Emory International Law Review

Volume 26 | Issue 2

2012

Foreword

Gregory S. Gordon

FOREWORD

The Editorial Board of the *Emory International Law Review* is pleased to present the second issue of Volume 26. This issue contains a collection of scholarly articles, written symposium pieces, and student comments, together covering a broad span of international law topics. In addition, this issue marks the second year of our renewed Recent Developments section, where we publish a collection of shorter pieces on current events in international law, which are posted online upon completion of the editing process and later included in our print edition. With this issue, the Editorial Board also reintroduces the practice of authoring a Foreword to accompany every issue. When Forewords first regularly appeared in the early volumes of the *Emory International Law Review*, they allowed the Editorial Board to draw major themes out of the individual pieces and provided the Editorial Board the opportunity to thank some of the individuals whose contributions help make the *Emory International Law Review* a success.

This issue of the *Emory International Law Review* begins with several Recent Developments that discuss current phenomena in international patent law, advances in Brazil's domestic legal system, and Brazil's contribution to the debate on exchange rates and trade. In our first Recent Development, Professor Timothy Holbrook responds to the recent rulings of the Federal Circuit in *Akamai Technologies, Inc. v. Limelight Networks, Inc.* and *McKesson Technologies Inc. v. Epic Systems Corp.* In an essay that has already garnered notable responses and citations since its publication online, Professor Holbrook argues that the *Akamai* and *McKesson* decisions may have extended the extraterritorial reach of a patent under 35 U.S.C. § 271(b), by decoupling active infringement from its statutory territorial limitation.

Our second Recent Development centers on the impact of yet another significant 2012 patent case, *Solvay SA v. Honeywell Fluorine Products Europe BV*, which was decided by the Court of Justice of the European Union. In this piece, Professor Marketa Trimble traces the effect of the Solvay case on the Brussels I Regulation recast, which will replace the current Brussels I Regulation on jurisdiction across the European community in 2015. Professor Trimble argues that the *Solvay* decision provides flexibility for at least some national courts within the European community to decide cases pertaining to

patents granted outside their respective countries, and points to the German court system as a potential locus for centralized patent litigation in Europe.

Our third and fourth Recent Developments pertain to Brazil, regarding changes within its domestic legal system, and its contribution to the global debate on currency manipulation and its effect on trade, respectively. Our third Recent Development is authored by two clerks to the United States Court of International Trade, Silas W. Allard and Antonia F. Pereira. The piece analyzes Brazil's call for traditional trade remedies, such as countervailing duties and anti-dumping duties, to be used as tools against the fixing of exchange rates. Finally, our fourth Recent Development, authored by Professors Nuño Garoupa and Angela Oliveira, outlines the introduction of stare decisis and certiorari into the conceptual framework of the Brazilian legal system. As part of their discussion, Professors Garoupa and Oliveira present a comprehensive comparative survey of stare decisis and certiorari across common law and civil law jurisdictions around the globe, placing Brazil's legal development within an international context.

Our Articles section begins with a study of the interpretation by Latin American and Caribbean states of right to life provisions in the Convention on the Rights of the Child and the American Convention on Human Rights. Professor Ligia de Jesus of Ave Maria School of Law argues that Latin American and Caribbean states reject abortion rights, and that these states' legally binding interpretation of their treaty obligations recognizes and protects the right to life before birth.

In our second Article, Ms. Laura Halonen of the Lalive law firm in Switzerland examines the compatibility of United Kingdom and United States legislation against financing terrorism with public international law on jurisdiction. Ms. Halonen concludes that as there is presently no universal jurisdiction for the crime of financing terrorism under customary international law, the laws of the United States and the United Kingdom are not entirely compatible with international law. In the current era of highly publicized terrorism financing prosecutions, Ms. Halonen's piece is a timely and relevant study of the subject.

In our third and final Article, Mr. Jordan Toone of White & Case LLP discusses the increase in Foreign Direct Investment in the Gulf Cooperation Council. Mr. Toone uses a series of data sets to demonstrate the dramatic upsurge in investment and analyses the legal frameworks that typically govern foreign investment regimes in the Gulf region. The Article concludes with a

discussion of what the aggregation of his data reveals about the relationship between Foreign Direct Investment and economic growth.

Our Symposium section compliments our Third Annual Symposium, titled *International Law and the Internet: Adapting Legal Frameworks in Response to Online Warfare and Revolutions Fueled by Social Media*, held on February 1, 2013, at Emory University. The Symposium's speakers and panellists considered many topics revolving around the themes of government responses to burgeoning forms of communication, especially as they relate to revolutionary movements, and the challenges in applying jus in bello and jus ad bellum concepts to cyberwarfare.

The introduction to our written Symposium is provided by Kristen E. Tullos 12L. Ms. Tullos thoroughly recaps the highlights of the Symposium's speakers and panels. Noting that the substantive questions posed at the Symposium are but another iteration of the conflict between liberty and security, Ms. Tullos urges us to search for ways to apply existing legal frameworks in ways that bolster the Internet's role in education, communication, and innovation, while at the same time restricting its ability to cause harm.

In our second Symposium piece, Ryan Hal Budish traces the growing pains of online activism and the challenges that remain for traditional activism. Mr. Budish, a fellow at the Berkman Center for Internet and Society and the Project Director of Herdict.org, argues that online activist platforms, such as Herdict, can serve as powerful engines for activism by allowing the largest possible coalition of participants to contribute to a cause through small, safe tasks.

The proliferation of the Internet has also led to a rapid rise in both the capabilities and corresponding vulnerabilities of national governments to cyber attacks. Eric Talbot Jensen, associate professor at Brigham Young University Law School, argues in our third Symposium piece that the traditional notions of deterrence developed during the Cold War have had to adapt to this changing threat. However, these adaptations have also opened new opportunities and raised important legal issues implicating international law, the law of armed conflict, and U.S. domestic law.

In a similar vein, Catherine Lotrionte, the Director of the Institute for Law, Science & Global Security and Visiting Assistant Professor of Government at Georgetown University, argues that the evolving ability of cyber attacks to

threaten critical national infrastructure requires an international agreement on how the normative principles of *jus ad bellum* apply in the cyber context. Such an agreement is necessary to maintain the stability and world peace for which the international community was founded. Dr. Lotrionte argues that the norm of state responsibility should be applied to cyber attacks to foster cooperation between nations, especially where cyber attacks can be attributed to non-state actors operating within the territory of another state.

Our final Symposium piece was contributed by Sascha Meinrath, Vice President of the New America Foundation and Director of the Open Technology Institute, and Marvin Ammori, a fellow at the New America Foundation and Principal of the Ammori Group law firm. They argue that the Internet is the foundation for twenty-first century civil society, and that Internet freedom is necessary to maintain democratic participation in that modern civil society. Meinrath and Ammori urge lawyers to seek out both the legal and technological expertise needed to ensure that legislation of the Internet is driven by technical knowledge and an eye to freedom, rather than by the forces of fear, uncertainty, and doubt.

Moving next to our Comments section, we publish a collection of student pieces that concern a wide range of international law issues. The first of our Comments is written by Thomas Buck, Jr. 13L and examines whether the legal justifications for criminal bans on polygamy can withstand modern challenges. Beginning with the 2011 case of the British Columbia Supreme Court and its comprehensive 190-page opinion upholding Canada's criminal ban on polygamy, the Comment examines such wide-ranging sources as ancient Mormon and Islamic texts and recent episodes of Sister Wives and Big Love. Mr. Buck concludes that the harms flowing from polygamy are evident and outweigh any infringement on fundamental rights brought about by criminal bans.

Yilin Ding 13L provides our second Comment. He examines the 2008 Congo cases that involved a vulture fund bringing suit in Hong Kong courts. The Chinese national government intervened in the cases to force Hong Kong to abandon its common law restrictive doctrine of immunity in favor of China's more traditional absolute sovereign immunity doctrine. Mr. Ding concludes that the shift was not only regressive for Hong Kong, but also not in the best long-term interests of China. He demonstrates that a better solution to the issues raised in the Congo cases is to look to the anti-vulture legislation in the United Kingdom.

Our third Comment examines another facet of the Chinese legal system. Jordan Kearney 13L argues that China's new Tort Liability Law, intended to curb retributive violence in response to medical malpractice, will fail because it incorrectly assumes both the public's ability to get a fair trial and the public's perception of that ability. Ms. Kearney argues that for the law to become effective, and in turn for China to achieve actual medical malpractice reform, the Tort Liability Law must be accompanied by broader legal reforms to assure access to and fair administration of the justice system.

In our fourth Comment, we move from China to the European Union, with an analysis of European patent reform by Matthew Parker 13L. Mr. Parker discusses the need for a uniform patent regime across Europe, to protect the value of European patents in the global economy. He delineates the objections to a uniform regime that have been raised by the European Court of Justice, European Parliament, Italy, and Spain, and proposes means by which to overcome these objections, in order to realize meaningful European patent reform.

From patent reform in the European Union, we then move on to anti-doping efforts in sport. In our fifth Comment, Geoffrey Rathgeber 13L begins with the case of Brazilian swimmer César Cielo Filho, who was sanctioned by the Court of Arbitration for Sport after testing positive for a diuretic known to conceal banned substances. Amidst this backdrop, Mr. Rathgeber advocates for a re-drafting of the World Anti-Doping Code, to make it more fair and understandable. In addition, he recommends ways the Court of Arbitration for Sport can shape the reasoning that it provides in its opinions.

Our sixth Comment is authored by Alexander Weaver 13L. He examines the effect of news aggregators—entities that compile news stories published by several other sources, and present them in one single online location—on the traditional news industry. Mr. Weaver tackles the possible infringement by news aggregators of copyrights held by news publishers, and uses case precedent from Australia and the United Kingdom to argue that the onus to limit aggregators' access should be placed on the website owner through website tags and technological barriers.

The Editorial Board would like to conclude by thanking those individuals whose dedication and sage advice have helped us to produce this publication. First, we would like to thank our classmate Stella Lee 13L for her assistance with a series of particularly challenging translations. As always, we would also like to thank the staff members of the *Emory International Law Review* for

their tireless efforts and for lending us their expertise. This issue also benefitted in ways large and small from the advice and guidance of our faculty advisors. The Board is grateful for the hard work and patience that brought this issue to publication.