

INTERNATIONAL LAW
AMERICAN BAR ASSOCIATION YOUNG LAWYERS DIVISION



Committee Newsletter
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NEWS AND ANNOUNCEMENTS >>

Recent Events

- The YLD-ILC worked together with the International Arbitration Committee of the ABA Section of International Law in August on the Program “CAS”: The “Supreme Court of Sports” at the 2016 Rio Summer Olympics.
- The YLD-ILC sponsored a program entitled “Data Breaches and Cyber Security – Are You Ready?” at the 2016 YLD Fall Conference in Detroit on Friday, October 21, 2016.

Upcoming YLD-ILC Programming

- At the ABA Midyear Meeting in Miami, Florida (February 2- 5, 2017), the YLD-ILC is co-sponsoring on February 3 two programs:
 - Cuba Libre: The Potential Legal Costs and Benefits of Doing Business in Cuba
 - The Zika Virus: The Legal Implications of a Public Health Emergency (in collaboration with the Litigation Committee)

At this time we are considering speakers for the program and welcome any suggestions our readers may provide. Note that there is no funding available for any speakers. Please contact aba.yldilc@gmail.com with ideas!

- The YLD-ILC is currently considering live CLE program proposals for the upcoming YLD 2017 Spring Conference (May 4-6, 2017). We welcome any suggestions for program proposals at aba.yldilc@gmail.com.

Other YLD Upcoming Programming

- November 17, 2016, ABA Webinar: The Basics of Clinical Trial Research: Differing Perspectives of Sponsors, Sites and Investigators
- December 13, 2016, ABA Webinar: False Claims Act Update: How Escobar Has Rewritten the FCA Playbook

ARTICLES >>

Brexit and International Law - A Brief Report

By Amelia Lo



June 23, 2016 marks an important date in the history of the European Union (“EU”). On this day, a majority of British voters voted affirmatively on the referendum to leave the European Union.

The deal agreed to at the February European Council meeting (February 18 and 19, 2016) is binding in international law for all EU Member States.¹ This is because it can only be amended or revoked if all Member States, including the UK, agree.²

What is the major basis for the change?

Article 50(1) of the Lisbon Treaty provides that a member state “may decide to withdraw from the Union in accordance with its own constitutional requirements,” and Article 50(2) provides that the withdrawing state shall notify the European Council of its decision and negotiate an agreement stating the exit arrangements and its future relationship.³ During the estimated two-year transitional period, the UK is expected to continue to obey EU treaties and law, and comply with the terms of the withdrawal agreement it reached with the EU, in accordance with the principle of “sincere cooperation.”⁴

What are the most noticeable changes internally?

Prominent consequences resulting from the UK Referendum include: 1) the replacement of UK Prime Minister David Cameron with Theresa May after the former’s resignation,⁵ 2) the fall in the Pound Sterling,⁶ and 3) the many discussions and debates both locally and globally on the

¹ European Council General Secretariat, European Council meeting (18 and 19 February 2016) – Conclusions (2016), http://www.consilium.europa.eu/en/meetings/european-council/2016/02/euco-conclusions_pdf/ (last visited Oct 11, 2016).

² Id.

³ European Union, Article 50(1) and (2) of Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community (2007), <http://eur-lex.europa.eu/legal-content/en/all/?uri=oj:c:2007:306:toc> (last visited Oct 11, 2016).

⁴ European Union, Article 4(3) of Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community (2007), <http://eur-lex.europa.eu/legal-content/en/all/?uri=oj:c:2007:306:toc> (last visited Oct 11, 2016).

⁵ CNN, David Cameron to resign Wednesday as Theresa May to become British PM (2016), <http://edition.cnn.com/2016/07/11/europe/britain-politics-may-leadsom/index.html> (last visited Oct 11, 2016).

⁶ The Guardian, The post-Brexit pound – how sterling's fall affects you and the UK economy (2016), <https://www.theguardian.com/business/2016/aug/19/the-post-brexit-pound-how-sterlings-fall-affects-the-uk-economy> (last visited Oct 11, 2016).

implications of the referendum.⁷

In terms of the legal aspect, a large amount of UK law regarding employment,⁸ consumer protection,⁹ and intellectual property¹⁰ is at least partly derived from European Directives.¹¹ For instance Section 77 of the UK's Manual of Patent Practice states that a granted European patent should be treated like a granted domestic UK patent.¹² Moreover, the European Union Charter of Fundamental Rights¹³ which provides for certain personal, civil, political, economic and social rights including data protection and bioethics currently applies to the UK.¹⁴ Thus, lawmakers will have to go through the Directives and regulations one-by-one to see whether there is any overlap between British and EU law and determine whether they would like to incorporate some of the protections exclusively found in EU law and import them into the British legal system. As the saying *Rome wasn't built in a day* indicates, this will likely be a matter of years. As such the effect of Brexit on law firms and businesses depends on how much of the previous legislation is retained, and how such changes shape a new line of case law.

Another example of how Brexit may affect us is to consider its impact in the intellectual property sphere. Currently, trademark holders who wish to obtain trademark protection in the UK do not have to file separately for a trademark if they have already obtained trademark protection under the Madrid Protocol Concerning the International Registration of Marks.¹⁵ In the interim, to ensure business efficacy, the Intellectual Property Office of the UK has confirmed that EU trademarks and registered community designs continue to be valid in the UK.¹⁶

Possible implications internationally

⁷ Forbes, The Potential Impacts Of Brexit On The Global Economy (2016), <http://www.forbes.com/sites/baininsights/2016/06/29/the-potential-impacts-of-brexit-on-the-global-economy/#7da0944b20e0> (last visited Oct 11, 2016).

⁸ London Chamber of Commerce and Industry, & Euro Info Centre, EU Employment Law (2006), <http://www.londonchamber.co.uk/docimages/1154.pdf> (last visited Oct 11, 2016).

⁹ The National Archives, Consumer Rights Act 2015 Summary and Background, <http://www.legislation.gov.uk/ukpga/2015/15/notes/division/2> (last visited Oct 11, 2016).

¹⁰ World Intellectual Property Organization & LTC Harms, The Enforcement of Intellectual Property Rights: A Case Book (2012), http://www.wipo.int/edocs/pubdocs/en/intproperty/791/wipo_pub_791.pdf (last visited Oct 11, 2016).

¹¹ UK Government, Transposition Guidance: How to implement European Directives effectively(2013), www.gov.uk/government/uploads/system/uploads/attachment_data/file/229763/bis-13-775-transposition-guidance-how-to-implement-european-directives-effectively-revised.pdf (last visited Oct 11, 2016).

¹² Intellectual Property Office of the UK Government, Manual of Patent Practice (2016), <https://www.gov.uk/guidance/manual-of-patent-practice-mopp/section-77-effect-of-european-patent-uk> (last visited Oct 11, 2016).

¹³ European Union, Charter of Fundamental Rights of the European Union (2012), http://eur-lex.europa.eu/legal-content/en/all/?uri=uriserv:oj.c_2010.083.01.0389.01.eng (last visited Oct 11, 2016).

¹⁴ House of Commons & European Scrutiny Committee, The application of the EU Charter of Fundamental Rights in the UK: a state of confusion (2014), <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/979/979.pdf> (last visited Oct 11, 2016).

¹⁵ World Intellectual Property Organization, Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (2007), http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=283484 (last visited Oct 11, 2016).

¹⁶ UK Government Intellectual Property Office, IP and BREXIT: The facts (2016), <https://www.gov.uk/government/news/ip-and-brexit-the-facts> (last visited Oct 11, 2016).

The UK government is expected to have tighter controls on immigrants entering Britain. However, it remains to be seen whether the EU will exert stricter requirements of UK citizens entering the EU.

According to the Vienna Convention on the Law of Treaties, the termination of a treaty “does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.”¹⁷ Thus, it would appear that UK citizens living in other EU countries can maintain their status quo, and former residents can continue to live in the European Union countries that they are currently living at least during the negotiations as the UK is still currently part of the EU.¹⁸ What happens in the future, and whether this status quo will remain as such or undergo certain changes, is ultimately dependent upon negotiations between the UK government and those of other EU countries.

While it may be too early to accurately predict all the ramifications of the vote, much has been said about the possible implications of Brexit, both long and short term. One thing that we can probably all agree on is that, internationally and locally, substantial change is in the air!

Amelia Lo has been admitted to practice law in the State of New York. She is the vice-chairlady of the Hong Kong Federation of Women Lawyers' Anniversary Organizing Committee and Corporate Restructuring Committee, and an organizing committee member of the Cross Strait Four Regions Young Lawyers Forum of the Law Society of Hong Kong. Amelia was one of 2 young lawyers sponsored by the Law Society to attend the Commonwealth Law Conference in Glasgow as part of the 4-member delegation in 2015.

¹⁷ United Nations, Article 70(1)(b) Vienna Convention on the Law of Treaties (1969), <https://treaties.un.org/doc/publication/unts/volume-1155/volume-1155-i-18232-english.pdf> (last visited Oct 11, 2016).

¹⁸ BBC, Brexit: What does it mean for expats, here and in the EU? (2016), <http://www.bbc.com/news/business-36606847> (last visited Oct 11, 2016).

Prioritizing Justice for Victims of Human Trafficking by Revising the Law



By Diriki T. Geuka

“After considering the oral arguments and briefs of both parties, the court concludes that the TVPA¹⁹ does not impose liability for pre-2008 trafficking acts occurring entirely outside the United States.”²⁰ This language acutely sums up the reasoning supplied by the United States District Court for the Northern District of Georgia in *Plaintiff A v. Schair*.²¹

In this case Richard Schair was accused of various human trafficking violations stemming from fishing tours facilitated by his Georgia based company, Wet-A-Line Tours.²² Several under-aged²³ plaintiffs alleged that in 2005-2006 they were coerced into performing sexual acts with the defendant and his customers aboard the defendant’s ship while the victims were under the influence of drugs and alcohol.²⁴ These allegations have spawned two noteworthy decisions in two Federal cases, interpreting the stay provision of the TVPA²⁵ and the 2008 reauthorization of the TVPA.²⁶

In the 11th Circuit, Schair sought to stay the claims brought against him in the U.S. pending the resolution of criminal proceedings levied against the defendant in Brazil arising out of the same nexus of events.²⁷ The 11th Circuit declined to stay the case, reasoning that 1) Congress added the TVPA stay provision, 18 U.S.C. § 1596(b),²⁸ to alleviate the Department of Justice’s concern that contemporaneous civil and criminal actions could harm a domestic prosecutor’s ability to prosecute the criminal case due to the rigorous demands in civil discovery;²⁹ and thus 2) the stay provision was not intended to help a defendant bypass suits brought in the United States simply because of a criminal proceeding in a foreign state.³⁰

The Northern District of Georgia in the case below (also styled *Plaintiff A v. Schair*) did not find for the plaintiffs under the Trafficking Victims Protection Reauthorization Act (TVPRA),³¹

¹⁹ The Trafficking Victims Protection Act (TVPA) is an anti-trafficking law enacted in 2003.

²⁰ Order at 3, *Plaintiff A v. Schair*, No. 2:11-cv-00145-WCO (N.D. Ga. Sept. 9, 2014).

²¹ *Id.*

²² *Id.*

²³ The age of consent in Brazil is 14, but the age of consent in many jurisdictions within the United States is 18.

²⁴ *Plaintiff A v. Schair*, 744 F.3d 1247, 1247 (11th Cir. 2014); see also Barry Meier, *Allegations Link U.S. Companies to Brazilian Sex Tourism*, N.Y. Times, July 9, 2011, at B1, available at http://www.nytimes.com/2011/07/09/business/allegations-link-us-companies-to-brazilian-sex-tourism.html?_r=0 (last visited Sep. 7, 2016) (highlighting the increased interest in Brazil by perpetrators of human trafficking while referencing the Schair allegations as proof).

²⁵ *Plaintiff A*, 744 F.3d at 1247.

²⁶ Order at 6-7, *Plaintiff A*, No. 2:11-cv-00145-WCO.

²⁷ See generally *Plaintiff A*, 744 F.3d at 1247.

²⁸ 18 U.S.C. § 1596(b); *Plaintiff A*, 744 F.3d at 1247.

²⁹ *Plaintiff A*, 744 F.3d at 1255.

³⁰ *Id.*

³¹ Order at 7, *Plaintiff A*, No. 2:11-cv-00145-WCO. While the TVPA was originally enacted in 2003, the reauthorization contained in the TVPRA was not added until 2008. *Id.* at 3.

reasoning that 1) by permitting the plaintiffs to maintain claims under the TVPRA's pleading standards, the defendant's liabilities would be increased to such a degree as to constitute an impermissible retroactive application of the 2008 statute to 2005 and 2006 offenses;³² and 2) acts of Congress are not presumed to have extraterritorial application unless explicitly authorized by Congress.³³

The 2008 reauthorization incorporates Congress' intent to expand legal jurisdiction for human trafficking violations beyond the United States.³⁴ The extraterritorial jurisdiction provision of the 2008 act provides jurisdiction for the prosecution of human traffickers who are U.S. citizens, permanent residents, or are physically in the United States irrespective of nationality.³⁵ The reauthorization also relaxed the standard for proving *mens rea* by allowing claims for not only "knowledge" of human trafficking, but also "reckless disregard" for the crime.³⁶ The 2008 changes also allowed for greater recovery for victims of human trafficking.³⁷

While the Northern District of Georgia's dismissal of the claims stands on legally permissible grounds, the ultimate disposition of the case failed to deliver justice for the minor victims. A possible solution to this problem could be achieved if Congress were to enact new legislation permitting retroactive application of the 2008 reauthorization to cases arising from pre-2008 violations. Minor children who are victims of human trafficking frequently encounter substantial barriers that restrict their ability to receive relief from human trafficking, such as inability to escape the control of the perpetrator, lack of requisite knowledge to pursue legal relief, or failure by the authorities to address the matter due to corruption. Congress should pass legislation expressly authoring the retroactive extraterritorial application of the TVPA/TVPRA to protect human trafficking victims.

Diriki T. Geuka is a 3L at Stetson University College of Law where he serves as Student Bar Association President and an Editor on the *Journal of International Wildlife Law & Policy*. Diriki attended Florida A&M University for his undergraduate studies where he majored in History and Education.

³² *Id.*

³³ *Id.* In deciding this case, the court also failed to explore the obligation that the U.S. has to victims of human trafficking under international treaties prohibiting human trafficking and organized crime. For example, the U.S. was heavily involved in drafting and promulgating the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*. This document, to which the United States is a signing party, is a direct outgrowth of the *United Nations Convention Against Transnational Organized Crime And the Protocols Thereto*. See generally United Nations Office of Drugs and Crime, *United Nations Convention Against Transnational Organized Crime And the Protocols Thereto*, www.unodc.org, https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf (last visited Sept. 12, 2016).

³⁴ Order at 6, *Plaintiff A*, No. 2:11-cv-00145-WCO. "The Supreme Court explained that there is a presumption against construing United States statutes as applying extraterritorially but that the presumption is overcome when the statute clearly manifests a congressional intent that it apply extraterritorially." *European Community v. RJR Nabisco Inc.*, 783 F.3d 123, 126 (2nd Cir. 2015) (citing *Morrison v. National Australia Bank LTD.*, 130 S. Ct. 2869 (2010)).

³⁵ Order at 6, *Plaintiff A*, No. 2:11-cv-00145-WCO.

³⁶ *Id.*

³⁷ *Id.*

Amal Clooney’s Plan to Take ISIS to the ICC for Genocide and Human Trafficking

By Ishrat Riya Khan

International Human Rights Lawyer and Oxford University Barrister Amal Clooney is known to have taken on many cases dealing with crimes against humanity. A well-known face in the United Nations (UN), Amal is renowned for standing up against human rights violations by representing clients at the International Criminal Court (ICC), International Court of Justice (ICJ), and the European Court of Human Rights.¹ Some of her most admirable work has been to serve as senior advisor to the UN envoy on Syria and Counsel to the UN Inquiry on the use of armed drones led by the Special Rapporteur on Counter-Terrorism and Human Rights.² In her newest and possibly most difficult pursuit, Amal has chosen to take the leaders of ISIS to the ICC and prosecute them for their crimes against humanity.³ To be more precise, Amal wants to take ISIS to the ICC for a “clear case of genocide” of the Yazidi people, followers of an ancient religion in the regions currently occupied by ISIS.⁴



During a speech to the United Nations General Assembly in New York during its International Day of Peace celebrations, Amal, alongside her client Nadia Murad, expressed her disappointment towards the UN member states for their lack of actions to stop ISIS using a human rights based approach.⁵ Nadia, a Yazidi woman and victim of sex trafficking by ISIS came to Amal for help after being a captive of ISIS for three months until she escaped and was granted asylum in Germany.⁶ Nadia believes that Amal is the best person to help her and the Yazidi people whom she claims are being wiped off the planet by ISIS.⁷

In 2015, Nadia testified at the United Nations Security Council at a hearing for human trafficking and was nominated for the 2016 Nobel Peace Prize.⁸ At the International Day of Peace celebrations, Nadia was named a Goodwill Ambassador for the United Nations Office on Drugs and Crime (UNODC).⁹ Nadia’s appointment as goodwill ambassador has not gone unnoticed by

¹ Richard Bayliss, *Amal Clooney*, DOUGHTY STREET CHAMBERS, <http://www.doughtystreet.co.uk/barristers/profile/amal-clooney> (last visited Nov. 1, 2016).

² *Id.*

³ Cynthia McFadden, Jake Whitman & Hannah Rapple, *Amal Clooney Takes on ISIS for ‘Clear Case of Genocide’ of Yazidis*, NBC NEWS, <http://www.nbcnews.com/storyline/isis-uncovered/amal-clooney-takes-isis-clear-case-genocide-yazidis-n649126> (last visited Nov. 1, 2016).

⁴ *Id.*

⁵ *Id.*

⁶ Caryn Carver & Megha Cherian, *Nadia Murad tells her story – how she escaped sex slavery and became an activist for Yazidi women*, GLOBAL CITIZEN, <https://www.globalcitizen.org/en/content/interview-nadia-murad-yazidi-activist-isis-iraq/> (last visited Nov. 1, 2016).

⁷ McFadden, Whitman & Rapple, *supra* Note 3.

⁸ Gulala Xalid, *Yezidi Woman Nominee for Nobel Peace Prize*, KURDISTAN 24, <http://www.kurdistan24.net/en/news/c1247ac2-552c-4152-8c55-58c986f00369/yezidi-woman-nominee-for-nobel-peace-prize> (last visited Nov. 1, 2016).

⁹ *Nadia Murad Batee Taha to be appointed Goodwill Ambassador by UNODC on 16th September in New York*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, <http://www.unodc.org/unodc/en/press/releases/2016/September/nadia-murad-basee-taha-to-be->

ISIS since it brought many threats her way.¹⁰ Despite this acknowledgement by the International Community in the recent months, Amal and Nadia both emphasize that it's not enough and more needs to be done.¹¹

So what is Amal's plan to bring ISIS to the ICC and why hasn't the rest of the world already thought of it? After her recent visit to the Yazidi refugees in Greece, Amal is encouraging UN officials and member states to meet with Yazidi refugees and interview them on an individual basis.¹² Furthermore, she believes that excavating mass graves of the victims will give them some more evidence to work with to track down and bring ISIS officials to the ICC.¹³ No doubt that this plan will be met with skepticism because most countries may believe that bringing ISIS to court will be nearly impossible and prove to be unproductive. While some of the international community feels it a better strategy to bomb ISIS out of existence, Amal stresses the need for a more human rights and humanitarian approach.¹⁴ In her opinion, ISIS cannot be destroyed by bombs since their crimes against humanity are a result of the philosophy they follow. She wants the international community to understand that an idea cannot be killed with bombs because even if the current ISIS members are killed, more members can sprout back up in the future based on an idea.¹⁵

So what exactly is the problem? The ICC exists to prosecute crimes against humanity, but in order for it to investigate and prosecute happenings in a state, the state has to be a member of the ICC. Syria and Iraq, ISIS's current residences, are not members of the ICC which is why they cannot be investigated unless Iraq invites it to do so or the UN Security Council sanctions an investigation.¹⁶ In order for the UN security council to sanction an investigation, it needs affirmative votes by all of its permanent member states.¹⁷ In the past, China and Russia who are both permanent voting members of the UN have voted against opening an investigation at the ICC for war crimes carried out by ISIS in Syria.¹⁸ During the International Day of Peace celebrations, Amal claimed that Russia is open to voting for such sanctions but China has yet to be persuaded.¹⁹

The United States and the United Nations have both acknowledged that ISIS in fact has carried out genocide against the Yazidi people. Others choose to ignore the issue because it simply does not serve their own economic interests to do so. In Amal Clooney's words however, ISIS must be brought to court and held accountable for the sake of humanity. What's for sure is that Amal and Nadia have a very difficult task ahead of them, but they believe that there is no

[appointed-goodwill-ambassador-by-united-nations-office-on-drugs-and-crime-on-16-september.html](#) (last visited Nov. 1, 2016).

¹⁰ Elise Harris, *Amal Clooney, George's wife, takes on U.N. and Islamic State -Citing genocide, speaks up for Nadia Murad, other Yazidi victims*, THE WASHINGTON TIMES,

<http://www.washingtontimes.com/news/2016/sep/19/amal-clooney-takes-on-isis-at-un/> (last visited Nov. 1, 2016).

¹¹ Carver & Cherian, *supra* Note 6.

¹² McFadden, Whitman & Rappleye, *supra* Note 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Hillary Weaver, *Amal Clooney is Bringing a Case Against ISIS*, VANITY FAIR, <http://www.vanityfair.com/style/2016/09/amal-clooney-bringing-case-against-isis> (last visited Nov. 1, 2016).

¹⁶ McFadden, Whitman & Rappleye, *supra* Note 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

greater good than to stand up for humanity. What still remains to be seen is the outcome of their efforts and the actions yet to be taken by the international community in the upcoming months.

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Exchange of Enclaves Between India & Bangladesh: Legal Issues from an International Law Perspective

By Aditya Ghatpande

Enclaves are important, not only from the geo-political standpoint, but also from the international law context. As a preliminary matter, an “enclave” in the international context is defined as a territory of one state within the territory of another state.¹ This article discusses in brief the issues from an international law perspective with regards to the enclave exchange between India and Bangladesh completed on July 31, 2015, which was initially commenced by an agreement entered in 1974.²



The enclaves in the present case came into existence out of a sovereign’s right to exclusive exercise of power over his territory.³ Sovereignty refers to supreme political authority within the relevant territory, which includes the power to make laws and the power to exercise power to the exclusion of others.⁴

A war between the Kingdom of Cooch Behar and the Mughal Empire ended with a series of peace treaties signed over 1711-13.⁵ The Mughal Empire was able to wrest control of some but not all parts of Cooch Behar.⁶ Because Cooch Behar became a tributary state to the Mughal Empire, no efforts were made to make the territories of each empire uniform by dissolving the enclaves.⁷ The enclaves survived the various later changes in sovereignty: the British Crown replaced the Mughal Empire, East Pakistan replaced the British Crown after partition of India in 1947, and Bangladesh replaced East Pakistan after independence in 1971.⁸ Cooch Behar remained a subordinate to the respective sovereigns till it acceded to India in 1949.⁹

India and Pakistan as modern states came into being in 1947 after the partition. This brought challenges to the legal status of the residents of the various enclaves. They were the subjects of their respective sovereigns on territories adversely possessed by a different sovereign. This issue also brought practical difficulties for the sovereigns. Almost all of the residents remained

¹ Evgeny Vinokurov, *A Theory of Enclaves* 1 (Lexington Books, 2007), available (in part) at http://www.vinokurov.info/assets/files/Enclaves_Ch01.pdf.

² Suvojit Bagchi, *Land pact rollout in next 11 months*, THE HINDU, (June 13, 2015), <http://www.thehindu.com/news/national/land-pact-rollout-in-next-11-months/article7310565.ece> (last visited Oct. 31, 2016).

³ See Hosna J. Shewly, *India and Bangladesh Swap Territory, Citizens in Landmark Enclave Exchange*, MIGRATION POLICY INSTITUTE (Mar. 9, 2016), <http://www.migrationpolicy.org/article/india-and-bangladesh-swap-territory-citizens-landmark-enclave-exchange> (last visited Oct. 31, 2016).

⁴ *Sovereignty*, LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/wex/sovereignty> (last visited Sept. 24, 2016); *Sovereignty*, THE LAW DICTIONARY, <http://thelawdictionary.org/sovereignty/> (last visited Sept. 24, 2016).

⁵ Shewly, *supra* Note 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Shoaib Daniyal, *India-Bangla land swap: was the world’s strangest border created by a games of chess?*, SCROLL.IN (May 8, 2015), <http://scroll.in/article/725804/india-bangla-land-swap-was-the-worlds-strangest-border-created-by-a-game-of-chess> (last visited Oct. 31, 2016).

without a definite citizenship and basic amenities like electricity and health services.¹⁰ Law and order problems also persisted.¹¹

India and Bangladesh entered into an agreement popularly called the Land Border Agreement of 1974 to resolve the problem of enclaves.¹² Bangladesh ratified the agreement, but India could not because its constitution required an amendment for exchange of territory.¹³ Several issues remained unresolved despite the Agreement, such as an un-demarcated boundary of approximately 6.1 km, adverse possession, and the proposed enclave exchange.¹⁴ A protocol was signed in 2011 to resolve the pending three issues.¹⁵ Finally, the 100th Amendment to the Constitution of India in 2015 cleared the final hurdle.¹⁶

With the final resolution of the enclave issue, the residents of those enclaves were given a choice of citizenship on the conclusion of “exchange” of the enclaves.¹⁷ The enclave exchange made territories of India and Bangladesh uniform and gave the residents rights not available to them before.

Aditya Ghatpande obtained his first degree in law from India. He is an international 1L student at Akron Law, International Law Society member, and 1L Representative of International Law Society.

¹⁰ The Ministry of External Aff. Gov't of India, *India and Bangladesh Land Boundary Agreement* (2014), https://www.mea.gov.in/Uploads/PublicationDocs/24529_LBA_MEA_Booklet_final.pdf (last visited Oct. 31, 2016).

¹¹ *Id.*

¹² *Id.*

¹³ CONST. OF INDIA, Nov. 9, 2015, art. 3, available at <http://lawmin.nic.in/olwing/coi/coi-english/coi-4March2016.pdf>.

¹⁴ The Ministry of External Aff. Gov't of India, *supra* Note 10.

¹⁵ *Id.*

¹⁶ The Constitution (One Hundredth Amendment) Act, 2015, GAZETTE OF INDIA EXTRAORDINARY, pt. II, § 1, (May 29, 2015), <http://www.indiacode.nic.in/acts-in-pdf/2015/CONST100.pdf> (last visited Oct. 31, 2016).

¹⁷ Arshad Ali, *Land exchange deal: Will you go to Bangladesh? Not many Yes in enclaves*, INDIAN EXPRESS (Jul. 17, 2015), <http://indianexpress.com/article/india/india-others/will-you-go-to-bangladesh-not-many-yes-in-enclaves-2/99/> (last visited Oct. 31, 2016).

Trends and Unpredictability in International Reasonableness Standards



By Jennifer Hutchins

In a traditional contract for the sale of goods, a buyer's failure to give notice of an alleged nonconformity in the goods, or a breach in the warranty of the goods, may work to release the seller from liability under the Uniform Commercial Code (UCC)¹ and the United Nations Convention on Contracts for the International Sale of Goods (CISG),² provided that the notice is provided within a reasonable time.

The UCC applies domestic commercial standards to a merchant buyer when examining the reasonableness of notice and the notice period.³ This practice is an attempt to strike a fair balance between the interests of the buyer and seller when goods may be nonconforming. The balance can allow the buyer and seller to work together in order to resolve a dispute prior to pursuing litigation or, in the alternative, provide both parties with notice that the transaction is in dispute and that further action may be forthcoming.⁴ Ultimately, the UCC's guidelines regarding the reasonableness of the notice period endeavor to provide safeguards against stale claims being asserted after it is too late for either party to investigate or resolve the issue.

While the reasonableness of the notice period under the UCC has become well defined through case law since its inception, developing strong domestic standards,⁵ reasonableness of notice in international transactions is much more opaque.

Other than CISG Article 39's notice ceiling limiting the time frame to a maximum of two years, no exact notice period is defined by the Convention. As such, courts have been left with the task of establishing what a reasonable notice period should be.

This presents a potentially problematic situation as parties from different countries, and different cultures, attempt to find an amicable interpretation between what may be very opposing viewpoints as to the reasonableness of the notice period.

¹ See UCC § 2-607(3).

² See CISG art. 39.

³ UCC § 2-607, Official Comment 4.

⁴ *Id.*

⁵ See *Hebron v. American Isuzu Motors, Inc.*, 60 F.3d 1095 (4th Cir. 1995) (finding reasonable notice that buyer is required to give seller after breach of implied warranty of merchantability is discovered serves the important functions of promoting voluntary resolution of disputes and minimizing prejudice to seller from passage of time). See also *City of Marshall, Tex. v. Bryant Air Conditioning Co.*, 650 F.2d 724 (5th Cir. 1981) (finding notification by buyer to the seller that a breach of warranty has occurred is required so that seller has an opportunity to cure the breach); *Standard Alliance Industries, Inc. v. Black Clawson Co.*, 587 F.2d 813 (6th Cir. 1978) (finding notice of breach of warranty serves two distinct purposes: it opens way for settlement to negotiation between parties and minimizes possibility of prejudice to seller by giving him ample opportunity to cure defect, inspect goods, investigate claim or do whatever may be necessary to properly defend himself or minimize damages while facts are fresh in minds of parties); *Wagner Tractor, Inc. v. Shields*, 381 F.2d 441 (9th Cir. 1967) (finding purpose of statutory requirement of notice to seller of breach of implied warranty of fitness is to enable the seller to minimize any damages or correct defect).

A representative example of this challenge was highlighted by the court in a 1997 Swiss case (numbered 11 95 123/357) concerning two un-named parties.⁶ The court was attempting to resolve a dispute between a Swiss buyer of medical equipment and an Italy-based seller involving allegedly non-conforming medical equipment. The court reasoned that a notice period of one month was a fair compromise between the significant differing standards of reasonableness, with regards to a timely notice between the two parties. While the Swiss generally employ the more liberal Anglo-American and Dutch traditions, which can allow for notice periods of up to several months; the Italian system tends to adopt a more stringent German standard, enforcing a strict time limit of eight days.

This court determined a one month period of time to be reasonable.⁷ This is often referred to as the “noble month rule” initially proposed by German commentator Ingeborg Schwenzer⁸ in her well-recognized article on the subject of reasonability. Many advocates of Schwenzer’s view suggest that it would result in more predictability and consistency in international sales;⁹ however, whether this model will be adopted in every jurisdiction across the board as a strict rule or limited to use as a starting point remains to be seen.

The above referenced case is just one of several underscoring the myriad of differences which come into play when transactions between buyers and sellers cross from the domestic arena into the international marketplace.

While courts are still attempting to characterize a reasonable notice period internationally, various thought-provoking questions have developed from the analysis of this situation thus far. What are the potential benefits associated with the implementation of more adaptable guidelines as opposed to a strict bright-line rule? And, what are some of the risks and rewards for each party when long notice periods are applied versus shorter ones?

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⁶ CLOUT Case No. 192 [Obergericht des Kantons Luzern, Switzerland, 8 Jan. 1997], available at <http://cisgw3.law.pace.edu/cases/970108s1.html> (CISG-online.ch case 228), also published in Schweizerische Zeitschrift für Internationales und Europäisches Recht (SZIER) 132 (1997).

⁷ *Id.*

⁸ Ingeborg Schwenzer, Art. 39, in COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) 16 (Peter Schlechtriem & Ingeborg Schwenzer eds., 2d ed. 2005).

⁹ See Camilla Baasch Andersen, *Reasonable Time in Article 39(1) of the CISG—Is Article 39(1) Truly a Uniform Provision?*, § VI(2) (Recommended Approach for Future Practice) (1998).

North Korea Persistent on the Development of Nuclear Weapons

By Laura Melendez

On Friday September 2, 2016, North Korea declared that it had successfully launched its fifth nuclear test.¹ Such tests have been conducted in defiance of numerous warnings from the United States and the UN.² This test in particular has increased concerns among the United States and the UN as it reportedly was a powerful explosive compared to North Korea's previous tests.³ The South Korean military stated that the North Korean missile resulted in a tremor magnitude 5.⁴ The South Korean government also stated that the previous nuclear test conducted by North Korea in January had an estimated magnitude of 4.8 with an explosive yield of six to nine kilotons, which is reasonably comparable to the 15 kiloton nuclear bomb used in Hiroshima.⁵ These recent nuclear tests conducted by North Korea have dispelled doubts as to whether North Korea has the technological capabilities to develop nuclear warheads.⁶ North Korea's persistence in developing nuclear weapons is of great concern for states who have agreed to the Treaty on the Non-proliferation of Nuclear Weapons (NPT).⁷



North Korea's testing of nuclear weapons violates several international treaties, of which the NPT is the most relevant.⁸ The goal of the NPT is to prevent nuclear weapons from proliferating around the world, to stimulate combined effort in the peaceful uses of nuclear energy, and to supplement the goal of nuclear disarmament.⁹ The NPT was adopted in 1968 and entered into force in 1970.¹⁰

A crucial article in the NPT in relation to the recent activities by North Korea is Article X, which states that "each [p]arty shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country."¹¹ Article X of the NPT also includes a clause stating that, "Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a

¹ Choe Sang-Hun & Jane Perlez, *North Korea Tests a Mightier Nuclear Bomb, Raising Tension*, N.Y. TIMES, Sept. 8, 2016, http://www.nytimes.com/2016/09/09/world/asia/north-korea-nuclear-test.html?hp&action=click&pgtype=homepage&clicksource=story-heading&module=first-column-region@ion=top-news&wt.nav=top-news&_r=1 (last visited Sept. 8, 2016).

² DPR of Korea, UN NEWS CENT., <http://www.un.org/apps/news/infocusRel.asp?infocusID=69> (last visited Oct. 31, 2016).

³ Choe Sang-Hun & Jane Perlez, *supra* Note 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Treaty on the Non-Proliferation of Nuclear Weapons, Jun. 12, 1968, 729 U.N.T.S. 10485.

⁸ *Id.*

⁹ Treaty on the Non-Proliferation of Nuclear Weapons, UN OFFICE FOR DISARMAMENT AFFAIRS, <https://www.un.org/disarmament/wmd/nuclear/npt/> (last visited Sept. 8, 2016).

¹⁰ *Id.*

¹¹ Treaty on the Non-Proliferation of Nuclear Weapons, *supra* Note 1.

majority of the Parties to the Treaty.”¹² The review of the NPT was conducted in 1995 and the parties decided to extend the NPT indefinitely.¹³ North Korea acceded to the NPT in 1985 and withdrew from the NPT on January 10, 2003.¹⁴

Article 54 of the Vienna Convention on the Law of Treaties allows for states to withdraw from a treaty such as the NPT in accordance to the provisions of said treaty. Although concerning to the parties to the NPT, North Korea’s withdrawal was largely achieved following the guidelines established by the NPT. North Korea’s only violation was in terms of the requirement that a withdrawing state give three-month notice, which North Korea’s immediate withdrawal did not comply with. This timing violation did not have an effect on North Korea’s compliance as there is no substantial compliance concept embodied in the NPT. North Korea’s withdrawal began to have a substantial effect when it began its nuclear weapon testing in 2006.¹⁵

However, there have been scholars who have proposed potential arguments against the legality of the withdrawal of North Korea from the NPT.¹⁶ Article X states that a party may withdraw for extraordinary reasons from the NPT.¹⁷ North Korea’s stated reason was that the United States represented a threat to the state and that for that reason it was necessary to withdraw.¹⁸ Although the validity of such reasoning may be questioned, there are no guidelines for what would constitute an extraordinary circumstance. Such determination was left to the states.

According to the five different reports from the UN Security Council in regards to each Nuclear Weapon test, North Korea has rejected invitations to talk about the NPT and its withdrawal from it.¹⁹ For these reasons, the UN under Chapter VII of the UN Charter²⁰ has established sanctions that have isolated North Korea from the majority of the world by cutting trade, travel and banking. This has not proven to have an impact great enough to deter North Korea from engaging in nuclear weapon testing.

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¹² *Id.*

¹³ Treaty on the Non-Proliferation of Nuclear Weapons, NUCLEAR THREAT INITIATIVE, <http://www.nti.org/learn/treaties-and-regimes/treaty-on-the-non-proliferation-of-nuclear-weapons/> (last visited Sept. 9, 2016).

¹⁴ Show Action, UN NEWS CENT., <http://disarmament.un.org/treaties/a/npt/democraticpeoplesrepublicofkorea/acc/moscow> (last visited Sept. 10, 2016).

¹⁵ Frederic L. Kirgis, *North Korea’s Withdrawal From the Nuclear Non-Proliferation Treaty*, AMERICAN SOCIETY OF INTERNATIONAL LAW, <https://www.asil.org/insights/volume/8/issue/2/north-koreas-withdrawal-nuclear-nonproliferation-treaty> (last visited Oct. 31, 2016).

¹⁶ *Id.*

¹⁷ Treaty on the Non-Proliferation of Nuclear Weapons, *supra* Note 7.

¹⁸ Frederic L. Kirgis, *supra* Note 15.

¹⁹ DPR of Korea, UN NEWS CENT., *supra* Note 2.

²⁰ Frederic L. Kirgis, *supra* Note 15.

Should the UN expand its scope in Yemen to include addressing its role as a proxy for Saudi Arabia and Iran relations?



By Taarika Sridhar

Since March 2015, Saudi Arabia has led a military coalition force in Yemen with the aim of suppressing the Houthis, a Zaidi-Shia movement, and reinstating the internationally recognized government.¹ The coalition campaign has involved several regional militaries and has created a level-three humanitarian disaster affecting at least 12 million people.² Moreover, the war has produced an ideal recruitment platform for militant groups including Al Qaeda and ISIS, thereby placing the entire region under increased threats of terrorism.³ Recent mediation efforts with the Houthis in Oman—a neutral party in the Yemen conflict and frequent regional mediator—that followed the collapsed talks from August 2016 have yet to yield tangible results. Meanwhile, cross-border hostilities threaten to further escalate tensions.⁴

With no clear exit plan or end in sight, the war appears fated to be long and expensive, raising questions of the likelihood of establishing peace, rule of law, and general economic and political stability in Yemen. Equally distressing are the implications the war has on regional stability, particularly on any near-term cessation of the ongoing Saudi Arabia-Iran hostility. Yemen is sometimes considered a proxy for Saudi Arabia's hostile relationship with Iran.⁵ The Kingdom alleges that Iran arms and supports the Houthis, and Iran has previously accused Saudi Arabia of targeting its assets, including its Embassy in Yemen's capital Sana'a.⁶ Given Iran's imminent re-entry into global economic and political markets following the lifting of sanctions, and Saudi Arabia's ongoing efforts to attract greater foreign investment, the development of Saudi Arabian and Iranian relations within the Yemen context can significantly impact future regional economic and political decisions and opportunities.⁷ To this end, international organizations such as the

¹ Mohammed Hatem, *Saudi Conflict With Iran Takes Its Biggest Toll in Yemen*, BLOOMBERG (Oct. 24, 2016), <http://www.bloomberg.com/news/articles/2016-10-24/a-14-hour-trip-in-yemen-shows-toll-of-saudi-proxy-war-with-iran> (last visited Oct. 31, 2016).

² Stephen O'Brien, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Remarks at High-Level Event on the Humanitarian situation in Yemen, United Nations Office for the Coordination of Humanitarian Affairs (Sept. 21, 2016), <http://reliefweb.int/sites/reliefweb.int/files/resources/USGYemenRemarksAsDelivered.pdf> (last visited Oct. 31, 2016).

³ William Maclean & Mohammad Gobri, *Saudi, Yemen forces clash on border, combatants say*, REUTERS (Sept. 15, 2016), <http://uk.reuters.com/article/yemen-security-idUKL8N1BR3YI/> (last visited Oct. 31, 2016).

⁴ Coalition prefers final Yemen settlement to 'short' truce', GULFNEWS (Oct. 31, 2016), <http://gulfnnews.com/news/gulf/yemen/coalition-prefers-final-yemen-settlement-to-short-truce-1.1902280/> (last visited Oct. 31, 2016).

⁵ Hatem, *supra* Note 1.

⁶ Samuel Oakford & Peter Salisbury, *Yemen: The Graveyard of the Obama Doctrine*, THE ATLANTIC (Sept. 23, 2016), <http://www.theatlantic.com/international/archive/2016/09/yemen-saudi-arabia-obama-riyadh/501365/> (last visited Oct. 31, 2016).

⁷ Suzanne Maloney & Emma Borden, *The political implications of transforming Saudi and Iranian oil economies*, BROOKINGS (June 16, 2016), <https://www.brookings.edu/blog/markaz/2016/06/16/the-political-implications-of-transforming-saudi-and-iranian-oil-economies/> (last visited Oct. 31, 2016).

United Nations (UN) have important and urgent roles to play to ensure decreased hostilities, not just within but also around Yemen.

The UN has been an active observer and critic of the war. It has also played an important but largely ineffective role in mediation efforts; at least two attempts to negotiate have failed since the war began 18 months ago.⁸ Despite its consistent efforts to ensure that international laws are upheld in Yemen, the UN has neither addressed Iran's (real or alleged) involvement nor the contributory destabilizing effects the hostile Saudi Arabia-Iran relationship has on finding a solution in Yemen.⁹ The UN Security Council's press statements on Yemen, including the latest on September 8, 2016, have made no mention of Iran.¹⁰ Likewise, most other UN statements and briefs regarding Yemen call for general obedience to international humanitarian law but do not mention the underlying current tension between the two largest regional powers with vested interests in Yemen.¹¹

Such omissions arguably restrict the UN's compliance with requirements under the Responsibility to Protect (R2P) doctrine to "use appropriate diplomatic, humanitarian and other peaceful means" to "protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity."¹² To fulfil its R2P obligations, the UN's efforts in Yemen cannot be limited to addressing the tensions between just the Saudi Arabia and the Houthis but must also encompass Iran's role. UN assistance in developing dialogues that include Iran seems especially necessary given diplomatic relations between the Kingdom and Iran were severed in January 2016. Except for a neutral but passive Oman, no other regional mediators exist to encourage reconciliation. By keeping one of the most influential parties off the agenda in several ways, the UN seems to be artificially narrowing its view of the boundaries of the war and thereby the peace process to those actors physically and actively present in Yemen. The proxy-nature of the Yemen war has thus been precluded from the UN's R2P mandate to use "diplomatic, humanitarian or peaceful" approaches to ending the conflict.¹³

Ultimately the question is *if* the UN should be called on to identify and to some extent, regulate, proxy wars if those wars have a substantive impact on obtaining local and regional peace, or if that duty falls outside the limits of the UN's legal and practical capabilities? Perhaps the Saudi Arabia-Iran issue falls outside the purview of the UN's peace and humanitarian mission in Yemen. Concerning itself with regional diplomatic enmities might strangle the UN's actual efforts on the ground. But one could also argue that the hostile relationship and its manifestation as a proxy war are within the UN's oversight over the compliance with and execution of proper international law (security and humanitarian). So long as the two nations' goals in Yemen, either stated or alleged, remain at odds with one another, successful negotiations between the

⁸ Asa Fitch, *U.N. Sets One-Month Recess for Yemen Peace Talks as Fighting Continues*, THE WALL STREET JOURNAL (Aug. 26, 2016), <http://www.wsj.com/articles/u-n-s-yemen-envoy-announces-one-month-recess-for-peace-talks-1470494251> (last visited Oct. 31, 2016).

⁹ Press Release, UN Special Envoy for Yemen, Statement of the Special Envoy of the United Nations Secretary-General for Yemen - Kuwait City (Aug. 6, 2016), <http://www.un.org/apps/news/infocus/Yemen/yemen.asp?NewsID=1353&SID=51> (last visited Oct. 31, 2016).

¹⁰ Press Release, Security Council, Security Council Press Statement on Yemen (Sept. 8, 2016), <https://www.un.org/press/en/2016/sc12512.doc.htm> (last visited Oct. 31, 2016).

¹¹ *Id.*

¹² 2005 World Summit Outcome, *Responsibility to Protect*, ¶ 138-39, U.N. DO. A/60/L.1 (Sept. 15, 2005), <http://www.responsibilitytoprotect.org/index.php/about-rtop> (last visited Oct. 31, 2016).

¹³ *Id.*

coalition and the Houthis seem unlikely. If the UN can play a role, and what that role might be, is an issue worth exploring.

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