the SPANISH YEARBOOK of INTERNATIONAL LAW

AEPDIRI Journal's Review*

The Board of Editors of the *Spanish Yearbook of International Law* (SYbIL) has decided that, from this volume 22 onwards, the *SYbIL* will give notice to our readers of the studies and doctrinal articles published in each respective year (in this case, 2018) by the other two periodic journals edited —as our *Yearbook*— by the *Asociación Española de Profesores de Derecho internacional y Relaciones Internacionales* (AEPDIRI). This final section of the volume will therefore include the abstracts of the main contributions published by the *Revista Española de Derecho Internacional* (REDI) and the *Revista Electrónica de Estudios Internacionales* (REEI).

Revista Española de Derecho Internacional (REDI), Vol. 70/1 (2018)

Teresa FAJARDO DEL CASTILLO, "El acuerdo de París sobre el cambio climático: sus aportaciones al desarrollo progresivo del Derecho internacional y las consecuencias de la retirada de los Estados Unidos", 70(1) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.1.2018.1.01]

The Paris Agreement on Climate Change and its contributions to progressive development of international law and the consequences arising from the withdrawal of the United States

This study examines the contribution of the Paris Agreement to the progressive development of international law. The Paris Agreement exemplifies the characteristic features of a sectoral regime and the triumph of flexibility in a legal sector of international law where States have to implement their international obligations to the domestic framework, for which they require flexibility to fulfil their commitments as well as their national circumstances to be taken into account. To this end, the Paris Agreement has distanced itself from the previous approaches that guided the normative development of the Framework Convention on Climate Change: the most rigid, envisaged in the Kyoto Protocol, and the softer, set forth by the Copenhagen Accord. The Paris Agreement develops the Framework Convention by establishing a set of provisions having a different normative intensity. These provisions are mandatory for both developed and developing countries through a mechanism of voluntary commitments (Intended Nationally Determined Contributions) that ultimately marks the identity of the Agreement. Finally, the study also assesses the impact that the United States' withdrawal may have on the Paris Agreement.

* This section has been compiled by Ms Hanan LAGHRICH GONZÁLEZ, Assistant to the Editor in Chief.

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Sergio SALINAS ALCEGA: "El acuerdo de París de diciembre de 2015: la sustitución del multilateralismo por la multipolaridad en la cooperación climática internacional", 70(1) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.1.2018.1.02]

The Paris agreement of december 2015: the replacement of multilateralism by multipolarity in international climate cooperation

The Paris Agreement breaks the perverse dynamic of international climate cooperation after the failed attempts in Copenhagen and Doha. This circumstance is the only one that justifies the enthusiasm with which it was received. However, the careful analysis of the text brings uncertainties regarding the magnitude of its contribution. Especially the analysis of its content allows to conclude that the new model of climate management does not fit as it should to what seems appropriate in the case of a global public good. The substitution of the top down for the bottom up approach does not bring the schema closer to a multilateral model but to a multipolar one, through the individualization of the mechanism for the attribution of emission reduction obligations. The consequence is that we are as subject as before, or even more, to the political will of the States. These should be those that, without a strong pressure on the issue in the new agreement, make commitments ambitious enough for the aggregate effort to think of an effective response to global warming. And this does not seem to be enough, given the pace of aggravation of a problem that threatens us all.

Mª J. CERVELL HORTAL: "Sobre la doctrina «unwilling or unable state» (¿podría el fin justificar los medios?)", 70(1) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.1.2018.1.03]

About the «unwilling or unable doctrine» (could the end justify the means?)

This article addresses the doctrine that defends the possibility that the States use the force within the territory of another which is unwilling or unable to face terrorist groups using that territory to attack others. In particular, it reflects on this doctrine's contents, legal basis and its application to the fight against ISIS in Syria. It also evaluates the existence of a growing tendency to accept it and defends alternatives which could help to face the terrorist threat.

Pilar JIMÉNEZ BLANCO: "La ejecución forzosa de las resoluciones judiciales en el marco de los reglamentos europeos", 70(1) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.1.2018.1.04]

Enforcement of judgments in the framework of the European regulations

Enforcement of judgments still depends on national laws of Member States, but it is subject to certain conditions resulting from European Regulations. From a comparative study of the different Regulations, a series of common guidelines have been obtained which constitute a European minimum in the field of the enforcement. The coexistence of exequatur and direct enforcement affects procedural issues, but the grounds for refusal available on national law are the same in both cases. There are different standards of defense of the executed debtor, in particular a special protection under the Recast

Brussels I Regulation. Finally, the implementation of the Regulations in Spanish law has some deficiencies that should be corrected.

Asier GARRIDO MUÑOZ: "Los requisitos procesales en serio: la existencia de una «controversia internacional» en la jurisprudencia de la Corte Internacional de Justicia", 70(1) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.1.2018.1.05]

Taking procedural requirements seriously: the existence of an «International Dispute» in the case law of the International Court of Justice

The notion of «international dispute» has become increasingly relevant in the determination of the ICJ's jurisdiction, but it has been in the judgments rendered in the cases Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India, Pakistan and United Kingdom) that the term has been most decisive. Following the allegations of «formalism» made against these decisions, this work aims first to put the notion into historical perspective by identifying two opposing tendencies in the Court's case law: one prioritising flexibility and another one prioritising rigorousness. Next, this work will try to explain the rationale of the most recent decisions on the matter through the prism of the protection of the judicial function of the Court.

Beatriz CAMPUZANO DÍAZ: "La derogatio fori en la Ley Orgánica del Poder Judicial", 70(1) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.1.2018.1.06]

The derogatio fori in the Judiciary Organization Act

This article deals with the regulation of the derogatio fori after the amendment of the Ley Orgánica del Poder Judicial (Judiciary Organization Act). The article focuses on the way our tribunals should act to verify that the parties have agreed to submit the dispute to a foreign tribunal and that such agreement is valid from a formal and substantive perspective, in order to stay the proceedings in our country.

María Jesús ELVIRA BENAYAS: "Transposición al ordenamiento español de la Directiva 2014/60/ue sobre restitución de bienes que hayan salido de forma ilegal de un Estado miembro mediante la Ley 1/2017", 70(1) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.1.2018.1.07]

Transposition into Spanish Law of the 2014/60/EU Directive on the return of cultural objects unlawfully removed from the territory of a Member State by the 1/2017 Act

The protection of cultural property in the European Union has been a constant concern since the beginning. However, the establishment of the single market prompted a specific regulation for its export as well as the setting of rules aimed at the restitution of cultural objects that had left illegally from one Member State and were located in another Member State. Those first standards had to be modified because they showed little practical application and, as result of that process, a new Directive was adopted in 2014. This norm has recently been incorporated into Spanish Law through the 1/2017 Act.

With this new norm some deficiencies that the 36/1994 Act showed were fixed but it shows, in turn, some gaps for its application.

Montserrat PINTADO LOBATO: "Hacia una teoría china de las relaciones internacionales. Evolución, proyectos teóricos y pertinencia práctica", 70(1) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.1.2018.1.08]

Towards a Chinese theory of international relations. Evolution, theoretical projects and practical appropriateness

Chinese International Relations production has become one of the main focus of non- Western peripheral academic production. The rise of China in the international system and its progressive accommodation on global forums stimulates the knowledge and theory production as tools to battle ethnocentrism and understand the new international reality. In this process, the three main theoretical projects (Tianxia, the Tsinghua School and Sinoconstructivism) could be used as windows to understand this native academic production and the project of international society that China aims to lead.

Antonio PASTOR PALOMAR: "La solución de controversias de doble imposición en España: una práctica convencional peculiar encaminada al arbitraje", 70(1) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.1.2018.3.01]

Double taxation dispute settlement in Spain: a peculiar conventional practice aiming at arbitration

The OECD-G20 Base Erosion and Profit Shifting (BEPS) Package refers to tax planning strategies that exploit gaps and mismatches in national and international tax rules. BEPS provides tools to governments so as to improve the functioning of international tax dispute settlement procedures, such as the mutual agreement procedures and arbitration. This paper deals with Spain's international practice on this subject matter and underlines the need to apply the national legislation as well as the new treaties effectively. A key part of it is the Law on treaties and other international agreements which should be taken into consideration to implement the procedures. Moreover, there is an analysis of the different double taxation arbitration systems that Spain is bound to follow from the entry into force of the national and international legislative reforms.

Revista Española de Derecho Internacional (REDI), Vol. 70/2 (2018)

Sixto SÁNCHEZ LORENZO: "El principio de coherencia en el Derecho internacional privado europeo", 70(2) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.2.2018.1.01]

The consistency principle in european private international law

The present study contains a critical analysis of the scope of the principle of coherence or consistency principle in the field of European private international law. First, the author analyzes the areas in which the requirement of legal coherence between concepts, notions and legal solutions is required: vertical

(successive normative texts on the same subject), horizontal (normative texts on different subjects) and transversal (European and non European legal rules). The logic of integration can lead to a formal understanding of the principle of coherence as a mere parallelism between concepts and legal solutions in the systematic interpretation of European private international law. A casuistic analysis tries to demonstrate such a risk as well as the need for an axiological, relative and dialectical understanding of the coherence principle, which requires a comparison of legal objectives and values issue-by-issue, discarding any possibility to resort to an automatic parallelism of concepts or legal solutions.

Fulvio ATTINÀ: "Afrontando la ola de inmigración. La UE como causa y gerente de la crisis", 70(2) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.2.2018.1.02]

Tackling the migrant wave: EU as a source and a manager of crisis

The response of the EU and Member States to the current migration wave is an interesting case of building collective management for coping with a trans-boundary crisis. The present article analyses and assesses the EU response to the migration wave in a wide perspective that encompasses the existing knowledge about the drivers of increasing migration and about Europe's political and social approach towards regular and irregular migrants in the past decades; the analyses of the response of the European leaders to the demand of the citizens to close off the borders and prevent migrants from getting in; and the assessment of the EU management of the crisis. The closing section checks the EU response against the drivers of the on-going migration wave and draws a picture of the main weaknesses of the EU response.

Elisenda CALVET MARTÍNEZ y Xavier PONS RAFOLS: "El fortalecimiento de la independencia judicial en los procesos de justicia transicional como garantía de no repetición", 70(2) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.2.2018.1.03]

Strengthening judicial independence in transitional justice as a guarantee of non-repetition

The guarantees of non-repetition include all the measures that a State in transition must adopt to prevent the recurrence of serious violations of human rights that occurred in the past. The purpose of this study is to analyze, from an International Law perspective, to what extent institutional reforms aimed at strengthening judicial independence in transitional justice constitute guarantees of non-repetition. In this sense, International Law offers a set of rules and principles to guarantee judicial independence, both in its institutional and individual dimensions. On the other hand, the judiciary has often been accomplice in human rights violations committed in the past, therefore, transitional justice measures should serve a threefold purpose: removing justice operators from the judicial system identified with the previous regime, protect judges from possible arbitrariness or indiscriminate measures and, finally, ensure that judges form a homogeneous body, with proven integrity and impeccable conduct. Eventually, strengthening judicial independence in transitional justice not only contributes to prevent future human rights violations, but also increases citizens' trust in institutions and promotes the rule of law.

José Antonio SANAHÚJA: "Reflexividad, emancipación y universalismo: cartografías de la teoría de las Relaciones Internacionales", 70(2) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.2.2018.1.04]

Reflexivity, emancipation and universalism: cartographies of the theory of international relations

Since his post-positivist turn of the Eighties of the 20st Century, both the theory and discipline of International Relations has become more plural and diverse, and its cartography can be drawn from three axes or lines of tension: the first one, in the epistemological realm, has radical rationalism and reflectivism as extreme poles, with social constructivism, as moderate rationalism, and neo-Gramscian critical theory in the middle ground; the second axis, of praxeological-normative nature, is organized around the possibility and desirability of change; the third one address the definition of universality versus diversity, and the possibility or negation of a post-Western universalism. All of them also entail divergences between foundationalism and anti-foundationalism, both in the epistemological and normative realm.

Marta REQUEJO ISIDRO: "El tiempo en el Reglamento 650/2012. ilustraciones de la práctica española", 70(2) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.2.2018.1.05]

Time in the regulation 650/2012. First illustrations of Spanish practice

The first cases of application of the European Successions Regulation in Spain dealt with testamentary dispositions granted before August 17, 2015 by foreigners with habitual residence in Spain. The application of art. 83 (transitional provisions) raised doubts among the legal practitioners involved as to the applicable law, in particular regarding the identification of a choice of law. The paper focuses on art. 83 and its complexity; at a second stage it assesses the Spanish decisions in light of the proposed explanations to the rule.

Margarita ROBLES CARRILLO: "La reforma de la corporación para la asignación de nombres y números de internet (ICANN): un análisis en términos de legitimidad", 70(2) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.2.2018.1.06]

The reform of the internet corporation for assigned names and numbers (ICANN): *an analysis of its legitimacy*

ICANN is a corporation created in accordance with US law and aimed to ensure the stable and secure operation of the Internet's unique identifier systems. Since its creation, this corporation has been widely criticized for its lack of legitimacy. This problem justifies the need to reform it. Both political-institutional dissent and the appearance of neutrality of technological governance have led to a unilateral solution to this problem to the extent that the United States has controlled its development and results. This reform has been carried out following the multistakeholder model. The new Bylaws modifies the

ICANN institutional model and also the accountability system. But the first shows serious organic and functional problems, while the second has been built mainly through one procedure that does not really guarantee independent and external control. Despite the reform, ICANN's legitimacy crisis has not been yet resolved satisfactorily.

Carmen MONTESINOS PADILLA: "Los principios Ruggie y la Agenda 2030. Un futuro de recíprocas influencias por explorar", 70(2) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.2.2018.1.07]

The ruggie principles and the 2030 Agenda. A future of reciprocal influences to be explored

The Guiding Principles on Business and Human Rights are a valuable tool for the implementation of the 2030 Agenda. The adoption of National Action Plans in accordance with them and the consequent implementation of measures that, among other things, guarantee the recognition of the extraterritorial responsibility of the parent companies, impose mandatory due diligence procedures and remove obstacles in access to effective mechanisms of reparation, will contribute to the fulfilment of the sustainable development goals. The evaluation of the National Action Plans and the monitoring of compliance with the measures by which they are integrated are considered to be useful tools for diagnosing the level of achievement of the objectives around which the 2030 Agenda is articulated. The purpose of this paper is precisely to contribute to the preliminary assessment of compliance with the Ruggie Principles through the analysis of the content of the National Action Plans of the United Kingdom, the Netherlands, Denmark, Finland, Sweden, France, Norway, Italy, Switzerland and Spain, and in this way to establish guidelines to follow in future activities assessing the level of achievement of the sustainable development goals.

Concepción ESCOBAR HERNÁNDEZ: "La corte penal internacional en construcción: nuevos retos veinte años después de la Conferencia de Roma", 70(2) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.2.2018.2a.01]

The International Criminal Court under construction: new challenges twenty years after the Conference

Almost fifty years after the General Assembly of the United Nations adopted the Universal Declaration of Human Rights on 10 December 1948, a Diplomatic Conference of Plenipotentiaries convened under the auspices of the same Organization entered another important date in the history of international law: on 17 July 1998, the States meeting at the Rome Conference adopted the Statute of the International Criminal Court, through an unregistered vote whose result is worth noting: 120 votes in favor, seven against and 21 abstentions. The celebration in this year of the twentieth anniversary of the adoption of the Statute of Rome offers a good opportunity to reflect again on a legal instrument located in the heart of the collective imagination on the fight against impunity for the most serious international crimes.

Sara KENDALL: "*Restorative Justice at the International Criminal Court*", 70(2) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.2.2018.2a.02]

With the twentieth anniversary of the Rome Statute of the International Criminal Court (ICC) approaching in July of 2018, the ICC has announced its intention to «mark this milestone» throughout

the year, inviting visitors to its website to do the same. An accompanying film commemorating the anniversary opens with scenes of atrocity crimes throughout the world flashing in sequence. Interspersed throughout this account of the Court's establishment are images of victims of crimes that could possibly fall under the court's jurisdiction, whilst the film narrates the subject matter that the ICC is empowered to adjudicate: the use of child soldiers, destruction of cultural property, and sexual violence, among other forms of war crimes, crimes against humanity and genocide. Following a clip of testimony of a survivor of sexual violence crimes, the film introduces the Court's Trust Fund for Victims, which was established through the Rome Statute to provide «support to victims, survivors, their families and community». It closes with the claim that the pursuit of security «starts with justice for everyone». While a familiar genre of institutional self-representation, the film is remarkable for the way in which it foregrounds the figure of the victim of international crimes within a retributive legal field.

Ángeles JIMÉNEZ GARCÍA-CARRIAZO: "La plataforma continental de las islas Canarias: ampliación y cuestiones afines", 70(2) *Revista Española de Derecho Internacional* (2018) [DOI: http://dx.doi.org/10.17103/redi.70.2.2018.3.01]

The continental shelf of the Canary Islands: extension and related issues

The United Nations Convention on the Law of the Sea envisages the possibility for coastal States to extend their continental shelf beyond 200 nautical miles. This creates an additional marine space where States can explore and exploit extremely attractive mineral and energy resources.
The geo-strategic position of the Canary Islands provides an excellent example of state practice. The potential extension of the continental shelf leads to overlaps with Portugal and with Western Sahara and has reactivated two outstanding issues. On the one hand, the question of the Savage Islands, which is out of the sphere of the extended continental shelf. On the other hand, the status of the Western Sahara as a non-autonomous territory, which prevents the delimitation of the marine spaces between this territory and the Canary Islands.
It is the State's responsibility not to miss the opportunities offered by a treaty such as this one which exhaustively codifies the law of the sea. A good use of the tools that the Convention makes available to coastal States is a guarantee of power and access to resources under legitimate conditions.

Revista Electrónica de Estudios Internacionales (REEI), No. 35 (2018)

Francisco JIMÉNEZ GARCÍA: "El Derecho internacional en mutación. El test «civilizatorio» del estado de derecho internacional (¿Soft-Law de baja o alta intensidad?) y el régimen de las fuerzas de estabilización de la paz", 35 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.35.02]

International Law in mutation. The «civilizing» test of the international rule of law (soft law of high or low density?) and the regime of the peace stabilization forces

In the turn of the millennium, different areas of the global society are deeply challenging the international Law. Indeed, today with new factors altering the spatial, structural and regulatory

dimension of state and humans relations, at the domestic and at the international levels, the international order remains in its crisis of identity. On the one hand, the predominance of liberal and non-formalistic systems increases the distance between power, law and justice, while on the other hand, multilevel action is encouraged and transparency and accountability are promoted. Within the framework of the United Nations, while the topic of the Rule of Law has been proposed to mark the course of these changes and to limit the new sovereign powers or action forums, there is no consensus either on its scope or on its legal status. Rather, it is conceived as a «civilizing test» under certain structural principles or values: certainty, predictability, transparency, accountability and respect for international humanitarian law and human rights. In order to test such a purpose, it is proposed as a field of study that stabilization operations –and their changing basic principles– should not only be in accordance with the principles of the Rule of Law, but also contribute to their implementation in the countries or regions where they operate.

Mercedes SOTO MOYA: "El Reglamento (UE) 2016/1104 sobre régimen patrimonial de las parejas registradas: algunas cuestiones controvertidas de su puesta en funcionamiento en el sistema español de Derecho internacional privado", 35 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.35.03]

Council Regulation (EU) 2016/1104 in matters of the property consequences of registered partnerships: Some controversial issues from its implementation in the Spanish IPL system

On July 8, 2016, was published the Council Regulation (EU) 2016/1104, implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships. This Regulation is a milestone in the construction of EU private international law, since never before the registered unions had been the protagonists of a EC Regulations. This paper analyzes some of the problems that its implementation in the Spanish system of Private International Law will arouse. In the first place, it will be complicated for the legal operator identifying the couples covered by the Regulation. Second, another of the controversial aspects that may result in the entry into force of this rule in the Spanish IPL system, is the relative to the applicable law when it corresponds to a State with more than one legal system, like Spain. We have a notion that the diversity of autonomic regulations can produce problems of internal conflicts of laws, as happens with other regulations, such as the one of successions, for example. It is studied if this diversity will constitute a real problem of application of the Regulation 2016/1104 and what the possible solutions would be.

Elena RODRÍGUEZ PINEAU: "La oposición al retorno del menor secuestrado: movimientos en Bruselas y La Haya", 35 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.35.04]

Opposing the return of an abducted child: Brussels and The Hague on the move

The adequacy of the solutions foreseen in the otherwise successful Hague Convention 1980 on child abduction has been increasingly questioned. This has been particularly so in relation to abductions linked to domestic violence. Criticisms have also been relevant in relation to the EU rules on child abduction. In this context, both The Hague Conference and the European Union have undertaken a revision of these rules. The former has put forward a Draft Guide to good practice on Article 13(1)(b)

on the assumption that there is no need to review the rule but to foster its proper application. The proposal for a Brussels II Regulation Recast EU, on the other hand, includes a thorough reform of the Regulation in relation to child abduction. Both texts aim at securing the return of the child by means of the adoption of protective measures. This article addresses the solutions proposed in both documents in the light of the aims they pursue in order to evaluate their significance and the reciprocal impact they may have.

José ABU-TARBUSH y Javier GRANADOS: "La política exterior de Rusia en Oriente Medio: su intervención en Siria", 35 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.35.05]

Russian foreign policy in Middle East and its military intervention in Syria

Russia's military intervention in Syria since september 2015 marks a turning point in its foreign policy after the fall of the Soviet Union in 1991. Russia has in Syria and in the whole region several interests, like the control of military bases, enegy projects and regional alliances. However, Moscow pursued also other objectives which are capital to its global strategy. Russian authorities aim to change the structure of the International System toward a multipolar order in which it wants to be considered as a great power and, at the same time, to decrease American power in the region. Moscow has seen USA's failure trying to change authoritarian regimes in Afganistan (2001), Irak (2003) or Libia (2011), as an opportunity to achieve those goals. This Russian strategy has introduced a new balance of power in the Middle East, although it has not change the traditional order of the region or revised the existing order. Moscow seeks to preserve the status quo and reinforce authoritarianism.

Pilar JIMÉNEZ BLANCO: "Movilidad transfronteriza de personas, vida familiar y Derecho internacional privado", 35 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.35.06]

Cross-border mobility of persons, family life and private international law

The cross-border mobility of persons requires adequate protection of their right to family life, which implies, therefore, the possibility of moving and residing with family members in another State. The mobility regime within the EU has certain peculiarities for EU citizens but also for third-country nationals. A minimum European family model can be identified. In addition, there is a trend towards the recognition of already established families, in particular, when they have established themselves as families in another EU State. In the field of immigration law, the way to accredit and make effective the family relationships does not coincide in all cases with the classical methods of private international law. Sometimes there are two different approaches, civil and administrative, on the same family relationship. Immigration law should be subject to the right to family life, in particular to the protection of the best interests of the children and their right of relationship with both parents as guiding principles of all decisions that affect them.

Borja FERNÁNDEZ BURGUEÑO: "Solicitudes de asilo patrocinadas presentadas en embajadas y consulados: un modelo basado en la experiencia española y en el programa canadiense de «private sponsorship»", 35 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.35.07]

Sponsored asylum applications filed in embassies and consulates: A model grounded on the Spanish experience and on the Canadian program «private sponsorship»

For 25 years Spain allowed to seek asylum at its embassies and consulates. This legal route was closed with the entry into force of Law 12/2009, October 30, Regulating the Right of Asylum and Subsidiary Protection. Eight years later, under the greatest refugee crisis in Europe since World War II, it is necessary to construe a proposal that re-enables a legal and safe way for refugees to seek protection in Europe preventing them from having to resort to mafias and smugglers to cross the Mediterranean Sea. In this paper, after analysing the legal basis and viability of lodging asylum applications in diplomatic missions, it will be proposed to accommodate the Canadian "Private Sponsorship of Refugees" programme to the Spanish legal framework to shape up a regime sponsored by the civil society which will allow refugees to seek asylum in Spain from abroad.

Andrea COCCHINI: "Tráfico ilícito de migrantes y operación Sophia: ¿podría aplicarse de nuevo la responsabilidad de proteger en Libia?", 35 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.35.08]

Migrants smuggling and operation Sophia: Could the responsibility to protect return to Libya?

Libyan internal conflict after Gaddafi's fall makes it impossible to control over its southern land borders and the coastal ones in the north of the country. This lack of control facilitates irregular migrations from sub-Saharan Africa to Libya and from there to the EU, through the southern central Mediterranean. In order to stop migrants smuggling, the EU Council adopted Decision (CFSP) 2015/778 which is developing the operation Sophia. This operation, however, is jammed in a phase that prevents it from achieving its objectives due to the absence of Libya's consent or UN Security Council resolution allowing its extension to the following phases. To unlock it, this paper suggests to restore the already forgotten principle of the responsibility to protect which, backed by the theory of UN Security Council retroactive authorizations, would allow the operation to continue within the international legal framework.

Elena PINEROS POLO: "Arbitraje del Mar del Sur de China. La estrategia procesal de la República Popular de China", 35 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.35.09]

South China Sea arbitration. The procedural strategy of the People's Republic of China

This paper summarizes the main procedural aspects of the arbitral resolution of the South China Sea Arbitration. Likewise, it analyses the default of appearance of China in the arbitral proceedings. The legal and practical consequences of the non-appearance of the respondent state in the arbitral proceedings are examined, specifically in this particular case, including the decision of the Tribunal regarding its jurisdiction. China adopted a certainly questionable procedural strategy, indeed it finally did not assure an absolute successful outcome.

José Ignacio PAREDES PÉREZ: "Medidas contra el bloqueo geográfico injustificado: el Reglamento (UE) 2018/302 y su incidencia sobre las normas europeas de Derecho internacional privado", 35 *Revista Electrónica de*

Estudios Internacionales (2018) [DOI: 10.17103/reei.35.10]

Measures against unjustified geo-blocking: Regulation (EU) 2018/302 and its impact on European private international law rules

The purpose of this study is to analyze the measures of Regulation 2018/320/EU against discriminatory practices based on nationality, place of residence or place of establishment in cross-border transactions within the internal market. In this particular context, the interaction of these measures with the European rules of private international law is addressed in order to delimit, on the one hand, the cases of contractual and non-contractual obligations in case of infringement of the prohibitions foreseen in the new Regulation, and, on the other hand, of the need to review the interpretation of the criteria that define the notion of activity addressed to the Member State of the domicile of the consumer in the meaning and purpose of the Regulation, which is to achieve the conciliation between the right of the customers not to be discriminated against for geographical reasons and the freedom of the traders to determine the geographical scope to which they direct their activities within the European Union.

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Juan Domingo TORREJÓN RODRÍGUEZ: "El Parlamento Europeo y el conflicto del Sáhara Occidental (1956-2018)", *36 Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.02]

The European Parliament and the Western Sahara conflict (1956-2018)

Our main objective is to make an analysis of the attitude of the European Parliament about the Western Sahara conflict, from the origin of the conflict until 2018. In the early 80's, the Parliament supported the Moroccan thesis. But throughout the decade, this position changed towards a support of the self-determination of the Western Sahara people. In the 90's, after a crisis between Morocco and the EU, the European Parliament adopted a more moderate posture about the issue. In the 00's, the Parliament drew attention to human rights and exploitation of natural resources issues, supported the Baker Plan, the Corell Opinion about the exploitation of natural resources in Western Sahara, and requested for the inclusion of the human rights monitoring in MINURSO. In the 10's the European Chamber pays less attention to the Western Sahara conflict.

Cástor Miguel DÍAZ BARRADO: "El "principio democrático" al hilo del Acuerdo sobre diálogo político y cooperación entre la Unión Europea y Cuba", *36 Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.03]

The "principle of democracy" in light of the political dialogue and cooperation agreement between the European Union and the Republic of Cuba

International community is determined to embody the "principle of democracy" long ago as an essencial principle of the international order. However, it has not yet happened as this fact is demostrated by international practice. But, States' behaviour and international organizations' task, particularly it from european and american organizations, indicate a neat trend in this direction. Political dialogue and

cooperation agreement between the European Union and its Member States, and the Republic of Cuba is of particular interest in order to appreciate the evolution which is taking place in this matter. The "delicate balance" achieved with this Agreement is a notable expression of the path chosen by some States and international Organizations in accepting eventually the "principle of democracy" in the international community. Projecting a pragmatic approach of international relations, as it is done by the Agreement, is not incompatible with the will to form the "principle of democracy" in the international order.

Víctor Luis GUTIÉRREZ CASTILLO: "La aplicación extraterritorial del Derecho internacional de los derechos humanos en casos de ocupación beligerante", 36 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.04]

The extraterritorial application of international human rights law in cases of belligerent occupation

Over the last decade, one of the most controversial issues in international protection of human rights is the extraterritorial application in situations where a State occupies the territory of another State for belligerent reasons. The practice and the international case law -within the United Nations and the Council of Europe- have recognized the extraterritorial applicability of international texts on protection of human rights but with subtle differences. This article pays particular attention to the development of the case law of the European Court of Human Right (ECHR). As for the latter, when a State is exercising effective control over a foreign territory, its responsibility is compromised by the acts committed by its armed forces, as well as by the local authorities supported thereby.

Manuel de Jesús ROCHA PINO: "La asociación estratégica China-Unión Europea durante el periodo 2010-2018: interdependencia económica y tensiones normativas", 36 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.05]

The China-European Union strategic partnership during the period 2010-2018: economic interdependence and normative tensions

The research analyzes the development of the China-European Union (EU) strategic partnership during the period 2010-2018. Along this time, the China-EU relations have been characterized by two processes: on the one hand, in order to continue with their commercial relations, both actors have favored the deepening of their economic interdependence relations in a pragmatic way. On the other hand, the bilateral relations experience tensions and constant disagreements due to the political, economic and normative asymmetries existing between China and the EU. This paper uses a liberal institutional approach in order to analyze the priority issues of the bilateral agenda, and how the strategic partnership has become an institutional mechanism to negotiate disagreements and tensions, as well as the accommodation of their interests.

Carlos GONZÁLEZ VILLA: "La dimensión internacional de la desintegración de Yugoslavia: una fuerza impulsora de la violencia", 36 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.06]

The international dimension of Yugoslav disintegration: a driving force of violence

The study addresses the impact of the international dimension of the final crisis in Yugoslavia between 1990 and 1991. This period encompasses the failure of the reform led by the Yugoslav Federal Prime Minister, the road to the proclamation of independence by Slovenia and Croatia in June 1991, and the armed conflicts in those republics. International influence in those development is approached from a multidimensional perspective, taking into account the foreign policy of the United States, analysed through the constraint represented by the existence of the Soviet Union; the international support that allowed secessionist republics to rearm before the proclamation of their independence; and the diplomatic activity of European countries, some of which also participated in the rearming process. Through the analysis of primary sources and published material, the paper concludes that international factors are directly related to the fact that the dissolution of Yugoslavia resulted in a violent process.

Mª del Pilar DIAGO DIAGO: "La prueba de la nacionalidad española y de la vecindad civil: dificultades en la determinación del régimen económico matrimonial legal", *36 Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.07]

The proof of the spanish nationality and the regional citizenship: difficulties in the determination of the legal matrimonial economic regime

The Spanish Civil Registry does not provide any complete evidence of the nationality or of the, regional citizenship except in the specific cases that are dealt in this study. This reality generates a legal uncertainty that affects the determination of the law to apply on many occasions and especially, in the legal matrimonial property regime. This work analyzes the ways of the nationality and the regional citizenship, as well as the difficulties that arise in the determination of the legal matrimonial property regime. In addition, new solutions are proposed, according to the new regulation offered by the LRC.

Rocío CARO GÁNDARA: "La reserva de dominio como garantía funcional del comercio internacional: su eficacia en España", *36 Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.08]

Retention of title clause as a functional security right in international trade: its effectiveness in Spain

In time of crisis, as in time of economic stability, the availability of credit is a key element in financing business activity. But in the business world there is no credit without security. In this sense, the retention of tittle clause, understood as a clause inserted in a contract for the sale of movable property, wich suspends the transfer of propert until the full payment of the deferred price, is a cheap inter-party financing mechanism, a guarantee of compliance of the deferred payment, and, finally, and effective guarantee of satisfaction of the seller interest, in case of default of the buyer. However, when it is inserted in an international contract, its effectiveness is highly questioned, as a consecuence of the spatial discontinuity caused by the application of the lex rei sitae rule, as a criterion for determinig the law applicable to rights in rem in case on movables. This discontinuity of its effectiveness is caused, in turn, by the diversity of requirements that national legislators demand for their effectiveness against other creditors of the buyer and third parties. In this context, this paper analyzes the posible effectiveness in Spain of retention of title agreed upon abroad and proposes de lege lata and de lege ferenda solutions, taking into account legislative developments, in different territorial and material areas,

that offer different models of regulation, through the choice or combination of material and conflictual techniques.

Soledad TORRECUADRADA GARCÍA-LOZANO: "Los derechos humanos como límite a la gestión de los flujos migratorios mixtos", *36 Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.09]

Human rights as limiting the management of mixed migration flows

Even if it is true that the State is sovereign to decide who enters its territory, where and under which conditions, it is a competence that is limited because of the necessary human rights guarantees of the persons who form part of mixed migration flows. Thus, the principle of non refoulement finds its foundation in the guarantee of the right to life and not to be a victim of torture and other cruel, inhuman or degrading treatment or punishment and is applicable both to asylum-seekers or as migrants who find themselves in a situation of risk. At present, international tribunals and organs remind all states of their obligations to ensure respect for human rights of all persons, insisting on rationality and humanity in a social context which is dangerously turning towards populism and against those who are in a situation of special vulnerability.

María José CERVELL HORTAL: "Un caleidoscopio sobre el uso de la fuerza (el conflicto sirio)", *36 Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.10]

A kaleidoscope on the use of force (the syrian conflict)

This article analyzes, from the Syrian conflict perspective, some of the norms regulating the use of force, with special reference to non-intervention principle, self-defence against non-state actors and humanitarian intervention, in order to determine their implementation, effectiveness and limits.

Ángeles JIMÉNEZ GARCÍA-CARRIAZO: "El tratado de delimitación entre Timor Oriental y Australia fruto de la conciliación obligatoria", *36 Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.11]

The delimitation agreement between Timor-Leste and Australia as a result of the compulsory conciliation

On March 6, 2018, Timor Leste and Australia signed the maritime boundary treaty. This treaty comes true after nearly thirty years since the Timor Gap Treaty was signed between Australia and Indonesia. That agreement has marked relations between Australia and Timor Leste since the latter's independence. Australia's carve-out from the maritime boundary jurisdiction of international courts has forced Timor Leste to activate for the first time the compulsory conciliation mechanism within the framework of the United Nations Convention on the Law of the Sea. The outcome of this dispute settlement mechanism is embodied in an agreement that divides the continental shelf and the exclusive economic zone between both States, but whose lateral limits are subject to future adjustments upon certain events.

Valentina MILANO: "Human trafficking by regional human rights courts: An analysis in light of Hacienda Brasil Verde, the first Inter-American Court's ruling in this area", 36 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.12]

Hacienda Brasil Verde Workers v Brazil is the Inter-American Court of Human Rights' (IACHR) first ruling on human trafficking and slavery. In this landmark case, the Court provides important guidance on the scope of the exploitative conducts prohibited under Article 6 of the American Convention on Human Rights and of the positive obligations this prohibition entails. After referring to the circumstances that have hindered the adjudication of slavery and human trafficking cases internationally, this study provides an overview of the developing international case law on these forms of exploitation, focusing on the European Court of Human Rights (ECtHR). It then analyzes in detail the reasoning followed by the IACHR in Hacienda Brasil Verde, highlighting its main contributions but also some of its weaknesses. Finally, the study presents conclusions on the extent to which the IACHR's ruling addresses some of the gaps and weaknesses identified in the ECtHR's case law, in particular by providing greater clarity on the relationship between slavery and trafficking in international law as well as by putting more emphasis on States' positive obligation to prevent these practices.

Leandro BALTAR y Luciana Beatriz SCOTTI: "La aplicación del derecho extranjero, la cláusula de excepción y el reenvío en el Derecho Internacional Privado argentino: Un trinomio pragmático", 36 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.13]

The application of foreign law, the clause of exception and the renvoi doctrine in the Argentine Private International Law: A pragmatic trinomy

The incorporation into the Civil and Commercial Code of the Nation of a title dedicated to provisions of International Private Law implied a change for Argentina. Faced with an incomplete systematization of the rules that regulate these legal relationships, we are obliged to reinterpret today's solutions. Now, we have rules that regulate the general aspect by introducing new challenges and overcoming old problems. The reception of the renvoi doctrine opens up to us as a new path expected by many. This regulation must be interpreted together with the novel incorporation of the "exception clause" that proposes a flexibilization of the Argentine conflict system and that, together, become two "friends" that function in a peculiar way.

Nicolás CARRILLO SANTARELLI: "La decisión "humanizadora" de la Sala de Cuestiones Preliminares de la Corte Penal Internacional sobre competencia y jurisdicción frente a algunos crímenes cometidos de forma transnacional: el caso de los Rohingya expulsados hacia Bangladesh", 36 *Revista Electrónica de Estudios Internacionales* (2018) [DOI: 10.17103/reei.36.14]

The "humanizing" decision of the Pre-Trial Chamber of the International Criminal Court on competence and jurisdiction regarding certain crimes perpetrated with transnational elements: the case of the Rohingya expelled to Bangladesh

The decision on competence and jurisdiction of the Pre-Trial Chamber I of the International Criminal Court, in spite of its brevity and its seizing procedural aspects at first glance, is noteworthy for several reasons flowing from its interpretations, which enable the Court to address a serious humanitarian and

social crisis that cannot be left in impunity. Concerning this, besides highlighting the autonomous participation that victims may have, and even referring to rights of theirs in the institutional framework of the Court –that the latter must ensure, the Chamber's decision draws a distinction between the crimes of forcible transfer and deportation, and concludes that the Court can have competence even when only part of the pertinent criminal conduct takes place in the territory of States parties to its Statute, even if such conduct did not begin in their territories. This logic permits to strengthen the fight against the impunity of conducts with transnational elements, further eliminating gaps and control vacuums through the potential action of the Court, whose objective international legal personality and effects in relation to third parties in some events are also upheld in the decision.

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