

(1) Sawsan Almzaian, How U.S. State Courts Interpret (or Ignore) International Anti-Organ Trafficking Obligations: Ohio, New York, and Massachusetts

International law has long recognized organ trafficking as a grave human rights violation, particularly under the Palermo Protocol and related anti-trafficking instruments. Yet the domestic judicial enforcement of these norms within U.S. courts remains fragmented and doctrinally underdeveloped. While federal statutes address aspects of organ removal primarily through commercial regulation frameworks, state-level courts—where much criminal enforcement occurs—rarely engage explicitly with international anti-trafficking obligations.

This project examines how U.S. domestic courts, particularly at the state level, interpret and apply laws relevant to organ trafficking and whether international legal norms meaningfully influence judicial reasoning. Using Ohio as a primary case study, with comparative analysis of New York and Massachusetts, the paper identifies statutory gaps, judicial silence regarding international standards, and structural limitations inherent in relying exclusively on domestic criminal law frameworks.

The paper argues that the absence of explicit judicial engagement and legal gap with international anti-organ trafficking norms contributes to enforcement inconsistency and doctrinal ambiguity. It further contends that greater incorporation of international standards—whether through interpretive principles, legislative reform, or judicial citation practices—could strengthen victim protection and prosecutorial clarity.

By situating organ trafficking within the broader “international law in domestic courts” discourse, this project highlights the practical consequences of doctrinal isolation between international commitments and domestic adjudication.

(2) Pamela Bookman & Alyssa King, International Commercial Courts and International Commercial Law

Courts are the backbone of the international dispute resolution system. At some level, they ultimately support all international commercial activity, providing either a forum for resolving commercial disputes or the sovereign power behind the recognition and enforcement of arbitration awards. In recognition of these important roles and courts’ ability to build soft power and attract investment, this century has seen a new wave of international commercial courts (domestic courts specializing in international commercial cases) emerge across Europe, Asia, and Special Economic Zones (SEZs)—from Dubai to Kazakhstan. Many of these courts try to mimic the long-dominant London Commercial Court (LCC), complete with English procedure and retired British judges.

These courts style themselves as adopting the best of London’s common law legal tradition while also doing what arbitration cannot—develop international commercial law. But while many have written about whether these new courts can compete with the LCC or with arbitration, few have focused on the kinds of cases these courts decide and whether and how they develop substantive law. Through an analysis of decisions from the DIFC (Dubai), SICC (Singapore), and AIFC (Astana) Courts, we find a surprising divergence from the London model. Our findings reveal

that these institutions often refer to, but rarely apply English law, instead favoring local statutes and global standards like the UNCITRAL Model Laws. Moreover, the SEZs in civil law jurisdictions follow a mostly civil law style of legal reasoning and substantive law development, while adopting the most aggressive procedural tools known only to the common law world—like anti-suit injunctions and global asset freezing orders. Ultimately, these courts’ common-law-style legal decisions work to position the courts as conduits—jurisdictions that facilitate global forum shopping and judgment and award enforcement for parties seeking to harness a sovereign’s power in the international dispute resolution system.

(3) Hannah Buxbaum, Enterprise Contracts and Jurisdictional Law

The entity theory that frames modern corporation law characterizes each individual corporation as a distinct legal entity with its own rights and obligations. The core principle that flows from this view is limited liability. If the corporation is an independent juridical person, then its owners cannot be held responsible for its debts and obligations. In the context of a simple corporation whose owners are natural persons, limited liability protects the individual assets of investors who contribute capital to a business enterprise. In the context of a corporate group, however, the principle protects the assets of other corporations within that group. As Berle recognized already in 1947, there is a certain “divergence between [this] theory and the underlying economic facts” of business practice, which often reflects a high degree of strategic and operational integration within corporate groups. Corporate law addresses that divergence by recognizing some exceptions to the rule of limited liability, including alter ego analysis and other veil-piercing techniques. In addition, and in view of the ever-expanding size and scale of enterprise groups, some scholars have advocated for a more radical shift to an “enterprise” theory of corporate law that would reject the legal formalism of corporate personality where groups of corporations act as a unitary economic enterprise.

The same tension between form and economic reality that appears in the context of substantive liability appears in jurisdictional contexts as well. First, it is relevant to personal jurisdiction. On a strict entity approach, the jurisdiction of a forum state in claims related to the activities of a corporate group extends only to the particular company active within that state—not to its parent or other affiliates. Second, the tension between form and reality is relevant to certain questions of legislative jurisdiction. Under the Supreme Court’s approach to extraterritoriality, several statutes have been interpreted to provide a cause of action only for plaintiffs who have suffered “domestic injury.” In cases where a course of conduct causes widespread transnational harm, this has led to somewhat artificial line-drawing regarding exactly which entity within a multinational corporate group suffered the relevant harm.

There is little evidence of a general shift to enterprise analysis in the jurisdictional context. In this paper, I explore a more limited move based on the existence of enterprise-wide *contracts*. This recognizes that corporate groups sometimes shift particular operational functions or legal arrangements to the enterprise level. The paper will explore the extent to which existing doctrines—including, for example, the “effects test” for personal jurisdiction—could accommodate this form of enterprise analysis, and examine some current doctrinal barriers. It will argue that a more robust commitment to this modified form of enterprise analysis will improve the alignment of jurisdictional law with the realities of transnational corporate activity.

(4) Maggie Gardner, Beyond the Presumption Against Extraterritoriality

The Roberts Court has been intent on reining in the reach of U.S. law through its development and deployment of the presumption against extraterritoriality. But the Roberts Court has so far said little about how judges should apply statutes that do rebut the presumption against extraterritoriality. As Congress catches up with the Supreme Court's instructions to make its extraterritorial intentions more clear, lower courts are finding the presumption rebutted across a range of statutes. And contrary to conventional wisdom, they are not considering any additional limits on the reach of those statutes. Instead, based on a brief aside in *RJR Nabisco v. European Community*, they are applying those statutes as broadly as their terms can possibly bear. This trend towards aggressive application of extraterritorial statutes is in tension with the Roberts Court's general skepticism of transnational litigation. But even for those who do not share that skepticism, such unconstrained extraterritoriality exacerbates concerns for international comity and defendant fairness without necessarily effectuating congressional intent. And when the U.S. Government is the plaintiff (or prosecutor), aggressive extraterritoriality risks further empowering an increasingly imperial Executive Branch.

This Article calls for a revitalization of Supreme Court precedent that addressed this question before the emergence of the modern presumption against extraterritoriality. It draws from those precedents a three-step analysis for interpreting extraterritorial statutes in light of choice-of-law principles. But it also flags how choice of law has evolved since these prior pronouncements. Drawing on the draft Restatement (Third) of Conflict of Laws, it updates the analysis to be more simple, concrete, and judicially manageable. The core lesson is that even extraterritorial statutes should be interpreted with some restraint to ensure that U.S. law does not needlessly "rule the world." [Maggie will be seeking input on the prescriptive section of the paper.]

(5) Ji Ma, The Transactions of National Security

Today, governmental mercantilism—a transactional approach—extends into every corner, including traditionally sovereign national security. To enhance national security, the Trump administration has taken extraordinary steps to carve itself into private corporations by acquiring ownership stakes, taking a golden share, cutting sales revenue. Although this transactional approach is not new, the U.S. government has never intervened in private corporations so broadly, extending from the production of critical minerals to the sale of advanced semiconductor chips to the closing of plant production. Notably, this approach to national security will likely continue, enabling the government to take private property, favor certain private enterprises, exacerbate corruption and rent-seeking, tilt the playing field, and hinder industrial innovation.

Previously, some scholarship has explored how private corporations use their power to shape political affairs, acting as key protagonists in contemporary geopolitical contests and policy dilemmas. However, scholarship rarely addresses the opposite: government attempts shaping private corporate affairs. To turn the tables, this Article examines how the government intervenes in private corporate governance, the legal authorities enabling such intervention, the risks

involved, and the governance of those risks—contributing to understanding the role of public actors in challenging the foundations of the traditionally market-oriented US system.

This Article proceeds as follows. Part I examines the U.S. government’s shift from a defensive to an offensive mechanism to protect national security, adopting a transactional approach through intervention in private corporations. Part II synthesizes types of national security transactions, analyzes the underlying legal authorities, and explains the anticipated risks. Part III evaluates public and private law approaches to address those risks. Part IV discusses the implications from three perspectives: the end of corporate governance, the public-private distinction, and the governance of national security. The Article concludes that regardless of which administration holds power, this transactional approach to national security will persist because of enhanced industrial policy driven by stiff geopolitical competition, gradually settled patterns from path dependence, and shifting economic ideology from the broken neoliberal consensus.

(6) Ui-young Suh, The implications of the South Korean judicial reform: Constitutional Court’s New Role in the Review of Customary International Law

In February 2026, the National Assembly of South Korea passed the amendment to the Constitutional Court Act, authorizing the Constitutional Court to review the judgments of courts. This amendment represents a seismic shift in South Korea’s judicial architecture, which sustained since 1987, effectively positioning the Constitutional Court as a “fourth tier” reviewer of judicial judgments.

Historically, while the Constitutional Court affirmed the theoretical incorporation of the rules and principles of customary international law under Article 6(1) of the Constitution, it has maintained a limited role in identifying and interpreting customary international law. Instead, the Supreme Court led the development of such rules, particularly concerning State immunity. This was notably demonstrated in the 2023 “comfort women” case held by the Seoul High Court, which conclusively allowed exemptions from sovereign immunity without referring the matter to the Constitutional Court for a constitutional review. With its newfound capacity to scrutinize “judicial lawmaking,” the Constitutional Court shall review whether Supreme Court findings are constitutional regarding: (1) the evidentiary identification of international customary law rules, (2) the recognized rule’s status as part of the national law, and (3) the substantive constitutionality of the rule itself.

This article further contends that the text, structure, and objectives of the Constitution authorize customary international law rules to be interpreted as primary legislation only when such rules are directly applicable in courts as self-executing rules. This approach mirrors the methodology currently applied to treaties and international agreements, where courts determine on a case-by-case basis whether specific provisions possess a self-executing nature.

(7) Paul Stephan, Aditya Bamzai & Mitu Gulati, Taxes as Sanction

This paper keys off a provision that made it into the House version of the 2025 tax bill – Section 899 – that would give the president the power to withdraw the tax exemption bestowed on foreign states and foreign-state-owned enterprises if their governments discriminate against U.S.

persons. We are considering the legality as well as feasibility of such a proposal in light of *Learning Resources Inc. v. Trump* (2026). [For more details on the provision, see here: <https://bipartisanpolicy.org/explainer/retaliatory-international-tax-provisions-house-gop-tax-bill/>]

(8) Edward Swaine, The Lifespan of Treaty Conditions

What controls the lifespan of treaty conditions—also known as reservations, understandings, and declarations (“RUDs”)—of the United States? Conditions are an important feature of international treaty-making. They play an outsized role in U.S. agreements, where they are commonly understood as a means of accommodating U.S. reluctance to accept international obligations, typically (but not exclusively) by deregulating it. Through conditions, the United States may remove certain subjects from the operation of an agreement, decline international dispute resolution, or the like.

While conditions have grown in importance, little else about how the United States enters or exits agreements has remained stable. Executive and congressional-executive agreements have eclipsed Article II treaties as the go-to means of creating legal obligations. At the other end, the United States has developed greater flexibility in how it withdraws from its agreements, typically through unilateral action by the president. The inescapable theme has been the growth of presidential power over the creation and destruction of international commitments, and a substantial literature has developed concerning how to maintain legislative authority at both ends.

The balance of authority throughout the lifespan of an agreement has tended to receive less attention, in part because those dynamics have been more stable. Conditions are no exception, but they should be. While the authority to propose conditions—on the domestic plane, as part of the advice and consent process, and on the international plane, as part of signing or ratification—has been the subject of scrutiny, what happens to them while the United States remains a treaty party has received very little. The failure to evaluate the ability to withdraw conditions, in particular, deserves more, and international and domestic pressures may force the issue. This paper will attempt a more careful examination of this issue.

(9) Yanbai Andrea Wang, The New Global Jurisdictional Order

The global jurisdictional order that lives in our casebooks and case law consists of two poles. At one end is the common law tradition that exists in the U.S. and England. At the other end is the civil law tradition that is widely described as encompassing “the rest of the world.” This Article argues that this familiar global jurisdictional order is under transformation. In the wake of China’s rise is a new model for jurisdiction rooted in a procedural logic of jurisdictional elasticity that is at odds with both common and civil law traditions, even as individual doctrines bear resemblance to existing norms. That logic is advanced through a network of rules that permits broad and discretionary direct jurisdiction, embraces parallel litigation, and prioritizes among duplicative lawsuits by giving some weight to filing order but preserves a means of escape. That logic is then implemented by a judiciary that does not channel discretion to lower courts but centralizes it at the highest level through institutional mechanisms unknown to either civil or common law systems. For China, this approach to jurisdiction affords the Chinese

Communist Party exceptional flexibility to calibrate adjudicatory power on a case-by-case basis. For the global order, it disrupts a known constellation that has long shaped U.S. domestic law as well as international treaty-making.