

# Foreword

BRIAN J. KENNEDY\*

This final issue of the *San Diego International Law Journal's* twelfth volume is composed of articles which examine a broad range of contemporary legal issues which raise foreign, international, and global concerns. Randall Peerenboom analyzes the role Chinese courts could and should assume in implementing economic and social rights (ESR) in China in his article, *Economic and Social Rights: The Role of Courts in China*. Peerenboom begins with a survey of recent global developments and trends of increasing acceptance of ESR, and highlights the main controversies, debates, and approaches to implementing ESR, elaborating on the concerns about the justiciability of ESR. He then compares the social, legal, political, and economic context in China with South Africa—generally considered a world leader in judicial implementation of ESR—to demonstrate that courts in different countries will and should play different roles in implementing ESR. Peerenboom concludes by recommending that the Chinese judiciary, in addition to working with government agencies, should utilize a more proactive, multipronged approach to implementing ESR in China.

In her article, *The Dangerous Illusion of International Financial Standards and the Legacy of the Financial Stability Forum*, Cally Jordan aims to identify some of the reasons behind the failure of the Financial Stability Forum (FSF)—which was designed to promote financial

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\* Editor-in-Chief, 12 SAN DIEGO INT'L L.J. (2011), J.D. Candidate 2011, University of San Diego School of Law, M.A. Political Science, California State University, Fullerton, B.A. Political Science and Criminal Justice, California State University, Fullerton. I would like to thank the Editorial Board and Members of the *San Diego International Law Journal* for their outstanding contributions to the success and completion of this volume. I would also like to thank my family—my wife Valerie and my son Alexander—for their continued love and support throughout the publication process.

stability across national borders and provide an early warning to financial crisis—to prevent the global financial crisis of 2008 (GFC). Jordan begins her article by pinpointing some of the immediate causes of the GFC, and later applies chaos theory to gain operational insight into the financial crisis. She then analyzes the role of the FSF and the Financial Sector Assessment Program (FSAP)—which was designed to monitor and assess financial stability on a country by country basis—to highlight the inadequacies of the FSF’s “soft law” approach to creation of international standards and the limitations of the FSAP exercises. Jordan concludes by assessing the successor institution to the FSF, the new Financial Stability Board.

Yu-Hsin Lin attempts to empirically assess the extent to which independent directors in Taiwan constrain tunneling—the extraction of private benefits by controlling shareholders at the expense of non-controlling shareholders—in her article, *Overseeing Controlling Shareholders: Do Independent Directors Constrain Tunneling in Taiwan?* Lin begins with a review of relevant corporate governance literature to lay the foundation for her empirical analysis, followed with a discussion of her research methodology which primarily consisted of in-depth interviews with independent directors of Taiwanese public companies. Next, she assesses the current corporate environment in Taiwan, focusing on corporate governance, related party transactions, and recent corporate board reform. Lin then uses empirical evidence to demonstrate that independent directors are functionally limited in overseeing internal control and preventing tunneling. Lin concludes with an analysis of institutional constraints on independent directors effectiveness—information asymmetry and the transplant effect—to prevent controlling shareholders from tunneling.

In his article, *Gangs, Violence, and Victims in El Salvador, Guatemala, and Honduras*, Juan J. Fogelbach attempts to provide greater insight into gangs, violence, and state response in El Salvador, Guatemala, and Honduras. He begins his article by detailing the origins and structure of *Mara Salvatrucha* (MS-13) and 18th Street (M-18)—the two largest Central American gangs. Fogelbach then proceeds to shed light on gang recruitment methods, including voluntary and involuntary association, the initiation process, and when gangs permit disassociation. He then discusses gang violence in El Salvador, Guatemala, and Honduras—which includes homicide, organized extortion, and civilian massacres—that contributes to the escalating violence in the region. Fogelbach concludes by detailing state responses to the escalation of gang violence, which primarily consist of enacting gang injunctions and resurrecting clandestine death squads to eradicate gang violence.

Jamie Altman analyzes the Lehman Protocol and how it was designed to address and overcome the unique problems arising from international insolvency proceedings in her comment, *A Test Case in International Bankruptcy Protocols: The Lehman Brothers Insolvency*. Altman begins with a discussion of the competing theories underlying bankruptcy systems—universalism and territorialism—and then details the various statutory solutions to problems which arise from international insolvencies. She next analyzes the Lehman Protocol in-depth; demonstrating the theory underlying the protocol—a private agreement between parties in an international bankruptcy—is modified universalism which is one theoretical bankruptcy model that could potentially govern international bankruptcy. Altman concludes by assessing the potential threats to the Lehman Protocol's success—namely parties' reluctance to adopt the Protocol—and suggesting additional provisions for future protocols to address problems associated with forum shopping and multinational companies with multiple legal entities.

In his comment, *The Global H1N1 Pandemic, Quarantine Law, and the Due Process Conflict*, Gregory P. Campbell argues that the U.S. Centers for Disease Control (CDC) should develop a uniform due process standard to govern all quarantine procedures in the United States, and recommends the World Health Organization (WHO) adopt and incorporate the standard into the International Human Regulations (IHR). Campbell first analyzes the 2009–2010 global H1N1 pandemic as a case study to demonstrate how quarantine orders can impact due process rights. He next examines the legal foundations for due process rights, and surveys history to illustrate how quarantine orders have restricted those rights. Campbell then proceeds to analyze the newly revised IHR and its failure to provide proper procedural due process protection, as well as the WHO's authority to obtain member compliance. He then turns his attention towards U.S. quarantine procedures, assessing the adequacy of the due process protection afforded by CDC, state, and local regulations. Campbell concludes by discussing the realities of quarantine orders and how a uniform due process standard would better prepare the international community for global health emergencies.

Finally, Lauren González analyzes *In re Briones* and the broad implications of the Board of Immigration Appeals' (BIA) restrictive interpretation of the LIFE Act in her casenote, *One Time Too Many: In re Briones and the BIA's Rigid Interpretation of the LIFE Act and its Dire Consequences for Undocumented Reentry*. González begins with

an analysis of the LIFE Act—its origin, creation, and potential. She then examines the BIA’s decision interpreting the LIFE Act in *Briones*—that inadmissibility under Immigration and Nationality Act (INA) § 212(a)(9)(C)(i)(I) precludes aliens from adjusting their status under INA § 245(i)—which conflicts with prior U.S. court of appeals precedents and is counter to legislative intent. González then analyzes recent U.S. courts of appeals decisions post-*Briones* which have reluctantly adopted the BIA’s rigid interpretation of the LIFE Act. She concludes by calling for either the BIA or Congress to overturn the *Briones* decision, or for the U.S. courts of appeals to rule BIA’s interpretation arbitrary, and thus not bound.