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Articles

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Article Abstracts

Unilateral economic sanctions have come under attack from a number of fronts in recent years. The Supreme Court's invalidation of the Massachusetts Burma law, recent WTO decisions rejecting U.S. unilateral environmental measures, and the United States' normalization of trade relations with China all raise questions about the continued legal and political viability of economic sanctions to promote human rights and other international values. U.S. industry and academic commentators also have condemned unilateral measures as ineffective in altering state behavior and as violative of international law. This Article confronts these questions by arguing that unilateral measures to promote human rights play an important role in the global community's broader effort to define and enforce international norms. The Article examines recent measures against Burma to illustrate the role of economic sanctions in the transnational process of norm development and internalization. It then evaluates U.S. unilateral sanctions practices for consistency with international jurisdictional, trade, and substantive human rights rules. The Article argues that, when crafted to comport with established international law values, unilateral measures play an important role in both the domestic internalization of human rights norms into the practices of sanctioning states, and in the transnational internalization of norms by target states and by other participants in the international community. As such, unilateral measures can contribute substantially to the definition and promulgation of human rights norms and ultimately to the development of the global human rights enforcement system.

This Article examines the gendered meanings of the concepts of democracy, citizenship, and human rights in the context of the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina. It argues that while these concepts are central to the post-socialist and post-conflict reconstruction of Bosnia and Herzegovina, their application even in Western Europe is gendered. Considerable recent political and academic work in Western Europe provides ways of rethinking these concepts so as to incorporate women's concerns and experiences and to take account of diverse and multiple identities. The General Framework Agreement provided an opportunity for the inclusion of such rethinking in the renegotiation of a contested space rather than the restatement of these concepts in their familiar, gendered guises. However, examination of the terms of the Agreement shows that this rethinking did not occur and that identity is perceived solely in terms of ethnicity to the detriment of gender. Finally, the Article looks at developments in Bosnia and Herzegovina since the Agreement was reached that have addressed the deficiencies for women in the application of democracy, citizenship, and human rights.

The current controversy surrounding the media reform program of the international administration in Kosovo spotlights the importance of an appreciation of context and American exceptionalism in the provision of legal assistance to post-conflict societies. Since June 1999, the United Nations and the OSCE have served as the transitional administration in the province, and have begun the process of media reform, including the regulation of hate speech and incitement. American press organizations have sharply criticized these initiatives, arguing that the answer to hate speech in Kosovo is not government regulation, but access to alternative views. This Article examines the relationship between a responsible press and a successful democracy, and posits that in a nascent democracy, the role of the press in constructing a shared identity can be crucial. Often in wartime and post-conflict environments, however, the press is disabled as a democratic actor, becoming instead a tool for incitement and encouragement. The question remains how such divisive media can be transformed into a press capable of communicating impartial information to a multi-ethnic democracy. The Article considers both the German and American modes of incitement and hate speech regulation within their historical and political contexts, and contends that the libertarian, American model of hate speech regulation is the product of a unique set of historical and social circumstances. American rules are of limited utility as a model for post-conflict media development. The Article argues that the values represented by a regulation prohibiting media incitement, as exists in Germany, may be a necessary step in the process of post-war reconciliation and democratic transition, both in the press and within Kosovar society. The Article concludes by examining issues relating to the enforcement of the Kosovar incitement regulations and the role they can play in the establishment of an independent press capable of informing and challenging a burgeoning post-war democracy.

Even in a climate of increased cooperation among regulatory authorities, jurisdictional conflict remains a prominent aspect of cross-border antitrust regulation. Much of this conflict is generated by private litigation—that is, lawsuits initiated under U.S. antitrust law by private attorneys general rather than by the government. This Article examines two strands of jurisprudence relevant to the role of the private attorney general in cases with international aspects. First, it analyzes the cases involving actions based on statutory violations of the antitrust laws, in which the extraterritorial reach of U.S. antitrust law has been delimited. It then turns to decisions on choice of forum and choice of law in international contracts, noting that those cases increasingly support party autonomy even when issues of regulatory law are involved. The Article notes that the former cases contemplate an expansive role for the private attorney general, while the latter cases marginalize that role. It then argues that the disparate treatment accorded the private attorney general in these two settings illustrates a more general inconsistency in the value assigned to public regulatory interests of the United States in international cases—while the statutory cases suggest that U.S. antitrust interests cannot be weighed against other interests, the contract cases indicate otherwise. The Article thus concludes that arguments against interest balancing in the statutory context have been undermined by developments in the international contract arena.