

# THE GLOBAL COMMUNITY

Yearbook of International Law  
and Jurisprudence

2020

Giuliana Ziccardi Capaldo

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# Contents

<i>Aims &amp; Scope</i>	<i>xiii</i>
<i>Outline of the Parts</i>	<i>xv</i>

<b>CELEBRATION OF THE TWENTIETH ANNIVERSARY OF THE GLOBAL COMMUNITY YEARBOOK OF INTERNATIONAL LAW AND JURISPRUDENCE</b>	<b>1</b>
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## EDITORIAL

<b>Facing the Crisis of Global Governance—GCYILJ’s Twentieth Anniversary at the Intersection of Continuity and Dynamic Progress</b>	<b>5</b>
<i>Giuliana Ziccardi Capaldo</i>	

## PART 1: ARTICLES

<b>The Unresolved Struggle for International Criminal Accountability: From Nuremberg to the International Criminal Court</b>	<b>17</b>
<i>Richard Falk</i>	
<b>From Integration Through Law to Global Community Law? Between Arbitration, Adjudication, and Judicial Overreach</b>	<b>41</b>
<i>Ernst-Ulrich Petersmann</i>	
<b>The Rise of the Occupation Constitution</b>	<b>79</b>
<i>Chris Thornhill</i>	

## PART 2: NOTES AND COMMENTS

<b>When Diplomatic Protests Are Not Enough: The Rule of Specialty, <i>United States v. Valencia-Trujillo</i>, and the Enigma of Prudential Standing in US Extradition Practice</b>	<b>117</b>
<i>Steven W. Becker</i>	

<b>Working on a Right to Health for the Digital Era</b> <i>Carlo Botrugno</i>	137
<b>On the Origins of Human Rights in War</b> <i>Robert Kolb</i>	157
<b>“Abuse of Executive Power” versus Simply Bad Policy (or Maladministration) and Why the Distinction Matters</b> <i>Sonja C. Grover</i>	165

### **PART 3: IN FOCUS—GLOBAL POLICIES AND LAW**

<b>From Pandemic to Apocalypse—Nuclear War as Terminal Disease</b> <i>Louis René Beres</i>	183
<b>America’s Foreign Policy under Donald Trump</b> <i>Richard W. Mansbach</i>	201
<b>The Disruptor-in-Chief Wrecks the Nuclear Arms Control Architecture</b> <i>Ramesh Thakur</i>	235
<b>Responding to the Global Food Fraud Crisis: What Is the Role of Intellectual Property and Trade Law?</b> <i>Graham Dutfield &amp; Uma Suthersanen</i>	271

### **SPECIAL TOPICS**

#### **I. COVID-19—PANDEMICS/EPIDEMICS AND GLOBAL POLICIES**

<b>Globalization and Post-COVID-19 Public Health Order</b> <i>Guiguo Wang</i>	297
--	-----

#### **II. THE BELT AND ROAD INITIATIVE (BRI)**

<b>China’s “Belt and Road Initiative”: A Research Study of a Multifaceted Policy</b> <i>Xiaoqing Diana Lin, Anja Matwijkiw, Bronik Matwijkiw &amp; Su Yun Woo</i>	325
<b>Appendix of the Part—Topics Covered in the Previous Issues (2008–2019)</b>	359

### **PART 4: FORUM—JURISPRUDENTIAL CROSS-FERTILIZATION: AN ANNUAL OVERVIEW**

<b>I. Introductory Module—MISSION AND CONCEPTS</b>	365
<b>I.1 Contemporary International Tribunals. Jurisprudential Cross-Fertilization in Their Common Mission of Realization of Justice, Antônio Augusto Cançado Trindade</b>	367
<b>II. Module—ENVIRONMENTAL LAW, LAW OF THE SEA, GLOBAL COMMONS LAW—The Relationship Between the ITLOS and the ICJ or Another International Court or Arbitral Tribunal</b>	373

II.1	Multilateralism, Environmental Law, and the Jurisprudence of International Courts and Tribunals, <i>Malgosia Fitzmaurice</i>	375
III.	<b>Module—INTERNATIONAL AND DOMESTIC LAW—The Relationship Between International and Domestic Courts</b>	<b>403</b>
III.1	Regulating Mobility-as-a-Service, <i>Oreste Pollicino, Valerio Lubello &amp; Aleksandar Stojanović</i>	405
III.2	Climate Litigation as Global Law, <i>Otto Spijkers</i>	431
III.3	The Three Dimensions of Rights Protection in Europe’s Multi-Layered System of Governance, <i>Michael C. Tolley</i>	455

**PART 5: DECISIONS OF INTERNATIONAL COURTS  
AND TRIBUNALS IN 2019**

*Edited by Giuliana Ziccardi Capaldo*

	<b>Systematic Classification Scheme</b>	<b>479</b>
I.	<b>INTERNATIONAL COURT OF JUSTICE</b>	<b>505</b>
I.1	INTRODUCTORY NOTE, <i>Antônio Augusto Cançado Trindade</i>	507
I.2	LEGAL MAXIMS: SUMMARIES AND EXTRACTS FROM SELECTED CASE LAW ( <i>Giuliana Ziccardi Capaldo</i> )	531
I.2.1	<i>Jadhav Case (India v. Pakistan)</i> , Judgment, 17 July 2019	533
	<b>Systematic Key Items of the Section</b>	<b>545</b>
II.	<b>INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA</b>	<b>547</b>
II.1	INTRODUCTORY NOTE, <i>Tullio Treves</i>	549
II.2	LEGAL MAXIMS: SUMMARIES AND EXTRACTS FROM SELECTED CASE LAW ( <i>Emilio Sessa</i> )	565
II.2.1	<i>The M/V “Norstar” Case (Panama v. Italy)</i> , Case n. 25, Judgment, 10 April 2019	567
	<b>Systematic Key Items of the Section</b>	<b>577</b>
III.	<b>WTO DISPUTE SETTLEMENT SYSTEM</b>	<b>579</b>
III.1	INTRODUCTORY NOTE, <i>Joanna Gomula</i>	581
III.2	LEGAL MAXIMS: SUMMARIES AND EXTRACTS FROM SELECTED CASE LAW ( <i>Joanna Gomula</i> )	593
III.2.1	<i>United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products. Recourse to Article 21.5 of the DSU by the United States/Second Recourse to Article 21.5 of the DSU by Mexico (WT/DS381/AB/RW/USA, WT/DS381/AB/RW2)</i> , Appellate Body Report circulated on 14 December 2018, adopted on 11 January 2019	595

III.2.2	<i>Brazil—Certain Measures Concerning Taxation and Charges (WT/DS472/AB/R, WT/DS497/AB/R), Appellate Body Report circulated on 13 December 2018, adopted on 11 January 2019</i>	601
III.2.3	<i>Russia—Measures Concerning Traffic in Transit (WT/DS512/R), Panel Report circulated on 5 April 2019, adopted on 26 April 2019</i>	604
III.2.4	<i>Korea—Import Bans, and Testing and Certification Requirements for Radionuclides (WT/DS495/AB/R), Appellate Body Report circulated on 11 April 2019, adopted on 26 April 2019</i>	610
III.2.5	<i>United States—Countervailing Duty Measures on Certain Products from China. Recourse to Article 21.5 of the DSU by China (WT/DS437/AB/RW), Appellate Body Report circulated on 16 July 2019, adopted on 15 August 2019</i>	615
	<b>Systematic Key Items of the Section</b>	<b>623</b>
IV.	<b>INTERNATIONAL CRIMINAL COURT</b>	<b>625</b>
IV.1	<b>INTRODUCTORY NOTE, <i>Geert-Jan Alexander Knoops &amp; Sara Pedrosa</i></b>	627
IV.2	<b>LEGAL MAXIMS: SUMMARIES AND EXTRACTS FROM SELECTED CASE LAW (<i>Anna Buono, Caterina Tuosto</i>)</b>	641
IV.2.1	<b>SITUATION IN DARFUR</b>	643
IV.2.1.1	<i>The Prosecutor v. Omar Hassan Ahmad Al-Bashir, Case No. ICC-02/05-01/09 OA2, Appeals Chamber, Judgment, 6 May 2019</i>	643
IV.2.2	<b>SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO</b>	651
IV.2.2.1	<i>The Prosecutor v. Bosco Ntaganda, Case No. ICC-01/04-02/06, Trial Chamber VI, Judgment, 7 November 2019</i>	651
IV.2.3	<b>SITUATION IN COTE D’IVOIRE</b>	655
IV.2.3.1	<i>The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé, Case No. ICC-02/11-01/15, Trial Chamber I, Decision, 15 January 2019</i>	655
IV.2.3.2	<i>The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé, Case No. ICC-02/11-01/15, Trial Chamber I, Decision, 16 July 2019</i>	658
IV.2.4	<b>SITUATION IN COMOROS</b>	661
IV.2.4.1	<i>Public Judgment on the Appeal of the Prosecutor Against Pre-Trial Chamber I’s ‘Decision on the “Application for Judicial Review by the Government of the Union of the Comoros”’, Case No. ICC-01/13 OA 2, Appeals Chamber, 2 September 2019</i>	661
	<b>Systematic Key Items of the Section</b>	<b>665</b>
V.	<b>INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS</b>	<b>667</b>
V.1	<b>INTRODUCTORY NOTE, <i>Rafael Nieto-Navia</i></b>	669

V.2	LEGAL MAXIMS: SUMMARIES AND EXTRACTS FROM SELECTED CASE LAW ( <i>Anna Buono</i> )	673
V.2.1	<i>Prosecutor v. Radovan Karadžić</i> , Case No. MICT-13-55-A, Appeals Chamber, Judgement, 20 March 2019	675
	<b>Systematic Key Items of the Section</b>	<b>683</b>
VI.	<b>COURT OF JUSTICE OF THE EUROPEAN UNION</b>	<b>685</b>
VI.1	INTRODUCTORY NOTE, <i>Antonio Tizzano</i>	687
VI.2	LEGAL MAXIMS: SUMMARIES AND EXTRACTS FROM SELECTED CASE LAW ( <i>Federico Bianchi, Raffaella Cetrulo, Daniela Rodríguez Bautista, Eirini Pantelodimou, Carmine Renzulli, Roberto Soprano</i> )	703
VI.2.1	<i>M.A., S.A., A.Z. v. International Protection Appeals Tribunal, Minister for Justice and Equality, Attorney General, Ireland,</i> Case C-661/17, First Chamber, Judgment, 23 January 2019	705
VI.2.2	<i>Federal Republic of Germany v. European Commission</i> , Case C-405/16 P, Third Chamber, Judgment, 28 March 2019	709
VI.2.3	<i>Request for an Opinion pursuant to Article 218(11) TFEU, made on 7 September 2017 by the Kingdom of Belgium,</i> Opinion 1/17, Full Court, 30 April 2019	711
VI.2.4	<i>Monachos Eirinaios v. Dikigorikos Syllogos Athinon</i> , Case C-431/17, Grand Chamber, Judgment, 7 May 2019	715
VI.2.5	<i>Bundesverband der Verbraucherzentralen und Verbraucherverbände—Verbraucherzentrale Bundesverband eV v. Planet49 GmbH</i> , Case C-673/17, Grand Chamber, Judgment, 1 October 2019	717
VI.2.6	<i>Eva Glawischnig-Piesczek v. Facebook Ireland Limited</i> , Case C-18/18, Third Chamber, Judgment, 3 October 2019	720
VI.2.7	<i>European Commission v. Republic of Poland</i> , Case C-192/18, Grand Chamber, Judgment, 5 November 2019	723
VI.2.8	<i>Zubair Haqbin v. Federaal Agentschap voor de opvang van asielzoekers</i> , Case C-233/18, Grand Chamber, Judgment, 12 November 2019	726
VI.2.9	<i>A. K. v. Krajowa Rada Sądownictwa and CP, DO v. Sąd Najwyższy</i> , Joined Cases C-585/18, C-624/18 and C-625/ 18, Grand Chamber, Judgment, 19 November 2019	729
VI.2.10	<i>Santa Conte v. European Union Intellectual Property Office (EUIPO)</i> , Case T-683/18, Seventh Chamber, Judgment, 12 December 2019	732
VI.2.11	<i>GN v. ZU</i> , Case C-532/18, Fourth Chamber, Judgment, 19 December 2019	735
	<b>Systematic Key Items of the Section</b>	<b>737</b>
VII.	<b>EUROPEAN COURT OF HUMAN RIGHTS</b>	<b>739</b>
VII.1	INTRODUCTORY NOTE, <i>Linos-Alexander Sicilianos &amp; Afroditi Gkagkatsi</i>	741

<b>VII.2</b>	<b>LEGAL MAXIMS: SUMMARIES AND EXTRACTS FROM SELECTED CASE LAW (<i>Adriana Fillol Mazo, Ana Cristina Gallego Hernández, Yolanda Gamarra, Lucía Ione Padilla Espinosa, Juan Francisco Moreno-Domínguez, Ángel Tinoco Pastrana</i>)</b>	<b>757</b>
<b>VII.2.1</b>	<i>Case of Georgia v. Russia (I)</i> , Application No. 13255/07, Grand Chamber, Judgment, 31 January 2019	759
<b>VII.2.2</b>	<i>Case of Berdzenishvili and Others v. Russia</i> , Applications Nos. 14594/07, 14597/07, 14976/07, 14978/07, 15221/07, 16369/07 and 16706/07, Third Section, Judgment, 26 March 2019	761
<b>VII.2.3</b>	<i>Advisory Opinion Concerning the Recognition in Domestic Law of a Legal Parent-child Relationship Between a Child Born Through a Gestational Surrogacy Arrangement Abroad and the Intended Mother Requested by the French Court of Cassation</i> , Request No. P16-2018-001, Grand Chamber, 10 April 2019	763
<b>VII.2.4</b>	<i>Case of Ilgar Mammadov v. Azerbaijan</i> , Proceedings Under Article 46 § 4, Application No. 15172/13, Grand Chamber, Judgment, 29 May 2019	767
<b>VII.2.5</b>	<i>Case of Romeo Castaño v. Belgium</i> , Application No. 8351/17, Second Section, Judgment, 9 July 2019	770
<b>VII.2.6</b>	<i>Case of Pryanishnikov v. Russia</i> , Application No. 25047/05, Third Section, Judgment, 10 September 2019	775
<b>VII.2.7</b>	<i>Case of Pastörs v. Germany</i> , Application No. 55225/14, Fifth Section, Judgment, 3 October 2019	777
<b>VII.2.8</b>	<i>Case of G.B. and Others v. Turkey</i> , Application No. 4633/15, Second Section, Judgment, 17 October 2019	781
<b>VII.2.9</b>	<i>Case of J.D. and A v. The United Kingdom</i> , Applications Nos. 32949/17 and 34614/17, First Section, Judgment, 24 October 2019	785
<b>VII.2.10</b>	<i>Case of Ilias and Ahmed v. Hungary</i> , Application No. 47287/15, Grand Chamber, Judgment, 21 November 2019	788
<b>VII.2.11</b>	<i>Case of Z.A. and Others v. Russia</i> , Applications Nos. 61411/15, 61420/15, 61427/15 and 3028/16, Grand Chamber, Judgment, 21 November 2019	792
	<b>Systematic Key Items of the Section</b>	<b>797</b>
<b>VIII.</b>	<b>INTER-AMERICAN COURT OF HUMAN RIGHTS</b>	<b>799</b>
<b>VIII.1</b>	<b>INTRODUCTORY NOTE, <i>Elizabeth Odio Benito</i></b>	<b>801</b>
<b>VIII.2</b>	<b>LEGAL MAXIMS: SUMMARIES AND EXTRACTS FROM SELECTED CASE LAW (<i>Antonio-Jesus Rodríguez-Redondo</i>)</b>	<b>811</b>
<b>VIII.2.1</b>	<i>Caso Álvarez Ramos vs. Venezuela</i> , Excepción Preliminar, Fondo, Reparaciones y Costas, Sentencia de 30 de Agosto de 2019, Serie C No. 380	813
<b>VIII.2.2</b>	<i>Caso Perrone y Preckel vs. Argentina</i> , Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 8 de Octubre de 2019, Serie C No. 384	819



VIII.2.3	<i>Caso Valenzuela Ávila vs. Guatemala</i> , Fondo, Reparaciones y Costas, Sentencia de 11 de Octubre de 2019, Serie C No. 386	824
VIII.2.4	<i>Caso Girón y Otro vs. Guatemala</i> , Excepción Preliminar, Fondo, Reparaciones y Costas, Sentencia de 15 de Octubre de 2019, Serie C No. 390	831
VIII.2.5	<i>Caso López y Otros vs. Argentina</i> , Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 25 de Noviembre de 2019, Serie C No. 396	836
	<b>Systematic Key Items of the Section</b>	<b>843</b>
<b>IX.</b>	<b>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS</b>	<b>845</b>
IX.1	INTRODUCTORY NOTE, <i>Frans Viljoen</i>	847
IX.2	LEGAL MAXIMS: SUMMARIES AND EXTRACTS FROM SELECTED CASE LAW ( <i>Juan Francisco Moreno-Domínguez, Antonio-Jesus Rodríguez-Redondo</i> )	857
IX.2.1	<i>Shukrani Masegenya Mango &amp; Others v. United Republic of Tanzania</i> , Application No. 008/2015, Judgment on Merits and Reparations, 26 September 2019	859
IX.2.2	<i>Benedicto Daniel Mallya v. United Republic of Tanzania</i> , Application No. 018/2015, Judgment on Merits, 26 September 2019	864
IX.2.3	<i>Majid Goa alias VEDASTUS v. United Republic of Tanzania</i> , Application No. 025/2015, Judgment on Merits and Reparations, 26 September 2019	868
IX.2.4	<i>Ally Rajabu and Others v. United Republic of Tanzania</i> , Application No. 007/2015, Judgment, 28 November 2019	872
	<b>Systematic Key Items of the Section</b>	<b>881</b>
<b>X.</b>	<b>INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES</b>	<b>881</b>
X.1	INTRODUCTORY NOTE, <i>August Reinisch &amp; Johannes Tropper</i>	883
X.2	LEGAL MAXIMS: SUMMARIES AND EXTRACTS FROM SELECTED CASE LAW ( <i>Johannes Tropper</i> )	909
X.2.1	<i>Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia</i> , ICSID Case No. ARB/16/6, Award, 27 August 2019	911
X.2.2	<i>CMC Muratori Cementisti CMC Di Ravenna SOC. Coop.; CMC Muratori Cementisti CMC Di Ravenna SOC. Coop. A.R.L. Maputo Branch; and CMC Africa Austral, LDA v. Republic of Mozambique</i> , ICSID Case No. ARB/17/23, Award, 24 October 2019	936
X.2.3	<i>Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v. Hungary</i> , ICSID Case No. ARB/17/27, Award, 13 November 2019	954
	<b>Systematic Key Items of the Section</b>	<b>979</b>

<b>XI. INTERNATIONAL ADMINISTRATIVE TRIBUNALS</b>	<b>971</b>
<b>XI.1</b> INTRODUCTORY NOTE, <i>Francesco Seatzu</i>	973
<b>XI.2</b> LEGAL MAXIMS: SUMMARIES AND EXTRACTS FROM SELECTED CASE LAW ( <i>Simona Fanni</i> )	979
<b>XI.2.1</b> <i>Nasir v. Secretary-General of the United Nations</i> , Case No. UNDT/GVA/2017/109, Judgment No. UNDT/2019/090, 22 May 2019	981
<b>XI.2.2</b> <i>L. (No. 6) v. ICC</i> , ILOAT, 128th Session, Judgment No. 4183, 3 July 2019	984
<b>XI.2.3</b> <i>FC v. International Bank for Reconstruction and Development</i> , WBAT, Decision No. 615, 25 October 2019	987
 <b>Systematic Key Items of the Section</b>	 <b>991</b>
 <b>PART 6: RECENT LINES OF INTERNATIONALIST           THOUGHT</b>	
<b>Global Social Indicators, Comparison, and Commensuration: A Case Study of COVID Rankings</b> <i>David Nelken</i>	 <b>995</b>

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# AIMS & SCOPE

## Editor's Note

The *Global Community Yearbook of International Law and Jurisprudence (Yearbook)* is a peer-reviewed journal, covered in Scopus, and first published in 2001 (with twenty editions, that is, annual publications so far). Over the years it has become an authoritative reference on the most significant transformations in the world constitutive process. While providing researchers and practitioners with access to a uniquely rich resource for the study of international jurisprudence, the *Yearbook* promotes discussion on current issues that impact substantive and procedural aspects of global law. In this way, the *Yearbook* makes it possible to monitor—from year to year and from several perspectives—the development of the international order towards a legal system for a global community.

The theoretical parts of the *Yearbook* (Articles, Notes and Comments, In Focus, Forum) contain analyses by leading scholars and judges from all over the world focusing on the global challenges for law, policy, and justice; it provides scientific and practice-oriented articles on recent developments in global law, as well as new insights on the contribution of judicial pronouncements to the constitutional global order.

The *Yearbook* constitutes the only thorough annual survey of major developments in international jurisprudence. The decisions of international courts and tribunals are covered extensively, to reflect their recognized importance for the development of international/global law. A comprehensive survey by eminent international law scholars who explore, document, and evaluate this process provides an innovative approach to the interactions between courts with the objective of reducing conflicts and paving the path towards harmonization of legal principles governing the global community. The relevant part (“Global Justice—Decisions of International Courts and Tribunals”), which is divided into sections and which is primarily devoted to the highest judicial bodies, continues to report annually on significant international case law, as systematically ordered by legal maxims. Since the 2019 edition, the contents of the *Yearbook* have been enriched with the inclusion of two new sections: one devoted to the African Court on Human and Peoples’ Rights (ACtHPR) and the other to International Administrative Tribunals (IATs).

In this manner, the *Yearbook* fills in the gaps left by other journals that provide partial coverage of international judicial decisions; and international law scholars can rely on it to better understand the wealth of case law emanating from international jurisdictions. The

originality and utility of this *Yearbook* lies precisely in its “intermediation” role between case law and international scholars, practitioners, and students.

Finally, an updated overview of the current international law literature in the part entitled “Recent Lines of Internationalist Thought” provides readers with an opportunity to study and interpret global legal issues from different perspectives, examine different methodologies, and explore ideas from different cultures. The 2017 edition introduced a change to this part. The novelty concerns the subject behind the original authorship—meaning that the Scholar/Judge who contributes thoughts and ideas is also talking about his *own work*.

The *Yearbook* is a one-stop resource for all researchers of international/global law, various related disciplines, and the jurisprudence of international courts and tribunals. It is aimed at academics, legal practitioners, and law students in the fields of international/global law, national law, legal philosophy and ethics, political science, and economics.

# OUTLINE OF THE PARTS

The *Yearbook* is structured into the following parts:

## ARTICLES

This part is devoted to significant doctrinal contributions to international legal theory and gives priority to works dealing with changes in the rules and structure of the international community. The aim is to follow the development of the international legal order and the building of the global community heralded at the end of the second millennium. This part is at all times open to report on fresh developments and to debate new, and other contradictory, trends.

## NOTES AND COMMENTS

This part contains short articles on current issues in international/global law. In line with the *Yearbook's* orientation, comments addressing international case law are given precedence.

## IN FOCUS

Beginning with the 2008 issue, the *Yearbook* includes a part entitled “In Focus—Global Policies and Law,” exploring the globalization of politics, communication, economics, culture, and the environment, while identifying objectives, programmes, models, public policy choices, and emerging global policies, and considering some of the major issues and challenges facing the world as a whole, in an attempt to enhance the coordination and harmonization of norms and procedures and the implementation of global law.

## **FORUM—JURISPRUDENTIAL CROSS-FERTILIZATION: AN ANNUAL OVERVIEW**

Beginning with the 2010 issue, the *Yearbook* includes a new part, aiming to compare and analyse the interconnections between the decisions of international courts and tribunals, as

a way of exploring and examining judicial dialogue and the development of common legal principles and concepts in all branches of international law.

To this end we have chosen to focus on the areas of international law in which different international courts operate; therefore, this part consists of eight modules corresponding to the areas listed below (in addition, an introductory module has been added to illustrate key concepts):

- Introductory Module—MISSION AND CONCEPTS
- Module—CRIMINAL LAW—The Relationship Between International Criminal Tribunals and Their Relationship with the ICJ or Another International Court or Arbitral Tribunal
- Module—EUROPEAN LAW—The Relationship Between the European Courts and Their Relationship with the ICJ or Another International Court or Arbitral Tribunal
- Module—HUMAN RIGHTS LAW—The Relationship Between Courts of Human Rights and Their Relationship with the ICJ or Another International Court or Arbitral Tribunal
- Module—ECONOMIC AND FINANCIAL LAW—The Relationship Between International Judicial Bodies in Economic Matters and Their Relationship with the ICJ or Another International Court or Arbitral Tribunal
- Module—INVESTMENT LAW—The Relationship Between the ICSID Tribunals and the ICJ or Another International Court or Arbitral Tribunal
- Module—ENVIRONMENTAL LAW, LAW OF THE SEA, GLOBAL COMMONS LAW—The Relationship Between the ITLOS and the ICJ or Another International Court or Arbitral Tribunal
- Module—INTERNATIONAL AND DOMESTIC LAW—The Relationship Between International Courts and Domestic Courts

The aim is to identify the emergence of common rules (substantial and procedural) in the various contexts. In each area eminent international law scholars will carry out an analysis of the points of convergence and divergence not just between the decisions handed down by courts operating in the same area but also between the decisions of tribunals and international courts operating in other areas, dealing with different matters, examining the coherence (or lack thereof) of their jurisprudence when they apply the same international norms, also of a customary law nature. In comparing the decisions of the various tribunals, a constant element will be the reference to the International Court of Justice and the way the decisions of other international tribunals relate to its jurisdiction. However, not all the modules will be offered annually but only whenever there are developments in each of them that will be interesting to note.

The *Yearbook* is the first academic journal to present an annual overview of the process of cross-fertilization between courts, based on the drafting and systematic classification of legal maxims (i.e., points of law decided by various international courts) in the part entitled “Global Justice—Decisions of International Courts and Tribunals.” A comprehensive and complete survey by eminent international law scholars exploring, evaluating, and documenting this process has the potential to enhance our contribution and thus further guide our understanding of how to reduce conflicts and create an effective exchange of legal reasoning between different courts. The aim is to promote a favourable environment for the courts to advance the process of judicial cooperation with a view to the possible harmonization of legal principles governing the global community.



## GLOBAL JUSTICE—DECISIONS OF INTERNATIONAL COURTS AND TRIBUNALS

The decisions of international courts and tribunals receive ample coverage in the *Yearbook*, reflecting their recognized importance for the development of international law.

International courts and tribunals covered include: International Court of Justice (ICJ), International Tribunal for the Law of the Sea (ITLOS), WTO Dispute Settlement System (WTO DSS), International Criminal Court (ICC), International Residual Mechanism for Criminal Tribunals (MICT), General Court and Court of Justice of the European Union (ECJ), European Court of Human Rights (ECtHR), Inter-American Court of Human Rights (IACtHR), African Court on Human and Peoples' Rights (ACtHPR), International Centre for Settlement of Investment Disputes (ICSID), International Administrative Tribunals (IATs). Moreover, if there were no decisions issued by these tribunals for the year under consideration, we would omit the relating section.

Each major international court or tribunal has its own section, which includes an Introductory Note on the activity of that judicial body over the course of the year under consideration. The activities of the court and tribunals are presented in the form of “legal maxims,” i.e., brief and easily understood extracts of statements on international law announced in a judicial decision, focusing on points of law decided by various international courts, systematically arranged.

Normally, the maxims consist of integral citations from the text of the judgment. However, divergences from the original text (i.e., omissions or additions) are marked by the use of square brackets (round brackets with dots are used to indicate that the quotation which follows is situated in the original text before the previous quotation). Maxims usually reproduce the text of several extracts drawn from different paragraphs of the decision to which reference is made. Further, to give the reader an immediate idea of the constituent parts of the maxim, the paragraph number corresponding to each extract is given below each legal maxim in the order in which they have been used.

The maxims are collected according to the “Systematic Classification Scheme,” which can be found at the beginning of this part. This scheme has two parts, dealing respectively with substantive and procedural international law. Each of these parts is further divided into headings and sub-headings.

The maxims are systematically presented and also logically arranged in such a manner as to permit the reading of the overall context of each decision, serving as a forerunner to the full reading of the text of each judgment.

The chosen working-method has been adapted from the one successfully employed in the “Repertory of Decisions of the International Court of Justice/Répertoire de la Jurisprudence de la Cour Internationale de Justice” (1947–1992), by Giuliana Ziccardi Capaldo, 1995.

The following information is also given for each decision covered: (a) the full title of the case and the parties to it, where these exist; (b) the type of decision, the date, and the original language; and (c) reference to the collection of Reports in which the original text of the decision is to be found and/or specialized websites for internet access.

## RECENT LINES OF INTERNATIONALIST THOUGHT

This part, included in the *Yearbook* since 2006, focuses on the thought of leading international law scholars “innovative” in their responses to challenges that have faced contemporary world society. The 2017 edition introduced a change to this part. The novelty concerns the subject behind the original authorship—meaning that the Scholar/Judge who

contributes thoughts and ideas is also talking about his *own work*. The purpose is to give an overview of the current international law literature providing readers with an opportunity to view arguments from different perspectives, to examine different methodologies, and to explore ideas reflecting cultural diversity. This would certainly allow an understanding of the relevance of internationalist thought on the changes in international law and contemporary politics in the context of globalization.

### **GENERAL INFORMATION**

The journal is included in Scopus, the largest abstract and citation database of peer-reviewed literature.

This issue may be cited as 20 *Global Community YILJ 2020*, G. Ziccardi Capaldo General ed. (2021).

All views expressed in the articles, notes and comments, editorial comments, and other contributions to the *Yearbook* represent the opinions of the individual authors and should not be interpreted as an expression of the views of the Editors.

#### **Submission of Manuscripts**

Manuscripts should be submitted by email to [globalcommunity@tin.it](mailto:globalcommunity@tin.it) preferably in English, although a small percentage of papers may be accepted in other languages (French, German, and Spanish) at the discretion of the General Editor. Abstracts should be submitted in English only.

The *Yearbook* is committed to ensuring ethics in publication and quality of articles. Manuscripts submitted for publication are blindly peer-reviewed. The *Yearbook* will not consider submissions whose content has been, or will be, published before it appears in this *Yearbook*. It is therefore important to agree upon ethical guidelines for *Yearbook* publication—see *Publication Ethics & Malpractice Statement* available on the journal's website at <http://www.globalcommunityyearbook.org/forauthor-publication.php> where you can find other useful information.

Manuscripts should meet the editorial standards specified in the *Yearbook's* stylesheet which may be obtained from the journal's website. The latter also provides other helpful information about the *Yearbook*, including the content of previous volumes.

#### **Orders**

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# Celebration of the 20th Anniversary of the Global Community Yearbook of International Law and Jurisprudence



Giuliana Ziccardi Capaldo  
Founding General Editor

Giuliana Ziccardi Capaldo, Emeritus Professor of International Law, University of Salerno, is internationally renowned as a pioneer of global law and global community. As the architect of the integrated approach, in her book *The Pillars of Global Law* (2008), she pioneered her vision of global constitutionalism based on the idea of securing globally shared governance in terms of constitutional democracy as well as constitutional principles within the global community as a whole.