2014

FLE Learning

International Conference on Trade, Business Economics and Law
&
Annual Conference on Intellectual Property and International Law

Conference Abstracts

ICTBEL 2014 (London) & ACIPIL 2014 (London)
17-19 November 2014

ACIPIL London

ICTBEL London

FLE Learning

International Conference on Trade, Business, Economics and Law
&
Annual Conference Intelectual Property and International Law

ICTBEL 2014 (London) & ACIPIL 2014 (London)
Conference Abstracts

List of reviewers

The conference organisers would like to express their gratitude for the contribution made by following committee members for the abstract papers reproduced in these proceedings.

Dr Avnita Lakhani
Dr Monika WIECZOREK-KOSMALA
Dr. Indianna Minto-Coy
Dr. Joanna Błach
Dr. Nitin Upadhyay
Dr. Poomintr Sooksripaisarnkit
Dr. Rajesh Sharma
Dr. Ramandeep Chhina
Dr. Zhixiong Liao
Dr. Zinatul Zainol
Miss. Kate Masih
Mrs. Andrea Bockley
Ms. Florence Simbiri-Jaoko
Ms. Mercy Khaute
Prof. Tshepo Herbert Mongalo

Format for citing papers
Author surname, initial(s). (2014). Title of paper. In proceedings of the Annual International Conference on Law, Economics and Politics, (pp. xx-xx). London, November 17th – 19th, 2014.

These proceedings have been published by the FLE Learning Ltd trading as FLE Learning.
T: 0044 131 463 7007 **F**: 0044 131 608 0239 **E**: submit@flelearning.co.uk **W**: www.flelearning.co.uk

TABLE OF CONTENTS

CAPITAL AS A FACTOR IN BANK RISK TAKING: EVIDENCE FROM NIGERIAN COMMERCIAL BANKS

Dr. Ogochukwu Okanya[1]

Using empirical evidence from Nigerian commercial banks, this paper examines the role of capital as a possible factor in bank risk taking. Bank capital is believed to serve the crucial purpose of providing a cushioning "shock absorber" effect and so it became important to ascertain what effect bank capital has on a bank's propensity to take more risk. Given the frequent demands that Nigerian banks improve on their capital by the regulatory authorities, it became important to determine whether banks were more likely to take on more or less risk with higher bank capital. The ratio of risk assets to total assets was used as proxy for risk taking while the capital to risk weighted assets was used to proxy for bank capital. Our findings show that Nigerian banks increasingly took on more risk as bank capital increased over the years.
Key words: Bank Capital, Risk Taking, Risk assets

D1P1

FOREIGN CAPITAL, INVESTMENT, AGRICULTURAL EXPORT AND ECONOMIC PERFORMANCE IN SOME SELECTED ECOWAS STATES: A PANEL DATA ANALYSIS.

Dr. Sola Olorunfemi[2]

The study looked at the impact of foreign capital, investment and agricultural export on economic performance in some of the ECOWAS states. While the specific objectives were (i) to evaluate the growth rate of foreign debt, investment, and agricultural export, (ii) to determine the structure of agricultural export, (iii) to measure the relationship among foreign debt, investment, agricultural export and economic performance. The study was carried out on the proposed West Africa Monetary Zone (WAMZ) of the ECOWAS countries. These countries are Gambia, Ghana, Guinea, Nigeria and Sierra Leone. Data used for this study was extracted from CIA World Factbook. These Data were analysed using Panel Data. The fixed effect results indicate positive relationship between GDP and each of external debts, agricultural export for animal and agricultural export for vegetable products. A 1% change in foreign debts, agricultural export for animal and agricultural export for vegetable products lead to 4.9, 21.2 and 191.9 percent change in GDP respectively. However, there is a negative relationship between GDP and investment. A 1% change in investment, leads to 6.8 percent reduction in GDP. However, random effect results indicate positive relationship between GDP and investment. The results also show that foreign capital, investment and agricultural export positively affected both the foreign exchange reserves and balance of payments for the countries. While only foreign debts and agricultural export affect non-economic (infant mortality and life expectancy) performances. The study concluded that to achieve rapid economic growth maximum efforts will have to be directed toward increasing agricultural export, and that foreign debts should be well directed and investment vigorously pursued in each of the countries.

D1P2

THE ECONOMICALLY PROFITABLE INVESTMENT PROJECT IS THE ASPECT OF THE LEVEL OF ECONOMIC DEVELOPMENT OF THE REGION

Dr. Haishat Karmokova[3]

Co-Author(s) : Tkhamokova S.M. and Shogenova M.H

This article is devoted to analytical survey of investment attraction of the region into the capital by years and its evaluation. The special importance of the main economic improvements, and specifically the direction of investment policy of the region, the relevance of the choice of the most effective ways of its solution of the region, a necessity arose to solve the problems of improvement of measures for its

[1] Dr. Ogochukwu Okanya, Principal Lecturer, Institute of Management and Technology, Enugu, Nigeria..

[2] Dr. Sola Olorunfemi, Associate Professor, Adekunle Ajasin University.

[3] Dr. Haishat Karmokova, Docent at Department of Accounting, School of Accounting and Audit, V.M.Kokov Kabardino-Balkaria State Agrarian University.

realization. In this case, it is in perspective, the investment project of creation of the enterprise, on the basis of plants, not applicable, for the production of electronic equipment, with the purpose of organization and development of production in Kabardino-Balkaria with low cost and high competitive in the world market.

Keywords
The dynamics, money incomes, investments, capital, economic profitability, investment project.

D1P3

FISCAL DISPARITIES, YARDSTICK COMPETITION, AND THE WELFARE EFFECTS OF FISCAL EQUALIZATION TRANSFER

Prof. Yasuyuki Nishigaki[4]

Many researchers have focused on the advantages of public goods being provided by a local government rather than the central government. Tiebout indicated that "voting with feet" leads to an optimal provision of local public goods if residents can migrate from one municipality to another in order to maximize utility. This so-called Tiebout hypothesis has subsequently been used as a theoretical basis for decentralizing the provision of public goods. Owing to residents' free mobility, the performance of local governments is interrelated in a competitive environment. Furthermore, local governments are disciplined to provide public goods efficiently. However, the hypothesis is founded on rather unrealistic assumptions, including perfect information and the "free mobility" of residents.

The interaction among local governments is facilitated by tax competition owing to the inter-jurisdictional mobility of the tax base. Here, the unfavorable externality of a loss in a local government's tax base causes strategic behavior when setting tax rates. This intergovernmental competition results in inefficiency (Wildersin, Brueckner and Saavedra).

Oates directed his attention to the imperfect and asymmetrical information in the provision of local public goods, and indicated that a decentralized local government supplies differentiated public goods according to local needs. Furthermore, this is preferable to public goods supplied by a centralized government, which provides a uniform amount to each district (Oates' Decentralization Theorem). The predominance of information available from local governments over that from the central government plays a key role in providing differentiated public goods in accordance with local needs.

The theory of local yardstick competition states that comparing public services levels and tax rates with those in nearby localities is a useful way to assess the performance of a local government. According to Besley and Smart, local yardstick competition offers voters an effective way to assess and elect administrators. By comparing their incumbent's performance to that of administrators in similar jurisdictions, voters can elect better politicians.

However, Allers pointed out that fiscal disparities bias this yardstick comparison. When fiscal disparities exist, a politician in a wealthier jurisdiction can take more rent than a counterpart in less favored fiscal circumstances, without compromising his/her reputation (Allers). In this case, transfers from wealthier jurisdictions to those that are less wealthy may decrease the fiscal disparities and improve the efficiency of yardstick competition.

Many studies have investigated the effects of fiscal transfers. Mayers, using Tiebout's type-two region model, indicated that a voluntary fiscal transfer by the wealthier jurisdiction causes the population to migrate and decreases the fiscal disparities between the two jurisdictions. This improves the welfare in both regions. Boadway, Horiba, and Jha found that fiscal equalization transfers by the central government decrease the abuse of fiscal disparities, under asymmetric information, between a local

[4] Prof. Yasuyuki Nishigaki, Professor, Faculty of Economics, Ryukoku University.

governor and residents. Kotsogiannis and Schwager investigated the effect of fiscal equalization transfers on accountability. They showed that yardstick competition is more effective if differences in revenue capacities are equalized, although they did not address the welfare effects of transfers.

In this study, we use the yardstick competition model to investigate the welfare effects of fiscal equalization transfers. We find there is a possibility of a win–win situation, in terms of welfare, for both the lender and recipient in a fiscal equalization transfer. Our study contributes to the existing body of research in two ways. First, our yardstick competition model considers residents' consumption choices, which are crucial when judging how welfare effects are used to analyze the equilibrium of asymmetrical jurisdictions, as well as the welfare effects of equalization transfers. To the best of our knowledge, this study is the first to apply a yardstick model to these issues. Second, our model does not require the free migration of taxable resources, such as residents, to equalize the discrepancies between jurisdictions and improve welfare. The only factor included as a fiscal externality is information about the relative performance of neighboring governors.

D1P4

THE LEGAL IMPACT OF GLOBAL COLLABORATION ON BUSINESS, LAW AND POLITICS

Mrs. Olufunmilayo Olumese[5]

This paper discerns if interdisciplinary globalization in world economies, social justice and good governance will enhance justice, sustainable development and establish and implement viable state policies for good governance worldwide. The governed are generally discontent by the corrupt practices of leaders which disenfranchises the masses and the consequences of which include: infringement on human rights; anarchy, insurgencies, insecurity, impoverished economies, abuse of the rule of law and non-viable state policies that would not benefit the common man. This paper discovers that – enhanced commerce, law and politics are indices of a viable economy ; their globalization should cut across state boundaries since 'Man', a 'social being', interacts widely. Study shows that world economies are making frantic efforts to maximize their areas of comparative advantage particularly due to world technological advancement, given the challenges of sustainable development and the world is now a global village. Afterall, "Global Alliance for Justice Education" [GAJE] has postulated that enhanced "human right" can impact appropraitely on commerce, law and politics. Hence, this paper suggests that: "Social justice" is "equity" which is in consonance with the principles of fairness as well as "fundamental human right" hinged on economic, social, cultural and educational rights [ESCERs], the Human Right group regards this a good measure to good-governance that must be fulfilled, protected and respected by all irrespective of status for better world output in commerce, governance and law. This paper concludes that the benefits of globalizing commerce, law and politics include:

- Better governance;
- Enhanced world economies for better living standards;
- Mitigates Anarchy and world insurgencies;
- Reduces the difference in world economic competition, capital and human flights from the underdeveloped to the developed world economies, and finally
- Enhances sustainable development.

KEYWORDS: Globalization; Mitigation; Social Justice and Governance.

D1P5

[5] Mrs. Olufunmilayo Olumese, Lecturer II, Ambrose Alli University, Ekpoma, Edo State.

DEVELOPMENTALIST PERSPECTIVES ON COUNTERMEASURES IN INTERNATIONAL TRADE LAW: A COMMENTARY ON THE PRACTICE OF INTERNAL MEASURES FOR EXTERNAL VIOLATIONS

Mr. Shrey Patnaik[6]

International trade law contains several provisions for the special treatment of developing countries. It is reasoned that this differential treatment is necessary to counterbalance disadvantages arising out of the compulsoriness of the World Trade Organization (WTO) structure. Thus, in this context, developmentalism is an effort to concentrate on the efforts of the international trade law regime to bolster the ground of developing economies.

Countermeasures are an essential enforcement mechanism in international law, including the law relating to international trade. Regulated forms of countermeasures are permissible, even encouraged, by the WTO adjudication system. These countermeasures are limited by restraints when used against developing countries. Nevertheless, a controlled form of such measures is an integral component of the reactive nature of international trade law.

However, in recent practice, countermeasures have not been restricted to violations of WTO law. Recent practice evidences the usage of countermeasures against countries violating extra-WTO laws. The examination of such practices is relevant for first, the formulation of a consistent rule of international law and second, testing the developmentalist dimensions of such instances. However, supportive principles and practices from non-external violations countermeasures are also utilized in relevant analysis.

The literatures attempts to crystallize such practice into coherent legal principles that are fundamental for the development of such enforcement mechanisms. It is also imperative that the fundamental reasons for which such measures are undertaken are examined. It is argued that such measures are resorted to partially due to the limited jurisdictional extent of the WTO adjudicatory mechanism.

Thus, it is emphasized that the practice of internal countermeasures as a response to external violations is intrinsically representative of the developmentalist nature of International Trade Law. It is important to ensure safeguards and limitations on the implementation of such measures against disadvantaged developing countries for the protection of their interests in an unequal plane. The consistent rule of law dissected from recent practice supports this trend, furthering the concept of developmentalism in international trade law.

D1P6

WHEN COMMUNICATION IS LETHAL: THE BT DRONE STRIKES CASE AND CORPORATE LIABILITY

Dr. Ozlem Ulgen[7]

On 26 September 2012, BT Group plc signed an STM-16 fibre-cable contract with the US government to supply a fibre-optic communications cable that connects RAF Croughton to Camp Lemonnier. RAF Croughton in Northamptonshire, UK, is a US Air Force communications station. Camp Lemonnier in Djbouti, East Africa, is the US base for operations by unmanned air vehicles (drones) undertaking "targeted killings" in Yemen and Somalia. Since 2002 the US has conducted over 300 drone strikes in several countries under a policy to target and eliminate terrorist suspects. Strikes have killed alleged terrorists and civilians, such as the relatives of two Yemeni men; Mohammed al-Qawli and Faisal bin Ali bin Jaber. On 15 July 2013, Reprieve, a UK-based NGO, filed a complaint against BT on behalf of the two men alleging breaches of the 2011 OECD Guidelines for Multinational Enterprises. The complaint was filed with the UK National Contact Point (NCP) (Department for Business, Innovation and Skills), which is the body responsible for promoting and implementing the Guidelines. The NCP's October 2013 Initial Assessment concluded that the complainants "have not substantiated a link between the company's

[6] Mr. Shrey Patnaik, Student, National Law University, Delhi.

[7] Dr. Ozlem Ulgen, Senior Lecturer in Law and Deputy Director of Research, Birmingham City University.

actions and the issues raised sufficient to give it any obligation under the Guidelines beyond a general level of due diligence." A subsequent review of the decision by a Review Committee in January 2014 also rejected the complaint on the basis that there had been no procedural failings on the part of the NCP.

The BT Drone Strikes Case raises important issues about the extent of MNE knowledge and complicity in conducting business dealings which are or have the potential to be harmful. With global economic power comes corporate responsibility to ensure business activities do not have adverse human rights impacts. MNEs cannot avoid responsibility by pleading protection under private contractual dealings where there is a clear public interest. MNEs also cannot fulfil this responsibility by simply citing the lack of prohibition under national or international law. Many MNEs have corporate social responsibility agendas, codes of conduct and guidelines. But these prove impotent if not legally enforceable. With these issues in mind, this paper analyses the case in terms of effective MNE due diligence practices, identification of business activities which cause or contribute to adverse human rights impacts, weaknesses in the NCP complaints procedure, and the possibility of establishing corporate liability.

D1P7

THE CASE FOR MULTIPLE DERIVATIVE ACTIONS IN EUROPE

Mr. Georgios Zouridakis[8]

The recent crisis can be perceived as resulting from an ensemble of factors, one of its components being a series of misfeasance identifiable in corporate decision making. Therefore, as a matter of natural course of events, the accountability mechanisms in place are being put to question. This article examines an "uncharted territory" in the law of public limited companies of European countries that is intertwined with private enforcement of directors' duties and meant to address problems arising from the growing complexity of inter-corporate structures; "multiple derivative actions".

Multiple derivative actions, briefly described, are a species of derivative actions; whereas a member of a related body corporate (be it a parent company, the holding company of the parent et cetera) can bring an action on behalf of the wronged entity. Despite being in place in what can be collectively referred to as "common law countries" for some time now, multiple derivative actions are nowhere to be found in European civil law jurisdictions; the case of permitting them is not perfectly clear under common law either. Expectedly, the literature on shareholders' remedies in Europe has only recently started to develop some interest on the matter. Given thus recent developments in English case law and the respective, reignited discussion on the topic therein, it is timely to consider whether multiple derivative actions are indeed needed in general; and, if so, the grounds on which such actions should be permitted. Identifying such a necessity thereof, this study purports thus to crystallise the nature of multiple derivative actions and their operation alongside the related mechanism of "single" derivative actions. To reach these objectives, this study undertakes an examination of selected (common law and civil law) jurisdictions and attempts to draw insights from the (rather limited) relevant literature. The comparative study also looks into the compatibility of the mechanism with the core company and procedural law principles of both civil law and common law countries; particular focus being on the tension between remedying (and deterring) injustice at a multi-layered inter-corporate level and respecting the separate corporate personality of the firms involved in such litigation. Resulting from this endeavour is the argument that European jurisdictions could and should consider introducing multiple derivative actions; the study going further to suggest a set of principles to be followed in the introduction of the latter shareholder remedy to a legal order. The practical value of this proposed framework resides in providing clear guidance as to what conditions claimants should meet in bringing a multiple derivative action; under statute or otherwise.

D1P8

[8] Mr. Georgios Zouridakis, PhD Student/Graduate Teaching Assistant, University of Essex.

SOUTH AFRICA'S BROAD BASED BLACK ECONOMIC EMPOWERMENT POLICY: A CATALYST TO LABOUR UNREST IN THE MINING INDUSTRY

Dr. Renee Horne[9]

Since the inception of Black Economic Empowerment (BEE) in 1994, its legislative successor, B-BBEE in 2003 and the Amendment Bill of 2011, studies have focused on the rationale behind the government's decision to continue with the economic redress policy. The architects of B-BBEE contend that this is an economic development policy; aimed at deracialising the economy by ensuring the majority of historically disadvantaged participate meaningfully within the South African (SA) economy, (Chabane, 2003). BEE detractors argue that the policy is often contaminated by corruption, hence widening the gap between the rich and the poor. According to Hamann, Khagram & Rohan (2008), B-BBEE was established to address specific problems related to poverty, unemployment, housing and basic services in order for economic transformation to become a reality. Post 1994, these issues continue at an increasingly alarming rate in the country. Consequently, South Africa's income inequality gap continues to widen, with a minority of Black South Africans forming part of the ultra-wealthy, known as the Black Elite. Since 1994, 5% of Black incomes rose by 45% while the poverty level has increased from 45% to 55%. The income inequality gap has created tensions with a series of strikes in various mining areas in South Africa.

The mining industry was the first to introduce BEE and is currently the largest BEE contributor of the transfer of ownership between Black and White stakeholders. The ownership deals of approximately £8.4 billion have benefitted a few Black Elite in the country however this has not filtered down to the majority of mineworkers who earn an estimated £450 per month. The B-BBEE Mining Charter focuses on significant investments in socio-economic development and enfranchising Black South Africans to own or manage mines; however the latter has been achieved with the former lacking implementation, hence the labour unrest resulting in South Africa's poor economic performance. In 2012, the SA economy contracted 0.5% due to the mining strike in Marikana in the North-West Province where 34 mineworkers were killed. The five-month long platinum strike in 2014 resulted in the economy contracting 0.6%. The series of labour unrest has been a response to low wages, poor working and living conditions in the SA mines. This has also hampered the industry's economic performance, with a reduction in the mining industry's Gross Domestic Product (GDP) contribution to the economy from an average of 20% in the 1970's to 4.9% in 2013.

This paper evaluates the effects of B-BBEE within the SA mining industry, with the contention that the policy has made limited inroads in addressing the socio-economic conditions of the country, moreover mineworkers. Since the new democratic dispensation in 1994, the policy has perpetuated a Black Elite. With the use of exclusive interviews from cabinet ministers, BEE consortia and mining multinationals triangulated with B-BBEE data and reports, the paper provides the first in-depth examination on the progress and failures of B-BBEE while simultaneously providing recommendations for policymakers.

D1P9

FEASIBILITY OF THE CURRENCY UNION IN EAST ASIA VIA THE SVAR APPROACH

Dr. Behrooz Gharleghi[10]

Following closer monetary cooperation among East Asian countries in recent years, this paper empirically investigates the feasibility of forming a currency union in Indonesia, Malaysia, Philippines, Thailand, Singapore, China, Hong Kong, Japan, Korea, and Taiwan by examining the symmetry of underlying shocks for the most recent period post-crisis (1999 to 2013) and by testing correlation in shocks. Using a five-variable structural vector autoregressive model, we identify various types of shocks in ten East Asian economies. Impulse response function and variance decomposition of shocks are used to identify the size, speed of adjustments to shocks, and the root cause of variability in macro variables. Results from

[9] Dr. Renee Horne, Senior Lecturer: Economic, WITS BUSINESS SCHOOL.

[10] Dr. Behrooz Gharleghi, Senior Lecturer, Asia Pacific University of Technology and innovation.

VDC analysis show that supply shocks are predominant shocks for the variability of average real output for all East Asian countries except Hong Kong and Malaysia. In contrast, external supply shocks are predominant shocks for the variability of the average price level for all East Asian economies except Japan, Korea, Singapore, and Taiwan. Fluctuations in real exchange rates are predominantly generally caused by demand shocks in all East Asian countries, except China, Korea, and Singapore. Monetary shocks, external monetary shocks, and supply shocks are the predominant causes of exchange rate variabilities for China, Korea and Singapore, respectively. Thus, important policy implications are needed in exchange rate regimes in these countries. Finally, the results from impulse response function show that the size of disturbances is small and hence make these countries eligible to form the currency union. The result from the speed of adjustment to shocks shows that adjustment to shocks in East Asia is faster than previous periods covered by other researchers. The apparent implication is that, given the disparities, the formation of a currency union becomes more feasible for the region during recent years especially after the crisis. In overall, empirical analysis suggests the capacity of the sub region comprises of Indonesia, Japan, Hong Kong, Korea, Malaysia, and the Philippines to endorse the common currency area.

D1P10

ACCOUNTING POLICY UNDER TAS # 16 (PROPERTY, PLANT AND EQUIPMENT): THE CASE STUDY OF PROPERTY DEVELOPMENT SECTOR OF STOCK EXCHANGE OF THAILAND (SET)

Dr. Sasivimol Meeampol[11]

Thailand Accounting Standard (TAS) # 16 (Property, Plant and Equipment) framework the accounting treatment for most types of property, plant and equipment. Property, plant and equipment are primarily measured at its cost, subsequently measured either using a cost or revaluation model, The depreciated also are applied, so that its depreciable amount is allocated on a systematic basis over its useful life. This research aims to study the following: 1) the principle of TAS # 16, recognition, initial measurement, subsequence expenditure, and disclosure, (2) the accounting policy under TAS # 16 about subsequence expenditure on the Property, Plant and Equipment of the firms listed on the Stock Exchange of Thailand (SET) under property sector, and (3) analyzing the effect of accounting policy about the subsequence expenditure of financial statement, which studied on the financial ratio. This study adopts an explanatory case study as its research method and the data is collected in the financial statement year 2012 and 2013 respectively. The results showed that the subsequence expenditure on the Property, Plant and Equipment is defined as accounting policy among : 1) the cost method or 2) the revaluation method, which the revaluation method will be affect the amount of asset, equity on the statement of financial position. Also, it will affect the amount of net income on the comprehensive income statement if the fair value is lower than the cost. It will affect the financial ratio, especially on the profitability ratio. As a result of studying on the accounting methods of revaluation of PPE on the property sector, the study found that almost firms in this sector defined accounting policy on the revaluation model. Therefore, the stakeholder especially the investors should be aware about the accounting method of firms because it will affect the financial performance. The Awareness of accounting methods used by a certain businesses facilitates prospective investors on the extent of their investments in such assets and the movements therein.

D1P11

[11] Dr. Sasivimol Meeampol, Dean of Faculty of Business Administration, Kasetsart University. Co-Author Dr. SuparerK Suksaman

AN APPRAISAL OF INJUNCTIVE REMEDY OF ANTO PILLER ORDER TO COPYRIGHT INFRINGEMENT IN NIGERIA.

Mr. Oladiran Ayodele[12]

The primary function of Copyright under the law is to prevent someone from taking possession of the fruits of another person's work or labour. Where a person takes possession of the fruits of another person's work or labour, law provides remedy. One of the remedies is Anto piller, and it has emerged globally as highly cherished remedy to copyright infringement both in Nigeria and worldwide. By virtue of these terms, the copyright owner is given the means whereby he may be able to establish the source of supply of pirated works, and the extent of sales, which have taken place, which will assist him in establishing the amount of damages to which he may be entitled. Despite this unique opportunity afforded by Anto Piller, infringement is still rampant. As such this paper considers what constitute infringement of copyright and the opportunity afforded by injunctive remedy of Anto Piller to copy right owner to enforce his right. The study x-rays the development and practice of an Anto Piller in Great Britain and globally. The work discusses Injunctive remedy of Anto Piller being essentially an ex parte application thereby foreclosing the right of the defendant to fair hearing as enshrined in the Nigerian Constitution of 1999 and the Evidence Act, Laws of Federation of Nigeria, 2004. It discusses incidences of infringement of copyright and how useful Anto Piller has been in curbing the prevalence of copyright infringement in Nigeria. It x-rays the obstacles to the use of Anto Piller in Nigeria that resulted into its ineffective use despite its usefulness globally. The paper considers the inadequacies of the legal frameworks to curbing the infringement of copyright in Nigeria, and observes the discrepancies between national laws and international law on the concept copyright vis-à-vis the use of Anto Piller. It discusses how these discrepancies can be rectified through legislation.

D1P12

NOVELTY AND THE PROOF OF ORIGINALITY

Dr. Alin Speriusi-Vlad[13]

Novelty represents the basis for any proof of originality, including a presumption of originality that can be recognize only after a novelty analysis. This issue raises a particular interest from the doctrine, based on the incoherent national case law. In Romania the courts are trying to recognize a presumption of originality, while in France the Supreme Court severely punish this practice. The rules referring to the burden of proof should not affect how originality is proven. Originality should be based on an undisputed material fact, which can be determined or assessed objectively, as the novelty of the intellectual creation. The burden of proof which falls to a participant in a legal proceeding does not create a presumption in favor of the other party in the same proceeding, but rather the existence of a presumption affects in a decisive way the burden of proof, in the sense that it falls to the one who does not enjoy this presumption, to the one who is opposed to it. This study represents the best opportunity to clarify the alleged opposition between originality and novelty or how an intellectual creation even if it is not new is still original, according to some scholars. The simple presumption of originality is not overthrown by simply invoking a personal creative activity which would have, incidentally, led to an intellectual creation identical to the previous one, but when this personal creative activity is proven. But in this case, purely theoretically, the judge should explain in his judgment which he gives, in a credible way using the elements, criteria and objective data, how it is possible for two people, by their nature different one from the other, to create identical works. In any case, the judge cannot simply accept this "chance" or such a "coincidence" without clarifying it, because at that moment the whole legal protection system of intellectual property would be empty in content and meaningless, because immediately after such a view would be accepted by the jurisprudence, many "coincidences" like the one above would occur, all rights to intellectual creations would thus be paralyzed.

D1P13

[12] Mr. Oladiran Ayodele, Lecturer I, Osun State University, College of Law, Ifetedo, Osun State, Nigeria..

[13] Dr. Alin Speriusi-Vlad, Assistant Professor, Ph.D., Post-doctoral researcher, West University of Timisoara - Faculty of Law.

RIGHT TO HEALTH VIS-À-VIS PATENT PROTECTION

Ms. Shakha Jha[14]

More than one third of the population of the world does not have access to the most essential drugs and half of this population reside in Africa and Asia. This has lead to a debate between the developed and developing countries over the issue of patent rights and access to medicines as a matter of human right. It is frequently observed that despite the access to medicines being an integral part of the fundamental right to health as also under Article 21 of the Indian Constitution, it is not given adequate significance under the legal provisions pertaining to "patents". It has, therefore, become a challenge to maintain a balance between TRIPS related patent protection and the interests of public policy.

There is a dire need to protect the patents but at the same time, it is pertinent to protect the human rights as well. Thus, certain measures should be adopted to maintain a balance between the two. For example, the pharmaceutical industry can be considered as an exception to the general product patent regime and compulsory licensing provisions can be made applicable in situations where generic drugs are required to address public health matters.

Thus, in the light of the issues raised above, the proposed paper will revisit the role and significance of the protection of patents in the contemporary world with respect to the ''Doha Declaration on the TRIPs Agreement and Public Health", adopted by the WTO, recognising the primacy of public health over the interests of patent proprietors and TRIPS Agreement.

The paper will also advocate the current challenges to human rights with respect to the Patents Act prevailing in developing countries like India and South Africa in the context of access to essential drugs, thereby drawing a comparative analysis with the patent regime existing in other developed nations of the world. Furthermore, the author will deliberate over the exceptional grounds on the basis of which the drug patents can be said to be justified. Moreover, the paper will suggest the measures that can be taken in order to strike a balance between right to health and patent protection ultimately ending with the concluding remarks.

D1P14

DELAYED AND CANCELLED FLIGHTS IN EUROPEAN CIVIL AVIATION

Dr. Renzo Van der Bruggen[15]

EU Regulation 261/2004 establishes common rules on compensation and assistance to passengers in the event of denied boarding, cancellation or long delay of flights.

This Regulation provides almost similar rights to passengers of cancelled or delayed flights (passengers must be offered reimbursement; meals, refreshments, two telephone calls/e-mails; and if necessary, hotel accommodation). However, a financial compensation up to 600 EUR is only allowed for passengers of a cancelled flight. While the concept of 'cancellation' is defined by the Regulation, the concept of 'delay' is not. Discussions whether a flight is delayed or cancelled are thus inevitable. The criteria used by the Court of Justice of the European Union (CJEU) in order to determine whether a flight can be categorised as cancelled or delayed are very casuistic and unpredictable.

In its Sturgeon case, the CJEU decided that passengers of a delayed flight are also entitled to the financial compensation when the delay is minimum 3 hours -which was not envisaged by the Regulation. This

[14] Ms. Shakha Jha, Student, Symbiosis Law School, Pune.

[15] Dr. Renzo Van der Bruggen, Full-time Academic Assistant/Researcher (Ph.D. Candidate), Ghent University.

decision was based on the equality between both groups of passengers. Unfortunately, the decision created other inequalities and is not consistent with the Regulation.

The Regulation also failed to address some of the most pressing problems, and it did not fully resolve some of the key issues that it attempted to tackle (e.g. only delay at the departing point is taken into account, there is no framework for replacement flights, etc.). As a result, important gaps remained, leading to a lack of clarity in theory and in practice.

To cap it all, not only the scope of the Regulation is unclear (e.g. what to do with stopovers, is the Regulation applicable to all parts of the air carriage? Even outside the EU?), questions also arise concerning the validity of the Regulation as a whole. The Montreal Convention (to which the EU is a signatory) unifies certain rules for international carriage by air, including common liability standards in case of delay. Some believe that only the Montreal Convention can apply to these cases, what would make the European Regulation invalid.

To put in practice the Regulation together with the CJEU's case law is not easy. Airlines, National Enforcement Bodies and consumers all interpret the Regulation and the CJEU's case law in very different ways. In 2013 more than 842 million passengers were carried by air in the EU. It is vital that all parties in the industry, and the passengers themselves, know and understand the European air passenger rights.

My presentation aims to answer (some) legal and practical questions with a new and comprehensive framework.

D1P15

TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS

Mr. Jilles Hazenberg[16]

Transnational corporations (TNC's hereafter) play a confronting role in our globalized world by challenging both the power and duties states historically have. Furthermore, the cases in which TNC's infringe upon the ability of individuals, either within or outside of their networks, ability to enjoy the content of their human rights make their position even more pressing. Consequently it comes as no surprise that a growing number of academics, NGO's and courts have sought ways to hold private actors in general and TNC's specifically accountable for alleged violations of human rights. These factors raise questions whether, and to what extent, TNC's have duties to avoid harming, protect and provide human rights and can consequently be held accountable for violating that duty. TNC's cannot currently be the bearer of any human rights duty under international law. This paper, however, critically assesses approaches that either intend to reconstruct TNC's as relevantly public actors as to become the bearer of perfect human rights duties or to reconstruct existing legal mechanisms in order to hold TNC's accountable for infringing upon human rights without the involvement of the state. This exclusion is due to the problematic role of states in international legal human rights and in the factual situations involving TNC's and human rights infringements. The first section of this paper clearly disseminates the nature of duties corresponding to human rights and the appropriateness of discussing human rights in relation to private actors. I argue that for human rights to have legal weight they must be constructed as claim-right which require corresponding bearers of perfect duties. The paper's second section clarifies, through the use of real-world examples and in light of the nature of human rights, the 'problem' of TNC's and human rights. Moreover the problematic role states play as sole human rights duty-bearers is addressed. The remainder of the paper will review three distinct approaches through which TNC's can be held accountable. The first two approaches, the capacity- and publicness-approach, are philosophical and intend to construct TNC's as relevantly public and thereby as bearer of perfect human rights duty. The third approach is a primarily legal approach that circumvents assigning human rights duties to TNC's. It thereby intends to hold TNC's indirectly accountable for human rights infringements through the private

[16] Mr. Jilles Hazenberg, PhD Student, Groningen Centre for Law and Governance, Faculty of Law, University of Groningen.

enforcement of legal instruments other than human rights. It is argued that the philosophical approaches are inherently flawed due to confusing human rights responsibility with the ability to be accountable. The third approach is more promising because a reinterpretation of existing legal instruments can hold TNC's indirectly accountable for infringements on the ability of individuals to enjoy the content of human rights. Such a legal approach shows that, paradoxically, the language of human rights duties is inappropriate and counterproductive in holding TNC's accountable.

D2P1

THE EFFECT OF TRADE OPENNESS AND INSTITUTIONAL QUALITY ON INCOME INEQUALITY

Ms. Cecilia Marlina[17]

Income inequality is one of the most serious problems facing the world today since it can contribute to a broader process of global social fragmentation. With distinct level of accumulated wealth, different groups within countries will have divergent economic interest, undermining a sense of broader national solidarity.

While international trade has been cited as one of the main factors behind the engine of growth for many countries, the persisting problem of income inequality has raised concerns about the effect of trade on income inequality. Recent evidence reveals that growth led by international trade has been accompanied by an increase in income inequality. Any assessment of the income inequality problem would be incomplete without reference to quality of the institution. Good quality of institutions is widely recognized as an important aspect of well-functioning market. Institution is highly in charge of the economic and policy decision of a country. Hence, the way they reallocate economic resources must have great impacts on the income inequality. The quality of institutions may also influence the extent to which international trade affects income inequality as it influences the ability of government to ensure fair distribution of income among its citizens.

This study employs System Generalized Method of Moment (GMM) estimation method to examine the effect of trade openness and institutional quality on income inequality in developed and developing countries for the period 1984 to 2013. In line with the Kuznet's theory, the results show that developing countries experience higher income inequality as its economy grows, while the opposite occurs in developed countries. The empirical results also suggest that trade openness and promotion of democratic stability can be effective policies for reducing income inequality in both developed and developing countries.

Keywords: Income Inequality; Trade Openness and Institutional Quality

D2P2

THE DOING BUSINESS INDICATOR IN MINORITY INVESTOR PROTECTION. A CRITICAL ANALYSING

Ms. Neshat Safari[18]

The dark side of Doing Business. A critical analyzing of the Doing Business Indicators In Investor Protection: The World Bank's Doing Business Report is part of the World Bank's group effort to create an efficient regulatory environment for businesses.

Every year the report ranks different jurisdictions across the world according to their ability to facilitate business activities.

[17] Ms. Cecilia Marlina, Honours Candidate, Monash University Malaysia.

[18] Ms. Neshat Safari, Phd Student, City University London.

Among the report's indexes, the "Protecting investors'' index measures the protection of minority shareholders in listed companies. However, there are significant limitations in the scope and contents of this index.

This paper argues that the protecting investor's index falls to properly evaluate the different mechanisms for protecting shareholders in each jurisdiction. The protecting investor's survey should not be limited to the protection for minorities only in listed companies; also it should consider the specificities of legal systems. Numerous of factors, such as the strength of corporate governance and the diversity of economical and political environment have significant effect on the mechanisms of protecting shareholders. However, the Protecting Investors index fails to cover all those factors and uses the same standard in measuring investor protection for different jurisdictions.

Moreover, the protecting investor's index ignores the gap between law in theory and law in action. It seems that the basis of the survey is the notion that only regulations matter. However, this paper argues that the main emphasis should be placed on the role of enforcement of regulations.

In fact the index should consider whether regulations on protecting investors are adequately enforced in each country without any improper influence of the wrongdoers.

In order to shows the flaws on the investor protection index, this paper will provide some examples from the UK and The United States surveys.

D2P3

FROM THE HOME MEMBER STATE PRINCIPAL TO EMIR, ESMA AND THE COLLEGES
Dr. Christina Tarnanidou[19]

The paper examines the developments in the supervision of the CCPs under the Regulation 648/2012/EU (EMIR), as a key parameter of the new model of European supervision. Under EMIR ESMA and the Colleges undertake a central role in all supervisory matters related to the CCPs and their services and activities throughout the EU. The National supervision based on the traditional home member state principle inevitably narrows its application in scope and essence.

But is the EMIR supervisory model a model for CCPs only or for the markets themselves and how this model is aligned with the supervision under MiFID or MiFD2?

In terms of answering these questions the paper analysis the following issues:

a) How EMIR affected the markets from a clearing perspective.
b) The "de facto" application of EMIR to the markets, considering the one way road of regulation and the recognized European passport to CCPs.
c) The implications of the EMIR's application to the markets as a "de facto event" either from a supervisory or regulatory perspective.

Under these new approaches it is examined how a proper balance between European and National supervision can be achieved considering the need for addressing the systemic risk issues at an EU level and the still existing national origin and profile of the markets. The paper argues that this national profile cannot be disregarded.

However, some current examples on how the markets, mainly the small ones, reacted in light of the need to be EMIR compliant, point out that clearing concentrations in the hands of CCPs may inevitably change in the future and essentially make more loose the tight relation between the market and its nationality due to the one way road use of CCP services either as business opportunity or as a matter of cost.

[19] Dr. Christina Tarnanidou, Athens Exchange Group, Legal Cousel, Athens University of Economics and Business Lecturer in Commercial anf Financial Law.

From a regulatory perspective it is elaborated that the regulatory cost for EMIR compliance is not only a cost for CCPs but also and rather a cost for the markets, considering the risk assessment tests to which they subject within the process of authorisation under EMIR.

In light of the above, the paper considers also the Regulation 1095/2010/EU as the main fundamental basis for ESMA and its competences to CCPs. At this point the main concerns relate to the fact that markets will be subject to European supervision irrespective of their national profile. The questions that arises then is how the "distance" between the National market and the European supervision can be bridged for the protection of the EU system. Suggestions with respect to this issue are given which relate to the strengthening of the consultation processes in all respects (national, European, pre/post-legislative). In light of capturing all these parameters, the establishment of SMSG (Securities and Markets Stakeholders Group), as a Group working under the aegis of ESMA, is highlighted as a good starting point in terms of protecting the European interest without sacrificing the National one.

D2P4

WHY SHOULD THE INTERNATIONAL COMMUNITY PROGRESS IN THE INTERNATIONAL REGULATION OF DUAL-USE-GOODS TRADE?

Mrs. Ana Sanchez Cobaleda[20]

Dual-use goods are the materials and technologies normally used for civilian purposes but which may also have military applications, so that they can serve for mere civil matters as well as for the proliferation of Weapons of Mass Destruction (WMD). Due to their uniqueness, their trade cannot be regulated the same way non-dual-use goods trade is, and therefore, a precise legislation that takes into account their double nature and potential risks is needed. Their importance in world trade and the magnitude of the consequences of a lack of an effective regulation in the international arena could imply disastrous scenarios. States, International Organizations whose interest point are dual-use goods and no proliferation, as well as other informal international regimes (i.e. the Wassenaar Agreement, the Australia Group, Nuclear Suppliers Group,…), all focus on reaching the most comprehensive legislation possible. Mechanisms like the United Nations' 1540 Committee or the European Union's WMD Strategy strive for achieving a universal, binding and effective trade control regime. However, more efforts are needed in order to involve as many countries as possible in this crusade against proliferation. Please note the use of the term "trade control" and not "export control". The main contribution of this paper is advocating for a change in the terminology used when referring to export controls and, so, a change in the approach to deal successfully with the international regulation of dual-use goods. Although "export control" is still the pith concept, the idea itself has expanded thoroughly, to the point in which also the shipment, transfer, brokering and other actions like the utilization of such goods, constitute the whole group of activities that need to be controlled. Those activities are basically different aspects of "trade", so it is agreeable that "trade control" is a more appropriate term to describe what needs to be worked on regarding dual-use goods. This paper takes the nuclear goods as the case study to identify the main aspects of dual-use goods trade that need to be internationally regulated and the reasons why it is important to regulate those aspects.

D2P5

[20] Mrs. Ana Sanchez Cobaleda, PhD Candidate, University of Barcelona.

MONEY LAUNDERING AND VIRTUAL MONEY: THE BITCOIN EXAMPLE

Prof. Claudia Cardoso[21]

Money laundering arises in the mid-30s, on the basis of operations performed with funds from illegal activities, which were "laundered" and reinstated in the financial system. Notice that, since that time, the practices used in the money laundering have undergone multiple changes, having evolved in the complexity of operations, which is understandable if the changes that the financial system has been exposed are analyzed.

Often, regulation and legal framework do not follow the evolution of financial markets instruments, giving opportunity to take advantage of these gaps in less lawful activities. The starting point for this work was to figure out how the phenomenon of money laundering behaves when faced with innovation of virtual currencies and, in particular, of the bitcoin.

The bitcoin presents itself on the market as a virtual currency for simple use, which can be sold anywhere in the world. This currency has grown significantly, both in value and in volume of transactions, in recent years. The dimension of the phenomenon led to an increasing surveillance from the financial supervisors. Also, there is a growing focus on the subject by academic researchers (which is evidenced by bibliometric analysis on the main databases of academic publications).

In the present study, we search for evidence of the relationship between money laundering and transactions carried out in bitcoins. After a literature review on both themes, we analyze the official publications relating both themes (made by supervisors, public institutions or international organizations). The attitudes toward the bitcoin are diverse, but all share concerns about its future impact. We also analyzed the notoriety within the international media.

It is concluded that there is a thin line that divides this currency from practice of laundering capitals and that the link of both is recognized by various regulatory authorities. Some sparse evidence indicates that bitcoin may be an opportunity for money laundering, however more data is required.

D2P6

THE NEW GOVERNANCE: ANOTHER APPROACH FOR REVOLUTION

Dr. Mohamad Basam[22]

The Arab Spring, fueled by the power of the youth, was the event which changed the future of generations. The Arab Spring was a revolution against poverty, oppression, and corruption that removed dictators who had ruled for more than thirty years. Tunisia, Egypt, Libya, and Yamane are now free; well almost free. After the revolution, the Arab Spring countries found there had been no sign of recovery. Various words are emerging in Arab Spring countries that symbolize frustration among the people such as: “revolution thieves” and “the regime followers.” To overcome the frustration and to move on to a better future, parallel to the political revolution, administrative reform must take place.

The notion of administrative reform has been developed in a variety of channels—all of which agree that the goal of the administrative reform should be effective and efficient public service, improvement of the operational performance, and economic development. Governments have searched for these results in a variety of public administration theories that conforms their political ideology, culture, and economy. The question stands, then: if all countries are searching for the best way to govern people, what are the obstacles that most often hinder a government’s effort at administrative reform?

[21] Prof. Claudia Cardoso, Professor, Polytechnic Institute of Cávado and Ave.

[22] Dr. Mohamad Basam, Law Professor and Head of the Legal Programs, Institute of Public Administration.

The main difficulty of administrative reform seems to be that public actors will try to avoid laws or policies that threaten their interests. For example, policies of financial reform, deregulation, and privatization will be highly defended and supported, if they have the benefit of sharing an interest or providing value to public actors. As Herring argued "Special interests cannot be denied a voice in the councils of state since it is their concerns that provides the substance out of which the public welfare is formulated." In developing countries, there is no distinction between politicians and bureaucrats, putting tremendous power and authority in the hands of those who both make the policy and carry out its enactment. Hence, as Lord Acton put it, "power tends to corrupt people, and absolute power corrupts absolutely." Thus, this bad administrative environment may hinder the revolution.

This article argues that new governance may offer a better administrative environment to fulfill the revolution goals. It aims toward introducing new governance to developing countries in general and to Arab Spring Countries in particular. Part one traces the core obstacles of public administration in Arab Spring Countries. Part two provides a comprehensive definition of the new governance—not an easy task because most of the new governance literature does not define the term per se, but defines it instead within the context of another issue. Then, this article describes the challenges that may confront the adoption of the new governance, especially in developing countries. Finally, it examines soft law, as it is one of the main instruments for new governance. The idea behind this article is not to compare public administration to new governance, but to propose the new governance as the administrative framework for a better future for Arab Spring Countries.

D2P7

Keynote Guest Lecture

SETTLEMENT OF INTERNATIONAL DISPUTES: AN ASSESSMENT OF THE ROLE OF THE UNITED NATIONS AND INTERNATIONAL ARBITRATION

Dr. Ramandeep Chhina[23]

Listener Delegates List

1. Ms. Georgia Howson, Contracts Manager, Institute of Development Studies.
2. Mr. Andrew Akinbola, Managing Director/CEO, Hezkay Multilinks Nig. Limited.
3. Mrs. A beer Al-Dabbous, Team Leader, Kuwait Oil Company.
4. Ms. Kate Masih, Lecturer, London South Bank University.
5. Mr. Faustin Yaliembasila Yooso Sisimi, Ministry of Youth, Sport and Leisure, Culture and Arts, Democratic Republic of Congo
6. Dr. Ana maría Delgado garcía, Dean of Law School, Fundació Universitat Oberta de Catalunya
7. Dr. Blanca Torrubia Chalmeta, Director of Master in Advocacy, Fundació Universitat Oberta de Catalunya

[23] Dr. Ramandeep Chhina, Keynote Speaker and Assistant Professor in Business Law, Heriot-Watt University.

FLE Learning Ltd
Conference Division
T: 0044 131 463 7007 F: 0044 131 608 0239
E: submit@flelearning.co.uk W: www.flelearning.co.uk