

**THE YALE JOURNAL
OF INTERNATIONAL LAW**
Volume 38, Number 1, Winter 2013

Contents

Articles

- On the Constitutionality of Tax Treaties *Rebecca M. Kysar* 1
- The Crime and Punishment of States *Gabriella Blum* 57
- The Power To Detain: Detention of Terrorism Suspects
After 9/11 *Oona Hathaway, Samuel
Adelsberg, Spencer
Amdur, Philip Levitz,
Freya Pitts & Sirine
Shebaya* 123

Note

- When Does Internet Denial Trigger the Right of Armed
Self-Defense? *Sheng Li* 179

Comment

- Christopher X* and CNIL: A Clarion Call To Revitalize
the Hague Conventions *Daniel S. Alterbaum* 217

Address

- Distant Genocides *Pierre N. Leval* 231

- Recent Publications** 253

THE YALE JOURNAL
OF INTERNATIONAL LAW
Volume 38, Number 1, Winter 2013

Abstracts

Articles

On the Constitutionality of Tax Treaties

Rebecca M. Kysar 1

Taxes kindled the American Revolution. Revolt against collecting revenues without representation caused a tea party, propelling the colonies toward convening the First Continental Congress. Forgotten, though, is the role of taxes in shaping our fledgling nation immediately after the Revolution. Control over which governmental body could impose taxes inflamed the delegates to the Constitutional Convention. So important was the issue that the decision to originate revenue bills in the lower house of Congress constituted a cornerstone of the Great Compromise, thus birthing the representational structure of our country. This principle became embodied in the Constitution as the Origination Clause, ensuring that the power to tax would begin with the house that was directly elected and proportionate to the population.

Tax treaties (generally, bilateral instruments that mitigate or eliminate double taxation of income across jurisdictions) upset this carefully constructed intra-congressional balance. Because tax treaties are self-executing, meaning that they need no implementing legislation to take legal effect, the ratification of a tax treaty cuts the House of Representatives out of the process of legislating in the area of international taxation. This outcome, I argue, lies in derogation of the Origination Clause. Contrary to current practice, constitutional text, structure, history, and precedent, as well as normative considerations, mandate that tax treaties be implemented or approved through legislation passed by both houses of Congress.

Features of today's tax legislative and treaty environment have made the democratic concerns underlying the Clause even more acute—in sharp contrast to those concerns motivating the exclusion of the House from the Article II treaty process, which have fallen away in modern times. Involvement of the House would legitimize the tax treaty process through enhanced democratic representation, increased deliberation, and the reduction of special interest deals. These remedies would also breathe life into the process, the paucity of which has enabled tax treaties' circumvention of budgetary rules and has stymied discussion of purposes currently framed in century-old terms. Additionally the prescribed remedies allow the United States not only to honor its Constitution, but also to better uphold its obligations under international law by increasing the durability of its international commitments, creating more certainty for public and private actors. Finally, this analysis makes important contributions beyond

the context of tax treaties by shedding light on the vexing questions of whether and when the Constitution limits the reach of treaties and when, as a constitutional matter, treaties can or cannot be self-executing.

The Crime and Punishment of States

Gabriella Blum 57

Why is it that we no longer punish states, or, at least, do not admit to doing so?

The moral rhetoric of “crime” and “punishment” of states has been excised from mainstream international law, and replaced with an amoral rhetoric of “threat” and “prevention.” Today, individuals alone are subject to international punishment, while states are subject only to preventive, regulatory, or enforcement measures.

Through a historical survey of the shift from punishment to prevention in various spheres of international law, I argue that the preference for prevention has been motivated by a strong preference for peace over justice as the ultimate goal of the international system. Driving this belief, I suggest, is an array of considerations, correlating punishment with humiliation and revenge, fearing the effects of collective punishment, doubting the operation of punishment in a decentralized structure built around the principle of sovereign equality, and bemoaning the absence of an international institution to adjudicate the criminality of states. However, given existing practices under the paradigm of “prevention,” none of these considerations seems to justify a correlation between peaceful coexistence and an aversion to punishment.

Further, the elimination of a punitive paradigm may implicate normative concerns, even accepting the preference for peace: in fact, a prevention-oriented framework may have its own distorted effects for international peace and security. Drawing on debates over preventive sanctions in U.S. domestic criminal law, I argue that even though prevention may sound like a less oppressive policy than punishment, it may in fact be far less constrained and more ruthless. At the same time, a preventive paradigm might be paralyzed from operating where there is a crime that does not immediately threaten other international actors. I demonstrate both possibilities using the contemporary debates over anticipatory self-defense and humanitarian intervention.

The Power To Detain: Detention of Terrorism
Suspects After 9/11

Oona Hathaway, Samuel
Adelsberg, Spencer Amdur,
Philip Levitz, Freya Pitts &
Sirine Shebaya

123

Since the attacks of September 11, 2001, the United States has used the detention of suspected terrorists as a key element of its counterterrorism operations. Yet the sources of the U.S. government’s authority to detain suspected terrorists—and the limitations on that authority—remain ill defined. This Article fills that gap by clarifying the reach and limits of existing sources of U.S. government detention authority for counterterrorism purposes. It offers a comprehensive overview of the sources of government authority to detain terrorism suspects in law of war detention, including statutory and constitutional authority. It shows, moreover, that this authority is limited not only by its own terms but also by the law of armed conflict and human rights law. The Article then examines criminal law detention as an alternative to law of war detention for terrorism suspects. It argues that criminal law detention and prosecution of terrorism

suspects can produce better predictability, legitimacy, and flexibility than law of war detention and prosecution. In most cases, therefore, suspected terrorists can and should be charged and prosecuted within the federal criminal justice system. Doing so is not only more consistent with U.S. legal principles and commitments, but is also the most promising way forward in the fight against terrorism.

Note

When Does Internet Denial Trigger the Right of Armed Self-Defense?

Sheng Li 179

This Note examines the international law of cyber-warfare. It identifies the conditions under which a distributed denial-of-service (DDoS) attack may qualify as an "armed attack" under various international legal instruments, including Article 51 of the U.N. Charter and Article 5 of the North Atlantic Treaty. By analogizing DDoS attacks to naval blockades, the Note offers new insights whose implications are set in stark relief against real-life events, particularly the 2007 DDoS attacks against Estonia. As critical infrastructure is more digitized than ever before, and as the distinction between hacks and attacks breaks down, the Note examines when, whether, and how a state may respond militarily in self-defense to a breach of cyber-security, grappling with an urgent, emerging question of international law.

Yale Law School

Officers of Administration

Richard Charles Levin, B.A., B.Litt., Ph.D., *President of the University*
Peter Salovey, A.B., M.A., Ph.D., *Provost of the University*
Robert C. Post, J.D., Ph.D., *Dean*
Douglas Kysar, B.A., J.D., *Deputy Dean*
S. Blair Kauffman, J.D., LL.M., M.L.L., *Law Librarian*
Megan A. Barnett, B.A., J.D., *Associate Dean*
Toni Hahn Davis, J.D., LL.M., *Associate Dean*
Brent Dickman, B.B.A., M.B.A., *Associate Dean*
Mark LaFontaine, B.A., J.D., *Associate Dean*
Kathleen B. Overly, J.D., Ed.D., *Associate Dean*
Asha Rangappa, A.B., J.D., *Associate Dean*
Mike K. Thompson, M.B.A., J.D., *Associate Dean*

Faculty Emeriti

Guido Calabresi, LL.B., Dr.Jur., LL.D., D.Phil., H.Litt.D., D.Poli.Sci., *Sterling Professor Emeritus of Law and Professorial Lecturer in Law*
Dennis E. Curtis, B.S., LL.B., *Clinical Professor Emeritus of Law and Professorial Lecturer in Law*
Harlon Leigh Dalton, B.A., J.D., *Professor Emeritus of Law*
Mirjan Radovan Damaška, LL.B., Dr.Jur., *Sterling Professor Emeritus of Law and Professorial Lecturer in Law*
Drew S. Days, III, B.A., LL.B., *Alfred M. Rankin Professor Emeritus of Law and Professorial Lecturer in Law*
Jan Ginter Deutsch, LL.B., Ph.D., *Walter Hale Hamilton Professor Emeritus of Law and Professorial Lecturer in Law*
Owen M. Fiss, M.A., LL.B., *Sterling Professor Emeritus of Law and Professorial Lecturer in Law*
Robert W. Gordon, A.B., J.D., *Chancellor Kent Professor Emeritus of Law and Legal History*
Michael J. Graetz, B.B.A., LL.B., LL.D., *Justus S. Hotchkiss Professor Emeritus of Law and Professorial Lecturer in Law*
Geoffrey Cornell Hazard, Jr., M.A., LL.B., *Sterling Professor Emeritus of Law*
Quintin Johnstone, B.A., J.S.D., *Justus S. Hotchkiss Professor Emeritus of Law and Professorial Lecturer in Law*
Carroll L. Lucht, M.S.W., J.D., *Clinical Professor Emeritus of Law, Supervising Attorney, and Professorial Lecturer in Law*
Carol M. Rose, J.D., Ph.D., *Gordon Bradford Tweedy Professor Emeritus of Law and Organization and Professorial Lecturer in Law*
Peter H. Schuck, J.D., LL.M., *Simeon E. Baldwin Professor Emeritus and Professor (Adjunct) of Law*
John G. Simon, LL.B., LL.D., *Augustus E. Lines Professor Emeritus of Law and Professorial Lecturer in Law*
Robert A. Solomon, B.A., J.D., *Clinic Professor Emeritus of Law*
Stephen Wizner, A.B., J.D., *William O. Douglas Clinical Professor Emeritus of Law, Supervising Attorney, and Professorial Lecturer in Law*

Faculty

Bruce Ackerman, B.A., LL.B., *Sterling Professor of Law and Political Science*
† Muneer I. Ahmad, A.B., J.D., *Clinical Professor of Law*
Anne Alstott, B.A., J.D., *Jacquin D. Bierman Professor of Taxation*
Akhil Reed Amar, B.A., J.D., *Sterling Professor of Law*
‡ Ian Ayres, J.D., Ph.D., *William K. Townsend Professor of Law*
‡ Jack M. Balkin, J.D., Ph.D., *Knight Professor of Constitutional Law and the First Amendment*
Aharon Barak, LL.M., Dr.Jur., *Visiting Professor of Law and Gruber Global Constitutionalism Fellow (fall term)*
Megan A. Barnett, B.A., J.D., *Associate Dean*
Lea Brilmayer, J.D., LL.M., *Howard M. Holtzmann Professor of International Law*
Richard R.W. Brooks, J.D., Ph.D., *Leighton Homer Surbeck Professor of Law*
Robert Amsterdam Burt, M.A., J.D., *Alexander M. Bickel Professor of Law (fall term)*
Guido Calabresi, LL.B., Dr.Jur., LL.D., D.Phil., H.Litt.D., D.Poli.Sci., *Sterling Professor Emeritus of Law and Professorial Lecturer in Law*
‡ Stephen Lisle Carter, B.A., J.D., *William Nelson Cromwell Professor of Law*
Amy Chua, A.B., J.D., *John M. Duff, Jr. Professor of Law*
Dennis E. Curtis, B.S., LL.B., *Clinical Professor Emeritus of Law and Professorial Lecturer in Law*
Harlon Leigh Dalton, B.A., J.D., *Professor Emeritus of Law*
Mirjan Radovan Damaška, LL.B., Dr.Jur., *Sterling Professor Emeritus of Law and Professorial Lecturer in Law*
Toni Hahn Davis, J.D., LL.M., *Associate Dean*
Drew S. Days, III, B.A., LL.B., *Alfred M. Rankin Professor Emeritus of Law and Professorial Lecturer in Law*
Jan Ginter Deutsch, LL.B., Ph.D., *Walter Hale Hamilton Professor Emeritus of Law and Professorial Lecturer in Law*
Brent Dickman, B.B.A., M.B.A., *Associate Dean*
Fiona M. Doherty, B.A., J.D., *Clinical Professor of Law*
Steven Barry Duke, J.D., LL.M., *Professor of Law*
Robert C. Ellickson, A.B., LL.B., *Walter E. Meyer Professor of Property and Urban Law (spring term)*
Edwin Donald Elliott, B.A., J.D., *Professor (Adjunct) of Law*
† William N. Eskridge, Jr., M.A., J.D., *John A. Garver Professor of Jurisprudence*
†‡ Daniel C. Esty, M.A., J.D., *Hillhouse Professor of Environmental Law and Policy, School of Forestry & Environmental Studies; and Clinical Professor of Environmental Law and Policy, Law School*
Jeffrey Fagan, B.E., Ph.D., *Florence Rogatz Visiting Professor of Law (spring term)*
Owen M. Fiss, M.A., LL.B., *Sterling Professor Emeritus of Law and Professorial Lecturer in Law*
‡ James Forman, Jr., A.B., J.D., *Clinical Visiting Professor of Law*
‡ Heather K. Gerken, A.B., J.D., *J. Skelly Wright Professor of Law*
‡ Paul Gewirtz, A.B., J.D., *Potter Stewart Professor of Constitutional Law*
Abbe R. Gluck, A.B., J.D., *Associate Professor of Law*
Robert W. Gordon, A.B., J.D., *Chancellor Kent Professor Emeritus of Law and Legal History and Professor (Adjunct) of Law (fall term)*
Michael J. Graetz, B.B.A., LL.B., LL.D., *Justus S. Hotchkiss Professor Emeritus of Law and Professorial Lecturer in Law (fall term)*
David Singh Grewal, J.D., Ph.D., *Associate Professor of Law*
Dieter Grimm, LL.M., Dr.Jur., *Visiting Professor of Law and Gruber Global Constitutionalism Fellow (spring term)*
Henry B. Hansmann, J.D., Ph.D., *Oscar M. Ruebhausen Professor of Law*
Robert D. Harrison, J.D., Ph.D., *Lecturer in Legal Method*
Oona A. Hathaway, B.A., J.D., *Gerard C. and Bernice Latrobe Smith Professor of International Law*
Roderick M. Hills, Jr., B.A., J.D., *Anne Urowsky Visiting Professor of Law*
Edward J. Janger, B.A., J.D., *Visiting Professor of Law (fall term)*
Quintin Johnstone, B.A., J.S.D., *Justus S. Hotchkiss Professor Emeritus of Law*
† Christine Jolls, J.D., Ph.D., *Gordon Bradford Tweedy Professor of Law and Organization*
Dan M. Kahan, B.A., J.D., *Elizabeth K. Dollard Professor of Law and Professor of Psychology*
‡ Paul W. Kahn, J.D., Ph.D., *Robert W. Winner Professor of Law and the Humanities*
Amy Kapczynski, M.A., J.D., *Associate Professor of Law*
S. Blair Kauffman, J.D., LL.M., M.L.L., *Librarian and Professor of Law*
Amalia D. Kessler, J.D., Ph.D., *Sidley Austin—Robert D. McLean '70 Visiting Professor of Law (fall term)*

- Daniel Kevles, B.A., Ph.D., *Professor (Adjunct) of Law (fall term)*
 ‡ Alvin Keith Klevorick, M.A., Ph.D., *John Thomas Smith Professor of Law and Professor of Economics*
 † Harold Hongju Koh, A.B., J.D., *Martin R. Flug '55 Professor of International Law*
 Anthony Townsend Kronman, J.D., Ph.D., *Sterling Professor of Law*
 Douglas Kysar, B.A., J.D., *Deputy Dean and Joseph M. Field '55 Professor of Law*
 Mark LaFontaine, B.A., J.D., *Associate Dean*
 John H. Langbein, LL.B., Ph.D., *Sterling Professor of Law and Legal History*
 Justin Levitt, Ph.D., M.P.A., *Visiting Associate Professor of Law (spring term)*
 ‡ Yair Listokin, Ph.D., J.D., *Professor of Law*
 Carroll L. Lucht, M.S.W., J.D., *Clinical Emeritus Professor of Law, Supervising Attorney, and Professorial Lecturer in Law*
 † Jonathan R. Macey, A.B., J.D., *Sam Harris Professor of Corporate Law, Corporate Finance, and Securities Law*
 Luís Miguel Poiares Pessoa Maduro, Lic. en Derecho (J.D.), Ph.D., *Visiting Professor of Law Gruber Global Constitutionalism Fellow (fall term)*
 Chibli Mallat, LL.M., Ph.D., *Visiting Professor of Law and Oscar M. Ruebhausen Distinguished Senior Fellow (fall term)*
 Joseph G. Manning, A.M., Ph.D., *Professor (Adjunct) of Law (fall term)*
 David Marcus, B.A., J.D., *Maurice R. Greenberg Visiting Professor of Law*
 Daniel Markovits, D.Phil., J.D., *Guido Calabresi Professor of Law*
 Jerry Louis Mashaw, LL.B., Ph.D., *Sterling Professor of Law (fall term)*
 Braxton McKee, M.D., *Associate Professor (Adjunct) of Law (fall term)*
 † Tracey L. Mearns, B.S., J.D., *Walton Hale Hamilton Professor of Law*
 Noah Messing, B.A., J.D., *Lecturer in the Practice of Law and Legal Writing*
 Jeffrey A. Meyer, B.A., J.D., *Visiting Professor of Law*
 Alice Miller, B.A., J.D., *Associate Professor (Adjunct) of Law (spring term)*
 Kathleen B. Overly, J.D., Ed.D., *Associate Dean*
 Nicholas Parrillo, M.A., J.D., *Associate Professor of Law*
 Jean Koh Peters, A.B., J.D., *Sol Goldman Clinical Professor of Law and Supervising Attorney*
 Thomas Pogge, Dipl. in Soziologie, Ph.D., *Professor (Adjunct) of Law (spring term)*
 Robert C. Post, J.D., Ph.D., *Dean and Sol & Lillian Goldman Professor of Law*
 J.L. Pottinger, Jr., A.B., J.D., *Nathan Baker Clinical Professor of Law and Supervising Attorney*
 Claire Priest, J.D., Ph.D., *Professor of Law*
 George L. Priest, B.A., J.D., *Edward J. Phelps Professor of Law and Economics and Kauffman Distinguished Research Scholar in Law, Economics, and Entrepreneurship*
 Asha Rangappa, A.B., J.D., *Associate Dean*
 ‡ William Michael Reisman, B.A., J.S.D., *Myres S. McDougal Professor of International Law*
 ‡ Judith Resnik, B.A., J.D., *Arthur Liman Professor of Law*
 ‡ Roberta Romano, M.A., J.D., *Sterling Professor of Law*
 ‡ Carol M. Rose, J.D., Ph.D., *Gordon Bradford Tweedy Professor Emeritus of Law and Organizations and Professorial Lecturer in Law*
 Susan Rose-Ackerman, B.A., Ph.D., *Henry R. Luce Professor of Jurisprudence (Law School and Department of Political Science)*
 Jed Rubenfeld, A.B., J.D., *Robert R. Slaughter Professor of Law*
 Jennifer Prah Ruger, M.Sc., Ph.D., *Associate Professor (Adjunct) of Law (spring term)*
 William M. Sage, M.D., J.D., *Visiting Professor of Law (spring term)*
 Peter H. Schuck, M.A., J.D., LL.M., *Simeon E. Baldwin Professor Emeritus and Professor (Adjunct) of Law (fall term)*
 ‡ Vicki Schultz, B.A., J.D., *Ford Foundation Professor of Law and Social Sciences*
 ‡ Alan Schwartz, B.S., LL.B., *Sterling Professor of Law*
 † Ian Shapiro, Ph.D., J.D., *Professor (Adjunct) of Law (spring term)*
 † Scott J. Shapiro, J.D., Ph.D., *Charles F. Southmayd Professor of Law and Professor of Philosophy*
 Robert J. Shiller, S.M., Ph.D., *Professor (Adjunct) of Law (spring term)*
 Reva Siegel, M.Phil., J.D., *Nicholas deB. Katzenbach Professor of Law*
 Norman I. Silber, M.A., J.D., *Visiting Professor of Law*
 James I. Silk, M.A., J.D., *Clinical Professor of Law*
 John G. Simon, LL.B., LL.D., *Augustus E. Lines Professor Emeritus of Law and Professorial Lecturer in Law*
 Robert A. Solomon, B.A., J.D., *Clinical Professor Emeritus of Law*
 Richard Squire, M.B.A., J.D., *Florence Rogatz Visiting Professor of Law*
 Stephanie M. Stern, B.A., J.D., *Irving S. Ribicoff Visiting Associate Professor of Law (fall term)*
 † Richard B. Stewart, M.A., LL.B., *Visiting Professor of Law (fall term)*
 † Kate Stith, M.P.P., J.D., *Lafayette S. Foster Professor of Law*
 Alec Stone Sweet, M.A., Ph.D., *Leitner Professor of International Law, Politics, and International Studies*
 Mike K. Thompson, M.B.A., J.D., *Associate Dean*
 Tom R. Tyler, M.A., Ph.D., *Macklin Fleming Professor of Law and Professor of Psychology*
 Patrick Weil, M.B.A., Ph.D., *Maurice R. Greenberg Visiting Professor of Law (fall term)*
 James Q. Whitman, J.D., Ph.D., *Ford Foundation Professor of Comparative and Foreign Law*
 Abraham L. Wickelgren, J.D., Ph.D., *Florence Rogatz Visiting Professor of Law*
 Luzius Wildhaber, LL.M., J.S.D., *Visiting Professor of Law and Gruber Global Constitutionalism Fellow (fall term)*
 ‡ Ralph Karl Winter, Jr., M.A., LL.B., *Professor (Adjunct) of Law*
 ‡ Michael J. Wishnie, B.A., J.D., *William O. Douglas Clinical Professor of Law*
 John Fabian Witt, J.D., Ph.D., *Allen H. Duffy Class of 1960 Professor of Law*
 Stephen Wizner, A.B., J.D., *William O. Douglas Clinical Professor Emeritus of Law, Supervising Attorney, and Professorial Lecturer in Law*
 † Gideon Yaffe, A.B., Ph.D., *Professor of Law and Professor of Philosophy*
 † Howard V. Zonana, B.A., M.D., *Professor of Psychiatry and Clinical Professor (Adjunct) of Law*

Lecturers in Law

- Emily Bazelon, B.A., J.D.
 Cynthia Carr, J.D., LL.M.
 Adam S. Cohen, A.B., J.D.
 Linda Greenhouse, B.A., M.S.L., *Joseph Goldstein Lecturer in Law*
 Adam Grogg, M.Phil., J.D.
 Lucas Gutentag, A.B., J.D.
 Jamie P. Horsley, M.A., J.D.
 Margot E. Kaminski, B.A., J.D.
 Hope R. Metcalf, B.A., J.D.
 Christina M. Mulligan, B.A., J.D.
 James E. Ponet, M.A., D.D.
 Nina Rabin, B.A., J.D.
 Sia M. Sanneh, M.A., J.D.
 Daniel Wade, M.S., J.D.

Visiting Lecturers in Law

- Josh Abramowitz, A.B., J.D.
 Guillermo Aguilar-Alvarez, Lic. en Derecho (J.D.)
 Richard Baxter, M.A., J.D., *John R. Raben/Sullivan & Cromwell Visiting Lecturer in Accounting*
 H.E. Stuart Beck, B.A., J.D.

Stephen B. Bright, B.A., J.D., *Harvey Karp Visiting Lecturer in Law*
Jennifer Gerarda Brown, A.B., J.D.
Brett Cohen, B.A., J.D.
Timothy C. Collins, B.A., M.B.A.
Victoria A. Cundiff, B.A., J.D.
Brian T. Daly, M.A., J.D.
Karl (Tom) Dannenbaum, M.A., J.D., *Robina Foundation Visiting Human Rights Fellow*
Eugene R. Fidell, B.A., LL.B., *Florence Rogatz Visiting Lecturer in Law*
Gregory Fleming, B.A., J.D.
Lawrence J. Fox, B.A., J.D., *George W. and Sadella D. Crawford Visiting Lecturer in Law*
Gregory Gonsalves, B.S.
Benjamin W. Heineman, Jr., B.Litt, J.D.
Frank Iacobucci, LL.B., LL.M., *Gruber Global Constitutionalism Fellow*
Aaron Korman, M.Sc., J.D.
Barbara Marcus, M.S., Ph.D.
Charles Nathan, B.A., J.D.
Andrew J. Pincus, B.A., J.D.
Eric S. Robinson, M.B.A., J.D.
Charles A. Rothfeld, A.B., J.D.
David A. Schulz, M.A., J.D.
Michael S. Solender, B.A., J.D.
Laurence T. Sorkin, J.D., LL.M.
Sidney H. Stein, A.B., J.D.
David J. Stoll, B.A., J.D.
Christof R.A. Swaak, Ph.D.
Willard B. Taylor, B.A., LL.B.
Stefan R. Underhill, B.A., J.D.
John M. Walker, Jr., B.A., J.D.
David M. Zomow, B.A., J.D.

† On leave of absence, fall term, 2012-2013.

‡ On leave of absence, spring term, 2013.

**THE YALE JOURNAL
OF INTERNATIONAL LAW**
Volume 38, Number 1, Winter 2013

ADVISORY BOARD

ROBERT B. AHDIEH
*Professor,
Emory Law School*

OONA A. HATHAWAY
*Professor,
Yale Law School*

NICHOLAS ROSTOW
*Professor, National Defense
University, Editor-in-Chief, Vol. 7*

LEA BRILMAYER
*Professor,
Yale Law School*

MELANIE KHANNA
*Senior Donor Relations Officer,
United Nations Human
Rights Council*

STEPHEN RUCKMAN
*Special Appointee, Executive Division
Maryland Attorney General's Office,
Editor-in-Chief, Vol. 32*

AMY CHUA
*Professor,
Yale Law School*

MITCHEL LASSER
*Professor,
Cornell University Law School*

JAMES J. SILK
*Professor,
Yale Law School*

MIRJAN DAMAŠKA
*Professor,
Yale Law School*

JANET KOVEN LEVIT
*Dean,
University of Tulsa College of Law*

ALEC STONE SWEET
*Professor,
Yale Law School*

LAURA DICKINSON
*Professor, Sandra Day O'Connor
College of Law,
Arizona State University*

GRETA S. MILLIGAN
*Associate,
Covington & Burling LLP
Editor-in-Chief, Vol. 33*

PATRICIA WALD
*Judge, D.C. Circuit
Court of Appeals (Retired)*

OWEN M. FISS
*Professor,
Yale Law School*

ROBERT C. POST
*Dean,
Yale Law School*

JOHN D. WATSON, JR.
*Partner,
Latham & Watkins LLP
Editor-in-Chief, Vol. 9*

PAUL GEWIRTZ
*Professor,
Yale Law School*

W. MICHAEL REISMAN
*Professor,
Yale Law School*

JAMES Q. WHITMAN
*Professor,
Yale Law School*

SUSAN ROSE-ACKERMAN
*Professor,
Yale Law School*

THE YALE JOURNAL
OF INTERNATIONAL LAW
Volume 38, Number 1, Winter 2013

Editors-in-Chief

GISELLE BARCIA
TRAVIS PANTIN

Executive Editors

JASMEET KAUR AHUJA
JANE S. JIANG

Executive Features Editors

HANNAH BRENNAN
KRISTIN ZAICHKIN

Managing Editors

LINDSEY V. COUNTS
SAMIR DEGER-SEN
AVERY WHITE

Articles Editors

I. DEBORAH FRANCOIS
ADAM GOLDENBERG
KATE HADLEY
CHRISTINA KONINGSOR
JOHN LEWIS
CHRISTOPHER NASON
WILL SMILEY
JACOB VICTOR

Development Editor

CANEL TROUILLOT

Production Editor

STEPHEN DONNELLY

Features Editors

SHOUVIK BHATTACHARYA
AMANDA ELBOGEN
BENJAMIN F. FARKAS
CARLTON FORBES
ABIGAIL GRABER
ALISA SHEKHTMAN
JOSHUA SILVERSTEIN
CANEL TROUILLOT
EILEEN ZELEK

Submissions Editors

PIOTR BRZEZINSKI
GRACE KIM
SHENG LI
MINDY LU
SARAH MILLINGS
ALBERT NAH
FREYA PITTS
MICHAEL SHIH
ROMAIN ZAMOUR

Senior Editors

EDWINA CLARKE
JANIS FOO
FARSHAD GHODOOSI

KRISTA NELSON
TIFFANY NG†
SALLY PEI
CLARE RYAN

JAMES SHIH
JONATHAN N. SOLEIMANI
CAMERON A. VANSANT

Editors

JUSTIN ACCOMANDO
SELIN AKKAN
N. ALEXANDER AIZENSTATD
JOSHUA ANDRESEN
ARIELA ANHALT
JENNE AYERS
KRISTINE BECKERLE
MATTHEW BLUMENTHAL
MEGAN BROWDER
MARVIN BROWN
TRINITY BROWN
JOHN CALHOUN
YOON-YOUNG ANGELA CHOE
CHARLES DAMERON
ALLISON DAY
KYLE DELBYCK
RACHEL DEMPSEY
ANNA DIAKUN
AMANDA EL-DAKHAKHNI
MONIKA EHRMAN
MATTHEW EISENSON

LESLIE ESbrook
NICOLE J. FEARAHN
JURGEN GOOSSENS
BEN GRAHAM†
JORDAN C. HIRSCH
JULIE HUNTER
SUNG JIN
WILLIAM KALEMA†
LANAH KAMMOURIEH
JESSE KAPLAN
ALLANA KEMBABAZI†
JEREMY KESSLER
SAMUEL KLEINER
PHILIPP KOTLABA†
LUCAS LALLINGER
KATHRYN MAMMEL
DIEGO MATAMOROS
MATTHEW MELLEMA
CHRISTIAN MOTT
DAUD MUNIR

ROBERT NIGHTINGALE
GREGOR NOVAK
TEMIDAYO ODUSOLU
IFEANYICHUKWU OJUKWU
DAVID RANCE
MARA REVKIN
LAUREN SALAMON
CONRAD SCOTT
REEMA SHAH
ANDREW SHIPLEY
JENNIFER SKENE†
JESSICA SO
BRIAN SWEENEY
TINA THOMAS
LILIAN TIMMERMANN
BRIANNA VAN KAN
JULIE VEROFF†
DANIEL VIEHOFF
NICHOLAS WALLACE
JOHN C. WEI†
MENG JIA YANG

† *Source Coordinator*

