

Rudolf Streinz,
Chun-Kyung Paulus Suh (Hrsg.)
**Social Dimensions
of International Law**

Joint Symposium Munich 2012



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Social Dimensions of International Law

Joint Symposium Munich 2012 of Ludwig-Maximilians-
Universität München, Ritsumeikan University Kyoto and
Seoul National University

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Preface

This book contains the presentations of a conference held in the form of a joint symposium in July 2012 in Munich. The institutional background of this symposium is the tripartite partnership program that existed already since 2001 between Ludwig-Maximilians-University Munich (LMU) Faculty of Law, Seoul National University (SNU) Law School and Ritsumeikan University (RU) Kyoto Law School. We are very happy to announce that this partnership is flourishing until the very day today.

2012 has already been the 2nd Joint Symposium following the first held in Seoul, Korea at Seoul National University in 2011 with the main topic: “Current Developments in International Economic Law”.¹ Following the 2nd Joint Symposium in Munich, the first held together with all of our tripartite partnership faculties, the 3rd Joint Symposium has taken place in July 2013 at Ritsumeikan University Kyoto, Japan with the topic: “The Role of the Supreme Court and Constitutional Courts in Japan, Korea and Germany”.²

The symposium in Munich was hosted by the Faculty of Law of the University of Munich in invaluable cooperation with the Max Planck Institute for Social Law and Social Policy in Munich and it had as its main topic “Social Dimensions of International Law”. It served as a chapeau for presentations in both, public and private international law. To grasp the notion of social dimensions of international law as a term is by far not as simple as it seems at first sight. Social dimensions in this context include on the one hand all aspects of social sciences in general, such as changes in the composition of society, the self-concept of society as well as the reception of changes by society. On the other hand, law has its own social dimensions in its norms and principles dealing with social aspects, such as social and collective rights and obligations. It is noteworthy that both paradigms of social dimensions of international law have been elucidated not only by the presenters but also by participants of this symposium in lively discussions that followed each of the presentations. We truly regret that we are not able to reflect the content of these discussions in this publication.

¹ Presentations of the 1st Joint Symposium “Current Developments of International Economic Law” have been published in a special edition of the Seoul Law Journal 53 (2012) 3, pp. 639-778.

² Presentations of the 3rd Joint Symposium “The Role of the Supreme Court and Constitutional Courts in Japan, Korea and Germany” have been published in the Ritsumeikan Law Review 31 (2014) pp. 93-192.

The introduction to this symposium was held by the *co-editor* of this book, giving a broad overview of social dimensions of international law. The overview starts off with social aspects in different instruments of international human rights law, in customary international law and in general principles. Departing the domain of human rights law, social aspects in international economic law in form of trade and investment treaties are presented. Finally, social dimensions of law on the regional level are examined continent by continent.

Social aspects are also included in international environmental law. This aspect has been covered by the presentation of *Hyesoo WON*, dealing with “Social Dimension of Sustainable Development”. A generally accepted legal definition of the term sustainable development does not exist to present. An approach to define the term is based on a three-pillar-model consisting of the three pre-eminent social policy concepts, equity (1), participation (2) and social cohesion (3). In this presentation, each of these objectives in policy terms is examined and justified for the selection of the respective objective for the approach to define sustainable development.

As stated above, social dimensions also include the reception of changes by society and its influence on the law. This aspect is dealt with in the presentation “We, the People? Direct Democracy and Large Scale Projects” by *Dr. Martin HEIDEBACH*. As examples of large-scale projects, he refers to the railway station project “Stuttgart 21” and the construction of the third runway of Munich Airport. In the case of Stuttgart, the project has not been delayed by legal challenge, but by mass protests with the slogan “We, the people”. With this meaningful example, he refers to the call of the people for the possibility of plebiscites and discusses the pros and cons of more elements of direct democracy.

Jong-Hyeok LEE in his presentation “Restitution of Stolen Cultural Property in Northeast Asia – A Public and Private International Law Approach” deals with the social dimension of law in struggling to retribute unjust results of historical events. Giving an overview of the development of the law regarding the interest of restitution of stolen cultural goods, he starts from ancient Roman law, examining domestic laws of European States as well as of States in Northeast Asia, arriving at international instruments. In the following, difficulties in interpreting treaties to determine the authentic meaning of a treaty in the existing bilateral treaties regarding restitution between Korea and Japan as well as between China and Japan are shown. Finally, the UNIDROIT Convention on the restitution of cultural goods as an outlook of a possible solution is examined, presenting all aspects that *de lege lata* prove to be rather stumbling blocks.

“The *forum delicti commissi* under European procedural law” is the title under which *Dr. Christian GOMILLE* presents the difficulties that arise when understandings of the concept of tortious liability in different domestic legal systems within the EU law regime diverge, but need to made fit under one chapeau. This is particularly shown in the rivalry between the principle of *actor sequitur forum rei* and the principle *forum delicti commissi*. The definition of tort law by the European Court of Justice reveals the complexity of the ambitious endeavor to harmonize European Law, in particular tort law. The presentation showcases examples of tort law that can make substantive law fall apart from procedural law and create sheer absurd results. Possible solutions to avoid such unbearable results are presented and round up this presentation.

Finally, the law and its own social dimension in safeguarding social and collective rights are dealt with by *Stephan LORENTZ* in his presentation “The Right to Strike between ILO Labour Standards and the European Convention on Human Rights”. Social rights, a long time disregarded as mere political claims rather than real rights have gone through a development in the 20th century. In light of the decision “*Enerji Yapi Jol Sen*” by the European Court of Human Rights, social rights, such as the right to strike, are presented as acknowledged as interdependent human rights. Juxtaposing the safeguarding function of other organs and institutions such as the ILO with its conventions, the presentation takes a firm stand that the clear separation of liberal rights and social rights has taken steps to be seen as overcome.

Looking back at the series of joint symposia, we cannot but thank our partners at Seoul National University Law School, Professor *Moon-Hyuk HO*, Professor *Seog-Yun SONG* and Professor *Hans-Peter FOLZ* as well as at Ritsumeikan University Kyoto Law School, Professor *Masahisa DEGUCHI* and Professor *Kimio YAKUSHIJI*. All of them are not only partners, but have become close friends and supporters of our Faculty. Furthermore, we wish to specially thank Professor *Dagmar COESTER-WALTJEN*, initiator of this partnership on behalf of LMU, who has institutionalized her personal friendships and *Dr. Philipp M. REUß* who was sedulously promoting this partnership in its early years.

Regarding the symposium, we gratefully acknowledge the financial support by the German Academic Exchange Service (DAAD) for the funding to invite presenters to the symposium, the LMU International Office for its invitation to one of the dinners, Latham & Watkins for financial support and *Gregor STEVENS*, Judge at Landgericht München I for organizing a wonderful guided tour at the Munich Palace of Justice (Justizpalast) including the ascent to the dome of the building and visit of two hearings at the court. We are deeply indebted to our co-host, the Max Planck Institute (MPI) for Social Law and Social

Policy, in particular to its Director, Professor *Ulrich BECKER*. At MPI, we owe special thanks also to *Dr. Monika NISSLEIN* who has greatly facilitated the organization of the symposium with her immense experience and support. *Florian KNERR*, program collaborator at the time, was competent and enthusiastic in all stages of organization and realization of the project. Finally, we thank all staff members of the Chair for Public Law and EU Law at LMU as well as all former LMU exchange students of the Japan-Korea partnership program for taking care of organizational duties in and around the symposium.

This publication has been made possible by *LMU JurAlumni*, the Alumni and Friends Association at the LMU Faculty of Law that has granted the necessary funds. In the editing process, we wish to thank *Katharina BAUDISCH* and *Robin LEICK* for their linguistic and technical support.

Munich in August 2015

Rudolf STREINZ

Chun-Kyung Paulus SUH



Group photo with the participants of the symposium on the rooftop of the MPI

Social Dimensions of International Law

Rudolf STREINZ

I. Introduction

I am very glad that we can have our joint symposium together with our Japanese and Korean colleagues from Ritsumeikan University of Kyoto and Seoul National University (SNU) in cooperation with the Munich Max-Planck-Institute (MPI) of Social Law and Social Policy. This cooperation is based on manifold reasons: Firstly, we would not have such spatial and organisational capacities at the Ludwig-Maximilians-University. Secondly, our faculty of law is interested in strong connections and fruitful cooperation with the Munich Max Planck Institutes. The branch of public international law is connected especially with the MPI of Social Law and Social Policy because of the director of this MPI, my dear colleague Ulrich Becker. As an honorary professor he is not only a Member of our Faculty but also eagerly engaged in giving lectures and seminars within our general programme. He is not only an expert in social law but in European law, too, which is not least proven by his contributions to the third edition of Jürgen Schwarze's commentary on European law that has been published recently. Thirdly, this Max Planck Institute deals with international law as one of its main subjects. Unfortunately we were not successful in getting a chair of public international law at the MPI because the elected colleague, Ms Angelika Nußberger, did not accept her call and stayed at Cologne University for personal reasons. Now Ms Nußberger started her position as judge at the Strasbourg European Court of Human Rights. Nevertheless, there are a lot of international activities of the MPI, especially in cooperation with South-East Asia.

Firstly, I want to give a general overview on social aspects of international law, specifically with a view to economic matters and the consequences of globalization. Then I will present the special aspects of our symposium in this context. In my conclusion I want to demonstrate that the social dimension of international law is a special field of international law that needs and deserves more attention and research.

II. General overview: Social Aspects in International Law

Social aspects are an essential part of international human rights regimes. They are laid down in a lot of international treaties. To some extent they can be found in the other sources of international law that are mentioned in Article 38 of the