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EDITORIAL

Developments in the Protection of the Citizens' Rights Under International and European Law

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I. Introduction

After the publication of a fascinating Special Issue earlier this year, Utrecht Journal of International and European Law (UJIEL) is also excited to release a General Issue filled with yet another collection of highly relevant and interesting articles. This issue includes six articles and one case note, focusing on a variety of different legal fields such as: international customary law, migration law, international human rights law, international criminal law, and finance law. While each article and case note provides a unique perspective on a specific issue, which merit undivided individual attention, a common theme that runs through most of them is the focus on the rights of citizens. Whether it be property rights, as discussed in Shlegel's article, or the implication of human rights as addressed in the articles by Terwindt, Hill and Manea, as well as Pinto, it is clear that the legal issue(s) these authors wish to analyse is taken from a perspective of how the individual person is affected. The last article, however, focuses on investigating the implications of the SSM framework. As such, it places more emphasis on structural and institutional consequences. The case note, which also pays more attention to consequences that lie beyond the individual, is an interesting discussion on the implications of an ICJ judgment with respect to the Law of Treaties and the Law of the Sea. In order to give credence to each contribution in its own right, the next section will provide a brief overview of the articles and the case note.

II. The Articles

In the article entitled 'Identification of Customary Rules in International Criminal Law', Yudan Tan examines whether or not there has been a shift away from the classic two-element approach (State practice and *opinio juris*) in the identification of international customary law, specifically within the realm of international criminal law.[1] In order to answer this question, he makes a careful examination of the theories and case law presented by international criminal tribunals.[2] Despite the fact that his findings conclude in the negative, Tan's research offers important insight on the shifts that have occurred in the identification of customary rules in the field of international criminal law.

Stefan Schlegel's article offers a change in perspective when it comes to understanding the impact of international treaties that relate to migration in his article 'A Bundle of Rights – International Treaties Regarding Migration in the Light of the Theory of Property Rights'. Schlegel argues that international treaties regarding migration can be seen as mechanisms that transfer bundles of property rights from the

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[1] Yudan Tan, 'Identification of Customary Rules in International Criminal Law' (2018) 34(2) Utrecht Journal of International and European Law.

[2] ibid.

receiving country to the individual migrants.[3] By reviewing a number of different treaties on migration, he demonstrates that a common characteristic among these international treaties on migration is the receiving country's focus on providing property rights to the individual migrant, which is a growing trend that is specifically intended to internalise the effects of migration.[4] Tellingly, this article offers a new perspective on the implications and developments of migration law. Moreover, it proves to be a highly relevant topic in today's ever increasing international movement of people, and is essential for a broader understanding of such effects.

Another current issue in today's world is the increasing demand for food and agricultural products. This is the topic that Carolijn Terwindt, Shaelyn Gambino Morrison and Christian Schliemann tackle in their article 'Health Rights Impacts by Agrochemical Business: Legally Challenging the "Myth of Safe Use"'. Terwindt, Morrison, and Schliemann discuss how this demand has led to the growing production of pesticides by agrochemical businesses, which has consequently resulted in severe chronic illness, injuries, and environmental degradation.[5] The biggest contributor to this problem, however, is the fact that despite widespread litigation and proof to the contrary, these agrochemical businesses continue to claim that their products are 'safe to use'. As such, Terwindt, Morrison, and Schliemann aim to provide complementary approaches through the use of both civil and public litigation strategies to address the human rights issues associated with these negative outcomes, in hopes to hold these companies responsible for their unjust practices.[6]

In their article entitled 'Protection of Civilians: A NATO Perspective' Steven Hill and Andrea Manea provide an in-depth analysis of the North Atlantic Treaty Organization's (NATO) policy on the Protection of Civilians (PoC) that was endorsed in 2016. The authors express that 'the international community's efforts to protect civilians... could always benefit from greater awareness raising efforts in the broader community outside of NATO and security circles'.[7] Although one cannot say for certain the extent to which this article will directly impact the success of such efforts in civilian protection, what is clear is that these two authors, having worked within NATO themselves, offer important insight into the significance and operations of one of NATO's policies. What is particularly interesting is that Hill and Manea do not simply describe what NATO has done and wishes to accomplish through the PoC policy, they also address the challenges that it will face in the future. Furthermore, human rights is not a topic that is usually associated with NATO,[8] which means that this article highlights the growing focus on human rights by the international community. As such, this contribution is not only interesting for those who are curious about NATO's recent work, but also for those who are attentive to the international community's efforts in the realm of human rights generally.

A note-worthy point of contrast is the article written by Mattia Pinto entitled 'Awakening the Leviathan through Human Rights Law – How Human Rights Bodies Trigger the Application of Criminal Law'. Although Pinto focuses on human rights bodies and their growing application of criminal law, thus being of a different topic which does not directly refute the ideas addressed in Hill and Manea's article, Pinto's critical analysis of the increasing trend presented by human rights bodies to incorporate criminal law into their work does make one stop and think. The focus on human rights has positively been attributed to the efforts put forth by human rights bodies such as the Inter-American Court of Human rights, the European Court of Human Rights, the Human Rights Committee, etc. The assumption is that their efforts have developed in a linear-trajectory, relying on the values and procedures these bodies were based on. However, as Pinto points-out and critically challenges in his article, this is not the case. Through his analysis of jurisprudence of the human rights bodies, he showcases how there has been an increasing imposition of duties to criminalise and punish those involved in human rights cases, which is not only going against the traditional approach to human rights, but is also likely to contribute to unwanted consequences.[9] Evidently, Pinto offers a different but very important perspective on the development of International Human Rights Law through the work of human

[3] Stefan Schlegel, 'A Bundle of Bundles of Rights – International Treaties Regarding Migration in the Light of the Theory of Property Rights' (2018) 34(2) Utrecht Journal of International and European Law.

[4] ibid.

[5] Carolijn Terwindt, Shaelyn Gambino Morrison, Christian Schliemann, 'Health Rights Impacts by Agrochemical Business: Legally Challenging the "Myth of Safe Use"' (2018) 34(2) Utrecht Journal of International and European Law.

[6] ibid.

[7] Steven Hill and Andreea Manea, 'Protection of Civilians: A NATO Perpesctive' (2018) 34(2) Utrecht Journal of International and European Law.

[8] ibid.

[9] Mattia Pinto, 'Awakening the Leviathan through Human Rights Law – How Human Rights Bodies Trigger the Application of Criminal Law' (2018) 34(2) Utrecht Journal of International and European Law.

rights bodies. What he makes clear, is that it is essential that we continue to investigate, question, and challenge the development of human rights, and not to assume that all work within that realm will contribute to the field in a positive manner.

The final article is by Argyro Karagianni and Miroslava Scholten, and is entitled 'Accountability Gaps in the Single Supervisory Mechanism (SSM) Framework'. In this contribution, the authors evaluate the impact and development of the 2014 EU Regulation on establishing the Single Supervisory Mechanism in light of the recent judgment from the Court of Justice of the European Union (CJEU) in the case of *Landeskreditbank Baden-Württemberg* v *ECB*.[10] Their main point of inquiry is on the relationship between the EU and the national level of competences with respect to this new banking system.[11] They quickly point out that on the one hand, the regulation divides the powers between the European Central Bank (ECB) and the National Competent Authorities (NCAs); but on the other hand, the Court has taken the view that the SSM regulation entrusted all supervisory powers to the ECB.[12] In consequence, the authors argue that there has been a 'reverse' delegation line,[13] which is an essential characteristic of the aforementioned relationship that has not yet been fully established in the SSM framework itself. The authors also consider other important implications this might have with regards to the development of EU law generally. This article has a strong focus on the Court's judgment for its analysis. Nevertheless, their evaluations and conclusions stray far beyond this single case. It is first and foremost an investigation into the evolution of the SSM framework, and what this might say about EU law in a broader scheme.

III. The Case Note

The case note presented in this UJIEL issue is entitled 'The ICJ's Judgment in *Somalia v. Kenya* and its Implications on the Law of Treaties and the Law of the Sea', written by Kei-Chieh Chan. As the title suggests, the case note analyses the implications of the International Court of Justice's (ICJ) judgment from the case of *Somalia v. Kenya*, which took place on 2 February 2007.[14] Chan's main argument is that the Court's judgment embraced a more objective definition of treaties, focused on the importance of context and *travaux préparatoires* in treaty interpretation, and thus established itself as the default adjudicator for cases on the law of the sea.[15] This is clearly a fascinating case note to read, as it identifies a significant development in the Court's view on what position they should take when it comes to the interpretation of treaties, and on issues relating to the law of the sea.

Competing Interests

The author has been the Solicitations Editor of the Utrecht Journal of International Law since October 2017.

[10] Argyro Karagianni, Miroslava Scholten, 'Accountability Gaps in the Single Supervisory Mechanism (SSM) Framework' (2018) 34(2) Utrecht Journal of International and European Law.

[11] ibid.

[12] ibid.

[13] ibid.

[14] Kei-Chieh Chan, 'The ICJ's Judgment in Somalia v. Kenya and its Implications on the Law of Treaties and the Law of the Sea' (2018) 34(2) Utrecht Journal of International and European Law.

[15] ibid.

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