

EDITORIAL

General Issues in International and European Law

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I. Introduction

As a former editor of the predecessor to this journal, namely *Merkourios*, it gives me great pleasure to write the editorial for the 81st issue of the Utrecht Journal of International and European Law ("UJIEL") on 'General Issues in International and European Law'. After first providing a general overview of the materials contained in this issue, I will briefly highlight some of the main points made in, the five articles, the case note, two book reviews, and the interview.

II. The Content of this General Issue

This issue of UJIEL deals with several important legal issues which cover different areas of international and European law, including human rights, environmental law, European private law and legal culture and identity, for which the various authors can be praised for the carefully crafted insights and the depth of the legal analysis. The issue contains five articles each addressing different legal issues, including how the ECtHR's case law deals with specific biomedical issues, the responsibility of governments to ensure their citizens voting rights, ensuring non-discrimination in the workplace in the Ireland, environmental protection in the EU and access to relevant remedies, in addition to European private law and the development of a common legal culture and identity. Complimenting the aforementioned research subjects, a case note covers a brief analysis of *Hassan v United Kingdom*. Subsequently, there follow two book reviews, one on '*The Eurozone Crisis: A Constitutional Analysis*' by Kaarlo Tuori and Klaus Tuori and the other on '*The War on Terror and the Laws of War: A Military Perspective*', edited by Geoffrey S. Corn and colleagues. Finally, the issue closes with an interview of David Thór Björgvinsson, former judge of the European Court of Human Rights ("ECtHR") focusing on the effects of the Opinion of the Court of Justice of the European Union ("CJEU") on the EU's accession to the European Convention on Human Rights ("ECHR"). Next to Professor Björgvinsson's view on the process of EU accession to the ECHR, the interview contains a fascinating insider's view on the functioning of the ECtHR and its overall role in ensuring respect for human rights in Europe.

III. Articles

In his article, Francesco Seatzu focuses on the use of the ECHR and Biomedicine ("Oviedo Convention") by the ECtHR in case law dealing with specific biomedical issues.¹ Interestingly, Article 29 of the Oviedo Convention expands the advisory jurisdiction of the ECtHR to include legal questions concerning the interpretation of the Oviedo Convention itself. Seatzu suggests that while the protection systems established under the ECHR and under the Oviedo Convention are separate, the latter might be used interpretatively to specify and expand the scope of the provisions of ECHR, consistent with the unwritten rule that reference should be made to the source that provides the higher standards of protection of human health.² With continuous

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¹ Francesco Seatzu, 'The Experience of the European Court of Human Rights with the European Convention on Human Rights and Biomedicine'(2015) 31(81) Utrecht Journal of International and European Law 5-6.

² *ibid* 14.

advancements in the field of medicine, biomedical issues are increasingly prone to be brought before the ECtHR, as shown by the list of cases included at the end of this article.

In his article, entitled 'Public Responsibilities for Electoral Fraud Beyond Correlative Rights and Duties', Leon Trakman develops the notion that governments have a public responsibility to prevent electoral fraud in a way that extends beyond the protections conferred by an electorate's directly correlative right to voting freedom.³ To illustrate his theoretical framework, Trakman presents examples of fair elections globally, and in the United States in particular, including the divided 2014 US Supreme Court decision, *US v Texas*, in which the majority denied the right to vote to prisoners and parolees who are disproportionately represented by ethnic minorities.⁴ Trakman argues that, by imposing relevant public responsibilities on governments, elected offices and citizens alike, electoral systems can redress restrictive conceptions of correlative rights and duties as well as overbroad notions of governmental sovereignty and ensure fairness in the conduct of public elections.⁵ His article extends the conception of legal responsibilities to compel governments to govern fairly and effectively in the democratic interest.⁶

Amy Dunne, in her article addressing religious exemptions and employment equality, argues that the Irish religious exemptions are broader in scope than those at EU level, and therefore constitute a severe limitation on the equality rights of Irish citizens falling within protected grounds of non-discrimination other than religion or belief under the EU Employment Equality Directive.⁷ While noting that Ireland maintains a religious exemption broader than the scope of the religious exemptions set out in the EU Employment Equality Directive,⁸ the author recommends an amendment to relevant domestic law in order to strike a functionally tolerant, and not just superficially tolerant, balance between religious tolerance and generally applicable civil non-discrimination law.⁹

Hendrik Schoukens, in turn, deals with the issue of judicial protection in environmental matters at EU level. The author argues that instead of addressing the current failings of the EU in respect of access to justice in environmental cases, the CJEU's hands-off approach paves the way for yet another decade of non-compliance by the EU in the realm of access to justice in environmental cases.¹⁰ The high threshold applied by the CJEU through the *Plaumann-test* with regard to standing requirements in the context of direct actions against EU acts, which might have an impact on the environment or public health, hinders access to justice for environmental NGOs.

Stephanie Law's article explores the need for a single, common European notion of culture, tradition or identity, by using the evolution of the concept of the consumer, from its national foundations to its engagement in Union legislation and CJEU jurisprudence.¹¹ She advances a plea for the recognition of a shift in the perspective of legal development, to one which acknowledges the dynamic evolution of private law within a pluralist, multi-level regulatory construct.¹² In her view, the multiplicity of orders, cultures and traditions, sources of law, dispute resolution bodies and legal actors that exist within the European space should be engaged as a defining characteristic of European legal development.¹³ Law points out the possibility that, in light of the future evolution of private law, and Union law more broadly, a common culture may emerge at the European level.¹⁴ While that might take some more time to materialise, the interaction amongst different European legal cultures will potentially lead to a commonly shared legal culture.

³ Leon E Trakman, 'Public Responsibilities for Electoral Fraud Beyond Correlative Rights and Duties' (2015) 31(81) Utrecht Journal of International and European Law 17.

⁴ *ibid.*

⁵ *ibid* 31.

⁶ *ibid.*

⁷ Amy Dunne, 'Tracing the Scope of Religious Exemptions under National and EU Law: Section 37(1) of the Irish Employment Equality Acts 1998–2011 and Ireland's Obligations under the EU Framework Directive on Employment and Occupation, Directive 2000/78/EC' (2015) 31(81) Utrecht Journal of International and European Law 33.

⁸ *ibid* 43.

⁹ *ibid* 44.

¹⁰ Hendrik Schoukens, 'Access to Justice in Environmental Cases after the Rulings of the Court of Justice of 13 January 2015: Kafka Revisited?' (2015) 31(81) Utrecht Journal of International and European Law 46.

¹¹ Stephanie Law, 'From Multiple Legal Cultures to One Legal Culture? Thinking About Culture, Tradition and Identity in European Private Law Development' (2015) 31(81) Utrecht Journal of International and European Law 68.

¹² *ibid.*

¹³ *ibid* 87-88.

¹⁴ *ibid.*

IV. Case Note

In his case note on *Hassan v United Kingdom*, Cedric De Koker addresses a rather contentious area of international law, namely the interface and relationship between human rights law and international humanitarian law ("IHL") with regard to the deprivation of liberty in armed conflicts.¹⁵ In this case, the ECtHR ruled that by reason of the co-existence of the safeguards provided by IHL and by the ECHR in times of armed conflict, the grounds of permitted deprivation of liberty found in both bodies of law should, as far as possible, be accommodated and applied concomitantly.¹⁶ While praising the ECtHR for coming up with a nuanced, well-balanced solution to an old and heavily disputed issue,¹⁷ De Koker points out that the ECtHR missed an opportunity to clarify the scope of protection under Article 5 of the ECHR in non-international armed conflicts.¹⁸ Some important guidance in this regard is offered in the *Copenhagen Process Principles and Guidelines* resulting from the Copenhagen Process on the Handling of Detainees in International Military Operations. Although criticised,¹⁹ the *Copenhagen Process Principles and Guidelines* of October 2012 offer guidance about the treatment of persons deprived of their liberty for reasons related to an international military operation in the context of non-international armed conflicts and peace operations.

V. Book Reviews

This year's General Issue contains two book reviews. Anna Sting has written a review of *'The Eurozone Crisis: A Constitutional Analysis'*.²⁰ Sting notes that the book offers a very readable and detailed account of the events that have led to the Eurocrisis, from both a legal and economists' perspective.²¹ In her opinion, the authors have chartered important territory for the understanding of the connection between EU constitutional law and its relation to economics.²² With the serious economic, political and legal challenges still facing the Eurozone, highlighted especially during the recent protracted process of hard negotiations with Greece, this publication eventually contributes to better understanding and potentially remedying some of these problems.

Ben Stanford, in turn, reviewed the second edition of the book *'The War on Terror and the Laws of War: A Military Perspective'* edited by a number of military lawyers.²³ As Stanford points out, the 'chapters share a common thread: that legitimate, disciplined, and credible military operations cannot occur in the absence of an operational regulatory framework derived from the laws of war'.²⁴ The book allows the reader to benefit from the authors' unique yet balanced perspectives as they address some of the most pressing issues in the enduring campaign to defeat terrorism insofar as they concern the laws of war.²⁵ With the fight against terrorism still high on the international agenda, this book offers important insights on how this fight can and must be fought within the confines of the law.

VI. Interview

This issue of UJIEL ends with an interview of David Thór Björgvinsson, Professor of Law, Centre of Excellence for International Courts (iCourts), Faculty of Law, University of Copenhagen, Denmark, and former Judge of the European Court of Human Rights. In this interview, David Thór Björgvinsson outlined his views to Graham Butler on Opinion 2/13 from the CJEU on the Union's accession to the ECHR, the workings of the ECtHR, and what the future may have in store for that court.²⁶ Professor Björgvinsson

¹⁵ Cedric De Koker, *'Hassan v United Kingdom: The Interaction of Human Rights Law and International Humanitarian Law with regard to the Deprivation of Liberty in Armed Conflicts'* (2015) 31(81) Utrecht Journal of International and European Law 90.

¹⁶ *ibid.*

¹⁷ *ibid.* 94-95.

¹⁸ *ibid.*

¹⁹ See inter alia Jacques Hartmann, 'The Copenhagen Process: Principles and Guidelines' EJIL: Talk (3 November 2012) <<http://www.ejiltalk.org/the-copenhagen-process-principles-and-guidelines/>> accessed 4 August 2015; Amnesty International, 'Outcome of Copenhagen Process on Detainees in International Military Operations Undermines Respect for Human Rights' (23 October 2012) at <<https://www.amnesty.org/en/documents/IOR50/003/2012/en/>> accessed 4 August 2015.

²⁰ Kaarlo Tuori and Klaus Tuori, *The Eurozone Crisis: A Constitutional Analysis* (Cambridge University Press 2014).

²¹ See Anna Sting, 'The Eurozone Crisis: A Constitutional Analysis' (2015) 31(81) Utrecht Journal of International and European Law 99.

²² *ibid.*

²³ Geoffrey S Corn and others (eds), *The War on Terror and the Laws of War: A Military Perspective* (2nd edn, Oxford University Press 2015).

²⁴ See Ben Stanford, 'The War on Terror and the Laws of War: A Military Perspective' (2015) 31(81) Utrecht Journal of International and European Law 101.

²⁵ *ibid.*

²⁶ Graham Butler, 'A Political Decision Disguised as Legal Argument? Opinion 2/13 and European Union Accession to the European Convention on Human Rights' (2015) 31(81) Utrecht Journal of International and European Law 104.

reflects on the potential effects of the CJEU Opinion on the process of EU accession to the ECHR and a number of challenges facing the ECtHR in its work. The insights drawn from an insider's perspective and the placing of these important and systemic issues on a broader legal-political plane make for a fascinating read.

Competing Interests

The author declares that they have no competing interests.

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