

Proposal for J.S.D. Thesis  
NYU School of Law  
For Fall 2011 Admission

*A Critical Assessment of the Concept of Due Diligence in International Law*

**A. Summary**

Accountability and compliance is an ever-relevant item on the agenda of the international legal system. This item brings into sharp focus the role of development when the substantive obligations are conduct-oriented, i.e., they are based on due diligence. Due diligence relates to acting to prevent a thing or state of affairs from coming about. This thesis will examine whether due diligence can be an effective and appropriate tool to uphold the 'rule of international law' by ensuring compliance with international obligations through the balancing of competing interests. The thesis will seek to evaluate the concept of due diligence against the legal aims and objectives of achieving justice, effectiveness as well as the practicability of this doctrinal concept in economic terms. This will be done in order to form a view as to whether we should rethink due diligence, its role and scope or completely jettison it from international legal doctrine. The operationalisation of this thesis will involve; a) an examination of the historical development of due diligence and its status, scope and content in international law; b) a comprehensive mapping of due diligence through the assessment of the work of the International Law Commission (ILC) and other drafting committees as well as international judicial treatment of the concept and; c) an inquiry into and questioning of the very rationale and prudence of the due diligence concept by evaluating, *inter alia*, the scope for its application to non-state actors.

**B. Introducing Due Diligence**

The essence of due diligence is 'good judgement,' some would say prudence in a situation that has the risk of causing injuries or the coming into being of a prohibited state of affairs. It has been termed differently as many times as it has been used: vigilance, active vigilance or a certain degree of vigilance, to take appropriate measures, to take necessary measures, best practicable means, best efforts or to employ all means reasonably available.

Considering all these terms, I tentatively suggest that due diligence is concerned with:

- Taking positive action to prevent the coming into effect of an injurious or prohibited state of affairs;
- Taking positive action to punish those who willingly bring about the injurious or prohibited state of affairs (as to whether due diligence requires making amends by reparation warrants investigation);
- Taking positive action to limit injury to others, while doing that which is within your right to do;
- Taking positive action that is appropriate for the fulfilment of your affirmative undertaking.

The commonality of these points is the prevention of the coming into being of a certain state of affairs. Here I use prevention in the broad sense. That is, it includes the aims of protection and risk management. Therefore, due diligence relates to acting to prevent a thing or state of affairs from coming about, and where it does or may come about, to ensure that the risk is managed either *ex post facto* or pre-emptively by limiting the negative effects of the injurious or prohibited state of affairs.

Therefore, the concept of due diligence in international law as it relates to the law of international responsibilities is amorphous. This led F.V. Garcia-Amador, Special Rapporteur to the ILC in his Second Report to correctly note:

“The learned authorities are in almost unanimous agreement that the rule of ‘due diligence’ cannot be reduced to a clear and accurate definition which might serve as an objective and automatic standard for deciding, regardless of the circumstances, whether a State was ‘diligent’ in discharging its duty of vigilance and protection....”<sup>1</sup>

From these points four observations can be made: (1) Due is applicable to different areas of law: international criminal law/ international human rights, international environmental law and development, international investment and also the law on diplomatic relations, protection of foreign nationals and anti-terrorism,<sup>2</sup> (2) As an aspect of the law on international responsibilities it is varied, in the sense that it has many different meanings in many different circumstances, and as such it raises different questions in each area; (3) It has no definite standard and its scope and content still raise debate and so it is described as being flexible<sup>3</sup>; (4) Given the vagueness of the concept, does it have any limits; can it be characterised as an event or is it a process?

### **C. Proposed Research & General Outline of the Thesis<sup>4</sup>**

This thesis will examine whether due diligence can be an effective and appropriate tool for the propagation of substantive rules of international law for international persons, states and organisations alike.<sup>5</sup> As a corollary to the general thesis, the research will also evaluate the concept of due diligence against such value-based considerations as justice, effectiveness and general economic and political factors.

Consequently, in the specific context of the Ph.D. thesis the following issues will be investigated and

---

<sup>1</sup> Garcia-Amador, *Second Report on State Responsibility*, U.N. Doc.A/CN.4/106 (1957) reprinted in (1957) 2 Y.B. Int'l L. Comm'n 104-30, U.N.Doc. A/CN.4/SER.A/1957/Add.1

<sup>2</sup> See Section D: Contextualising the Thesis by Illustration (duty to prevent genocide and international environmental law and development and international investment law).

<sup>3</sup> *Ibid*, In particular, see section on international investment law.

<sup>4</sup> *Ibid*.

<sup>5</sup> Crawford, James & Olleson, Simon, *The Nature and Forms of International Responsibility*, in INTERNATIONAL LAW 445, 459 (Malcolm D. Evans ed., 2003) pp446. See also Barnidge, Jr, Robert. *The Due Diligence Under International Law*, International Community Law Review 8: 81-121, 2006 at 81.

addressed:

**PART I: Introduction & examination of historical development, status and nature of due diligence in international law**

This portion of the thesis will contain:

1. An examination of whether due diligence, in international law, is a doctrinal rule for interpreting other substantive rules or whether it is a conceptual framework through which substantive obligations are operationalised. In doing this, the paper will engage in an evaluation of the historical development of the concept and its status at international law. This examination will help to contextualise what the idea of due diligence really is, in an effort to assist in a later investigation as to its appropriateness for establishing substantives rules of international law.
2. As such, an examination of what the exact scope and content of due diligence and specific due diligence obligations are will be required in order to: (1) help determine whether substantive obligations can flow from it; (2) investigate its relationship with other primary rules on international responsibility; (3) investigate whether there can be a minimum international standard and; (4) investigate whether due diligence is truly capable of being objectively assessed.

**PART II: Descriptive & Comprehensive Mapping of Due Diligence (assessment of drafting deliberations and judicial interpretation of explicit and analogous due diligence clauses)**

3. The analyses in Part I will be followed by an examination of the practical application of due diligence. This will entail examining the ILC's considerations of due diligence in an effort to understand why due diligence has not been specifically referenced in the Draft Articles on States Responsibility for Internationally Wrongful Acts, even though it is being used in other instruments. Is the ILC's characterisation of due diligence as a primary rule of international responsibility appropriate or even helpful in fully guiding us as to its use in the promulgation of substantive rules? In order to answer these questions, a comparative analysis of the ILC's approach towards due diligence with that of other drafting committees will be undertaken.
4. At this point the analysis turns to an investigation of the means by which the expression and theoretical foundation of due diligence has been interpreted by various international and domestic courts and tribunals.<sup>6</sup> By "expression" I mean explicit and analogous reference to the concept in

---

<sup>6</sup> See for example, *Barcelona Traction Case* ICJ Reports 1970, 3, *Hostages in Tebran Case* ICJ Reports 1980, 31, *Alabama Case Moore*, History (note 49), vol. I, 495-682; *Nicaragua Case* ICJ Reports 1986, 70, *Trail Smelter Case* UN Reports of International Arbitral

treaties, and binding and non-binding resolutions of international bodies.<sup>7</sup> The focus will lie on international criminal law/international human rights, international environmental law and international investment law.<sup>8</sup> In essence the analysis seeks to understand how the courts have interpreted the expression of due diligence.

5. This examination of the basis and application of due diligence; will serve to establish the foundation for an investigation and assessment of the overall advantages and disadvantages of the use of due diligence as a tool to uphold the 'rule of international law' by ensuring compliance with international obligations through the balancing of competing interests. This will help in determining its overall attractiveness for further propagation of international law.

**PART III: Questioning Due Diligence (evaluating its scope for application to non-state actors, assessment of suitability by analysis against background of justice and effectiveness as well as an economic analysis)**

6. Considering the discussion up to this point, the focus of the research will here turn to the issue of the applicability of due diligence to international governmental organisations (IGO). The paper will also explore the extent to which these due diligence obligations, if any, will affect the ability of the IGO's to fulfil their mandate. A secondary issue for examination in this section is whether the standard of obligation of an international organisation, as it relates to due diligence, is equal to that of a state; where the mandate of the organisation overlaps with the international obligations of a state.

I will focus on the United Nations (UN) in this section since it has the highest exposure to due diligence obligations. The principles extrapolated from the assessment of the UN will be used to explore the applicability and suitability of due diligence to the process of establishing international responsibilities for IGOs in general. Here, reference will also be made to how the duty, if its use continues, may implicate private enterprises such as multinational corporations, non-governmental organisations and intergovernmental organisations. Can this doctrine be a means by which international civil responsibility may be developed, something akin to international criminal liability?

---

Awards III, 1905 arbitral decision of 11 March 1941, *Corfu Channel Case; Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka*, 30 ILM 577, *United States v. Mexico (Youmans)*, UN Reports of International Arbitral Awards IV, 1926

<sup>7</sup> See for example, Rio Declaration on Environment and Development 1992, London Dumping Convention, Ozone Convention 1985, Basle Convention on the Transboundary Movement of Hazardous Wastes 1989, Kyoto Protocol 1992. UN Security Resolution 1267S-RES-1267(1999), UN Security Council Resolution 1373 S/RES/1373(2001), UN General Assembly Resolution 48/104 - Declaration on the Elimination of Violence against Women, A/RES/48/104, UN General Assembly Resolution - Promotion and Protection of All Human Rights, A/HRC/7/L.22/Rev.1

<sup>8</sup> See Section D: Contextualising the Thesis by Illustration (duty to prevent genocide and international environmental law and development and international investment law).

7. The analysis continues by looking at the 'Bretton-Woods System' and the World Trade Organisation. These organisations have come under continuous criticism for engaging states in policies that are allegedly inimical to their development. This section seeks to address the question of whether these organisations have a substantive due diligence obligation to ensure that when they engage states it is done in a manner that has the least injurious effect on the development of the state. Should the answer to this question be in the affirmative, how should this obligation be operationalised and what rights are states then entitled to?
8. Given the paradigmatic divide that exists in the scholarship on how development ought to be approached, in this light, the paper now critically assesses the attractiveness of due diligence obligations to states. This is done considering that due diligence does, at the very least, two things that impact a state's development policy: (1) it requires states to use their resources, sometimes limited, to take positive actions in pursuit of their general international obligations and; (2) specific to environmental protection, due diligence obligations limit how states may go about exploiting their own resources in furtherance of their development goals. An economic analysis of due diligence will help us to understand how due diligence obligations burden some states as oppose to others. An analysis of due diligence against the background of justice and effectiveness will be done in order to properly contextualise the concept as well as the observations made by the economic analysis.

This will then guide in assessing the overall attractiveness of using due diligence as a tool for upholding the 'rule of international law.' What are the appropriate minimum international standards for acting with due diligence and how much is the fulfilment of the requirement of due diligence determined by a state's level of development?

#### **PART IV: Conclusion**

9. In completing the analysis this section of the project will take stock of the overall impact, potential and limits of the due diligence concept on the normative and institutional structures of international law. In so doing, this section of the project will seek to resolve the question of whether due diligence can be effective given its particular characteristics, such as the vagueness of existing legal conceptions. In broader terms, the project will seek to normatively evaluate the concept of due diligence, in order to form a view as to whether we should rethink its role and scope (possibly confining its use to specific areas of international law) or completely jettison it from international legal doctrine. In so doing, the thesis will consider whether the continuous proliferation of the due diligence is a 'desirable'

tool for meeting the contemporary aims, objectives and challenges of the international legal system. Ultimately, the aim is to make a substantive contribution to deliberations on the role that due diligence should play in the functioning and development of international law.

#### **D. Contextualising the Thesis by Illustration (duty to prevent genocide, international environmental law and development and International investment law)**

The tool of due diligence has been applied in many areas of international law. For the purpose of this proposal, I will use the duty to prevent genocide, international environmental law and development and international investment law to illustrate why this thesis presents an important opportunity to consider due diligence and its effectiveness in balancing competing interests, thereby upholding the 'rule of international law'. These three areas will form case studies in the thesis.

##### *Duty to Prevent Genocide*

Considering their capacity to influence the belligerent party in a situation where genocide is being committed or there is a risk of it being committed, under the Genocide Convention States Parties, must “...employ all means reasonably available to them, so as to prevent genocide as far as possible.”<sup>9</sup> By capacity the ICJ would consider, *inter alia*, (a) the geographical distance between the State Party concerned and the scene of the events of genocide (or potential genocide); (b) the strength of the political links between the State Party concerned and the perpetrators; and (c) all other kinds of links through which the State Party concerned can effectively influence the actions of the perpetrators.<sup>10</sup>

The questions that immediately arise from the ICJ's guidance are: Is there an international minimum standard to assess the State Party's due diligence, or is it a wholly relativistic standard? Do substantive obligations flow from a duty that is operationalised by due diligence; what should the state do to prevent genocide? What margin of appreciation do states have, in light of their resource availability and competing interests? Who determines the threshold strength of the political link? What other kinds of links will be considered? Is this obligation determined by the character, quality and strength of the state concerned? Is it a wholly subjective duty; that is to say, the kinship between the state and victims will determine what actions are considered appropriate?

##### *International Environmental Law*

---

<sup>9</sup> Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*) ICJ General List No. 91 (judgment on February 28, 2007).

<sup>10</sup> *Ibid*

Principle 21 of the Stockholm Declaration, which is said to reflect customary international law,<sup>11</sup> notes that States have the right to exploit their own resources and the responsibility not to do so in a manner that causes damage to other states.<sup>12</sup> This principle is reflected in Article 7 of the Convention on the Law of the Non-Navigational Uses of International Watercourses.<sup>13</sup> Given that private entities also exploit resources within a state it would appear that this principle would enjoin the state to regulate the activities of private entities as well.

Noting that states need to exploit their environment in order to properly pursue developmental goals. There appears to be a paradigmatic divide that features in the discussion about due diligence and international environmental protection, as the developing world argues that developed countries have achieved that status because they had the latitude to exploit their environment. As such, they, the developing countries, must be left to do the same. Seemingly then, the due diligence obligation in this field bears much difficulty for the developing world as it limits how the states may pursue some items in their development agenda.

Considering that, how attractive are environmental protection rules that are based on due diligence to developing countries? Appreciating the paradigmatic divide, is there an international minimum standard for due diligence in international environmental law? Do states now have a duty to establish and maintain a regulatory framework to police private entities? Seeing that many private entities are also multinational corporations, this seems to be an avenue through which states could enact extraterritorial environmental regulations, thereby impacting the development policies of other states. The questions raised again are: (1) Should countries be burdened with this sort of obligation? (2) When will states know that they have fulfilled their obligation? (3) In cases where resources are limited, how much should be expended on this matter and who determines whether the amount expended is, necessary, best effort or the appropriate degree of vigilance? An evaluation of due diligence against the background of effectiveness, justice and economic efficiency may help to address some of these questions.

### *International Investment Law*

In the general, Investment Treaties requires the Host State to give fair and equitable treatment to the foreign investors and to accord full protection and security to the foreign investments. Investment arbitral tribunals

---

<sup>11</sup> OECD, Report by the Environment Committee, 'Responsibility and Liability of States in Relation to Transfrontier Pollution' (1984), 4. – There is a 'custom based rule of due diligence imposed on all states in order that activities carried out within their jurisdiction do not cause damage to the environment of other states'.

<sup>12</sup> See also, *Trail Smelter Case* UN Reports of International Arbitral Awards III, 1905 arbitral decision of 11 March 1941.

<sup>13</sup> Article 7(1) Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States. See too ILC Commentaries on the Draft Articles.

have held that both these duties are based on a due diligence standard.<sup>14</sup> Newcombe and Paradell concluded that “[a]lthough the host state is required to exercise an objective minimum standard of due diligence, the standard of due diligence is that of a host state in the circumstances and with the resources of the state in question. This suggests that due diligence is a modified objective standard – the host state must exercise the level of due diligence in its particular circumstances.”<sup>15</sup>

This approach invites many questions: How will a balance be struck between the objective minimum standard and the subjective capacity of the state in question? For the objective minimum standard it is necessary to find a comparator; how will this be determined considering (1) the diversity of approaches to development and (2) the variance of priorities for each state? What will be the position regarding the objective minimum standard, when the state in question is incapable of attaining it? Should the objective minimum standard be used as a means of pushing states towards development (i.e., they will be responsible irrespective of their capacity)?

What is clear is that the due diligence standard raises a different set of questions for each field, in which it is utilised. However, a common theme in each set of questions is the capacity of the state in question (i.e., its level of development). When has a state done enough and is it the state liable for its incapacity? These questions concerned the effectiveness of due diligence in balancing competing interests so as to ensure compliance with international obligations. My thesis will probe into this issue deeply.

## **E. Contribution of Ph.D. to Scholarship**

F.V. Garcia-Amador in his Second Report to the ILC aptly described the current tone of the scholarship on due diligence in international law. He said, “... though the rule [due diligence] is vague and, consequently, of only relative value in practice, there is no choice—so long as some better formula is not devised in its stead—but to continue to apply the rule of ‘due diligence’ in these cases of responsibility.”<sup>16</sup> The existing scholarship on due diligence in international law, which my thesis will take into full account, assesses the concept of due diligence from the premise that it is a matter of fact.<sup>17</sup> However, my thesis will contribute to the scholarship

---

<sup>14</sup> *Wena Hotels Ltd v Egypt*, ICSID Case No. ARB/98/4, 8 December 2000; *AMT v Congo* ICSID Case No. ARB/93/1, 21 February 1997; *AAPL v Sri Lanka*; *Rymeli Telekom A.S. & Telsim MobilTelekomikayso Hizmetleri A.S. v Kazakistan*, ICSID Case No. ARB/05/16, 29 July 2008;; *Lauder v Czech Republic* (UNITRAL Arbitration) final award 3 September 2001; UNCTAD Series on International Investment Policies for Development, Investor-State Disputes Arising from Investment: Review (2005);

<sup>15</sup> Andrew Newcombe and Lluís Paradell, *LAW AND PRACTICE OF INVESTMENT TREATIES: STANDARD OF TREATMENT*, Kluwer Law International: 2009, 310, which was approved by Sole Arbitrator Jan Paulsson in *Pantechnika S.A. Contractors & Engineers (Greece) v Albania* ICSID Case No. ARB/07/21, 20 July 2009.

<sup>16</sup> Garcia-Amador, *Second Report on State Responsibility*, U.N. Doc.A/CN.4/106 (1957) reprinted in (1957) 2 Y.B. Int'l L. Comm'n 104-30, U.N.Doc. A/CN.4/SER.A/1957/Add.1

<sup>17</sup> See however, Peter Malanczuk *AKHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW*, Routledge: 1997

in that: a) it will comprehensively analyse the concept of due diligence from the position of whether it should exist - it will seek to question the very basis of a doctrine, that appears to have been widely invoked yet very vague; b) it will examine extensively an area that has been greatly under-theorised, and whose normative limits and potential are not fully explored.

## **F. Research Method and Sources to be Consulted**

The research will be mainly a qualitative analysis of various sources, both primary and secondary. This will include international instruments: treaties, declarations, binding and non-binding resolutions from international bodies. I will also review the decisions of international courts and tribunals. The existing scholarship on due diligence will, however, be used as a starting point for my research. Crucial to my investigations will be an analysis of discussions of the ILC and other drafting committees on the matter of due diligence.

Where the paper engages in the economic analysis of due diligence both the positive and normative approaches approach will be utilised. The positive approach will be used in the papers' discussion on the '...principles extrapolated from the assessment of the UN... [in examining the] ...applicability and suitability of due diligence to the process of establishing international responsibilities for non-state actors in general.'<sup>18</sup> The normative approach will be used in the paper's discussion on the relationship between due diligence and development and any policy recommendations that may come from the analysis.

**NB.** This proposal presents my preliminary assessment of the area and may be changed in consultation with my assigned supervisor.

## **G. Why NYU School of Law**

There are three main reasons why the NYU School of Law is the most appropriate place for this research to be undertaken. Firstly, the School provides an environment that allows for and encourages a complete immersion into my specific area of research. Secondly, the School boasts a leading environment for the interdisciplinary and comparative study of law. This fully accords with how I see the law as being a tool for the ordering of our societies. Thirdly, School's large and diverse community of international law scholars and JSD candidates will enrich the research process by advancing a holistic approach. In sum, the NYU School of Law provides a rigorous yet congenial, engaging and intellectually stimulating environment, suitable for my research.

---

at 245; John H. Knox "The Myth and Reality of Transbound Environmental Impact Assessment" 96 AJIL (2002) 291.

<sup>18</sup> See II. Proposed Research – part 6

## H. Full-time Faculty with whom I hope to work with:

1. Professor Ryan Goodman
2. Professor José Enrique Alvarez
3. Professor Richard B Stewart

## I. Preliminary Bibliography

### Books

- [1] Horst Blomeyer-Bartenstein, "Due Diligence" in 10 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 138 (R. Bernhardt ed., Elsevier Science 1987)
- [2] Mohammed Bedjaoui, "Responsibility of States: Fault and Strict Liability" in 10 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 358 (R. Bernhardt ed., Elsevier Science 1987)
- [3] P.M. Dupuy, "Due Diligence in the International Law of Liability", in OECD, LEGAL ASPECTS OF TRANSFRONTIER POLLUTION 369 (1977).
- [4] Carin Benninger-Budel (ed.) DUE DILIGENCE AND ITS APPLICATION TO PROTECT WOMEN FROM VIOLENCE (Martinus Nijhoff Publishers 2008)
- [5] Guy S. Goodwin-Gill, "State Responsibility and the 'Good Faith' Obligation in International Law" in ISSUES OF STATE RESPONSIBILITY BEFORE INTERNATIONAL JUDICIAL INSTITUTIONS 75, 78 (Malgosia Fitzmaurice & Dan Sarooshi eds., 2004).
- [6] Riccardo Pisillo-Mazzeschi, The Due Diligence Rule and the Nature of the International Responsibility of States, 35 GERM.Y.I.L. 9 (1992)
- [7] August Reinisch, "The Changing International Legal Framework for Dealing with Non-State Actors" in NON-STATE ACTORS AND HUMAN RIGHTS 37, 79 (Philip Alston ed., Oxford University Press 2005)
- [8] Olivier de Schutter, "The Accountability of Multinationals for Human Rights Violations in European Law" in NON-STATE ACTORS AND HUMAN RIGHTS 227, 233–35 (Philip Alston ed., Oxford University Press 2005)
- [9] Timo Koivurova "What is the Principle of Due Diligence?" in NORDIC COSMOPOLITANISM: ESSAY IN INTERNATIONAL LAW FOR MARTTI KOSKENNIEMI 341 (Jarna Petman and Jan

Klabbers eds., Martinus Nijhoff Publishers 2003)

- [10] James Crawford THE INTERNATIONAL COMMISSION'S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXTS AND COMMENTARIES (Cambridge University Press 2002)
- [11] James L. Kateka, "The s1st Session of the United Nations International Law Commission" in 7 AFRICAN YEARBOOK OF INTERNATIONAL LAW 217 (Abdulqawi Yusuf ed., Martinus Nijhoff Publishers 2001)
- [12] Xue Hanqin, TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW (Cambridge University Press 2003) See in particular Chapter 5 "The doctrine of due diligence and standards of conduct"
- [13] Lynne M. Jurgielewicz, GLOBAL ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW: PROSPECTS FOR PROGRESS IN THE LEGAL ORDER 57 (University Press of America 1996)
- [14] Anne T. Gallagher, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 447 (Cambridge University Press 2010)
- [15] Bin Cheng, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 218-32 (Grotius Publications Ltd 1987)
- [16] Han Kelsen, PRINCIPLES OF INTERNATIONAL LAW 200 (R. Tucker 2d ed. Nachdruck 1966)
- [17] Ian Brownlie SYSTEM OF THE LAW OF NATIONS: STATE RESPONSIBILITY PART I, 159-179 (Oxford: Clarendon Press 1983)
- [18] James Crawford & Simon Olleson, "*The Nature and Forms of International Responsibility*" in INTERNATIONAL LAW 445, 459 (Malcolm D. Evans ed., Cambridge University Press 2003)
- [19] Owen McIntyre, ENVIRONMENTAL PROTECTION OF INTERNATIONAL WATER COURSES UNDER INTERNATIONAL LAW (Ashgate Publishing Company 2007)

Journal Articles

- [20] 8 ICLR 81 International Community Law Review 2006 THE DUE DILIGENCE PRINCIPLE UNDER INTERNATIONAL LAW Robert B. Barnidge

- [21]35 Denv. J. Int'l L. & Pol'y 67 Denver Journal of International Law and Policy Winter 2006 Article STATE RESPONSIBILITY AND LIABILITY FOR NUCLEAR DAMAGE Alexandre Kiss
- [22]36 N.Y.U. J. Int'l L. & Pol. 265 New York University Journal of International Law and Politics Winter-Spring 2004 Articles THE HISTORICAL DEVELOPMENT OF THE DOCTRINES OF ATTRIBUTION AND DUE DILIGENCE IN INTERNATIONAL LAW Jan Arno Hessbruegge
- [23]18 Colo. J. Int'l Envtl. L. & Pol'y 537 Colorado Journal of International Environmental Law and Policy Summer 2007 Focus Issue: International Water COMMENTARY ON THE U.N. INTERNATIONAL LAW COMMISSION'S DRAFT ARTICLES ON THE LAW OF TRANSBOUNDARY AQUIFERS Gabriel E. Eckstein
- [24]14 J. Envtl. L. 264 Journal of Environmental Law 2002 Review STATE RESPONSIBILITY FOR TRANSBOUNDARY AIR POLLUTION IN INTERNATIONAL LAW. BY PHOEBE OKOWA [OXFORD: OXFORD UNIVERSITY PRESS, 2000, ISBN 0 1982 6097 0, £65] Alan Boyle
- [25] 5 Melbourne Law Journal 5 (2004) THE DOCTRINE OF STATE RESPONSIBILITY AS A POTENTIAL MEANS OF HOLDING PRIVATE ACTORS ACCOUNTABLE FOR HUMAN RIGHTS Danwood Mzikenge Chirwa
- [26]12 J. Conflict & Security L. 359 Journal of Conflict & Security Law Winter 2007 Article 'THE ARMS TRADE AND STATES' DUTY TO ENSURE RESPECT FOR HUMANITARIAN AND HUMAN RIGHTS LAW Maya Brehm
- [27]86 Am. J. Int'l L. 371 American Journal of International Law April, 1992 International Decision BILATERAL INVESTMENT TREATIES--APPLICABLE LAW--STATE RESPONSIBILITY--COMPENSATION STANDARD Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka. Case No. ARB/87/3, 30 ILM 577 (1991)
- [28]39 J. Mar. L. & Com. 229 Journal of Maritime Law and Commerce April, 2008 Article ADMIRALTY AND MARITIME LAW ARTICLES PUBLISHED IN NON-MARITIME LAW JOURNALS (2007) H. Kumar Percy Jayasuriya, Melanie Oberlin
- [29]22 Emory Int'l L. Rev. 61 Emory International Law Review 2008 Conference on World Law and World Health DOMESTIC VIOLENCE, HEALTH, AND INTERNATIONAL LAW Bonita Meyersfeld
- [30]18 Eur. J. Int'l L. 695 European Journal of International Law September, 2007 Symposium: Genocide, Human Rights and the ICJ BREACH OF THE OBLIGATION TO PREVENT AND REPARATION THEREOF IN THE ICJ'S GENOCIDE JUDGMENT Andrea Gattini

- [31]48 Harv. Int'l L.J. 553 Harvard International Law Journal Summer, 2007 Note LIABILITY OF MEMBER STATES FOR ACTS OF INTERNATIONAL ORGANIZATIONS: RECONSIDERING THE POLICY OBJECTIONS Andrew Stumer
- [32]26 A Stan. Envtl. L.J. 123 Stanford Environmental Law Journal June 2007 Symposium: Climate Change Liability and the Allocation of Risk INTERNATIONAL LIABILITY AS AN INSTRUMENT TO PREVENT AND COMPENSATE FOR CLIMATE CHANGE Michael G. Faure, André Nollkaemper
- [33]19 Geo. Int'l Envtl. L. Rev. 209 Georgetown International Environmental Law Review Winter, 2007 Article AN EXAMINATION OF THE INTERNATIONAL ENVIRONMENTAL LAW GOVERNING THE PROPOSED INDIAN RIVER-LINKING PROJECT AND AN APPRAISAL OF ITS ECOLOGICAL AND SOCIO-ECONOMIC IMPLICATIONS FOR LOWER RIPARIAN COUNTRIES Shawkat Alam
- [34]32 Yale J. Int'l L. 125 Yale Journal of International Law Winter 2007 Article CLEARING A PATH THROUGH A TANGLED JURISPRUDENCE: MOST-FAVORED-NATION CLAUSES AND DISPUTE SETTLEMENT PROVISIONS IN BILATERAL INVESTMENT TREATIES Scott Vesel
- [35]22 J. Envtl. L. & Litig. 267 Journal of Environmental Law and Litigation 2007 Article INTERNATIONAL LEGAL AVENUES TO ADDRESS THE PLIGHT OF VICTIMS OF CLIMATE CHANGE: PROBLEMS AND PROSPECTS Timo Koivurova
- [36]30-SUM Fletcher F. World Aff. 81 Fletcher Forum of World Affairs Summer, 2006 International Criminal Justice WHOOPS, I COMMITTED GENOCIDE! THE ANOMALY OF CONSTRUCTIVE LIABILITY FOR SERIOUS INTERNATIONAL CRIMES David L. Nersessian
- [37]11 J. Conflict & Security L. 179 Journal of Conflict & Security Law Summer, 2006 Article INTERNATIONAL ACCOUNTABILITY FOR VIOLATIONS OF THE IUS IN BELLO: THE IMPACT OF THE ICRC STUDY ON CUSTOMARY INTERNATIONAL HUMANITARIAN LAW Dieter Fleck
- [38]46 Nat. Resources J. 157 Natural Resources Journal Winter 2006 THE ROLE OF CUSTOMARY RULES AND PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW IN THE PROTECTION OF SHARED INTERNATIONAL FRESHWATER RESOURCES Owen McIntyre
- [39]44 Colum. J. Transnat'l L. 691 Columbia Journal of Transnational Law 2006 Articles THE RIGHT TO FOOD: HOLDING GLOBAL ACTORS ACCOUNTABLE UNDER INTERNATIONAL LAW Smita Narula

- [40]14 Pac. Rim L. & Pol'y J. 743 Pacific Rim Law and Policy Journal June, 2005 Comment STATE RESPONSIBILITY AND MARITIME TERRORISM IN THE STRAIT OF MALACCA: PERSUADING INDONESIA AND MALAYSIA TO TAKE ADDITIONAL STEPS TO SECURE THE STRAIT Tammy M. Sittnick
- [41]23 Berkeley J. Int'l L. 615 Berkeley Journal of International Law 2005 Article BABYSITTING TERRORISTS: SHOULD STATES BE STRICTLY LIABLE FOR FAILING TO PREVENT TRANSBORDER ATTACKS? Vincent-Joël Proulx
- [42]11 Buff. Hum. Rts. L. Rev. 21 Buffalo Human Rights Law Review 2005 Article HUMAN RIGHTS VIOLATIONS ARISING FROM CONDUCT OF NON-STATE ACTORS Jan Arno Hessbruegge
- [43]2 Int'l J. Const. L. 525 International Journal of Constitutional Law July, 2004 Development EUROPEAN COURT OF HUMAN RIGHTS: POSITIVE OBLIGATIONS IN E. AND OTHERS v. UNITED KINGDOM Bernhard Hofstätter
- [44]25 Mich. J. Int'l L. 337 Michigan Journal of International Law Winter 2004 Articles LESSONS FROM THE PROTRACTED MOX PLANT DISPUTE: A PROPOSED PROTOCOL ON MARINE ENVIRONMENTAL IMPACT ASSESSMENT TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA Maki Tanaka
- [45]17 Transnat'l Law. 51 Transnational Lawyer 2004 Symposium A PARADIGM FOR THE ANALYSIS OF THE LEGALITY OF THE USE OF ARMED FORCE AGAINST TERRORISTS AND STATES THAT AID AND ABET THEM Dr. Barry A. Feinstein
- [46]56 Okla. L. Rev. 735 Oklahoma Law Review Fall 2003 Comment INTERNATIONAL LAW: BLAMING BIG BROTHER: HOLDING STATES ACCOUNTABLE FOR THE DEVASTATION OF TERRORISM Sarah E. Smith
- [47]11 Cardozo J. Int'l & Comp. L. 1 Cardozo Journal of International and Comparative Law Spring 2003 Article USE OF FORCE AGAINST TERRORISM AFTER SEPTEMBER 11TH: STATE RESPONSIBILITY, SELF-DEFENSE AND OTHER RESPONSES Davis Brown
- [48] 34 Colum. Hum. Rts. L. Rev. 475 Columbia Human Rights Law Review Spring 2003 Notes WHO WILL POLICE THE PEACE-BUILDERS? THE FAILURE TO ESTABLISH ACCOUNTABILITY FOR THE PARTICIPATION OF UNITED NATIONS CIVILIAN POLICE IN THE TRAFFICKING OF WOMEN IN POST-CONFLICT BOSNIA AND HERZEGOVINA Jennifer Murray
- [49]26 Hastings Int'l & Comp. L. Rev. 83 Hastings International and Comparative Law Review Fall 2002 Notes STATE SPONSORSHIP AND SUPPORT OF INTERNATIONAL TERRORISM:

- [50]96 Am. J. Int'l L. 291 American Journal of International Law April, 2002 THE MYTH AND REALITY OF TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT John H. Knox
- [51]3 U. Denv. Water L. Rev. 231 University of Denver Water Law Review Spring 2000 Article SAFEGUARDING INTERNATIONAL RIVER ECOSYSTEMS IN TIMES OF SCARCITY A. Dan Tarlock
- [52]12 Transnat'l Law. 153 Transnational Lawyer Spring, 1999 INTERNATIONAL RESPONSIBILITY OF AN OCCUPYING POWER FOR ENVIRONMENTAL HARM: THE CASE OF ESTONIA Lisa M. Kaplan
- [53]3 ILSA J. Int'l & Comp. L. 193 ILSA Journal of International & Comparative Law Fall, 1996 Note & Comment GENERAL PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW Max Valverde Soto
- [54]26 Cal. W. Int'l L.J. 215 California Western International Law Journal Spring 1996 THE INTERNATIONAL CRIME OF ECOCIDE Mark Allan Gray
- [55]10 BYU J. Pub. L. 181 BYU Journal of Public Law 1996 INTERNATIONAL WATER LAW AND THE PROTECTION OF RIVER SYSTEM ECOSYSTEM INTEGRITY A. Dan Tarlock
- [56]85 Am. J. Int'l L. 568 American Journal of International Law July, 1991 Book Review "DUE DILIGENCE" E RESPONSABILITA INTERNAZIONALE DEGLI STATI BY RICCARDO PISILLO MAZZESCHI. MILAN: DOTT. A. GIUFFRÈ EDITORE, 1989. PP. XIV, 418. INDEXES Gabe Shawn Vargas
- [57]83 Am. Soc'y Int'l L. Proc. 62 American Society of International Law Proceedings April 5-8, 1989 INTERNATIONAL LAW AND PROTECTION OF THE ATMOSPHERE Gunther Handl, Scott A. Hajost, Lothar Gundling, Sharon Williams and Alice M. Noble-Allgire
- [58]83 Am. Soc'y Int'l L. Proc. 372 American Society of International Law Proceedings April 5-8, 1989 STATE RESPONSIBILITY FOR VIOLATIONS OF HUMAN RIGHTS Theodor Meron Mary Margaret McCarthy
- [59] 23 AJIL Spec Supp 173 American Journal of International Law, Special Supplement 1929 THE LAW OF RESPONSIBILITY OF STATES FOR DAMAGES DONE IN THEIR TERRITORY TO THE PERSON OR PROPERTY OF FOREIGNERS (1929 Harvard Draft), Articles 10-12; See also 55 AJIL 545, 1961 Harvard Draft, Article 13