

**UNIVERSITY OF
LEADING
THE WAY
WESTMINSTER** 

WestminsterResearch

<http://www.westminster.ac.uk/research/westminsterresearch>

Editorial

Marco Roscini

School of Law

This is the pre-print version of an editorial published in the International Community Law Review, 10 (2). pp. 107-108, 2008.

The final, definitive version can be found on the publisher's website:

<http://dx.doi.org/10.1163/187197308X311263>

The WestminsterResearch online digital archive at the University of Westminster aims to make the research output of the University available to a wider audience. Copyright and Moral Rights remain with the authors and/or copyright owners.

Users are permitted to download and/or print one copy for non-commercial private study or research. Further distribution and any use of material from within this archive for profit-making enterprises or for commercial gain is strictly forbidden.

Whilst further distribution of specific materials from within this archive is forbidden, you may freely distribute the URL of WestminsterResearch: (<http://westminsterresearch.wmin.ac.uk/>).

In case of abuse or copyright appearing without permission e-mail repository@westminster.ac.uk

In this issue, the *International Community Law Review* continues its timely focus on contemporary legal developments and also brings to light some underresearched issues. The first two articles both tackle problems related to the interpretation of treaties. Ulf Linderfalk's opening contribution, 'Doing the Right Thing for the Right Reason', provocatively suggests that the arguments usually put forward to justify the adoption of a flexible approach with regard to the problem of the variation in law and language over time (namely the doctrine of intertemporal law as expressed by the sole Arbitrator Max Huber in the *Island of Palmas* Arbitration, the International Court of Justice (ICJ)'s judgment in the *Aegean Sea Continental Shelf Delimitation* case and the *Namibia* Advisory Opinion by the same court), are not the correct ones, as, in reality, the supportive reasons lie elsewhere. The second part of the article also provides much food for thought and contains a thought-provoking re-assessment of the much debated problem of intertemporal law, which the author correctly believes having wider implications for the interpretation of treaties than usually assumed. Indeed, the intertemporal problem arises not only with regard to the use of language and the 'relevant rules of international law', but also in relation to the teleological criterion (as the initial purpose of the parties might subsequently change) and to the supplementary means of interpretation (according to the author, these include treaties *in pari materia*, the existence and number of which can vary over time).

The problem of the (re)interpretation of treaties is also at the core of Jill Marshall's article. Recalling Dworkin's theory of jurisprudential interpretation, the author's main purpose is to provide an overview of how recent judicial developments have creatively interpreted human rights law so to make it consistent with the overall purpose of treating all persons as equal. The focus of the article is on gender based violence in the 'private sphere' perpetrated by non-state actors. Through an analysis of relevant case-law of human rights bodies, the point is made that such actions are increasingly being included and interpreted as human rights violations of international concern. What would normally be a wholly private conduct is turned into an act attributable to a state because that state has failed to comply with its duty to prevent certain actions by individuals or groups within its jurisdiction to the detriment of international human rights. The concept of 'due diligence' might thus play a role in the re-interpretation of human rights law in order to improve the conditions of the victims of gender based violence, and in particular of women.

Ignacio de la Rasilla del Moral discusses the question of *jus standi* in international disputes involving *erga omnes* and *jus cogens* norms. Starting from the *Democratic*

Republic of the Congo v Rwanda Judgment of 3rd February 2006, in which for the first time the ICJ expressly recognised the *jus cogens* character of a norm of international law, he revisits some of the landmark decisions of the World Court regarding community interests in the light of recent doctrine. In spite of the reaffirmation by the ICJ of the principle of consensual jurisdiction even in the relationship between *jus cogens* and the establishment of the Court's jurisdiction, the author deems it fit to explore alternatives to circumvent the requirement of state consent for the judicial protection of community interests in international adjudication.

Finally, two articles, Suresh Nanwani's and Kate Dick's, present complementary perspectives on the topical issue of the participation and role of civil society in the activities of intergovernmental organisations. Nanwani's piece addresses the development and operation of accountability mechanisms in multilateral development banks, with particular emphasis on those established at the World Bank and at the Asian Development Bank in the 1990s. For the first time, international financial organisations created mechanisms that enabled private citizens to file claims with these institutions and to present their points of view on inadequate projects. Nanwani offers a precious insider's analysis of those mechanisms and of the seven categories of barriers encountered by citizens in accessing them, along with the measures that can be or have been taken in order to remove such barriers. The article ends by suggesting ways in which civil society's demands for accountability in multilateral development banks can be further developed.

Kate Dick's contribution on the legal status of non-governmental organisations (NGOs) under international energy treaties provides a stimulating discussion of this (surprisingly) underinvestigated issue. The author distinguishes between judicial and non-judicial modes of NGOs participation in the activities of intergovernmental organisations and concludes that a right of participation has probably emerged with regard to international energy treaties and institutions within the United Nations system, although this right is limited to participation in setting the policy framework, and does not extend to a right to participate in judicial disputes. On the other hand, NGOs have an almost irrelevant status under energy treaties outside the UN framework, in particular within the WTO machinery. This situation will hopefully change, as a wider participation of NGOs would increase the transparency and legitimacy of intergovernmental institutions. We hope that the present issue of the *International Community Law Review* will stimulate discussion on this and other important issues. Papers dealing with topical questions are, as usual, invited for submission, as part of the Review's constant endeavour to keep pace with the wealth of legal problems faced by the international community today.