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FOREWORD: AMERICAN SOCIETY OF INTERNATIONAL LAW'S 10TH MIDYEAR MEETING

Michael P. Scharf¹
Bethany Gump Jones²

I.

This double issue of the *Journal of International Law* contains articles generated from the American Society of International Law's 10th Midyear Meeting. Case Western Reserve was honored to be selected to host the Midyear Meeting. Unfortunately, because of the Coronavirus Pandemic, the meeting had to be held virtually, but it nonetheless attracted over 350 participants including 70 distinguished panelists and keynote speakers. Through a competitive process, the *Journal* selected a dozen outstanding articles submitted by these panelists to publish in this volume.

The publication of this volume of the *Journal* corresponds with the celebration of the 30th anniversary of the endowment and establishment of the Law School's Frederick K. Cox International Law Center. The Center serves as the hub for Case Western Reserve's top-ranked international law program,³ which includes the Henry King War Crimes Research Office, the Institute for Global Security Law and Policy, the Canada-U.S. Law Institute, the Immigration and Human Rights Law Clinic, and the student-edited *Journal of International Law*. To commemorate the occasion, we are pleased to share the major milestones in the development of our ambitious international law program since the endowment of the Center:

1991: The Cox International Law Center is endowed by a multi-million-dollar gift of the Gund Foundation. That same year, CWRU launched its LLM program for foreign lawyers which now enrolls more than 120 students a year. **2001:** Bruce J. Klatsky, Chairman and CEO of Phillips Van Heusen Corporation and a member of the Board of Directors of Human Rights Watch, provided a special endowment to the law school for a human rights lecture series and an annual fellowship

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1. Dean of the Law School since 2013 and Joseph C. Hostetler – BakerHostetler Professor of Law, Case Western Reserve University School of Law.
 2. Editor-in-Chief, *Case Western Journal of International Law*, JD 2021.
 3. Case Western Reserve's international law program has been ranked in the top ten in the nation by *PreLaw* Magazine for the past four years. See *PreLaw* Magazine, Winter 2021: <https://www.bluetoad.com/publication/frame.php?i=690829&p=22&pn=&ver=html5>.

for two students to Human Rights Watch. **2002:** The Cox Center War Crimes Research Office and War Crimes Research Lab are established, currently directed by James Johnson, former Chief of Prosecutions of the Special Court for Sierra Leone. To date, the Office has provided over 250 research memos to international tribunals, piracy courts, INTERPOL and the U.S. military commissions. **2003:** The Institute for National Security Law and Policy is established. *Case Western Reserve Journal of International Law* (established in 1968) moves to a double issue symposium format. **2004:** The Cox Center establishes the International Humanitarian Award for Advancing Global Justice; UN Under-Secretary General for Legal Affairs Hans Corell is the inaugural recipient.

2005: The Cox Center War Crimes Research program, in association with the Public International Law and Policy Group, are nominated for the Nobel Peace Prize by the Chief Prosecutor of the Special Court for Sierra Leone for work leading to the successful prosecution of Liberian President Charles Taylor. **2006:** The Cox Center launches the bi-weekly War Crimes Prosecution Watch e-newsletter, which currently has 15,000 subscribers. **2007:** CWRU approves semester-long foreign internships at international tribunals. This becomes the model for the Law School's 3L Capstone Program, which requires every graduating student to undertake a full-time Clinic or Externship. That same year, CWRU adds three LLM degree programs: International Criminal Law, International Business Law, and IP Law. **2008:** The CWRU Jessup International Law Moot Court team wins the Jessup World Championship, and CWRU student Margaux Day wins the Best Championship Round Oralist Award.

2009: CWRU launches fundraising initiative resulting in an endowment for internship support in honor of the late Henry King (1918-2009), CWRU professor and former Nuremberg Prosecutor. **2011:** The CWRU Jessup Team wins the Baxter Award for best brief in the world-wide competition. The Cox Center establishes a Human Rights Documentary Film series, which brings in the filmmaker to lead a discussion of the film. **2012:** The Cox Center launches "Talking Foreign Policy," a quarterly radio program hosted by Michael Scharf and produced by WCPN 90.3 FM Ideastream, Cleveland's NPR station. In 2020, the program was renewed for an eighth year. **2013:** CWRU launches first international law MOOC (free online course) on Coursera. To date, over 125,000 students from 139 countries have taken the "Introduction to International Criminal Law" MOOC. Also that year, CWRU launches the Maritime Piracy Prosecution Project, providing assistance to tribunals in Kenya, Mauritius and Seychelles. CWRU launches its SJD program, which now enrolls 50 foreign students a year.

2014: CWRU establishes its first concurrent degree program with Comillas University in Madrid under which students can spend their 3L year abroad and graduate with both the foreign LLM and our JD degree in just three years. Subsequently, CWRU has added concurrent

degree programs with Middlesex University in London, and University of Paris. **2016:** The Immigration Law Clinic is established. That same year, Dean Michael Scharf named among the most cited law professors in international law, according to Brian Leiter's Law Reports. Law School launches Master of Financial Integrity degree. **2018:** The *Case Western Reserve Journal of International Law* celebrates its 50th Anniversary. The *Journal*, which publishes an annual double volume symposium issue, is one of the oldest and most-cited international law journals in the country. **2019:** With funding from the Geise Foundation, the Cox Center launches the Yemen Accountability Project (YAP) to document war crimes and crimes against humanity for eventual international prosecution. 70 students joined YAP under the supervision of the director of the Cox Center War Crimes Office, Jim Johnson. **2020:** The Cox Center submits its first Amicus Brief to the U.S. Supreme Court. That same year, a Report on the Rohingya Genocide prepared by several CWRU Law Professors and alumni was cited by the International Criminal Court in an opinion confirming the Court's jurisdiction to investigate the Rohingya genocide.

II.

This 53rd volume of the *Journal of International Law* first presents the articles from authors who participated in the American Society of International Law's 10th Midyear Meeting. Following those ten articles, four student notes follow. The topics in this volume range from Africanization to the legality of lethal U.S. drone strikes and venture into topics such as Ocean Biodiversity and Bride Kidnapping. Each of these topics iterates the wide range and incredibly important topics that we call "international law." The focused efforts of each author in this Journal bring us a step closer towards identifying and solving the injustices that are so aptly described in the following works.

First, Assistant Professor Olabisi D. Akinkugbe describes recent trends in International Investment Law made in African states. Specifically, Professor Akinkugbe examines the moderate versus the radical Africanization of International Investment Law and advocates for the radical normative form. Then, Professor Mira Burri takes a journey that interfaces privacy and trade law. Although the two areas of law have developed independently from one another, Professor Burri reconciles their objectives in the data-driven society we live in today.

Visiting Senior Researcher Federica Cristani studies the incredibly timely concerns that the international Coronavirus crisis has and will cause on international investment law rules. There are so many questions about how this crisis will affect the global economy and Dr. Cristani reflects on how we might redesign international obligations of states towards foreign investors, potentially allowing for a higher degree of flexibility by investment arbitral tribunals.

Dr. Nicholas J. Diamond and Harvard SJD Candidate Dr. Kabir A.N. Duggal consider whether the Investor-State dispute settlement

system supports human rights. They ultimately argue that the Investor-State dispute settlement system has the potential to become a more accommodating system for human rights. But to reach this conclusion, they contemplate the differences between the United Nations Commission on International Trade Law and international investment agreements.

Postdoctoral researcher Luca Ferro studies whether the killing of Iranian Major-General Qasem Soleimani by U.S. drone strikes was legal. Dr. Ferro does this by first examining the facts surrounding the death of Soleimani and only then examines a plethora of analysis that all ask the same question: did the killing conform with the relevant international law including *jus ad bellum*, *jus in bello*, and international human rights law.

LLM Candidate Abhaya Ganashree presents an insightful approach into considering “who owns biodiversity?” While the ocean floor material provides mineral resources for a country whose jurisdiction includes such property, a conflict arises when those resources are found in areas beyond national jurisdiction. Sometimes countries compete, sometimes they collaborate to decide who owns the marine genetic resources but often, the debate starts to shift from the newly discovered resources to potentially politically-driven motivations. The article concludes by proposing that the “nondominium” principle would increase the value of marine genetic resources while incentivizing innovation all while respecting areas beyond national jurisdiction.

PhD researcher and teaching assistant Rita Guerreiro Teixeira examines the extent and processes through which international organizations develop international environmental norms. The article proposes that new approaches should be developed that reconcile the differences between the practice of international organizations and the theory of institutional law-making.

Russian lawyer Marina Maier then offers an engaging piece that studies offender rehabilitation in international criminal justice. Maier delves into the not only the systemic decision-making behind convictions but also considers emotional and mental shifts in focus that both the perpetrator and society could benefit from pursuing.

Finally, J.D. Candidate Jari Rubio details the health and human rights that asylum seekers in the United States are entitled to. The article describes the standard that international treaties require asylum-seekers receive and then walks through how current violations can be rectified. With the completion of this article, the volume then moves to the student notes.

Four third-year law students at Case Western Reserve were selected by the editorial board of volume 52 to be published. First, Asako Ejima writes about a legal framework that so evidently needs reconsidered for stateless individuals in the United States. Then, Dr. Laura K. Graham argues for accountability of those who used starvation as a method of war. Next, Bethany Gump Jones writes about

the harm to human dignity that hate-speech laws in Europe create and how the United States has the best structure to deal with such statements. Finally, Alexandria McKenna Lundberg describes how the law is not sufficient to protect bride kidnapping. Lundberg conducts this examination by focusing on Kyrgyzstan and evidencing that law enforcement is not influenced by cultural norms.

We are certain that each published work will encourage you to ponder the topics and suggestions they write about.

III.

Many students, scholars, practitioners, supporters, and advisors made Volume 53 of the *Journal of International Law* possible. We would like to thank the participants and organizers of the ASIL's 10th Anniversary Midyear Meeting, for helping to make the online conference such a success. We especially thank the Co-Chairs of the Program Committee, Professor Kristen Eichensehr of University of Virginia School of Law and Blanca Montejo of the United Nations Secretariat. In addition, we are indebted to Mark Agrast, Executive Director of the ASIL, who is an alum of Case Western Reserve University; Wes Rist, Deputy Executive Director of the ASIL; and Ben Juvelier, ASIL Program Officer – for their invaluable assistance with the organization of the Conference. Last but certainly not least, we thank the student editors of the *Journal of International Law*, who worked tirelessly to make this publication possible.

Volume 54 of the *Journal* will be devoted to the Cox Center's fall 2021 Symposium, "New Directions in International Law."

