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be explained by its strategy of the gradual judicial federalization of the Union. It also presupposes that recent jurisprudence of the European Court of Human Rights regarding Bosphorus presumption might be interpreted as modification of the Court's attitude in relation to the European Union.

Keywords: European Court of Justice; European Court of Human Rights; Opinion 2/13; European Convention; accession.

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INTERNATIONAL ORGANIZATIONS AND DISPUTE SETTLEMENT: SOME ISSUES, TRENDS AND PROSPECTS

Artur Gulasarian

Both the proliferation of international organizations and the increasing role they play in almost every field of international relations over the last decades has made the rise in the number of disputes involving international organizations inevitable. Based on an analysis of the texts of constituent instruments of a number of international organizations, international treaties, state practice, and contemporary doctrine of international law, this paper highlights the modes of dispute settlement involving international organizations (such as settlement of disputes between international organizations and member-states, settlement of disputes between international organizations and non-member states, settlement of disputes between international organizations and non-state actors, settlement of disputes between organs of international organizations, settlement of disputes between members of international organizations), reveals the key features of different procedures (judicial and non-judicial) of dispute settlement involving international organizations at both the universal and regional levels, identifies issues that need to be addressed within the context of particular procedures of dispute settlement, and assesses the prospects for their use. The paper also offers some insights into where the topic of "The settlement of international disputes to which international organizations are parties," which was proposed for inclusion in the long-term program of work of the UN International Law Commission in 2016, will need to go in the future. In doing so, this paper argues that the topic meets the requirements for selection of new topics set by the International Law Commission and that it is ripe for codification and progressive development. This paper suggests that the existence of an adequate international system of dispute settlement involving international organizations is an essential means of ensuring the independent and proper functioning of such organizations.

Keywords: international organizations; disputes; international courts and tribunals; state practice; non-judicial procedures of dispute resolution; UN International Law Commission.

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JUS HOMINUM

THE EUROPEAN COURT OF HUMAN RIGHTS AND FREEDOM OF RELIGION

Angelika Nussberger

The article analyzes the case law of the European Court of Human Rights (further – ECtHR) considering an important area of the freedom of religion, namely the use of religious symbols. These cases as well as restricting measures of member states, which have been challenged before the Court, are regularly controversially discussed in many European countries. By taking decision in cases of that category, the ECtHR demonstrates a double approach. On the one side, the secularism and intention to keep the equality of religions on a "zero" level are still favorable by the Court. For this reason, the Court often accepts various restricting measures considering the use of religious symbols. However, the author supposes that in the last time the symptoms of an other approach have been emerging: the Court treats the feelings of religious people in a more accurate manner and takes in consideration the cultural and historical context of a particular country. Thus, in the case Lautsi vs Italy, the Grand Chamber reversed the judgment of the Second Chamber not seeing a violation of Article 9 of the European Convention of Human Rights, which protects the freedom of thought, conscience and religion, in the common presence of crucifixes in classrooms of Italian public schools. Additionally, the ECtHR attempts to provide a wide margin of appreciation to national courts and politics. Moreover, the Court accepts many models of regulating the use of religious symbols, provided that they comply with the requirements of the Convention, especially the one very important, namely the prohibition of discriminating of particular beliefs. However, the author emphasizes that persons belonging to different religious groups could be affected by formally equivalent restricting measures to a different extent. One cause for that is the fact that the use and the wearing of religious symbols can be considered either as a duty or as a voluntary task.

Keywords: freedom of religion; secularism; religious symbols; margin of appreciation; proportionality test.

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THE ISSUES OF OBSERVING ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS BY RUSSIA WITH REGARD TO DETAINEES: THE ECTHR CASE-LAW

Ruslan Kantur

This article scrutinizes judgments of the European Court of Human Rights related to the issues of torture and other forms of cruel, inhumane, or degrading treatment applied by Russian law enforcement authorities to detainees. As established, such forms of treatment run counter to Article 3 of the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and have a pre-disposition to encroach upon the core human rights values recognized in all democratic societies. Out of all ECtHR cases upon the subject, this article focuses on those of *Barakhoev v. Russia*, *Maslova v. Russia*, and *Shmeleva v. Russia*, adopted by the Court in 2017. Specifically, the Court has invoked the autonomous concept of torture and other forms of cruel treatment commensurate with the normative definition stipulated in the 1984 Convention against Torture and Other Cruel, Inhumane, or Degrading Treatment of Punishment (the "official capacity" clause as excluded), with the *minimum threshold of severity* rule and *intensity* criterion, which the Court elaborated in its case-law covered by this concept. The stable construction of the autonomous concept is corroborated by reference to the previous similar case-law, namely *Mikheyev v. Russia* and *Kopylov v. Russia*, with the congruence of *corporum delicti*, as well as *animi nocendi*, of the latter cases with those of 2017 being revealed. The approach of the Russian senior courts in regard to the concept of torture and other forms of cruel treatment is examined. It is argued, with reference to the explicit position of the Supreme Court of Russia, that the prohibition of torture has become part of customary international law and does not allow for margin of appreciation. This assumption is predicated upon the principle of non-derogation from international obligations springing from Article 3 that constitutes a customary norm, as is envisaged in the relevant ECtHR case-law. Hence, the judicial mechanism provided for in the Russian legislation, which authorizes the Russian Constitutional Court to hold the Court's judgments unconstitutional and thus as not having legal force on the territory of the Russian Federation, can hardly be applied to cases where the ECtHR concludes that there has been a violation of Article 3 of the European Convention.

Keywords: European Court of Human Rights; cruel treatment; right not to be subjected to torture; violations of rights of detainees.

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JUS CRIMINALE

ON THE ACTIVATION OF ICC JURISDICTION OVER THE CRIME OF AGGRESSION

Claus Kreß

In the early hours of 15 December 2017, the Assembly of States Parties to the Rome Statute made the decision to activate the International Criminal Court's jurisdiction over the crime of aggression as of 17 July 2018. The activation resolution was adopted after extremely intense negotiations about one aspect of the jurisdictional regime, which had remained controversial since the adoption of the Kampala amendments on the crime of aggression. The legal controversy that had surrounded one detail of its consent-based jurisdictional regime created the Kampala amendments. Legal opinions divide with respect to how the state consent-based exercise of the Court's jurisdiction precisely operates between States Parties to the ICC Statute. In essence, two conflicting legal views had emerged. According to the first position, in such a case, the Court is precluded from exercising its jurisdiction over an alleged crime of aggression if committed either on the territory or by a national of a State Party to the ICC Statute, if this state has not ratified the Kampala amendments. According to the opposite position, a State Party, by ratifying the Kampala amendments, provides the Court with the jurisdictional links referred to in Article 12(2) of the ICC Statute. This means that the Court may, inter alia, exercise its jurisdiction over a crime of aggression allegedly committed on the territory of such a State Party by the national of another State Party to the ICC Statute, even if this second state has not ratified the Kampala amendments. Resolution adopted in New York appears to favour the latter approach, however it included a clause reaffirming a judicial independence and therefore leaves room for interpretation by the judges of the court in the future. The New York breakthrough completes the Rome and Kampala conferences and it marks the culmination of a fascinating century long journey. Imperfect as it is, the consensus reached at the UN headquarters sends a timely appeal to the conscience of mankind about the fundamental importance of the prohibition of the use of force for an international legal order, aimed towards the preservation of world peace. Since its inception, Russia has been an important actor in the long-running international debate about the international legal regulation of aggression. That is why the author of the article considers it appropriate to make it available to a wider Russian readership.

Keywords: International Criminal Court; Rome Statute; United Nations; UN Security Council; crime of aggression; use of force.

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THE TRUTH NEEDS ALLIES: THE IMPORTANCE AND PROBLEMS OF INTERNATIONAL FACT-FINDING COMMISSIONS

Aleksey Kudinov

This article reveals the significance and presents the theoretical and legal grounds of international enquiries, and assesses the role of the Russian Federation in the genesis and development of the concept of international fact-finding commissions. In the author's opinion, despite its considerable potential, the enquiry procedure is not used by the international community to the full extent. States do not use it even in cases where an international dispute is a disagreement on a point of fact. Single cases, where states used enquiry in order to settle their disputes, were typical for the first half of the 20th century. Fact-finding missions are actively used within the UN, however, the lack of a database and a uniform methodology for investigations is influencing the effectiveness of these missions. In the author's opinion, this is the result of a "fragmentation" of the missions. As a solution, the author proposes to gradually phase out fact-finding commissions that are established ad hoc in favor of a standing committee. The author notes the ineffectiveness of the International Humanitarian Fact-Finding Commission established in accordance with Additional Protocol I to the Geneva Conventions. Established in 1991, it was practically inactive until 2017. At the same time, the first investigation conducted by the Commission in 2017 on the initiative of the OSCE was illegal since international organizations are not authorized to initiate investigations by the Commission. As a solution to the problem of the Commission's inefficiency, the author proposes to integrate it into the UN system. Another problem inherent in international fact-finding commissions is their quasi-judicial nature. As a rule, fact-finding commissions are not limited to establishing facts, but are empowered with a broad competence, including the formulation of legal conclusions. As a result, the initial purpose of the fact-finding commissions is being eroded, and the outcome of the investigations is assessed ambiguously by the international community. In the author's opinion, this problem can be solved by legally fixing the right of commissions to formulate legal assessments of established facts exclusively as an expert opinion and as an annex to the main part of the report, which should include only information on established facts.

Keywords: fact-finding; international investigation; enquiry procedure; enquiry; International Humanitarian Fact-Finding Commission; United Nations.

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JUS GENTIUM

THE EXTERRITORIAL EFFECT OF AMERICAN SANCTIONS

Sergey Glandin

The Countering America Adversaries through Sanctions Act (CAATSA) clearly shows that the United States will counteract Russia and threats stemming therefrom by using sanctions. Among other means, CAATSA provides for secondary sanctions to be imposed on a person who knowingly engages in a significant transaction with a person that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Government of the Russia Federation, irrespective of both where this person is domiciled and conducts its business. The ongoing designation of Russian legal entities and individuals as Special Designated Nationals and Blocked Persons raises before legal science one practical question of the extraterritorial nature of the US legislation and its extension on non-US persons. Russian political leaders, businesses, parastatal entities, and their management long for answers to (i) whether the exterritorial application of sanctions is legal as a matter of US Law; (ii) how American courts apply sanction regulations; and (iii) whether there is any deficiency of law that could be used to evade US sanctions. Based on recent case law of US federal courts, this research deals with the extraterritorial application of US sanctions legislation. The judgment in *United States vs Erdal Akova* answers the question of why it is difficult for a foreign accused individual to challenge the legitimacy of extraterritoriality in his or her defense. The Judge found that the purpose of the sanctions law is to protect national security – a fact made clear by the name of the basic statute itself: The International Emergency Economic Powers Act can be applied internationally and thus exterritorialy. A conspiracy to violate US sanction that was allegedly formed abroad will lower or even prejudice the chances of success if at least one of the conspirators overtly acted in the US. The subject matter of the second case at issue was a failed attempt of an American partner to evade investment, civil, and contract liability on the basis of extraterritorial violation of US sanctions law committed by his Iranian partner in Iran. The federal judge ruled in favor of the Plaintiff on the payback of investments count, but was reluctant to address the Defendant's apparent violations of the relevant sanctions regulation and abuse of process. The author criticizes the Judge for a number of flaws and irregularities in law and gives insight on how not to lose one's investment due to either the formal requirements of the US sanctions regime or an American partner acting in bad faith.

Keywords: extraterritoriality; exterritorial jurisdiction, trans-border crime; sanctions; secondary sanctions, restrictive measures; investment protection; US investments.

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LEX MERCATORIA

HUMAN RIGHTS AND INVESTMENT LAW: INITIATING OF THE PROCEDURE

Carlo Santulli

International procedures in the areas of human rights protection and investment disputes resolution have much in common. However, there are important divergencies, first of all regarding the initiation of such procedures. This article pays attention to the following important nuances. If the procedure for human rights protection is launched by filing a complaint and, as a rule, the State is acting as a respondent (even in rare cases where a proceeding is initiated by an application lodged by a State against another Contracting Party), then in investment disputes the arbitral tribunal examines a dispute and the State may lodge a complaint against a private investor. The latter also has certain responsibilities before the State which creates a possibility for the State to lodge a counterclaim against a private investor. Further, in the system of human rights protection, the jurisdiction itself is entrusted with the function of filtering applications, whereas in investment arbitration this task is usually fulfilled not by the arbitral tribunal itself but by the administrative bodies of the arbitration institution. Differences also regard the applicant's right to waive: in the area of human rights protection the applicant possesses this right only to a certain extent and the court may reject such a waiver for the purposes of protecting a more general interest, whereas in the area of international investment disputes the claimant's right to waive is full and unconditional. Therefore, the main difference regards the function of human rights jurisdictions and jurisdictions dealing with investment disputes: If the former deal with a complaint for a violation of rights (and the applicant's right to waive this complaint is limited), then the latter resolve the parties' claims, including counterclaims, that constitute the dispute itself. As a result, they have different missions: If human rights judges fulfill their protective function invested to them by international treaty, then arbitral tribunals do not act as protectors but resolve the dispute between the parties. The author comes to the conclusion that the procedural divergences above disguise the substantive difference in legal philosophy of human rights and investment law that deserves further comprehension and study.

Keywords: human rights; investment disputes; international arbitration; functions of international jurisdictions.

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