁵

Moreover, given that many states that own SWFs have weak governance systems, regulation could play an important complementary role. Many SWFs in the

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Sovereign Wealth Funds (continued)

Middle East and Africa have domestic regimes that are not able to block loopholes that allow mismanagement and corruption. This has undermined the deployment of SWFs for development.

Conclusion

While the attention has mostly been on the host state interests of SWFs, these funds remain domestic properties which ought to serve home state interests. Hence, regulation should adequately entrench home state interests while not undermining host state security.

Both transnational and national regulation could help. Transnational regulation could facilitate mechanisms that emphasize home state interests while not undermining host state security. For instance, transnational actors such as the IWG could facilitate better self-regulation and coregulation—e.g., licensing and certification schemes—that balance home state and host state interests in the international investment of SWFs. At the national level, governments could domesticate suitable transnational schemes and make domestic command-and-control procedures that prioritize home state interests in the foreign investment of SWFs—for instance, transparency and accountability. This might amount to an effective use of co-regulation to address the challenges of SWF regulation.

Endnotes

¹Acknowledgements: The article is partly gleaned from a research project supported by IBA SEERIL/AAG Scholarship and Hon. N.D. McDermid Scholarship at the University of Calgary. The author is grateful to Professors Alastair Lucas and Fenner Stewart for reading a previous draft. The usual caveat applies.

²One of the major SWFs that have been a source of worry for the USA is the China Investment Corporation, established in 2007. The major concerns have been that its creation may mean that China intends to divert its foreign exchange holdings away from government securities in the USA; its investment activities might have negative implications on the USA's financial market and overall economy; it could drive geopolitical interests in establishing Asia as a financial power of the world; and it may give China too much control over the USA, resulting in security risks. This fund receives its inputs from foreign investments; it is a noncommodity fund. See Michael F. Martin, *China's Sovereign Wealth Fund*, in *Sovereign Wealth Funds* 21 (Thomas N. Carson & William P. Litmann eds., 2009); Gordon L. Clark, Adam D. Dixon, & Ashby H.B. Monk, *Sovereign Wealth Funds: Legitimacy, Governance, and Global Power* (2013). See also Patrick A. Mulloy, *Testimony of Patrick A. Mulloy Before the Senate Committee on Banking, Housing and Urban Affairs Hearing on "Sovereign Wealth Fund Acquisitions and Other Foreign Government Investments in the U.S.: Assessing the Economic and National Security Implications" (November 14, 2007)*, in *Sovereign Wealth Funds*, *supra*, at 107.

³Note, however, that while most stakeholders and scholars have called for restrictions or increased regulation of sovereign wealth funds, few have argued somewhat otherwise. See generally David Marchick, *Testimony of David Marchick*, in *Sovereign Wealth Funds*, *supra* note 2, at 309 (testifying on why sovereign wealth funds do not pose security threats to the USA and how a stricter regulation of them could be detrimental to the foreign policy and economy of the country); *Sovereign Wealth Fund Acquisitions and Other Foreign Government Investments in the United States: Assessing the Economic and National Security Implications: Testimony Before the Committee on Banking, Housing, and Urban Affairs, United States Senate, November 14, 2007*, in *Sovereign Wealth Funds*, *supra* note 2, at 83, 84 (outlining the activities of sovereign wealth funds in the USA and how the increased activities of these funds could be covered by the existing regulatory framework).

⁴See generally Martin A. Weiss, *Sovereign Wealth Funds: Background and Policy Issues for Congress*, in *Sovereign Wealth Funds*, *supra* note 2, at 1 (distinguishing the response of the USA and Europe to transnational investment activities of SWFs).

⁵The International Working Grp. of Sovereign Wealth Funds had twenty-six members countries and was co-chaired by Hamad Al Hurr Al Suwaidi, Undersecretary of Abu Dhabi Finance Department, and Jaime Caruana, Director of the Monetary and Capital Markets Department of the International Monetary Fund.

⁶Int'l Working Group of Sovereign Wealth Funds, *Sovereign Wealth Funds: Generally Accepted Principles and Practices: "Santiago Principles"* 1 (2008), <http://www.iwg-swf.org/pubs/eng/santiagoprinciples.pdf>.

⁷*Id.* at 5.

Sovereign Wealth Funds (continued)

⁸Before the global financial meltdown of 1997–1998, concerns of western politicians originally brought the activities of SWFs into question: What are they and how do they operate? However, upon the economic downturn, the developed countries in which these politicians raised these concerns welcomed SWF investments to cushion their economies. Leading among these was the USA. To accommodate these funds while making attempts to reduce the security threat they could pose by dominating host economies, the USA Treasury Secretary, Henry Paulson, worked with the International Monetary Fund to inaugurate the International Working Group of Sovereign Wealth Funds. The implicit idea behind this was to promote transparency and disclosure among SWFs, and reduce the doubt about their commercial nature. See Adam D Dixon, *Enhancing the Transparency Dialogue in the “Santiago Principles” for Sovereign Wealth Funds*, 37 Seattle U. L. Rev. 581 (2014). See also Sven Behrendt, *Sovereign Wealth Funds in Non-democratic Countries: Financing Entrenchment or Change?*, 65 J. Int’l Aff. 65, 68 (2011).

⁹See Paul Rose, *The Management of Public Natural Resource Wealth*, 3 Brazilian J. Pub. Pol’y 80 (2013).

¹⁰See Paul Rose, *Sovereign Wealth Fund Investment in the Shadow of Regulation and Politics*, 40 Geo. J. Int’l L. 1207, 1214 (2009).

¹¹Joseph J. Norton, *The “Santiago Principles” and the International Forum of Sovereign Wealth Funds: Evolving Components of the New Bretton Woods II Post-Global Financial Crisis Architecture and Another Example of Ad Hoc Global Administrative Networking and Related “Soft” Rulemaking?*, 29 Rev. Banking & Fin. L. 465, 513 (2010).

¹²See Behrendt *supra* note 8, at 69.

¹³OECD, *OECD Declaration on Sovereign Wealth Funds and Recipient Country Policies*, (2008), <http://www.oecd.org/daf/inv/investment-policy/41816692.pdf>.

¹⁴OECD, *OECD General Investment Policy Principles*, (2008), <http://www.oecd.org/daf/inv/investment-policy/41811096.pdf>.

¹⁵OECD, *OECD Guidelines for Recipient Country Investment Policies Relating to National Security*, (2008), <http://www.oecd.org/daf/inv/investment-policy/41807723.pdf>.

¹⁶The OECD general investment policy principles could be found in the OECD Code of Liberalisation of Capital Movements 1961 and the Organisation for Economic Co-operation and Development Declaration on International Investment and Multinational Enterprises of 1976, as revised in 2000.

¹⁷ See Efraim Chalamish, *Protectionism and Sovereign Investment Post Global Recession 6* (2009), <http://www.oecd.org/investment/globalforum/44231385.pdf>.

¹⁸*Id.* at 7.

¹⁹Edwin M. Truman, *A Blueprint for Sovereign Wealth Fund Best Practices*, Revue d’économie financière (English ed.) (Special Issue) 429 (2009).

²⁰*Id.* See also Rumu Sarkar, *Sovereign Wealth Funds: Furthering Development or Impeding It?*, 40 Geo. J. Int’l L. 1181 (2009).

²¹Truman, *supra* note 19.

²²Truman, *supra* note 19, at 435.

²³See Jonathan Anderson, *The Alaska Permanent Fund: Politics and Trust*, 22 Pub. Budgeting & Fin. 57 (2002).

²⁴ See, e.g., Ilias Bantekas, *Natural Resource Revenue Sharing Schemes (Trust Funds) in International Law*, 52 Neth. Int’l L. Rev. (2005); Anna Gelpern, *Sovereignty, Accountability, and the Wealth Fund Governance Conundrum*, 1 Asian J. Int’l L. 289 (2011); Hong Li, *Depoliticization and Regulation of Sovereign Wealth Funds: A Chinese Perspective*, 1 Asian J. Int’l L. 403 (2011); Ondotimi Songi, *Defining a Path for Benefit Sharing Arrangements for Local Communities in Resource Development in Nigeria: The Foundations, Trusts and Funds (FTFs) Model*, 33 J. Energy & Nat. Resources L. 147 (2015).

²⁵See, e.g., Kelly McParland, *How Alberta Turned Its Heritage Fund into a Cash Machine for Big-Spending Politicians*, Nat’l Post (June 25, 2014, 11:42 AM), <http://natpo.st/1zwDcx1>; Justin Giovannetti, Michael Pereira, & Julia Wolfe, *What Happened to Alberta’s Cash Stash: The Life and Death of the Province’s Rainy-Day Fund*, Globe & Mail (Apr. 30, 2015, 4:39 PM),

Hence, regulation should adequately entrench home state interests while not undermining host state security.

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