NEW YORK UNIVERSITY
# JOURNAL OF INTERNATIONAL LAW AND POLITICS

VOL. 50 Summer 2018 NUMBER 4

*CONTENTS*

This symposium issue is dedicated to
Justice Rose Luttan Rubin

ARTICLES

Role of Employee Discipline in FCPA Settlements: Balancing Competing Considerations ..... 1207
*Cheryl Scarboro & Diana Wielocha*

Rebuilding Afghanistan: A Fight Against Corruption ..... 1237
*John F. Sopko*

Contracts Procured Through Bribery of Public Officials: Zero Tolerance Versus Proportional Liability ..... 1261
*Kevin E. Davis*

NOTES

Sexual Minorities and the Right to Culture in African States ..... 1321
*Tyler Walton*

Circumventing the China Extradition Conundrum: Relying on Deportation to Return Chinese Fugitives ..... 1361
*Sabrina Choo*

COMMENTARY ..... 1417

BOOK ANNOTATIONS ..... 1467

NEW YORK UNIVERSITY

# JOURNAL OF INTERNATIONAL LAW AND POLITICS

*Editor in Chief*
Christopher R. Mullen

*Managing Editors*
Yekaterina Fomitcheva
Victor K. Liu

*Senior Articles Editors*
Ross S. Guilder
Ropafadzo C. Maweni
Sophie L. Zander

*Senior Executive Editors*
Carl T. Brzorad
Yoon Ha Cho
Isen Kang
Samuel Rackear

*Senior Notes Editor*
Hillel D. Neumark

*Senior Online Editor*
Alexander R. Tagawa

*Senior Book Annotations Editor*
George P. Kadifa

*Senior Symposium Editor*
Irina Goga

*Senior Developments Editor*
Verónica P. Casellas

*Senior International Law & Politics Editor*
Nathan Gusdorf

*Developments Editors*
Shiyi Fan
Benjamin A. Hanson
Lorena Michelen
Kali B. Montecalvo

*Symposium Editors*
Michael Price Chenkin
Patricia de Lucio
George E. Harris
Noah E. Lipkowitz

*Notes Editors*
Chelsea N. Anelli
Simon B. Kress
Sidra Mahfooz
Elisabeth N. Ponce

*Commentary Editors*
Amira Abulafi
Anais S. Berland
Alistair Fatheazam
Muyun Hu

*Book Annotations Editors*
Isabel Espinosa de los Reyes
Razia S. Hamid
Tobias A. Kraft
Mustafa S. Moiz
Jonathan R. Povilonis

*Online Editors*
Jacob D. Hymes
Andrew J. Marnell
Snezhana Stadnik

*Graduate Editors*

Tutku Bektas
Francisco A. Duarte
Monaliza Da Silva
Zhoutao Gu

Robert Uwe Hess
Youjin Isabel Jo
Benedikt Kaneko
Yuan Bing Mock
Wei Jie Nicholas Ng

Ibrahim Shehata
Bin Sun
Emily C. Westphalen
Amin Yacoub

*Staff Editors*

Pierre J. Allegaert
Daniel P. Barron
Hong Bao
Robert C. Bowling, Jr.
Angeline X. Chen
Melina E. De Bona
Laura M. Duane
Zachary S. Freeman
Avelino A. Garcia
Isabelle W. Glimcher
Ari G. Goldberg
Suzannah J. Golick
Jacob M. Green
Gabriella L. Hassan
Liman M. Hu
Nashel C. Jung
Caitlin E. Hutchinson Maddox

Paula C. Kates
Laura K. Kaufmann
Matthew F. Kelleher
Mark W. Kim
Jiaying Liu
William G. McKitterick
Sarah M. Moore
Adam W. Nasser
Rashmika Nedungadi
Kaja B. Niewiarowska
Alison F. Perry
Nicholas C. Phillips
Kyrsten R. Ponturo
Nicholas W. Prey
John R. Ruth
Bethany J. Saul

Sydney A. H. Sawyier
Andrew M. Scheperle
Alexandra G. Shepard
Jocelyn Shih
Breanna J. Small
Elizabeth Grace Smith
Vedad Tabich
Davis Valeriano Martinez Turner
Alyssa V. M. Wall
Ryan L. Weller
Amberly Wilenski
Christopher Williams
Yael M. Willner
Katerina N. K. Wright
Lillian L. Wu
Seamus O. Yarbrough
Jade H. Yoo

NEW YORK UNIVERSITY

# JOURNAL OF INTERNATIONAL LAW AND POLITICS

*Editor in Chief*
Alyssa V. M. Wall

*Managing Editors*
Isabelle W. Glimcher
Sarah M. Moore

*Senior Articles Editors*
Pierre J. Allegaert
Daniel P. Barron
Laura K. Kaufmann

*Senior Executive Editors*
Caitlin E. Hutchinson Maddox
William G. McKitterick
Alison F. Perry
Ryan L. Weller

*Senior Notes Editor*
Jade H. Yoo

*Senior Online Editor*
Bethany J. Saul

*Senior Book Annotations Editor*
Paula C. Kates

*Senior Symposium Editor*
Elizabeth Grace Smith

*Senior Developments Editor*
Mark W. Kim

*Senior International Law & Politics Editor*
Yael M. Willner

*Developments Editors*
Nicholas W. Prey
Alexandra S. Maurer
Jocelyn Shih
Christopher Williams
Katerina N. K. Wright

*Book Annotations Editors*
Robert C. Bowling, Jr.
Angeline X. Chen
Zachary S. Freeman
Breanna J. Small
Lillian L. Wu

*Symposium Editors*
Melina E. De Bona
Avelino A. Garcia
Jiaying Liu
Kyrsten R. Ponturo
Davis Valeriano Martinez Turner

*Commentary Editors*
Ari G. Goldberg
Gabriella L. Hassan
Matthew F. Kelleher
Adam W. Nasser
John R. Ruth
Amberly Wilenski

*Articles Editors*
Laura M. Duane
Kaja B. Niewiarowska
Andrew M. Scheperle

*Notes Editors*
Rashmika Nedungadi
Nicholas C. Phillips
Sydney A. H. Sawyier
Seamus O. Yarbrough

*Online Editors*
Hong Bao
Suzannah J. Golick
Jacob M. Green
Liman M. Hu
Nashel C. Jung
Vedad Tabich

*Graduate Editors*

*Staff Editors*

Justin C. Adamson
Jessica L. Allen
Tatiana G. August-Schmidt
Lynn M. Bager
Samuel E. Bashman
Ansel A. L. Bencze
Rebecca E. Berman
Paul A. Brudnick
Julia Chen
Cansu Colakoglu
Nikta Daijavad
Mark C. Davies
William S. Dawley
Jinah G. Eum
Isaiah Delas Evans
Marwa Farag
Jacqueline B. Gallant
Jackson R. Gandour
Kathryn E. Ghotbi
Seth Halper-Stromberg
Molly E. Henneberry
Jeffrey D. Hill
Emma Iannini
Chihiro Isozaki
Yoojin Lee
Tianwei Liu
James P. Lloyd
Heather McAdams
Corinne L. McCrum
Anjali A. Mehta
Ashley Miller
Jae Won Moon
Monica S. Pelayo
Andy Pigott
Michael W. Pizzi
Cole Rabinowitz
Beenish Riaz
Renata Rogers Castilho
Ariana Navarro Rowberry
Sophia N. Staley
Nithya Swaminathan
Jeffrey M. Tonge
Taylor M. Wettach
Janice Yoon
Wei You

# Keep informed of future issues.

## NEW YORK UNIVERSITY
## JOURNAL OF INTERNATIONAL LAW AND POLITICS

The *Journal of International Law and Politics* (*JILP*) was founded in 1968 under a Ford Foundation grant and is an official student publication of New York University School of Law.

*JILP* publishes four issues annually, featuring articles on both the practical and the theoretical aspects of public and private international law by leading scholars, jurists, and practitioners. *JILP* also publishes notes and book annotations written by Journal members. *JILP* sponsors an annual symposium on a current topic of international interest and subsequently publishes the contributions of the panelists in a symposium issue.

Please visit *JILP* online at https://www.nyujilp.org. Our website features the full text of articles from recent issues, information about past and present symposia, and up-to-date information on journal activities. *JILP* also welcomes contact by e-mail at nyujilp@gmail.com.

*New York University Journal of International Law and Politics*

Please return to:
Subscriptions
*Journal of International Law and Politics*
New York University
School of Law
110 West Third Street
New York, NY 10012, U.S.A.

(Please make checks or money orders payable to the *NYU Journal of International Law and Politics*.)

Please enter my subscription for the next four issues:

- ❑ Domestic $30.00
- ❑ Foreign $34.00
- ❑ Single issue $16.00

❑ Payment enclosed. ❑ Please bill me.

Name

Address

City/State/Zip

Country

© Copyright 2018 by New York University
Journal of International Law and Politics
Cite as N.Y.U. J. Int'l L. & Pol.
L.C. Cat. Card No. 70-3415
ISSN No. 0028-7873

---

The *New York University Journal of International Law and Politics* is published four times a year (Fall, Winter, Spring, Summer) at the New York University School of Law, 110 West Third Street, New York, New York 10012. Subscription rates are $30.00 (domestic); $34.00 (foreign); $16.00 (single issue). Fourth-class postage is paid at New York, New York, and additional mailing offices. POSTMASTER: Send address changes to *New York University Journal of International Law and Politics*, 110 West Third Street, New York, New York 10012.

Individual issues, complete volumes, bound sets, and microform editions of volumes 1 through 30 must be obtained directly from William S. Hein & Co., Inc., 2350 North Forest Rd., Getzville, NY 14068 (tel. 800-828-7571, fax: 716-883-8100) e-mail: mail@wshein.com and may not be subject to the prices listed above.

Unless a claim is made for nonreceipt of issues within one year of the mailing date, the Journal cannot replace those issues free of charge. Address all correspondence to *New York University Journal of International Law and Politics*, 110 West Third Street, New York, New York 10012.

The Journal invites authors to submit pieces for publication consideration. Pieces should be submitted via Scholastica, the online submissions service. Alternatively, submissions may be sent via e-mail to nyujilp@gmail.com. Citations should follow *The Bluebook: A Uniform System of Citation* (20th ed.). Submitted articles will not be returned.

All articles copyright © 2018 by the *New York University Journal of International Law and Politics*, except when otherwise expressly indicated. For permission to reprint an article or any portion thereof, please address your written request to the *New York University Journal of International Law and Politics*.

Except as otherwise provided, the author of each article in this issue has granted permission for copies of that article to be made for classroom use, provided that: (1) copies are distributed to students at or below cost; (2) the author and the Journal are identified on each copy; (3) proper notice of copyright is affixed to each copy.

The *New York University Journal of International Law and Politics* is committed to presenting divergent views. Accordingly, the opinions and affiliations of the authors presented herein are not necessarily representative of those of any Journal member.

The *New York University Journal of International Law and Politics* is indexed in *ABC POL SCI, America: History and Life, Contents of Current Legal Periodicals, Historical Abstracts, Index to Legal Periodicals, Index to Foreign Legal Periodicals*, and *Legal Resource Index*. The Journal is also available on the *Westlaw* system.

The *New York University Journal of International Law and Politics* is printed on recycled paper.

# FROM THE EDITOR IN CHIEF

This past year marked the fiftieth anniversary of the *Journal of International Law and Politics*. Since its inception, the Journal has played a crucial role in advancing constructive ideas on global issues and providing a platform for emergent and renowned scholars to contribute to international discourse. Like its preceding volumes, Volume 50 draws contributors from around the world on issues as diverse as the politicization of human rights, environmental protections as emerging customary law, and reassessing the relationship between culture and LGBTI rights in sub-Saharan Africa.

This past year also marked the 23rd Annual Herbert Rubin and Justice Rose Luttan Rubin International Law Symposium entitled *Global Anti-Corruption: Transparency in the Modern Age*. The event brought together leading practitioners and scholars to discuss anti-corruption efforts across various sectors at the national and global levels. Presenters included former U.S. Attorney for the Southern District of New York Preet Bharara, Senior Fellow at the Carnegie Endowment for International Peace Sarah Chayes, and the Special Inspector General for Afghanistan Reconstruction John Sopko, among many other distinguished guests. In keeping with *JILP* tradition, many presenters have contributed insightful articles to this special symposium issue. At the event, the Journal was honored to present a special commendation to Herbert Rubin in honor of his late wife Justice Rose Luttan Rubin, who along with her husband supported the Journal's work for many years. In Justice Rubin's memory, the Journal dedicates this special issue of our fiftieth volume.

It has been a humbling and monumental honor to serve at the helm of this remarkable publication for the past year—a position whose demands would have remain unfulfilled without the dedication of my board and the incalculable efforts of our dedicated editors. For their efforts, I remain eternally grateful. As the Journal enters its fifty-first year, our new staff continues the work of advancing intellectual discourse on issues that will have both international and domestic ramifications in the years and decades to come. The work of the Journal is incomplete, but its future remains bright.

Sincerely,
Christopher R. Mullen
Editor in Chief, 2017–2018