2010

Book Review: The Sword and the Scales: The United States and International Courts and Tribunals

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the chapters in concrete ways and demonstrating the practical solutions that project developers have successfully deployed, especially in the context of cooperation with local communities.

There are some shortcomings. REDD is a mechanism in constant development, and this fact might date the final part of the book quickly, especially as it does not take into account global initiatives such as UN-REDD and the World Bank's Forest Carbon Partnership Facility. Nor does it afford discussion of fora for international negotiations outside the UNFCCC process, such as the G8, the G20, and regional and bilateral areas of action (e.g. the COMIFAC). Oddly, crucial and complex legal linkages between the UNFCCC and the CBD treaty bodies are scarcely explored. The only article touching on this relationship advocates the creation of a market mechanism for the bioservices offered by forests. This is another shortcoming of the book—the "market-based" approach is adopted as the only solution to mobilize action in forestry and climate change. Alternative options are scarcely taken into account. Other schemes would consist, for instance, of avoided deforestation through imposed restrictions on land owners by host states in exchange for direct international funding (command-and-control regulation), or a hybrid solution where offsets from REDD projects are combined with supplemental mitigation targets which would not otherwise have occurred under a pure market approach.

Nevertheless, *Climate Change and Forests* certainly adds valuable insights to the existing literature. It is a work aimed not only at legal scholars, but at practitioners, investors, and policy makers, and will likely make a lasting contribution to the legal study of forestry activities as a means to fight global warming.

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The Sword and the Scales: The United States and International Courts and Tribunals

Edited by Cesare P.R. Romano

Cambridge: Cambridge University Press, 2009, 460 pp. (incl. index),
ISBN 978-0-521-72871-3, $US36.99.

The United States' relationship to international courts and tribunals matters. United States' participation in and enthusiasm for international adjudicative bodies increases the world's chances for peaceful dispute resolution in international relations, elevates the rule of law over brute power, and promotes justice and accountability for atrocities. This volume brings together top American legal scholars to discuss the United States' historical and evolving relationship to many of the world's most important international courts and tribunals. Although the volume's focus is not on climate change or environmental law, those interested in the establishment or use of international dispute resolution mechanisms to address climate change and other international environmental

concerns would benefit from perusing its pages. When is the United States most likely to buy in to a particular dispute resolution regime? When does it hesitate or refuse to engage? When does it seek to undermine international judicial institutions?

The volume might well be divided into four parts. The first part provides background on the United States' relationship to international courts and tribunals generally. Former State Department Legal Adviser John Bellinger III describes the George W. Bush administration's pragmatic approach to international courts: they are tools for advancing shared interests, and the costs and benefits of participation should be assessed on a case-by-case basis. Steven Kull's and Clay Ramsay's empirical research shatters some stereotypes about the American public's unwillingness to subject itself to adjudication by international courts, while Mary Ellen O'Connell depicts pre-World War I American Christians' fervent support for international arbitration as an alternative to war.

The next set of chapters focuses on the United States' relationship to courts and quasi-adjudicative bodies interpreting traditional public international law, and international criminal and human rights law. Among its highlights are Sean Murphy's chapter on antinomies in United States' attitudes toward the International Court of Justice, which describes tensions that echo throughout the volume, such as realism versus institutionalism, and American exceptionalism versus belief in the sovereign equality of states and the rule of law. Both John Cerone and Tara Melish emphasize the United States' preference for the subsidiarity principle in international criminal and human rights adjudication.

The third grouping of chapters centers on the adjudication of claims involving international economic law, such as the World Trade Organization's Dispute Settlement Body and dispute resolution mechanisms under Chapters 11, 19, and 20 of the North American Free Trade Agreement. Jeffrey Dunoff's chapter is particularly powerful in dispelling the myth that United States support for judicialized dispute resolution in the trade context should be assumed. Rather, the uneven history of United States enthusiasm for trade courts suggests that political and economic interests drive institutional support.

Cesare Romano concludes the volume with a strongly worded normative critique of the United States' approach to international courts. He characterizes the United States' attitude to international courts as "exceedingly shortsighted and contextual, vitiated by a lack of sophisticated understanding of crucial differences between courts, or at least genera of courts, and of what international courts are for and about, what they can and cannot do for this country." Although he proposes a number of constructive ways in which the United States can improve its approach to assessing participation in specific adjudicative bodies, the chapter ends on a political note, making explicit reference to "change the world can believe in," a play on President Obama's campaign slogan.

The George W. Bush administration's tumultuous relationship with international institutions clearly frames the volume. It begins with that administration's position on international courts. It

ends with Romano's critique of its approach. Cerone remarks that President Obama's approach to international criminal courts is likely to differ significantly from his predecessor's. These statements simultaneously highlight the evolving nature of the United States' relationship to international courts and the inherent limitations of any publication. It can all change, and may already have done so, in some contexts, after going to print. For example, although the United States has not joined the International Criminal Court, the Obama administration actively participated in proceedings at the recent ICC review conference in Kampala, Uganda.

The volume as a whole provides numerous insights into the United States' relationship to specific international courts. Perhaps the underlying message to be drawn from the volume is that the relationship of the United States to these bodies is inherently contextual. Yet themes and tensions emerge and recur throughout the volume. For example, several chapters discuss the United States' role in establishing, funding, and staffing various international courts, even courts it did not join. The human rights and international criminal courts chapters discuss the United States' preference for local resolution of disputes. The United States seeks to limit adjudicative bodies' jurisdiction and even to undermine their influence when they are perceived to threaten United States' interests and values. A thorough and explicit comparative analysis across courts and subsets of courts would tie together the numerous and varied chapters in the volume and provide an opportunity to elucidate differences. For example, how does the United States approach to assessing its support for trade courts differ from human rights bodies? What factors does it weigh and how? Such an analysis could provide a framework for better understanding the United States' relationship to international courts.

Both the sword and the scales are powerful tools available to the United States, provided that its policymakers understand their respective costs and benefits. This volume is an important step in furthering such knowledge, and it is essential reading for students of international courts and United States foreign relations law, as well as policymakers who hope to strengthen (or weaken) international adjudication in any area of the law, including climate law.

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Fairness in International Climate Change Law and Policy

By Friedrich Soltau

Cambridge: Cambridge University Press, 2009, 304 pp.,
ISBN 978-0-521-11108-9, £55.

Ethics and values often end up sidelined by the political, economic, and highly technical considerations that tend to dominate current intergovernmental negotiations on climate change. Soltau