ENOWNED SCHOLARS in international law and foreign relations law recently gathered to present their works-in-progress at the Public International Law and Theory workshop, hosted by the law school’s Whitney R. Harris World Law Institute. Attendees came from across the country, as well as from Leiden University and Utrecht University, both in the Netherlands.


“The symposium provided a wonderful opportunity for this distinguished group of scholars to present their work on topics as diverse as the Obama administration’s climate change policies; the responsibilities of Google, Facebook, and other technologies under repressive governments; and the theory of jus post bellum,” Sadat says. “In addition to presenting cutting-edge programs and lecturers, one of the missions of the Harris Institute is to support and encourage scholarship at the forefront of international and humanitarian law.”

In addition to Helfer and Waters, other presenters were:

“Although it is possible to formulate functional arguments for restricting opt-out rights under CIL [Customary International Law], it is difficult to conclude from these arguments that such restrictions should apply across the board to all of CIL, especially in light of the inefficiencies that such a mandatory regime is likely to generate.”

Curtis Bradley and Mitu Gulati
Duke University

“The risk is that the underlying digital network itself could make political networks vulnerable, a veritable black book of names and addresses for the secret police to round up. In the optimistic scenario, the Internet might help topple dictators; in the pessimistic scenario, the Internet might cement their control. … It seems incumbent upon us to demand the inculcation of a professional ethic among new media companies to protect the freedom-enhancing aspects of cyberspace.”

Anupam Chander
University of California, Davis

“The evident lesson of these case studies is that occupation is a singularly unhelpful precedent for planning exits from nation-building missions. The fundamental strategy of those missions is to build liberal democratic structures in the hope they foster reconciliation and coexistence. But only four of the 20 occupiers examined sought to build liberal democracies in the territories they controlled.”

Gregory Fox
Wayne State University

“A state’s decision to derogate from a human rights treaty during a domestic crisis can be explained by the fact that the derogation conveys information about the state’s future conduct. … Stable democracies are more likely to derogate from human rights treaties than autocracies or democratizing states.”

Laurence Helfer
Duke University
“The tendency by criminal lawyers to see international human rights law as part of the problem—because of the way in which the human rights movement has of late been associated with pressure for relatively more repressive constructions of offences—has blinded them to what they know full well domestically, namely that human rights are potentially their best ally in pushing back repressive excess.”

Frédéric Mégret
McGill University

“Specifically, the Obama administration should explore opportunities for (1) greater, smaller-scale governmental involvement in technology-oriented financial incentives programs; (2) federal-level, top-down, vertical initiatives connecting federal approaches to highways, railroads, and gas prices with smaller scale efforts to have people drive less in their communities; and (3) litigation, which often has a rescaling effect, by interested individuals, nongovernmental organizations, corporations, and government.”

Hari Osofsky
Washington & Lee University

“When a court invokes non-self-execution doctrine as a rationale for refusing to decide whether threatened criminal sanctions are illegal, the court potentially allows the government to violate the law in the very process of imposing criminal punishment. As Chief Justice Marshall observed … ‘the United States has been emphatically termed a government of laws, and not of men.’ It will certainly cease to deserve this high appellation, if the courts allow government officials to impose criminal sanctions in violation of established legal rules.”

David Sloss
Santa Clara University

“Some of the current (mis)perceptions of the role of moral parameters in the theorization of jus post bellum might be adjusted if just war theorists paid greater attention to the impact of legal rules and principles. Conversely, the legal discipline may draw valuable insights from the content of the classical jus post bellum under just war doctrine and historical sources when defining the contours of jus post bellum in modern international law.”

Carsten Stahn
Leiden University–Den Haag
the ICC, with Special Emphasis on the General Part”;

- David Sloss, Santa Clara University, “Executing Foster v. Neilson”;
- Carsten Stahn, Leiden University–Den Haag, “Jus Post Bellum: Mapping the Discipline(s)”; and
- Larissa van den Herik, Leiden University, “The Security Council, Targeted Sanctions & the

Ombudsperson: Revisiting the Need for Review in Light of the Individualization of Security Council Resolutions.”

In addition to Sadat, other discussants included: Adeno Addis, Tulane University; Robert Ahdieh, Emory University; Laura Dickinson, Arizona State University; David Luban, Georgetown University; Luz Nagle, Stetson University; Héctor Olásolo, Utrecht University; B. Don Taylor III, Washington University; Stephen Thaman, Saint Louis University; and Beth Van Schaack, Santa Clara University.

“An Ombudspanel would be preferable over an Ombudsperson. Furthermore, in terms of reinforcements, this panel should be able to make—at the very least—recommendations as to whether an individual meets the listing criteria and whether there is sufficient evidence to support the listing. ... In other words, the panel should only recommend to delist if there is a manifest error of assessment or a patent misuse of power.”

Larissa van den Herik
Leiden University

“The Supreme Court began to cite Charming Betsy as support for the domestic constitutional avoidance canon, relying explicitly on Charming Betsy’s supposed grounding in separation of powers concerns. ... The Charming Betsy canon continues to be misused as an example of the constitutional avoidance canon, rather than as a mandate that courts attempt to reconcile federal statutes with U.S. international law obligations. As Professor Ralph Steinhardt has commented: ‘This use of the Charming Betsy principle is seriously flawed.’”

Melissa Waters
Washington University

OUR HUNDRED MILES

North of Australia, the island nation of East Timor is “out of sight” and “out of mind” for the average American. However, it is never far from the heart and mind of Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and director of the Whitney R. Harris World Law Institute.

In 1995, Sadat began attending meetings leading up to the creation of the International Criminal Court (ICC). The ICC was established in 1998 by the Rome Statute of the International Criminal Court—a treaty drafted to create an international court that would seek justice for victims of war crimes and other crimes against humanity.

The year after establishment of the ICC, East Timor ended its nearly quarter-century occupation by Indonesia. Experts estimate that between 60,000 and 200,000 Timorese were killed during those tumultuous years. Countless more people were raped, tortured, or imprisoned.

Armed with her understanding of the ICC and the challenges of prosecuting perpetrators of war crimes, Sadat took on the grim task of documenting the atrocities committed at the hands of the Indonesian forces. She provided her findings to special panels created to bring the guilty to justice.

“I was asked to address an important legal issue—the question of ne bis in idem, more commonly referred to as the problem of ‘double jeopardy,’” she explains.