

SYMPOSIUM ON COMPARATIVE FOREIGN RELATIONS LAW

INTRODUCTION TO SYMPOSIUM ON COMPARATIVE FOREIGN RELATIONS LAW

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This symposium is focused on the emerging field of comparative foreign relations law. That field compares and contrasts how nations (and potentially also the European Union as a supranational entity) structure their decisions about matters such as entering and exiting international agreements, engaging with international institutions, and using military force, as well as how they incorporate international law into their legal systems. The legal materials that make up a nation's foreign relations law can include, among other things, constitutional law, statutory law, administrative law, and judicial precedent. Also of potential relevance to this body of law are normative "conventions" and interpretive understandings that emanate from patterns of governmental practice. Although the collection of legal materials that make up foreign relations law has long been the subject of study in the United States, it has only recently become an area of academic focus in other countries, making this an especially good time to be thinking about comparative analysis.

My own work in seeking to define and study comparative foreign relations law began several years ago when I started organizing a conference on the topic in [Geneva](#), as part of Duke Law School's summer program there. That conference, which was held in July 2015, primarily featured scholars from the United States and Europe.¹ Seeking to broaden the project to other regions of the world, I applied for funding and was fortunate enough to receive a fellowship from the Carnegie Foundation. The fellowship allowed me to organize a conference on the topic in [Tokyo](#) in the fall of 2016.² Subsequently, I organized a third conference, which recently took place in [South Africa](#) with the assistance of the University of Pretoria.³ The additional conferences have allowed me to include in the project a number of scholars from Asia, Africa, and Latin America. There are now approximately fifty contributors to the project, and they are writing chapters for the forthcoming [Oxford Handbook of Comparative Foreign Relations Law](#), which I am editing.⁴

All of the authors for this *Unbound* symposium are writing chapters for the *Handbook*, and their essays address a diverse array of descriptive, normative, and methodological issues implicated by the emerging field of comparative foreign relations law. [My essay](#) aims to help frame the discussion.⁵ It sets forth a definition of foreign relations law, describes its various sources and the types of issues that it regulates, and distinguishes it from international law. It also offers some comparative illustrations of this law in practice and notes some common issues and potential trends that can be studied across jurisdictions. Finally, it considers why foreign relations law has traditionally

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¹ See [Duke-Geneva Conference on Comparative Foreign Relations Law](#), DUKE LAW (Jan. 29, 2015).

² See [Duke-Japan Conference on Comparative Foreign Relations Law](#), DUKE LAW (June 29, 2016).

³ See [Duke-Pretoria Conference on Comparative Foreign Relations Law](#), DUKE LAW (May 10, 2017).

⁴ See [The Oxford Handbook of Comparative Foreign Relations Law](#), DUKE LAW.

⁵ See Curtis A. Bradley, [Foreign Relations Law as a Field of Study](#), 111 AJIL UNBOUND 344 (2017).

not been thought of as a discrete field of study outside of the United States, and it describes how this is beginning to change.

[Joris Larik](#), from Leiden University, focuses on the European Union.⁶ As a background point, he discusses the “paradox” of why, at least until recently, foreign relations law was treated as a field of study primarily just in the United States. He also provides an account of the development of scholarship relating to EU external relations law, and he argues that EU law is likely to play a central role in the emerging field of comparative foreign relations law. This is likely, he contends, for several reasons: the European Union has foreign relations law issues that are of comparable importance and complexity to those presented in the United States (including issues relating to federalism); the European Union, like the United States, has a “normative zeal” to export its values and models of governance; and the European Union, like the United States, has significant economic and military clout, as well as vibrant scholarly institutions.

[Tom Ginsburg](#), from the University of Chicago, considers foreign relations law from the perspective of his study of national constitutions.⁷ He explains that foreign relations functions are essential to the operation of national constitutions, and that this is evident when one empirically studies the texts of various constitutions. He also notes commonalities, differences, and trends in the treatment of foreign relations issues in national constitutions. In addition, he discusses how domestic and international law norms can be either substitutes or complements in national constitutions. Finally, he suggests that the emerging field of comparative foreign relations law can benefit from the methodological and analytical tools of comparative constitutional law.

[Anne Peters](#), from the Max Planck Institute in Heidelberg, explores connections between foreign relations law and the idea of “global constitutionalism.”⁸ She describes the approach of global constitutionalism, including most notably its focus on the extraterritorial effects of domestic and international law, and she argues that this approach supports a “normalization” of foreign relations law—that is, presumptively subjecting it to the constitutional and other legal standards that apply to other governmental action. She focuses in particular on treaty making and the exercise of war powers and discusses various “democratic gaps” in decision-making. She also discusses more generally when foreign relations law should consider the interests of individuals who are not part of the particular national system.

[Congyan Cai](#), from Xiamen University, describes foreign relations law in China.⁹ He explains that foreign relations law is now being taken seriously as a field of study in China, and he notes various legal changes in China that have contributed to this new focus. He also describes the current structure of foreign relations authority in China and notes some differences between the Chinese approach to foreign relations law as compared with the approach of Western democracies. Finally, he describes some recent developments that suggest that Chinese foreign relations law is continuing to evolve in important ways.

We are in the very early stages of the development of this new field of study. There are many definitional, methodological, and normative issues that will need to be addressed as the field develops. Although the short essays in this symposium cannot resolve these issues, my hope is that they will help to prompt additional reflection about the nature of the field and the shape that it should take going forward.

⁶ See Joris Larik, *EU Foreign Relations Law as a Field of Scholarship*, 111 AJIL UNBOUND 349 (2017).

⁷ See Tom Ginsburg, *Constitutions and Foreign Relations Law: The Dynamics of Substitutes and Complements*, 111 AJIL UNBOUND 354 (2017).

⁸ See Anne Peters, *Foreign Relations Law and Global Constitutionalism*, 111 AJIL UNBOUND 359 (2017).

⁹ See Congyan Cai, *Chinese Foreign Relations Law*, 111 AJIL UNBOUND 364 (2017).