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## Foreword

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## FOREWORD

The Editorial Board of the *Emory International Law Review* is pleased to present the first issue of Volume 27. With this issue, we continue our tradition of publishing short pieces, known as Recent Developments, top-notch student pieces, and full-length professional articles. The thirteen individual pieces in this issue span a wide cross-section of international law subjects, from the Alien Tort Statute to cross-border adoptions and from digital privacy to military necessity.

This issue begins with a pair of Recent Developments. The first, written by Professor Marcelo Dias Varella, reviews the recent explosion of international law norms. As the proliferation of these norms hastens, Professor Varella reveals, more states can be readily integrated into international legal systems. Professor Varella goes on to propose and describe developing sources of international norms, including private systems that are often neglected by legal scholarship. The second Recent Development, authored by Professor Edward L. Carter, discusses litigation over the right to be forgotten. Several countries are struggling with how to deal with plaintiffs who claim the right to have personal and embarrassing information deleted from Internet websites and servers. Professor Carter uses recent litigation in Argentina as a lens through which to view the conflicting forces at play, including the freedom of speech, the freedom of press, and technical questions about whether information in the digital age can ever really disappear.

The five professional articles begin with a piece by Professor Stacy-Ann Elvy discussing the recently enacted African Charter on Democracy, Elections and Governance (“ADC”). The ADC is the first regional instrument that seeks to ensure key elements of liberal democracy throughout Africa, but it is not without analogues in different regions of the globe. Professor Elvy looks at instruments around the world that sought to enact the same reform that the ADC seeks before providing several suggestions for the new African project. The second professional piece is authored by Professor Yasmine Ergas and looks at the future for international agreements on commercial surrogacy. Professor Ergas argues that the shortcomings of the existing ad hoc approach to this issue are quickly becoming clear, yet a unifying set of international norms is still a distant goal. The article concludes with a series of challenges that a new regime must overcome in order to remedy existing problems.

Our third professional article comes to us from Professor Nobuo Hayashi. Professor Hayashi looks at intricacies of the principle of “military necessity,” and its limits in justifying military conduct. Professor Hayashi highlights the ways international humanitarian law has accounted for some forms of military necessity but ignored other kinds, all to the detriment of cogent norm-creation. The fourth professional piece, authored by Professor Won Kidane, analyzes standards for the expulsion of aliens in the United States and the European Union. This comparative view exposes a number of shortcomings in both systems and allows Professor Kidane to identify a series of best practices for use by nations around the world. Our final professional article is one by Professor Joel Slawotsky. In it, Professor Slawotsky discusses Israel’s recent enactment of a windfall energy profits tax, which had a dramatic effect on U.S.-based Noble Energy. That company recently made two giant gas strikes in Israel but, after the enactment of the new Israeli law, its profits from those strikes will be taxed at a much higher rate than it had anticipated. Professor Slawotsky argues that by dramatically increasing the tax rate levied against Noble Energy, Israel may have violated an investment treaty made between the United States and Israel in the 1950s. Pursuant to the agreement, Noble Energy may have the opportunity to arbitrate its claim rather than seek restitution in the International Court of Justice.

Our six student comments begin with a piece by Bethanie Barnes 13L, highlighting the shortfalls of recent proposals for an inter-country adoption agreement between the United States and Russia. Ms. Barnes looks to the history of adoptions between the two nations before turning to key factors the two countries should consider for future agreements. Kedar Bhatia 13L authors the next piece, which takes a rarely discussed position of the Alien Tort Statute: the jurisdictional view. The statute, which has been in force in the United States since 1789, allows domestic U.S. courts to hear claims for violations of the law of nations stemming from violations anywhere in the world. However, Congress has provided courts little guidance on the kinds of violations that can be brought under the statute. Mr. Bhatia proposes a simpler solution—viewing the statute as purely jurisdictional—that would task Congress with more directly choosing what claims can be brought in federal court.

Melissa Curvino 13L authors the next student comment. In it, Ms. Curvino discusses the phenomenon of concordats in Spain, whereby Spain formally recognizes the rights of a particular religious group by reaching agreements with the leadership of those groups. Ms. Curvino argues that recent concordats

correctly recognize the rights of a significant majority of Spanish citizens while also protecting the rights of minority groups. The fourth student comment, authored by Courtney Ginn 13L, looks at the groundbreaking work done by the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) on the prosecution of sexually violent crimes. While these crimes have a long and dark history during wartime, the ICTY took a bold new approach to trying the individuals accused of these crimes while protecting the victims of violence. Nonetheless, the ICTY prosecutions had little success, and Ms. Ginn both explains their shortcomings and provides several possible solutions for the Bosnian domestic courts that will inherit the ICTY’s docket.

The next student comment comes from John Odle 13L and tackles the cutting-edge issue of drone warfare. Mr. Odle begins by discussing how drones have been deployed in recent conflicts before turning to the law governing targeted killings. He concludes that the United States has different limitations based on whether the United States is in an armed conflict. The final student piece, authored by Alan Payne 13L, analyzes the United States’ treatment of atheists. Mr. Payne first looks at how the United States’ Establishment Clause jurisprudence has evolved on the treatment of atheists before turning to how Europe treats the same citizens. Mr. Payne argues that the United States could benefit by adopting key principles that ground the treatment of atheists in Europe.

The Editorial Board would like to thank the individuals whose hard work and dedication brought this issue to print. The list of advisors and contributors is long, but includes our faculty advisors, alumni advisors, and the staff editors who work so tirelessly to edit and refine each piece we publish. The Board would like to thank the sixty-three students who collectively spent hundreds of hours editing, cite-checking, and reviewing the more than seven-hundred pages of scholarship that went into this issue. We hope you will enjoy this issue of the *Emory International Law Review*.

THE EDITORIAL BOARD