

A-6 International Law: Does it Still Matter?

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Bilateral Investment Treaties: Credible Commitment or Screening Mechanism?

Abstract:

Bilateral investment treaties (BITs) are the principal vehicle through which developing countries formally commit themselves to the international investor rights regime. They are typically portrayed as commitment devices which help countries overcome the dynamic inconsistency problem which characterizes the relationship between foreign direct investors and host states. By raising the diplomatic and reputational costs of noncompliance, BITs allow host states to credibly commit themselves to the rights of foreign investors. The logic of this argument suggests that those countries which lack a strong institutional infrastructure for the enforcement of property rights will be the ones in most need of the credibility-enhancing effects of BITs. However, it is also these countries for which compliance is likely to be most difficult. Some scholars have suggested that international legal commitments function as a screening mechanism, enabling states to credibly signal their intention to engage in compliant behavior in the future not because the commitment generates *ex post* reputational costs for noncompliance, but because the *ex ante* costs of becoming a signatory are high enough to deter noncompliant “types” from signing in the first place. The logic of this argument suggests that countries which already possess a strong institutional infrastructure for the protection of property rights will be more likely to sign BITs. I test these competing hypotheses against an econometric model of the decision to sign a BIT which takes into account a country’s level of institutionalized property rights protection while controlling for a number of other variables which might also influence this decision.

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Women and Sexual Violence: What Difference Does International Law Make for the Protection of Women?

Abstract:

Since the end of the Cold War and the break down of the former Soviet Union, many countries in East Europe have sought and attained their independence as autonomous states. Almost all of these states have become members of the European Union, and as such, are bound by the Constitution of the Union. In the West, there exists a close link between democracy and human rights and this has been further strengthened in the case of Europe by the existence of the European Union Council of Human Rights.

As such, the assumption that underlies the theoretical debates surrounding democracy under the liberal theory paints the picture that democracy and human rights are bedfellows and exist side by side. In the case of the EU, it has been applauded as a regional organization which has sought to further the rights of women example by ensuring equal pay. However, current trends in the new accession countries in Europe and Eurasia point to a different state of events, since the basic human rights, which should exist under the new democracies often exist *de jure*, thus not being enforced. This paper critically looks at the case of violence against women in these newly democratic states and asks the question: “What has the EU done to protect and ensure the rights of women trafficked as sexual slaves?” The issue of gender rights under communism was not fully realized due to the co-optation of women’s movements by the communist governments. As a result, the role of women in the transition to democracy in much of East and Central Europe was not as effective as those in Latin America and parts of Africa. However, if the liberal notions of democracy provide equality for all, why is this not the case especially for the social, political and economic rights of women since the introduction of democracy? The trafficking of women as sexual workers is still a vibrant business around the world and especially in the new accession countries. This paper seeks to examine what has been/ is being done to end such violence against women.

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The Laws of War and Aerial Bombing: Lessons from Guernica

Abstract:

The purpose of the laws of war is to limit war, i.e., to humanize it. An important part of the process of humanization of war is the protection of non combatants. However, the invention of the airplane and its increasing use for military purposes (starting seriously with WWI) made it easier to blur the distinction between soldiers and civilians. But, when do military objectives justify abandoning the principle of discrimination between combatants and non combatants? And thus, when does the violation of this principle constitute a crime against humanity or a war crime that could be prosecuted criminally? In addition, what other measures-such as reparations- should be used against those found accountable for such violation? These questions have acquired special relevance after the attacks of 9/11 in which civilian airplanes were used by terrorists as weapons of mass destruction and which provoked the US into entering into a war in which aerial bombardment is used in a large scale and can cause the loss of non-combatant lives. Since the war in Afghanistan is still on-going, in this paper I am going to try to answer the most central questions relating to aerial bombardment and the principle of discrimination using a historical case, i.e., the 1937 aerial bombardment of Guernica during the Spanish civil war. This case is still a symbol of the suffering of civilians during war and still remains controversial relative to the number of victims it caused.

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Rape Insurance in India and South Africa: Legitimizing Male Violence or
Liberating
Women?

ABSTRACT:

According to UNAIDS, India is the country with the most HIV-positive people in the world. However, South Africa is a close second and, as there is some controversy about India's collection of its data, may actually be number one. No doubt because they both suffer from the twin epidemics of HIV/AIDS and sexual violence, Indian and South African insurance companies offered a new product in 1999 - rape insurance. A subscriber to this policy would get free counseling and post-exposure prophylaxis, PEP, or month-long emergency treatment to decrease the risk of contracting HIV, should she suffer rape. Women's groups in India were so outraged by the proposal that the government rescinded it, but in South Africa, the private policies, although controversial, went forward. Should countries permit women to buy rape insurance? If so, should the providers of rape insurance be public (government-owned), as in India, or private, as in South Africa? Under international law, states must exercise "due diligence" in protecting the bodily integrity of citizens. Women's and human rights groups have used this expectation to "demand accountability" from the state for addressing violence against women, such as rape. Is offering rape insurance at odds with or in keeping with the exercise of "due diligence" in protecting one's citizenry? Does it matter whether the state simply permits a private institution to permit this insurance, rather than the state administering the policy itself? HIV/AIDS and rape are global issues that affect both women and men. However, the impact of each may be gendered. Women are more likely to contract HIV/AIDS and especially to suffer rape, for example. Feminist theorists have argued that heterosexual rape is not just a criminal act but a political one -- the penultimate expression of the imbalance of power between men and women. Are states that provide rape insurance, which ameliorates the impact of violence rather than addressing the cause, actually legitimating the sexual power imbalance? Are states that provide rape insurance discriminating against the half of their citizens who are female by treating rape as if it were a natural disaster rather than systematic political violence against a disadvantaged social group (women) by a more privileged one (men)? If so, does the problematic of a seemingly schizophrenic state (that treats the two halves of its citizens unequally) really matter when grappling with life-and-death problems such as the likelihood of contracting HIV? Might such gender discrimination be considered positive, a protection of women's rights, or at least a lesser evil, in light of the terrible psycho-social and bodily trauma of rape? In short, would rape insurance do women collectively more good than harm?

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Human Trafficking: Slavery in the 21st Century

ABSTRACT:

Although the British Parliament outlawed the trans-Atlantic slave trade more than two centuries ago, human trafficking, a form of modern day slavery, continues to exist. Today, a number of countries have plans to address human trafficking. There is some controversy about how to best deal with this problem. Two major approaches have emerged. The criminal justice approach focuses on the prevention of trafficking, prosecution of traffickers, and protection of trafficking victims. The socioeconomic approach centers on combating the underlying socioeconomic causes of trafficking. Globalization, poverty, an unmet labor demand, and discrimination and violence against women are the focus of this approach. This paper examines the primary causes, nature, and scope of human trafficking. It examines the relative strengths and weaknesses of both the criminal justice and socioeconomic approaches. It advocates a more multi-dimensional, integrated approach for eliminating the global slave trade.

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