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Ricardo GOSALBO BONO, "Consideraciones en torno a la distinción entre el fondo y la forma en el Derecho internacional (público y privado)", 71(1) *Revista Española de Derecho Internacional* (2019) [DOI: http://dx.doi.org/10.17103/redi.71.1.2019.1.01]

Considerations on the distinction between form and substance in International law (public and private)

The distinction between form and substance based on watertight, rigid criteria has experienced a renewed actuality owing to a series of controversial international judgments that have introduced disproportionate formal requirements in the field of public international Law. These new formal conditions have put into question the traditional informal flexibility of public international law and have impaired the realization of fairness as a unitary and impartial *corpus*, both procedural and substantive, within the international Rule of Law. Notwithstanding, an analysis of the relevant international practice demonstrates that the quest for international justice at the present stage of change that the international community is experiencing, demands a fluid permeability between the frontiers of form and substance, which have become interdependent and without great value when applied autonomously. Simultaneously, in the field of private International Law, the requirements of the present dynamism of the international relations and transactions between private individuals and economic operators have revealed the failure and inadequacy of the rule *lex fori regit processum*, as formulated and applied in its traditional, unilateral and exclusive scope, both for the purpose of assuring equal treatment between the parties in a dispute and for the realization of substantial justice. In the absence of procedural, transnational principles and rules accepted universally, some national legislators and courts, in particular the European Union, have had a laudable recourse to developing bilateral conflict rules of a procedural nature in order to meet the new challenges, in particular those relating to the characterization and the application of foreign law.

Cástor Miguel Díaz Barrado, "La Cumbre de las Américas: Un espacio para la cooperación sin apenas proyección normativa", 71(1) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.1.2019.1.02]

The Summit of the Americas: An area for cooperation with little legal projection

The Summit of the Americas' practice shows us that it is a cooperation body between States of the region which has developed the little normative work. However, this Summit fulfils the precise

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conditions to allow States to adopt legal agreements within it. Above all, the Summit of the Americas encourages the proclamation of some essential principles which could eventually be part of the international legal order. Beyond the specific results, under no circumstances we should dispense with bodies of this type in the domain of International Law. In fact, often and many times, practice shows that political positions of States receive a legal translation. As it is known, the Summit adopted no agreement on the establishment of a Free Trade Area in the Americas. However, at least, the Summit of the Americas has focused in the «democratic principle» which has gained legal force in the region as well as in the «Free Trade principle» that, surely, in the field of customary law is in the process of crystallization.

Guillermo Palao Moreno, "La determinación de la ley aplicable en los reglamentos en materia de régimen económico matrimonial y efectos patrimoniales de las uniones registradas 2016/1103 y 2016/1104", 71(1) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.1.2019.1.03]

The law applicable to matters concerning matrimonial property and property consequences of registered partnerships according to EU Regulations 2016/1103 and 2016/1104

Regulations 2016/1103 and 2016/1104 involve a new step forward in the development of a European Private International Law in the field of Family and Successions. From the perspective of choice-of-law, their solutions are strongly inspired by their conventional and European precedents, creating a new and uniform legal framework with an *erga omnes* effect for those Member States participating in the enhance cooperation procedure. Those instruments favour party autonomy, establishing solutions in defect of choice of law, which provide legal certainty and predictability for spouses/partners and third parties. Despite their benefits, from a general perspective, those Regulations are not free of uncertainties, apart from the internal problems which are linked to the lack of a Spanish legal framework for registered partnerships.

Felipe Gómez Isa, "La Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas: un hito en el proceso de reconocimiento de los derechos indígenas", 71(1) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.1.2019.1.04]

The United Nations Declaration on the Rights of Indigenous Peoples: A Milestone in the Process of Recognition of Indigenous Rights

Indigenous peoples have lived through a process of invisibility and systematic exclusion practically ever since the era of conquest. The arrival of republican States in Latin America following the decolonization process did not involve a substantial change in the traditional relationship of subjection and submission endured by native peoples in the Americas. In the mid-twentieth century, the international community began to pay attention to the marginalized situation of indigenous peoples. The main objective was to integrate some peoples that were considered to be backward and in need of protection. It was within this paradigm that most of the interactions with indigenous peoples have occurred, such as the first international treaty adopted in this field, Convention No. 107 of the International Labour Organization (ILO, 1957). This situation began to change with the adoption of Convention No. 169 by the ILO in 1989, and especially with the recently adopted United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007). From this point onwards, indigenous peoples have become subjects of rights under

international law rather than objects of protection, thus becoming protagonists of a far-reaching process of expansion of human rights.

Javier Morales Hernández, "Las relaciones internacionales en Rusia: desarrollo, enfoques y debates", 71(1) *Revista Española de Derecho Internacional* (2019)
[**http://dx.doi.org/10.17103/redi.71.1.2019.1.05**]

International Relations in Russia: Development, Approaches, and Debates

This article aims to analyze the emergence and development of International Relations as a scientific discipline in Russia, including its most recent debates. In the introduction, we explain the object of study in the context of the growing attention towards academic debates in languages other than English, as a response to the hegemony of American authors and paradigms. The following section describes the beginnings of scientific research and university teaching of International Relations in the USSR, as well as the changes that have taken place in the independent Russian Federation. The third section compares their various conceptions of the discipline, position within the social sciences and main theoretical approaches in the present day. The fourth section examines the debate about the convenience of preserving a national school of International Relations, opposed by those who prefer to adopt Western concepts and paradigms. Finally, the conclusions reflect on the challenges faced by Russian International Relations scholars to achieve greater international recognition.

Salomé Adroher Biosca, "la protección de adultos en el Derecho internacional privado español: novedades y retos", 71(1) *Revista Española de Derecho Internacional* (2019)
[**http://dx.doi.org/10.17103/redi.71.1.2019.1.06**]

Protection of adults in Private international Spanish law. News and challenges

Legal framework on international protection of adults in Spanish law has been recently modified through four different legal reforms: Law 7/2015 on jurisdiction rules, law 26/2015 on applicable law rules and laws 15 and 29/2015 on recognition and enforcement rules. This article analyzes these reforms through recent Spanish jurisprudence and administrative decisions and underlines the convenience of the ratification of the HAPC 2000 by Spain.

Stelios Stavridis, "La diplomacia parlamentaria: el papel de los parlamentos en el mundo", 71(1) *Revista Española de Derecho Internacional* (2019)
[**http://dx.doi.org/10.17103/redi.71.1.2019.1.07**]

Parliamentary diplomacy: the role of parliaments in the world

This study is about parliamentary diplomacy. It begins by asking if it is an oxymoron or a reality. It explains how, after having initially been of the realm of practitioners alone, now there is also academic interest in it. The article shows how from its initial meaning of «conference diplomacy», both the concept itself and its practice now represent a new form of diplomacy. The essay includes several illustrations of this practice and also mentions International Parliamentary Institutions (IPIs) as further empirical evidence of the «parliamentarization» of global affairs but also as yet another practical example of parliamentary diplomacy.

Revista Española de Derecho Internacional (REDI), Vol. 71/2 (2019)

Rui Manuel Moura Ramos: "A codificação do direito internacional privado português em perspectiva, meio século mais tarde", 71(2) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.2.2019.1.01]

The codification of portuguese private international law in perspective, half a century later

The present study deals with fundamental issues of Portuguese private international law codification, embodied in 1966 Civil Code. Placing this codification in the evolution of this matter in Portugal and in the situation existing at the time in the different european states, the Author refers the main characteristics of the system then adopted and the essential options that have been taken, either in the general or in the special part. In a second moment, the evolution that took place during the time the system has been in force is mentioned, characterized by the large number of rules contained in special laws, the reception of international conventions and, after, by the emergence of european union private international law. It is also stressed how these developments have stronly reduced scope of application of 1966 codification, also highligting the elements of materialisation, flexibility and specialisation already presents in portuguese private international law. Finally, permanence of some paradigms and emergence or renforcement of some leading concepts (as the constitutionalisation of the system and the deepening of parties autonomy) are stressed, and reference is made to the fields where new initiatives may be expected from Portuguese private international law legislator.

María Teresa Infante Caffi, "La Corte Internacional de Justicia se pronuncia sobre la demanda de Bolivia contra Chile relativa a una obligación de negociar. La sentencia de 1 de octubre de 2018", 71(2) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.2.2019.1.02]

The International Court of justice decided on the complaint of Bolivia against Chile relating to an obligation to negotiate. The judgment of 1 October 2018

By judgment of October 1, 2018, the International Court of Justice has decided on the submission of the Plurinational State of Bolivia regarding an alleged existence of an obligation under Chile, to negotiate an agreement granting Bolivia sovereign access to the sea. The Court has ruled that neither general international law nor the conduct of the parties resulted in the existence of such an obligation. The case raised the question of where and how that obligation had been generated, if it had been through the conduct of the respondent, or by agreement of the parties, as well as about the role of general international law. The case has recalled the theoretical debate according related to obligations characterized as part of a *pactum of negotiando* or of a *pactum of contrahendo*. The response of the Court to these various elements has been that it could not reach the conclusion that Chile had «the obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean», as stated by Bolivia in its submissions. Among other elements, the Court also affirms that art. 2.3 of the Charter of the United Nations establishes a general duty to settle disputes in order to preserve international peace and security, and justice. And, it does not indicate that the parties are obliged to resort to a specific method of settlement, such as negotiations, a term which is not mentioned in the said provision. Accordingly, the Court could not accept the other final submissions presented by Bolivia, which were premised on the existence of such an obligation.

Javier A. González Vega, "*En busca del esquivo mar:* la controversia Bolivia-Chile ante la Corte Internacional de Justicia", 71(2) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.2.2019.1.03]

In search of the elusive sea: the Bolivia-Chile dispute before the International Court of Justice

This article addresses the study of the dispute between Bolivia and Chile regarding the *obligation to negotiate an access to the Pacific Ocean*, focusing on the judgment on the merits of 1 October 2018. It starts by considering the stands taken by both Bolivia and Chile in the successive phases of the procedure, leading to the defining of restrictively the object of the controversy made by the Court in its previous decision on admissibility (preliminary objection) of 24 September 2015. Further, the analysis of the 2018 judgment reveals a Court's approach inspired by a formalist and voluntarist conception of International Law, unable to overlooking the slightest legal significance of the numerous diplomatic exchanges between the parties over almost a century of contacts. Contrary to this angle, it is argued that a more flexible approach to the elements of the case, paying due attention to the principle of good faith, might have drawn diametrically opposed conclusions and the consequent recognition of a legal obligation incumbent to Chile.

Fabián Novak, "La conducta ulterior de las partes como regla principal de interpretación de los tratados", 71(2) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.2.2019.1.04]

Subsequent conduct of the parties as main rule for treaty interpretation

This study analyzes recent advances and developments around one of the most important rules of treaty interpretation: the subsequent conduct of the parties. In this sense, this study aims to establish the content and scope of this main principle of interpretation, reflected both by the 1969 Vienna Convention on the Law of Treaties and by international custom, taking into account its application by international jurisprudence but also the draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties adopted by the International Law Commission in August 2018. This will be especially useful for those who apply international law, both within the States as well as at international entities, in their permanent work of construing, applying and implementing international treaties.

Matthew Kennedy, "Las reclamaciones sin infracción en las diferencias relativas a la propiedad intelectual en la OMC", 71(2) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.2.2019.1.05]

Non-violation complaints in intellectual property disputes in the WTO

WTO Members have agreed many times not to file non-violation and situation complaints under the TRIPS Agreement, most recently in a Ministerial Decision adopted in Buenos Aires in December 2017. The ongoing dispute in *Australia - Tobacco Plain Packaging* is just the type of case where that Decision is intended to avoid non-violation claims. Even so, nothing prevented the complainants in that case from filing non-violation claims under Australia's tariff concessions on cigars and cigarettes. Drawing on that example, this article explores the scope for non-violation claims in intellectual property disputes as it emerges from the relationship between GATT 1994 and TRIPS. It concludes that non-violation claims have always been available in intellectual property disputes when filed under WTO Members' individual concessions and commitments, although they would be difficult to prove. However, if a Member presented such a claim under

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TRIPS itself after the expiry of the current Ministerial Decision, a panel could find that it disclosed no valid cause of action.

Nuria Marchal Escalona, "El marco regulador en proyecto en España para la resolución alternativa de conflictos: ¿nuevas perspectivas para las reclamaciones de consumo?", 71(2) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.2.2019.1.06]

The regulatory framework project in Spain for alternative conflict resolution: new prospects for consumer claims?

With Law 7/2017, the legislator intends to favor the development and qualification of alternative consumer dispute resolution systems to promote consumer confidence, although this task has not yet finished. Proof of this is the legislative initiative presented by the Spanish legislator for conflict resolution in the field of air transport and in which an *ad hoc* procedure is designed for this type of claims. Its general assessment, although positive, is susceptible to improvement for its complete adaptation to European Law and Law 7/2007. However, we believe that it is necessary for the Spanish legislator to bet on the development of joint and coordinated channels of action between the RAL entities and the judicial system. Consumer confidence would be greater if the RAL entities help facilitate the resolution of litigation in the judicial process, and the new Draft Law to promote mediation seems to be the opportunity to materialize this purpose, by opting in this area for a change of model oriented towards the «mitigated mandatory mediation». A model of mediation that, as we have shown, does not violate either the principle of autonomy of the will or that of effective judicial protection. In addition, we believe that this legislative initiative could be a great opportunity to help facilitate the resolution of litigation arising in the field of consumer law. However, it is an initiative in which there is scope for improvement.

Yaelle Cacho Sánchez, "El potencial desarrollo del nuevo procedimiento consultivo ante el Tribunal Europeo de Derechos Humanos: fortalezas, debilidades, oportunidades y amenazas", 71(2) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.2.2019.1.07]

The potential development of the new advisory procedure before the European Court of Human Rights: strengths, weaknesses, opportunities and threats

Protocol No. 16 to the European Convention on Human Rights, which came into force on 1 August 2018 for the States that have ratified it, allows the highest courts and tribunals of a State Party to request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols. Due to recent developments, we have assessed the particular potential of this new advisory procedure to guarantee the long-term effectiveness of the Convention system. For that purpose, we have examined its context, which covers the reform process of the ECHR system, and its most significant elements as an advisory procedure promoting judicial dialogue. As a result of this analysis, we have identified some strengths and opportunities that may ensure the achievement of its objectives, as well as weaknesses and threats which may adversely affect the long-term effectiveness of the system. The latter may require to take, if necessary, appropriate corrective measures.

Gloria Fernández Arribas, "Corte Penal Internacional y crimen de agresión: el levantamiento de inmunidades mediante la remisión de asuntos por el Consejo de Seguridad", 71(2) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.2.2019.1.08]

The International Criminal Court and the crime of aggression: the waiver of immunities through Security Council referrals

The ability of the Security Council to make referrals under article 15 ter, which includes crimes of aggression committed in the territory of non-States parties or by nationals of non-States parties, opens the door to the analysis of the significance of foreign states officials' immunities before the ICC, since they would be the material authors of those crimes and the recognition of the immunities would render the Security Council's referrals practically ineffective. This paper will analyze the value of such immunities, focusing, in first place, on the existence of a rule of customary law of non-recognition of immunities before international criminal tribunals, and secondly, it will focus on the possibility that the Security Council's referrals entail an implicit waiver of immunities.

Ray Freddy Lara Pacheco, "Las ciudades mundiales y globales en el medio internacional, una revisión teórico-metodológica desde las relaciones internacionales", 71(2) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.2.2019.1.09]

World cities and global cities in the international medium, a theoretical and methodological revision from international relations

This paper summarizes the state of the art of the World and Global Cities studies which, adopting an International Relations point of view, have addressed the influence on global governance of World and Global Cities, together with their ability to create networks with political and economic interactions and their role as actors in the International System.
Like all theoretical and methodological approaches, the one espoused by the above-mentioned studies has been subject to criticism, which has been tacked with in parallel to the consolidation of an epistemic community on the «city» in the discipline of International Relations. The author of this papers claims that thanks to the progress experienced since the eighties until today by the school of the Global City, its approach has become the best positioned perspective in the area of IR, although it is not the only one.

Cesáreo Gutiérrez Espada, "Los sistemas de defensa contra drones, a la luz del derecho internacional", 71(2) *Revista Española de Derecho Internacional* (2019) [http://dx.doi.org/10.17103/redi.71.2.2019.1.10]

Defense systems against drones, in light of international law

The increasing use of drones, armed and unarmed, by states and non-state actors, in the framework of international and / or internal armed conflicts or in the absence of them, forces any State that intends to protect its citizens and infrastructures, as well as to its Armed Forces, bases and facilities, inside or outside the national territory, to equip itself with Defense Systems against Drones, particularly those of small size, reduced speed and limited height (LSS: Low, Slow, Small). This paper studies the types of existing systems and the critical assessment of their possession and use in the light of International Law. And it takes advantage of the recent adoption (January 2019) of a National Concept against UAS LSS by the Joint Center for the Development

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of Concepts (CCDC) of the Higher Center for Defense Studies (CESEDEN) (Ministry of Defense), to also pronounce on this text in the light of current International Law.

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Paloma García Picazo, 'Biopolítica del sistema mundial: varias reflexiones sobre sus derivas patológicas', 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.37.02]

Biopolitics of the world system: some reflections about its pathological drifts

Taken as a premise some of the substantive aspects of the present world accelerated climatic change and environmental degradation together with their estimated causes and effects; realistic forecasts announcing a constant and exponential planetary demographic growth; radical increase of world population's movements throughout the world: induced, forced and compulsory (migrations and internal and international displacements, adding their consequent and massive petitions of residence, citizenship, asylum and refugee rights), this article preceded by two theoretical proposals: Gaia Theory, Anthropocene- performs a specific theoretical digression in which coincide several thesis, conceptually coherent to the previous approach, stemming from M. Foucault extensive work: Biopolitics and Governmentality. Conceived in terms of just a conjectural essay, virtually useful to provide an overview of some of the most critical international issues which affect the present times, this contribution would not pretend at all to provide any 'recipe', 'diagnostic' or 'pronostic' of instrumental or empyrical character, intending merely to expose a qualified repertoire of eventually valuable elements for a theoretical international analysis, debate and reflection.

Angel Sánchez Legido, 'Externalización de controles migratorios versus derechos humanos', 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.37.03]

Externalization and outsourcing of migration controls vs. Human rights

The aim of this article is twofold. On the one hand, it tries to expose the main elements of the European policies of dislocation and outsourcing of migratory controls and to describe the risks that such policies entail from the point of view of human rights and international and European norms on international protection. On the other hand, taking into account the serious risk of evasion of Rule of Law controls that such policies entail, it is attempted to find in the case law of European courts and, above all, the European Court of Human Rights, the elements that would allow rebuild the system of checks and balances so eluded.

Yaelle Cacho Sánchez, "La agenda 2030 para el desarrollo sostenible y el Convenio Europeo de Derechos Humanos: ¿La reforma de su sistema de protección podría incidir en la implementación del ODS 16 ("paz, justicia e instituciones sólidas")?", 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.37.04]

The 2030 agenda for sustainable development and the European Convention on Human Rights: could the reform of its protection system influence the implementation of SDG 16 ("peace, justice and strong institutions")?

Beyond the human rights approach adopted by the 2030 Agenda, it seems possible to connect the SGD 16 about "Peace, justice and effective, accountable and inclusive institutions" with the ongoing reform process of the European Convention on Human Rights, since this process enshrines the right of individual application to the European Court of Human Rights as a cornerstone of the system and develops in such a way the principle of subsidiarity that States are committing themselves to institutional strengthening for the effective protection of human rights. On this basis, the reform of the ECHR may contribute to the implementation of the 2030 Agenda may be conceived. In this scenario, the ongoing reform process of the ECHR is analyzed briefly as a previous step required to understand the two elements identified. After a general contextualization of SDG 16 in the 2030 Agenda, the targets and indicators of this Goal are examined from the perspective of the right of access to justice and the institutional strengthening of the states, in order to verify the possible connections between this Goal and the two highlighted developments concerning the reform of the Convention. The goal is to find new solutions to achieve collective aspirations of human development represented by 2030 Agenda and to ensure its universal and transformative character.

Daniel Iglesias Márquez, "La litigación climática en contra de los carbon majors en los Estados de origen: apuntes desde la perspectiva de empresas y derechos humanos", 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.37.05]

Climate litigation against the carbon majors in the home states: An analysis from the perspective of business and human rights

The progress in the science of climate change have made it possible to identify and quantify in detail the extent to which the contribution of certain corporations to climate impacts affects the necessary conditions for the enjoyment of human rights. This implies that a specific group of corporations is becoming the target of various strategies of climate litigation before judicial and non-judicial mechanisms, in order to bear the cost of prevention and mitigation measures as well as to hold accountable for human rights violations associated with their climate impacts. This paper analyses, from a business and human rights perspective, the feasibility to file legal actions against corporations in their home States for their contribution to climate impacts in third States. In this regard, it argues that these particular kind of cases not only have the potential to influence in the climate actions of the major private greenhouse gas emitters, but also in the States' regulatory activity, especially those in the Global North.

Eva M. Vázquez Gómez, "La protección de la diversidad biológica marina más allá de la jurisdicción nacional. Hacia un nuevo acuerdo de aplicación de la Convención de Naciones Unidas sobre el Derecho del mar" , 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.37.06]

The protection of the marine biological diversity of areas beyond national jurisdiction. Towards a new implementing agreement of the United Nations Convention on the Law of the Sea

This paper, on the one hand, analyses the existing legal framework of the marine biodiversity in areas beyond national jurisdiction, and, on the other hand, the previous steps relating to the development of a new implementing agreement of the Law of the Sea Convention aimed at creating a global and specific legal system in this respect, including the elements which will be discussed during the negotiation.

Reyes Jiménez-Segovia, "Los sistemas de armas autónomos en la Convención sobre ciertas armas convencionales: Sombras legales y eticas de una autonomía ¿bajo el control humano?" , 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.37.07]

Autonomous weapon systems in the Convention on certain conventional weapons: Legal and ethical shadows of an autonomy, under human control?

Autonomous Weapon Systems, also known as Killer Robots, are in the armed conflicts to stay. Since 2014, the State Parties to the Convention on Certain Conventional Weapons debate on how to bring out an instrument for combat whose use raises serious legal challenges and important ethical issues. The impossibility of elaborating a common definition of this type of weapons has got the States repeatedly trapped in a vicious circle, preventing them from tackling legal and ethical issues of major humanitarian relevance. This study presents the technical keys of Autonomous weapons which originate the current blockage and delves into its consequences on legal and ethical issues and it proposes a set of comprehensive and clear actions that guarantee its use compliant with the international humanitarian law and subject to a continuous and meaningful control by the human beings.

Nuria Pastor Palomar, "Reservas a la Convención sobre los derechos de las personas con discapacidad", 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.37.08]

Reservations to the Convention on the rights of persons with disabilities

In expressing their consent to be bound by the Convention on the Rights of Persons with Disabilities, some States have made reservations and interpretative declarations that affect virtually all of their provisions. Some of these reservations raise problems regarding their compatibility with the object and purpose of the treaty: those directed to provisions that play a key role in the structure of the treaty, that do not allow derogation under any circumstances, those that express customary law or even jus cogens, or those written in a general way. In some cases, the other States parties have expressed their rejection, opting for the separability of the invalid reservation of the instrument of manifestation of consent, that is, by the application of the treaty in its entirety without the author State being able to benefit from its reservation. But this response has not been uniform. The treaty monitoring body, the Committee on the Rights of Persons with Disabilities, has also constantly warned about the obligations that allow the integrity of the treaty to be preserved. The study of these issues allows us to reflect on the scope of States' compliance with the new model of disability based on human rights adopted by the Convention.

Ángel Espiniella Menéndez, "Responsabilidad civil por accidentes de trabajo transfronterizos", 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.37.09]

Civil liability for cross-border work accidents

The civil liability of the employer derived from an international work accident has not been expressly regulated. After asking which could be the current model derived from this silence, its adaptation to the typology of accidents and to the intervention of third parties is analysed. With this aim, the essay is composed of five epigraphs: I. The silences of the rules of PIL: 1. The need of express rules. 2. Labour approach versus damages approach. II. Looking for a PIL approach for international work accidents: 1. International Jurisdiction: two insufficient approaches: A) Approach based on characterization. B) Approach based on jurisdictional order. 2. Applicable law: a puzzle of parties, damages and employment relationship: A) Law of the common habitual residence: proximity to the employer and employee. B) Law of the accident: proximity to the harmful event. C) Law of the contract of employment: the most connected law to the employment relationship. 3. Freedom of choice and work accidents: a blurred relation. A) Work accidents in international contracting clauses. B) Choice of law clauses. C) Choice of court clauses. III. PIL and Typology of international work accidents: 1. Standard Case: accident in the place of habitual performance of the work. 2. Special cases by the mobility of the employee: A) Accidents of transferred employees. B) Accidents of temporarily posted employees. C) Accidents of cross-border employees. D) Accidents of seasonal international employees. 3. Special cases by the international nature of the service: A) Work accidents during transnational services. B) Work accidents during nomadic services. C) Work accidents in international spaces. 4. Special cases by the irregularity of the relationship: A) International accidents of "false self-employed persons". B) Accidents of foreign employees in an irregular situation. IV. PIL and intervention of third parties in the international work accidents: 1. Several employers and international work accidents: A) Work accidents in cases of international subcontractors. B) Work accidents in cases of international assignment of workers. C) Work accidents in cases of international succession of firms. D) Common Aspects. 2. The insurer of the international employer's liability: A) Joint claims against the employer and the insurer, B) Direct claim of the employee against the insurer. V. Conclusions.

Javier Carrascosa González, "Traslado intraeuropeo de la sede social de las sociedades de capital", 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.37.10]

Cross border transfer of company seat in the European Union

This work deals with the transfer of the companies' head office under European private internacional law. The economic reasons for that transfer is examined as well as the three levels of regulation: European material law, the law of the State where the seat of the company was previously located and the law of the State of the new seat. Not only are the main judgments rendered by the ECJ in the matter considered, but also the consequences of that tranfer are carefully analized. The four seminal judgments by the ECJ Daily Mail, Cartesio, VALE Építési Kft. and Polbud shed some light on the necessary coordination between European substantive law, the law of the member state where the seat of the company was originally placed and the law of the member state of the company's new seat. Different legal options are open for companies that want to leave the state where the previous company's seat is located. Companies are allowed to transfer their seat to another member state with a parallel change of their governing law or manteining that law although the seat has been transfered to another member state.

Revista Electrónica de Estudios Internacionales (REEI), No. 38 (2019)

Teresa Fajardo del Castillo, "El Pacto Mundial por una migración segura, ordenada y regular: un instrumento de soft law para una gestión de la migración que respete los derechos humanos", 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.38.02]

The Global Compact for a secure, ordered and regular migration: a soft law instrument for management of migration respecting human rights

The Global Compact for a Secure, Ordered and Regular Migration was adopted on December 2018 by 163 States at the Intergovernmental Conference of Marrakech and some days later, it was endorsed by General Assembly of the United Nations in its Resolution 73/195. This Pact together with the Pact for Refugees faces normative action through soft law to adopt common "rules" for "human mobility in the 21st Century". However States proclaim their sovereignty on the subject. This instrument of soft law should serve as a reference for the exercise of sovereign competences in aspects that until now belonged to domaine reservé and for the adoption of a framework for the management of regular migration, although it also marks the reverse of the management of (un) safe, (un) ordered and irregular migration. It will also guide multilateral cooperation within the Organization of the United Nations and the International Organization of Migration.This article will deal with the scope and legal nature of this instrument and its capacity to trigger a model of management of migration while preserving human rights.

Pilar Pozo Serrano, "El Pacto Mundial sobre los refugiados: límites y contribución a la evolución del derecho internacional de los refugiados" , 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.38.03]

The Global Compact on refugees: limits and contribution to the development of international refugee law

The Global Compact on Refugees approved in 2018 aims to improve the response of the international community to large displacement of refugees and protracted refugee situations. The need for an equitable distribution of the burden and responsibility on refugees, present in the work of UNHCR for years lacked, however, explicit normative support. Despite an extensive state practice of according protection to individuals not covered by the refugee definition of the 1951 Convention and its 1967 Protocol, including large-scale displacements of refugees, positions assumed by the States prevented to recognize the existence of a customary norm. The adoption of the Global Compact provided an opportunity to fill these gaps. The political climate surrounding the negotiations and the adoption of the Pact, however, did not enable the adoption of an ambitious text. Several elements were excluded from the Pact during the negotiations. In the end, burden sharing and responsibility sharing were at the core of the Pact which devised novel mechanisms aimed to change the way that the international community respond to the situations of the refugees.

Jaume Ferrer Lloret, "La transparencia y el control internacional en el Acuerdo de París de 2015: ¿Un self contained regime? " , 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.38.04]

Transparency and international control in the 2015 Paris Agreement: A self contained regime?

With the arts. 13, 14 and 15 of the Paris Agreement of 2015 and the Decisions of the Conference of the Parties (CMA) which develop them, a complex institutional and procedural structure is established in order to ensure transparency and international control in the application and compliance with the provisions of this international treaty. In this sense, in art. 13 the so-called enhanced transparency framework is regulated, which must be made effective first through a technical expert review, and then through a facilitative and multilateral review of progress within the CMA. Art. 14 provides for the so-called global stocktake, aimed at assessing the compliance of all parties of the Paris Agreement. And in art. 15 a mechanism is established to facilitate the implementation and promote compliance with this international treaty. It remains to be seen if, given the urgency of the response to climate change, the working of this entire institutional and procedural structure will allow the goals set forth in art. 2 of the Paris Agreement to be met. As of today and as a provisional assessment, we can have a healthy dose of skepticism in this regard.

María Ángeles Sánchez Jiménez, "Plurinacionalidad y autonomía de la voluntad en el ámbito de la ley aplicable al divorcio", 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.38.05]

Multiple nationality and party autonomy concerning the applicable law to divorce

The aim of this paper is to analyse the impact caused by the applicability of the procedure established in the Regulation (EU) 1259/2010 for multiple nationals recital (22) in terms of the party autonomy regarding the choice of the applicable law to divorce introduced by art. 5 of the above-mentioned Regulation. To this end, this analysis begins by specifying the questions raised by multiple nationality in the field of the party autonomy (I). Such precision allows for a subsequent analysis of the response given by recital (22), with the objective of evaluating its scope and consequences (II). This constitutes the essential foundation upon which the impact of this solution for the different situations of multiple nationality will be considered. The results of this analysis allow to confirm the limitations of the choice of the applicable law to divorce on the basis of the connecting factor of nationality and, consequently, the limitations of the party autonomy (III). The evaluation of the consequences derivated from this development as well as the consideration of the appropriate solution for overcoming them is the main objective of the final considerations (IV).

Javier Maseda Rodríguez, "Procesos paralelos en materia de crisis matrimoniales: régimen de la litispendencia (y acciones dependientes) intracomunitaria" , 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.38.06]

Parallel judgments in matrimonial matters: EU lis pendens (and dependent actions) rules

This work analyses the EU lis pendens rule of art. 19 of Regulation (EC) 2201/2003 in relation exclusively to the parallel proceedings of legal separation, divorce and marriage annulment. Taking into account the future application of Regulation (EU) 2019/1111, repealing Regulation (EC) 2201/2003, the rigid nature of this rule is examined, valuing the flexibility possibilities of the prior tempore with special reference to the forum non conveniens in matrimonial matters. Likewise, the question of the identity of parties and cause of action in parallel matrimonial proceedings, paying special attention to the dependent actions and to the consequences for the goals of Regulation (EC) 2201/2003 derived from the equal weight given to legal separation, divorce and marriage

annulment. Determined the seising of a EU matrimonial court for lis pendens, specially, mandatory attemps for matrimonial reconciliation, the procedural exigences of the rule for the first and second seised court are studied, dedicating a section to the possibility and problems of transfer of parallel actions, especially with respect to the choice of law rule related to the action transferred, ending with a reference to the relationship between EU lis pendens and Spanish notarial divorce

Mariano J. Aznar, "The notions of 'preferential right' and 'interest' of States in the protection of the underwater cultural heritage", 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.38.07]

Las nociones de "derecho preferente" e "interés" en la protección del patrimonio cultural subacuático

The notions of preferential right and interest of states are not alien to general international law or the law of the sea and, as hypothesis, there is a subtle and plausible trend to prefer the later before the former when addressing the legal regime of global commons. Considering the underwater cultural heritage (UCH) as a possible component among these commons, this article discusses how to build up a legal regime protecting UCH progressively abandoning the presence of rights and its substitution by the notion of interest. A quest for the holders of this interest and their identification in casu through the revisited notion of verifiable link, the content and extent of their legal capacities and the responsibilities these stakeholders may have –particularly states–, and the legal regime governing all these issues are the purpose of these pages. This article will discuss first the notion of preferential right as used in international law and the law of the sea, in general, followed by the study of the presence and projection of that notion in current international legal texts governing UCH. The same scheme of analysis will be followed when addressing the notion of legal interest and its performance as an operative concept both at the general level of international law and the law of the sea and, later, how this notion may be creating a new legal and political canvas for the protection of UCH.

Luis Pérez-Prat Durbán, "Trucco o Trato. La Sentencia de la Corte Internacional de Justicia de 1 de octubre de 2018 en el asunto de la obligación de negociar un acceso al Océano Pacífico (Bolivia C. Chile)" , 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.38.08]

Trucco-or-Treat. The Jugdment of the International Court of Justice of 1 October 2018 in case Obligation to Negotiate Access to the Pacific Ocean (Bolivia V. Chile)

The award of the International Court of Justice of October October 1 2018 has ruled in Chile's favour on the question of whether Chile should be given an obligation to negotiate with Bolivia for its sovereign access to the Pacific Ocean. The refusal to recognize the existence of this obligation has been made after the analysis of a considerable amount of acts, declarations and behaviours of the parties - bilateral agreements, unilateral declarations, acquiescence, estoppel, etc -, with the constant result of denying the possibility that Chile's intention to commit has emerged. The work of the Court gives rise to criticism, since it has been an exercise in formalism and voluntarism, which has ignored, as plausibly shows dissenting opinions, the crystallizing effect of the aforementioned obligation in some of the episodes of Chilean and Bolivian practice.

José Ignacio Paredes Pérez, "Una lectura de la teoría conflictual de Savigny desde la perspectiva del reconocimiento de los derechos adquiridos" , 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.38.09]

A reading of Savigny's choice-of-law theory from the perspective of recognition of acquired rights

The aim of this work is the analysis on the legal perspective of recognition in Savigny's choice-of-law theory and the important role of the protection of acquired rights. A deep of his work shows us the double function of this notion, as an objective and as principle for the interpretation and application of the model positivized by the author. Regarding the main purpose, the spatial continuation of acquired rights, Savigny takes in account this aspect at the beginning of the creation, given he does not only restrict himself to the determination of the limits of the existing law in a period. He goes beyond, he tackles it in the dynamic sense, emphasising the acquired individual right, as an object of the legal relationship, and always with the aim of spreading its effects in the frame of the community of law. The analogy found by the author between the spatial and temporal limit of the legal rules contributes to this dynamism. Savigny, though, does not stop with the creation of the legal relationship but tackles as well the phase of extraterritorial validity of acquired rights. This matter places us inside the legal thought of the author facing the recognition of the acquired rights because of a change of a formal element and from the recognition of acquired rights based on legal acts verified abroad.

Jonathan Pass, "World hegemony in question: the complexities & contradictions of China's 'passive revolution' in its global context " , 37 *Revista Electrónica de Estudios Internacionales* (2019) [DOI: 10.17103/reei.38.10]

La hegemonía mundial en entredicho: las complejidades y contracciones de la 'revolución pasiva' de China en su contexto global

China's unprecedented meteoric rise has dramatically altered the structure and functioning of the global order sparking debate about whether it may become a 'world hegemon'. The Neo neo-Gramscian perspective adopted here understands hegemony as a power relationship between state-society complexes, each determined by the social forces emergent from its particular class configuration. To enjoy world hegemony a state-society complex must, amongst other things, enjoy politico-cultural hegemony over its subordinate counterparts, manifested in intellectual and moral leadership, enabling it to remaking the world in its 'own image'. In order to assess China's 'hegemonic credentials' (and the kind of world order it would be) according to this criterion, this study examines the evolving and contradictory nature of the country's ongoing top-down social restructuring a passive revolution within the context of a changing global capitalist system. Contemporary China stands at a crossroads, its growth model "unstable, unbalanced and uncoordinated" and its society far from "harmonious". Against the backdrop of authoritarian Caesarism, we argue, a nascent hegemonic project has emerged under Xi Jinping, which seeks not just to carry out profound domestic social reform, but to extend Chinese hegemony internationally, as witnessed over the last few years. We conclude that for the foreseeable future Chinese world hegemony appears unlikely, amongst other reasons because its present societal model fails to inspire emulation abroad, a key requirement for intellectual and moral leadership.