ENCOUNTERS BETWEEN FOREIGN RELATIONS LAW
AND INTERNATIONAL LAW

Foreign relations law and public international law are two closely related academic fields that tend to speak past each other. As this innovative volume shows, the two are closely interrelated and depend on each other for their mutual construction and identity. A better understanding of this relationship is of vital importance for upholding important constitutional values like democracy, the rule of law and the protection of human rights, while enabling states to engage in meaningful forms of international cooperation. The book takes a close look at the encounters between the two fields and offers perspectives for a constructive engagement between the two. Collectively, the contributions argue that the delimitation between the two fields occurs in a hybrid zone of interaction which requires both bridges and boundaries: bridges for the construction of the relationship between the two fields, and boundaries for preserving key normative expectations of both domestic and international law.

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Preface

Academic discourses on closely related issues sometimes develop in parallel, without much interaction between either track. To some extent, this is the case in the parallel universes of foreign relations law and public international law. Both fields can only exist with due acknowledgment of the other, but at times it appears as if differences and divergences between the two are overstated for the sake of solidifying one’s own perspective. This present volume departs from the assumption that we need bridges as well as boundaries between foreign relations law and public international law: bridges in order to better understand the mutual dependency of the two fields, boundaries so as not to collapse one field into the other. As editors, we think that the encounters between the two fields assembled in the following pages are of a productive nature. They will hopefully contribute to a further flourishing engagement with the bridges and boundaries between foreign relations law and public international law.

Putting together this volume was made possible first and foremost by the enthusiasm with which our authors joined us on this journey, which started at the Old Castle in Dornburg close to Jena in May 2019 with an informal research workshop. Back then the first ideas for this volume developed. Our group of authors made our task as editors easy and we are grateful for various and mutual learning processes in which we engaged in the run-up to this book.

At Cambridge University Press we would like to thank Finola O’ Sullivan and Marianne Nield who have steered the volume expertly to production. We are grateful to four anonymous reviewers for valuable insights which have helped to further improve the conceptual structure of the volume.

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Preface

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Helmut Philipp Aust and Thomas Kleinlein
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4 District Court for the Northern District of Alabama

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Abbreviations

AC Appeal Cases
AJCL American Journal of Comparative Law
AJIL American Journal of International Law
Appl. No(s). Application Number(s)
art. article
arts. articles
Ass’n Association
BCLR Butterworths Constitutional Law Reports
BiH Bosnia and Herzegovina
BIT Bilateral Investment Treaty
BV Bundesverfassung
BVerfG Bundesverfassungsgericht/ Federal Constitutional Court
BVerfGE Decisions of the Federal Constitutional Court
BYIL British Yearbook of International Law
cert. certiorari
CETA Comprehensive Economic and Trade Agreement
cf. confer
Ch. Chapter
CH Confoederatio Helvetica/ Swiss Confederation
CIA Central Intelligence Agency
Cir. Circuit
cl./cll. clause/clauses
cmt. comment
col. column
Commons House of Commons
Cong. Congress
Cons. Const. Conseil constitutionnel
COP 21 Conference of the Parties 21
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<td>Council</td>
<td>Security Council</td>
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<td>CRS</td>
<td>Congressional Research Service</td>
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<td>CRT</td>
<td>Critical Race Theory</td>
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<td>DCAF</td>
<td>Geneva Centre for the Democratic Control of Armed Forces</td>
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<td>DEA</td>
<td>Directorate for European Affairs</td>
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<td>DPA</td>
<td>Dayton Peace Agreement</td>
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<td>European Court of Justice</td>
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<td>European Journal of International Law</td>
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<td>The High Court of England and Wales</td>
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<td>Foreign Affairs Manual</td>
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<td>Florida International University</td>
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<td>FR</td>
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<td>foreign relations law</td>
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<td>foreign relations power</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>GHASC</td>
<td>Supreme Court of Ghana</td>
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<td>G7</td>
<td>Group of Seven</td>
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<td>HC</td>
<td>House of Commons</td>
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<td>HPCR</td>
<td>Program on Humanitarian Policy and Conflict Research at Harvard University</td>
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<td>International Court of Justice</td>
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<td>International Journal for the Semiotics of Law</td>
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IO(s) international organisation(s)
IPSR International Political Science Review
ItCC Italian Constitutional Court
IVG interruption volontaire de grossesse
J CSL Journal of Conflict and Security Law
KOF KOF Swiss Economic Institute (Konjunkturforschungsstelle)
LQR Law Quarterly Review
L. Rev. Law Review
MC Magistrate’s Court
MLR Modern Law Review
MPs Members of Parliament
NAFTA North American Free Trade Agreement
NATO North Atlantic Treaty Organization
Neb. L. Rev. Nebraska Law Review
NGO(s) non-governmental organisation(s)
NIEO New International Economic Order
OECD Organisation for Economic Co-operation and Development
OHR Office of the High Representative for Bosnia and Herzegovina
PA Parliamentary Assembly of Bosnia and Herzegovina
PCA Permanent Court of Arbitration
PCIJ Permanent Court of International Justice
Res. resolution
S. bills originating from the Senate
SA South Africa
SADC Southern African Development Community
SC Supreme Court
S Ct Supreme Court Reporter
SCR Canada Supreme Court Reports
SCR Indian Supreme Court Reports
Sess. Session
S. Con. Res. Concurrent resolution originating in the Senate
S.J. Res. Joint resolution originating in the Senate
S. RES. Simple resolution originating in the Senate
TPP Trans-Pacific-Partnership
TTIP Transatlantic Trade and Investment Partnership
TWAIL Third World Approaches to International Law
List of Abbreviations

UCLA University of California, Los Angeles
UK United Kingdom
UK Const. L. Blog United Kingdom Constitutional Law Blog
UKSC United Kingdom Supreme Court
UKTS United Kingdom Treaty Series
UN United Nations
UNCTAD United Nations Conference on Trade and Development
UN Doc. United Nations Document (Number)
UNESCO United Nations Educational, Scientific and Cultural Organization
UNFCCC United Nations Framework Convention on Climate Change
UNGA United Nations General Assembly
UNTS United Nations Treaty Series
US United States
US United States Reports
USC United States Code
USSR Union of Soviet Socialist Republics
VCLT Vienna Convention on the Law of Treaties
VP vice president
VRÜ Zeitschrift Verfassung und Recht in Übersee
WTO World Trade Organization
ZAGPHC Gauteng High Court