

*American  
Journal of  
International  
Law*

*October 2004*

*Vol. 98 No. 4*



*Published by*

*The American Society of International Law*

# AMERICAN JOURNAL OF INTERNATIONAL LAW

VOL. 98

October 2004

NO. 4

CONTENTS

PAGE

**Hyperownership in a Time of Biotechnological Promise: The International Conflict to Control the Building Blocks of Life** *Sabrina Safrin* 641

This article provides a utilitarian critique of the interplay between patent-based private claims to genetic material favored by developed countries and state ownership favored by developing countries. It argues that collectively these systems have overreached, creating an interactive spiral of excessive enclosure of genetic material that deters biotechnological innovation, generates tension between nations, and threatens individuals and indigenous communities. It proposes a framework for a more open system.

**Editorial Comments**

- Criminals, Combatants, or What? An Examination of the Role of Law  
in Responding to the Threat of Terror *Thomas M. Franck* 686
- Speaking Law to Power: Lawyers and Torture *Richard B. Bilder and Detlev F. Vagts* 689
- Using Framework Statutes to Facilitate U.S. Treaty Making *Steve Charnovitz* 696

**Notes and Comments**

- The Right of the Accused to Self-Representation Before International  
Criminal Tribunals *Nina H. B.Jørgensen* 711
- Peacekeeping and Prosecutorial Policy: Lessons from Kosovo  
*Gregory L. Naarden and Jeffrey B. Locke* 727
- Correspondence 743

**Current Developments**

- The Security Council's Efforts to Monitor the Implementation of  
Al Qaeda/Taliban Sanctions *Eric Rosand* 745
- Regulating Antarctic Tourism and the Precautionary Principle  
*Kees Bastmeijer and Ricardo Roura* 763

**International Decisions**

- Hamdi v. Rumsfeld* (Jenny S. Martinez) 782  
U.S. Supreme Court decision regarding judicial review of detention of U.S. citizen  
as enemy combatant
- Rasul v. Bush* (David L. Sloss) 788  
U.S. Supreme Court ruling on the availability of federal habeas corpus relief to  
detainees at Guantánamo Bay Naval Base
- Sosa v. Alvarez-Machain; United States v. Alvarez-Machain* (Brad R. Roth) 798  
U.S. Supreme Court decision on the scope of the Alien Tort Statute

<i>Prosecutor v. Brdjanin &amp; Talic</i> (Megan A. Fairlie)	805
ICTY appeals chamber ruling on testimonial privilege for war correspondents	
<i>Bustani v. Organisation for the Prohibition of Chemical Weapons</i> (Ana Stanic)	810
ILO Administrative Tribunal decision regarding the removal of the OPCW director	
<i>Commission of the European Communities v. Jégo-Quéré &amp; Cié SA</i> (Cornelia Koch)	814
ECJ judgment on standing of a fishing company to bring an action in an EC court for annulment of EC fisheries regulations	

## Contemporary Practice of the United States Relating to International Law

*Edited by Sean D. Murphy*

<i>Executive Branch Memoranda on Status and Permissible Treatment of Detainees</i>	820
<i>U.S. Efforts to Secure Methyl Bromide Exemption to Ozone Depletion Regime</i>	831
<i>U.S.-Japan Tax Treaty</i>	833
<i>U.S.-Bahrain Free Trade Agreement</i>	835
£/. S. -Morocco Free Trade Agreement	835
<i>Proposed New U.S. "Model" Bilateral Investment Treaty</i>	836
<i>Bioterrorism Act's Notice Requirements for Food Imports</i>	837
<i>NAFTA Waste Management Tribunal Finds No Arbitrary Treatment, No Expropriation</i>	838
<i>NAFTA Commission Statement on Amicus Curiae Participation in Arbitrations</i>	841
<i>Amendment of Treaty on Simplification and Harmonization of Customs Procedures</i>	843
<i>Supreme Court's Rejection of "Headquarters Doctrine" Under FTCA</i>	844
<i>Supreme Court Interpretation of Alien Tort Claims Act</i>	845
<i>New U.S./EU and U.S./UK Extradition Treaties</i>	848
<i>Continuance of Extradition Treaty with Czech Republic</i>	850
<i>Suspension of U.S. Aid to Serbia and Montenegro for Noncooperation with ICTY</i>	850
<i>Interpretation of "Rights of Custody" Under Hague Convention on Child Abduction</i>	851
<i>Cape Town Convention on Financing of High-Value, Mobile Equipment</i>	852

## Recent Books on International Law

*Edited by Richard B. Bilder*

### Book Reviews

Pauwelyn, Joost. <i>Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law</i> (Joel P. Trachtman)	855
Müllerson, Rein. <i>Ordering Anarchy: International Law in International Society</i> (Frank Berman)	861
Grewe, Wilhelm G. <i>The Epochs of International Law</i> (C. G. Roelofsen)	867
Castellino, Joshua, and Steve Allen. <i>Title to Territory in International Law: A Temporal Analysis</i> (Valerie Epps)	869
Bassiouni, M. Cherif (ed.). <i>Post-conflict Justice</i> (Ruti Teitel)	872
Joseph, Sarah, Jenny Schultz, and Melissa Castan (eds.). <i>The International Covenant on Civil and Political Rights: Cases, Materials, and Commentaries</i> (2d ed.); Young, Kirsten A. <i>The Law and Process of the U.N. Human Rights Committee</i> (Eckart Klein)	876
Ouguergouz, Fatsah. <i>The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa</i> (Adeno Addis)	879

### Briefer Notice

Stern, Brigitte, and H�el�ene Ruiz Fabri (eds.). <i>La jurisprudence de TOMC/The Case-Law of the WTO, 1996-1997</i> (Steve Charnovitz)	883
--	-----

### Books Received

884

**International Legal Materials.** Contents, Vol. XLIII, No. 4 (July 2004); No. 5 (September 2004)

888

### Table of Cases

890

### Index

893