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## Austrian Review of International and European Law

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#### Editorial

The University of Vienna has a very fruitful cooperation with Stanford University, a cooperation that provides a regular forum for bilateral conferences on current topics in different fields of mutual interest. The kick-off conference was inspired by Professor Norman Naimark's research project 'Austria in the Postwar World' which offered a three-year series of workshops on Austria under Allied occupation, Austria and the Cold War, and Austria and the New Europe. The first conference was held in 2004, followed by conferences in 2006 and 2009. The 2011 Stanford–Vienna Human Rights Conference brought together international lawyers from both sides who discussed the different approaches of the United States and Europe on various human rights issues. The conference was organized by the Department of International Law and International Relations of the University of Vienna Law School, together with the Ludwig Boltzmann Institute of Human Rights and the inter-disciplinary Research Platform 'Human Rights in the European Context', and took place at the University of Vienna from 20 to 22 June 2011.

The speakers were invited to submit their papers to be published in the *Austrian Review of International and European Law* and the great majority accepted that invitation. Such an invitation is similar to pro-active commissioning of contributions which, by its very nature, implies an important, theoretically self-compromising, compromise: that is, a limited ability to influence, or even control, the quality of contributions. However, we think that this downside – in the rare case it materializes – is counterbalanced by the broad variety of topics, arguments, ideas, analyses, controversies, discussions, (new) approaches etc., which would not – or not so easily – be achieved otherwise.

The conference papers submitted as a consequence of our invitation deal with three subject areas: first, a comparison between the US and Europe in the field of monitoring, protection and enforcement of human rights; second, responsibility to protect in the case of Libya; and third, corporate social responsibility, asylum and human trafficking.

This volume also contains the third Franz Vranitzky Lecture, given by Professor Dinah Shelton. In 2007, the University of Vienna established an endowed chair in honour of former Federal Chancellor Franz Vranitzky on the occasion of his 70<sup>th</sup> birthday. In 2011, Professor Dinah Shelton was appointed to this endowed professorship for one year. Her inaugural lecture was titled 'Regional Approaches to Human Rights: Europe and the Americas' and thus fits well in the framework of the Stanford–Vienna Human Rights

Conference. We are happy to publish a revised and extended version of her lecture in the *Review*.

Dan Svantesson's article testifies to the broad scope of the *Austrian Review* as a truly international law journal that is not limited to public international law, but also covers – as contained in its title – European law and, as part of a broad perception of international law, the conflict of laws. Dan Svantesson analyzes the applicable law in internet-based violations of privacy and personality rights against the background of the Rome II Regulation.

As usual, the final words are devoted to our indispensable helping hands without which the *Review* would not exist. These hands belong to Jane A. Hofbauer as executive editor and Andrea Bockley and Markus Beham as editorial assistants, who have edited the entire manuscript and performed all other editorial work to our fullest satisfaction; and to Scarlett Ortner for producing the camera-ready manuscript in a virtually flawless manner. These words of thanks have become a matter of routine; yet they should be – and really are – expressed with sincere gratitude.

Stephan Wittich on behalf of the editorial board

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## Stanford – Vienna Human Rights Conference:

US-American and European Approaches to Contemporary Human Rights Problems

#### Preface

Human rights, as they are protected today in the constitutions of states and in a growing number of international human rights treaties, have their origin in the American and French revolutions of the late 18th century. The United States, France and other European states were also the driving force behind the development of international human rights protection as a reaction against the Nazi Holocaust. On the basis of the Universal Declaration of Human Rights of 1948, the member states of the Council of Europe adopted the European Convention on Human Rights in 1950 and over the years developed the most sophisticated system of regional human rights protection, crowned with a full-time European Court of Human Rights in Strasbourg. In addition, the European Union has moved from an economic integration organisation to a political union with a strong human rights component.

When the Organization of American States adopted the American Convention on Human Rights on the model of the European Convention in 1969, the United States refused to ratify the Convention and to accept the jurisdiction of the Inter-American Court of Human Rights in San José. Similarly, the United States did not recognise any of the individual complaints mechanisms under the various UN human rights treaties. Based on the ideology of American exceptionalism, the United States wishes to remain a dominant player on the international human rights scene without subjecting itself to any meaningful international human rights scrutiny. Even the US Supreme Court, which for many years was the motor behind the progressive development of the domestic human rights discourse, seems to have become very lenient towards human rights violations by the US Government, most notably during the time of the Bush administration.

In June 2011, leading human rights scholars from the universities of Stanford and Vienna gathered in Vienna to discuss these divergent developments of human rights protection in the United States and Europe. In addition to analyzing the various human rights mechanisms of the Council of Europe, the European Union and the Organization of American States and their impact on real life in Europe and the United States, the participants discussed specific human rights problems relevant in both hemispheres, such as asylum, immigration, human trafficking, and business related human rights violations as well as the phenomenon of American exceptionalism, or the recent application of the 'Responsibility to Protect' doctrine in the case of

Libya. The outcomes of their comparative deliberations are published, albeit with some delay, in the present issue of ARIEL.

Manfred Nowak, Vienna, September 2013

#### Part I:

Monitoring, Protection and Enforcement of Human Rights in Comparison – the US and Europe