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Article Abstracts

The search for means to hold accountable those responsible for egregious human rights abuses has assumed central importance for policymakers as well as activists, politicians as well as scholars. In the absence of effective international enforcement mechanisms, domestic courts have played an important role in the effort to enforce international human rights norms. While most nations focus on criminal prosecutions, the United States has developed an elaborate doctrine of civil liability for violations of international law, through private lawsuits against individuals, corporations and States, known as the Filártiga doctrine. These two approaches have developed in virtual isolation, a result of a failure to understand their fundamental similarities. Both civil and criminal actions represent the translation into domestic legal systems of the international law principle of accountability for human rights violations. Differences in local procedures, as well as markedly different cultural responses to the purposes served by civil litigation, lead to wide variations in the implementation of accountability principles within domestic legal systems. But all respond to the international mandates to hold responsible perpetrators of human rights abuses, provide remedies for victims of those violations, and deter future abuses. An understanding of the common international law foundation underlying civil remedies in the United States and criminal human rights prosecutions abroad enables us to recognize that the assertion of jurisdiction over such actions is authorized by the international law principle of universal jurisdiction. The history and underlying logic of the doctrine demonstrate that it permits accountability through civil remedies as well as criminal prosecutions. As international negotiators press forward to draft an international convention governing civil jurisdiction and enforcement of judgments, it is crucial to the future of accountability that any resulting agreement recognize this principle.

World Trade Organization (WTO) rules do not forbid government Members from utilizing an environment-related import ban linked to the processes and production methods (PPMs) used in exporting countries. The myth that PPMs violate world trade law pervades the "trade and environment" debate, and is one reason why so many environmentalists are wary of the WTO. This Article presents a new taxonomy of PPMs. It distinguishes three different kinds of trade measures, and analyzes the status of each under WTO rules. Understanding the correct legal status of different types of PPMs is a necessary first step toward resolving disputes over the use of such environmental instruments.

Can international criminal courts provide defendants with fair trials? The question can be approached in at least two ways. First, are the substantive rights accorded to the accused by the tribunals' statutes, rules of procedure and evidence, and case law adequate? Second, regardless of the sufficiency of the paper rights accorded the accused in the tribunals' statutes, do these international courts have the independence and coercive powers necessary to ensure fair trials? For example, can these courts make certain that the accused is able to obtain the evidence and witnesses necessary for a serious defense? Or do the courts' judges have the independence necessary to withstand political pressure from the states on which they depend? In other words, despite the good intentions of the architects of these statutes, and the rights they formalistically contain, might these courts still lack certain essential capacities that criminal courts require in order to fulfill their functions? It is on this second, crucial, but often overlooked, aspect of the fair trial problem that this article focuses. A review of tribunal case law and past practice indicates that international criminal tribunals, as presently constituted, are limited in their ability to provide defendants with fair trials, even if the statutory rights accorded the accused and the positive pronouncements made by these courts are to be consonant with fair trial standards, because the courts lack the prerequisite power, or its functional equivalent, to make those substantive rights real. In short, the disjunction between authority and control, common to international institutions, is too great to allow for consistently fair criminal adjudication. Whether the structural limitations on the tribunals are fatal, or whether their detrimental effects can be abated, remains to be seen.

Considerable recent attention has focused on the challenges to state sovereignty presented by the growing influence of transnational corporations and non-governmental organizations. Two concrete manifestations of how international law is changing to reflect the emerging power of these non-state actors are the investor-state claim and the citizen submission processes, which are key components of the North American Free Trade Agreement regime. This Article considers how and to what extent these two processes affect the domestic sovereignty of the NAFTA Parties. It contends that although the sovereignty implications of the investor-state claim process are significantly more far-reaching, the Parties have exhibited a much greater concern over challenges to their sovereignty that they perceive as being posed by the citizen submission process. This asymmetrical, "protectionist" approach to engagement with civil society must be abandoned if states are to reap the potential benefits associated with trade and investment liberalization without jeopardizing their ability to regulate to protect public health and environment, and to manage domestic natural resources in a sustainable fashion.