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*International Law and
Social Justice*

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Introduction

David A. Frenkel & Jorge Emilio Núñez

This book offers a selection of essays which shed light on international law issues and Social Justice.

The essays are revised versions based on presentations at the 2019 International Conferences on Law organised by the Athens Institute for Education and Research (ATINER) held in Athens, Greece. The essays in this volume were selected after a process of blind-review on the basis of the reviewers' comments and the essays contribution to the ongoing discussion of the respective issues.

Traditional boundaries have become permeable. We live in a transparent, influenceable and pervious world. The response of the law and the legal systems to current developments is one of the great and serious challenges of our time. The authors of the essays collected for this book seek to analyse some of these challenges in International Law and Social Justice.

The book commences with **Hélène Mayrand & Andrew Smith-Grégoire's** essay *Challenging the Legal Concept of 'Safe Third Country' in the North American Context*. The Canada-U.S. Safe Third Country Agreement has been subject to criticism since its adoption. Rooted in international law and practice to address asylum shopping, the agreement prevents asylum seekers who have transited through the United States or Canada from making a refugee claim in the other country when they arrive at a land border port of entry, subject to some exceptions. In this chapter, we explain how the agreement works. We then turn to the problems it raises, in particular whether the agreement fulfil its objective of promoting the orderly processing of refugee claims and ensures the protection of the human rights of refugee asylum seekers returned to the United States. The authors argue that the agreement is counterproductive, as it does not effectively promote the orderly processing of refugee claims from the United States. They also analyses the numerous challenges before Canadian courts to the designation of the United States as a safe third country and the application of the agreement in the Canadian context. The essay raises the issue of whether Canada protects the rights of refugee claimants and complies with the non-refoulement obligation when it returns refugee claimants to the United States pursuant to the agreement.

Jorge Emilio Núñez is the author of the next contribution *Territorial Disputes and State Sovereignty*. Territorial disputes are complex, multi-layered and multi-faceted. In addition to the challenger and challenged parties, it is important to distinguish claims, issues at stake and contexts. Several controversial international differences of this kind are in an ongoing legal and political limbo. At its core, the stalemate, and potential escalation into conflict, has to do with the parties' choice to understand sovereignty as a closed and absolute concept that implies exclusionary power. The author's view is that sovereignty is not absolute. It has conceptual and substantive limitations and sovereignty can be inclusive or

exclusive. Sovereignty includes limitations and may lead to cooperation or domination. The author aims to show that the positive synergy view of territorial disputes clears the path for future, more integrated and multi-disciplinary studies with promising potential.

The third essay *Challenges to Strengthen the Protection of Civilians by Non-State Actors in Non-International Armed Conflicts* has been written by **Rutvica Rusan Novokmet**. The focus of this essay is on the analysis of non-State actors as parties to non-international armed conflicts and their obligation to respect the relevant international legal framework. The author warns that, compared to States, legal position of non-State actors in expressing their willingness to be bound by the rules of international humanitarian law is not equal. The consequences of such a legal lacuna are directly connected to the lack of protection of civilians in non-international armed conflicts. Deliberate attacks against civilians and civilian facilities, torture, sexual violence, recruitment and use of children in armed hostilities, indiscriminate use of anti-personnel mines, obstruction of humanitarian assistance – these are just a few examples of gross violations of international humanitarian law committed by non-State actors. Although the obligatory nature of international humanitarian law does not depend on its formal acceptance by the parties to armed conflict, the author emphasises that it is imperative to use more effective mechanisms to introduce non-State actors with their duty to protect the primary victims of armed conflicts – innocent civilians. In this context, international organisations play an extremely important role in convincing non-State actors to sign unilateral declarations by which they voluntarily express their commitment to respect fundamental humanitarian standards. The author concludes that these mechanisms can have positive influence on the prevention of future violations of international humanitarian law and that the use thereof can contribute to a better protection of civilians in non-international armed conflicts.

Panagiotis Zinonos is the author of the forth essay - *The Duty of Loyalty as a Tool for Fundamental Rights Enforcement in the Legal System of the EU*. The effective enforcement of rights within the European Union, understood as a legal system overarched by the duty of loyalty, depends upon judicial independence. The author introduces some recent legal developments pertaining to its double dimension as a fundamental right and as a structural duty of the Member states to discuss four enforcing tools that concretise the duty of loyalty: a) the self-standing right to an independent tribunal, b) the infringement procedure, c) the preliminary ruling procedure, and d) the technique of exceptional circumstances. In that context, the author rejects the idea that the multifaceted configuration of the European Union is detrimental to fundamental rights protection and stresses the relevance of all the actors.

Human Rights in the Context of the Venezuelan Refugee Crisis authored by **Kerry-Ann Paula Harrison** is the next essay. In 2018, the Venezuelan economy was reported as having essentially collapsed. Millions of Venezuelan nationals are currently on starvation's door and desperation has led to widespread migration to neighbouring territories. For the first time in its history, Trinidad and Tobago is now faced with an unprecedented influx of Venezuelans, who come in droves, on a daily basis, both legally and illegally, in search of food, medicine and a better

life. Those who land legally and admitted entry for a maximum of 90 days are generally prohibited from engaging in any employment. Consequently, many are forced to work illegally to earn money in order to survive. For the unlucky ones who do not enter legally it is even more difficult to assimilate into society, as they live in constant fear of being caught and imprisoned or even worse - deported. This essay seeks to critically analyse the extent of human rights violations of Venezuelan Refugees and migrants in Trinidad and Tobago, and in particular to comparatively analyse it with Trinidad and Tobago's international legal obligations as it pertains to the protection of refugees and human rights.

The final essay in this volume is **Helen Peng Han's** on *Development of Individualism in Chinese Legislation and Social Solidarity – A Durkheimian Approach*. The concept of individualism plays an important role in Durkheim's work of sociology. He viewed the rise of individualism as an indicator to reflect a society's development. When a society develops, collective consciousness leaves more room to the development of individualism. Durkheim also argues that when society evolves, the predominance of different types of social solidarity changes. Durkheim developed his theory of using law as an external index to observe the changes of society. This essay applies Durkheim's approach in Chinese society and through examining the changes of individualism in Chinese legislation it concludes that individualism develops rapidly in Chinese society, reflected by the increasing focus on individuals and more protection of individual rights in both repressive and restitutive laws. The authoress also argues that when individualism develops, to avoid the occurrence of anomie more proper rules and laws should be developed accordingly.

Many of the debates analysed are ongoing and the policy, ideas and interpretation brought up in the essays will undoubtedly contribute to future debates. We hope the reader will find the collection of essays stimulating and insightful reading not only for those who are interested in a particular issue discussed but also to acquaint themselves with current issues.

The views expressed in the essays in this volume are those of the authors and neither represent nor are they intended to represent the views of any other individual or body.

