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The International Law Profile of the ALI

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The International Law Profile of the ALI

George A. Bermann*

I. Introduction

International law today occupies a prominent place on the American Law Institute (ALI) research agenda. This chapter documents the wide range of subjects and forms that the ALI's engagement with international law has entailed over the years. However, international law did not always figure importantly in the work of the ALI and was in fact relatively slow in coming. This is for several reasons. International law did not correspond particularly well with the ALI's initial priority subjects, which were common law fields governed at the state level.¹ As a constitutional matter, U.S. states do not conduct foreign relations as such, and any acts taken at the state level that might incidentally impact U.S. foreign relations more likely take legislative and regulatory rather than common law form. But, more generally, international law cases for a long time occupied a modest place on the dockets of U.S. courts, in the practice of law firms, and even in law school curricula.

An important exception was the ALI's 1945 Statement of Essential Human Rights,² produced against the background of human rights atrocities in the years

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¹ Michael Traynor, *The First Restatements and the Vision of the American Law Institute: Then and Now*, 32 S. ILL. U. L.J. 145, 146 (2007).

² <https://www.ali.org/news/articles/statement-essential-human-rights/#:~:text=Its%20goal%20was%20to%20define,documents%20relating%20to%20individual%20rights> (last visited Dec. 26, 2020). The Statement presented the following as essential human rights:

- Article 1. Freedom of Religion
- Article 2. Freedom of Opinion
- Article 3. Freedom of Speech
- Article 4. Freedom of Assembly
- Article 5. Freedom to Form Association
- Article 6. Freedom from Wrongful Interference
- Article 7. Fair Trial
- Article 8. Freedom from Arbitrary Detention
- Article 9. Retroactive Laws
- Article 10. Property Rights
- Article 11. Education
- Article 12. Work
- Article 13. Conditions of Work
- Article 14. Food and Housing
- Article 15. Social Security
- Article 16. Participation in Government
- Article 17. Equal Protection
- Article 18. Limitations on Exercise of Rights

leading up to World War II and during the war itself. The idea originated with Professor Warren A. Seavey of Harvard Law School, who in 1941, well before the war's end, successfully urged ALI Director William Draper Lewis to launch a project to "ascertain[] and formulat[e] basic principles of Justice which should exist in every civilized state."³ Seavey argued, and Lewis agreed, that the ALI was perfectly positioned to carry out the task, by virtue of its capacity to harness collective efforts on the part of the country's leading legal minds and the high prestige that the ALI had garnered.⁴

In 1942, with the support of the Carnegie Endowment for International Peace and the American Philosophical Society, the ALI convened a Committee consisting of representatives of Canada, China, France, pre-Nazi Germany, Italy, India, Poland, the Soviet Union, Spain, Syria, the United Kingdom and a number of Latin American countries, and presided by ALI Director Lewis. The Committee was charged with helping establish a statement of principle on human rights for the international community in the postwar world or, as the ALI put it, "defin[ing] the indispensable human rights in terms that would be acceptable to men of good will in all nations."⁵ Although the statement produced by the Committee was never formally adopted by the ALI,⁶ it was submitted to the UN Secretariat for consideration as background material for the 1948 Universal Declaration of Human Rights.⁷ The principal drafter of the Declaration, John P. Humphrey, later wrote that "the best of the texts from which I worked was the one prepared by the American Law Institute, and I borrowed freely from it."⁸

Today, international law is anything but absent from the ALI agenda.⁹ Through the efforts, particularly of recent ALI Directors, Geoffrey C. Hazard Jr., Lance Liebman and Richard Revesz, it has become genuinely mainstreamed in the ALI's work, principally, but not exclusively, in two distinct varieties: Restatements and Principles.

³ Warren Seavey, *Laying the Foundations for a New World Order* (A Project for the American Law Institute), at 1 (July 15, 1941). Seavey was concerned that the war, together with technological developments, would "affect what we now believe to be our basic individual rights [in ways that could not] be foretold." *Id.* at 3.

⁴ *Id.* at 4.

⁵ <https://www.ali.org/news/articles/statement-essential-human-rights/#:~:text=Its%20goal%20was%20to%20define,documents%20relating%20to%20individual%20rights> (last visited Dec. 26, 2020).

⁶ The Statement and the work leading up to it was discussed by Mary Robinson, in the Annual Dinner Address at the American Law Institute's 80th Annual Meeting, 80 A.L.I. PROC. 232, 233–34 (2003).

⁷ U.N. General Assembly Resolution 217 A (III) (Dec. 10, 1948), reprinted at <https://www.refworld.org/docid/3ae6b3712c.html> (last visited Dec. 29, 2020).

⁸ JOHN P. HUMPHREY, *HUMAN RIGHTS AND THE UNITED NATIONS: A GREAT ADVENTURE* (1984).

⁹ Michael Traynor wrote in 2007:

The international implications of the law of the United States are growing, whether that law is federal or state, common law or statute, or regulatory law of the many administrative agencies, federal, state, and local, that have been created since the Institute was founded in 1923.

Traynor, *supra* note 1 at 146. See also George A. Bermann, *The American Law Institute Goes Global*, 16 WILLAMETTE J. INT'L L. 3000 (2008).

II. Restatements of the Law in the International Law Field

International law first made an appearance in ALI Restatements, albeit inconspicuously, through the 1934 Restatement (First) of Conflict of Laws,¹⁰ inasmuch as that instrument was in principle as applicable to international as to domestic cases. Reporters of Conflicts Restatements over time have become increasingly conscious of the field's international dimension, beginning with the 1971 Restatement (Second) of Conflict of Laws.¹¹ Still, reflecting back on the Second Restatement in 2007, Michael Traynor, former ALI President, saw the need to adopt a decidedly more comparative and international law outlook on conflicts of law, urging that U.S. work on the subject:

[t]ake into appropriate account the growing and relevant international efforts such as those to achieve harmonization of the law; international cooperation and coordination mechanisms as in international insolvency law, and international intellectual property law; the articulation of international principles as in UNIDROIT's Principles of International Commercial Contracts, which are akin to the Restatements; and the emergence of a *lex mercatoria*. It is not a coincidence that in contrast to our aggressive term, "the conflict of laws," other countries use the more peaceful term, "private international law."¹²

Those working on the current Restatement (Third) of Conflict of Laws¹³ are in fact more conscious than their predecessors of the international dimension of conflict of laws. Two members of the ALI, one of them himself a Reporter on the Restatement, have convincingly written of "the importance of international law, and of comparative law, for conflict of laws in general and the new Restatement in particular."¹⁴

The ALI's first foray into international law proper by means of a Restatement was the 1965 Restatement (Second) of the Foreign Relations Law of the United States, so named because it was produced in what the ALI considered its second

¹⁰ Reporter for the *First Conflict of Laws Restatement* was Joseph Beale. On the First Restatement, see Lorenzen & Heilman, *The Restatement of the Conflict of Laws*, 83 U. PA. L. REV. 555 (1935); William Richman & David Riley, *The First Restatement of Conflict of Laws on the Twenty-Fifth Anniversary of Its Successor: Contemporary Practice in Traditional Courts*, 56 MD. L. REV. 1196 (1997).

¹¹ Reporter for the *Second Conflict of Laws Restatement* was Willis L.M. Reese. On the Second Restatement, see Traynor, *supra* note 1 at 149–59; Willis L.M. Reese, *Conflict of Laws and the Restatement Second*, 28 LAW & CONTEMP. PROB. 679 (1963); Alan D. Weinberger, *Party Autonomy and Choice-of-Law: The Restatement (Second), Interest Analysis, and the Search for a Methodological Synthesis*, 4 HOFSTRA L. REV. 605 (1976); Patrick Borchers, *Courts and the Second Conflicts Restatement: Some Observations and an Empirical Note*, 56 MD. L. REV. 1232 (1997).

¹² Traynor, *supra* note 1, at 157–58.

¹³ As of the time of this writing the Restatement (Third) of Conflict of Laws is in progress. Its Reporters are Kermit Roosevelt III, Laura Little, and Christopher Whytock. On the Third Restatement, see Lea Brilmayer & Daniel Listwa, *Continuity and Change Is the Draft Restatement (Third) of Conflict of Laws: One Step Forward and Two Steps Back*, to which Reporter Kermit Roosevelt III and Bethan Jones responded, *Yale L.J. Forum* (Oct. 22, 2018); Carlos Vazquez, *Introduction to Symposium on Third Restatement of Conflict of Laws*, 110 AM. J. INT'L L. UNBOUND 137 (2016).

On the Conflict of Laws Restatement, in this volume.

¹⁴ Ralf Michaels & Christopher Whytock, *Internationalizing the New Conflict of Laws Restatement*, 27 DUKE L.J. 349 (2016–2017).

generation of Restatements.¹⁵ Given its unprecedented scope, the Restatement required a large Reporter team, consisting of Adrian Fisher, Noyes Leech, Covey Oliver, Cecil Olmstead, Robert E. Stein, and Joseph Sweeney. Writing about the Restatement, Professor Harold Meier observed that “it was not at all clear that there even was such a field as foreign relations law, and much of the work . . . went into determining which legal areas should be treated and which should not in that undertaking.”¹⁶

Soon enough there could be no doubt that foreign relations *was* a field of law, and 1987 brought the far more comprehensive and systematized Restatement (Third) of the Foreign Relations Law of the United States, a product that excited great interest, and some controversy, in the international law community. Critics in academia,¹⁷ among international law practitioners,¹⁸ and within the ALI itself¹⁹ viewed the Restatement as unduly internationalist in outlook and too quick to embrace customary international law as enforceable federal law. The U.S. State Department was especially alarmed at the Restatement (Third), its interventions triggering what one of the Restatement (Fourth) Reporters has described as an “acrimonious” relationship with the Reporters,²⁰ as evidenced by the fact that when the Restatement (Third) had been completed, the State Department reportedly pressed the ALI to postpone its publication.

The Restatement came in for particularly severe criticism by Supreme Court Justice Antonin Scalia in the case of *United States v. Stuart*, in which he objected to reliance in treaty interpretation on preratification materials, observing that the Restatement (Third)’s willingness to consult such materials for purposes of treaty interpretation “must be regarded as a proposal for change, rather than a restatement of existing doctrine, since the commentary refers to not a single case, of this or any other United States court, that has employed the practice.”²¹

¹⁵ On the Second Restatement of Foreign Relations Law, see Daniel Wilkes, *Book Review, Restatement (Second), Foreign Relations Law of the United States*, 18 WESTERN RES. L. REV. 355 (1966).

¹⁶ Harold G. Maier, *The Restatement of Foreign Relations Law of the United States, Revised: How Were the Controversies Resolved?*, 1981 Proceedings of the Annual Meeting of the American Society of International Law 180 (1987).

¹⁷ Paul B. Stephan, *Courts, the Constitution, and Customary International Law: The Intellectual Origins of the Restatement (Third) of the Foreign Relations Law of the United States*, 44 VA. L. REV. 33 (2003). John B. Houck, *Restatement of the Foreign Relations Law of the United States (Revised): Issues and Resolution*, 1986 INT’L LAWYER 1361 (1986); Rudolf Bernhardt et al., *Review, Restatement of the Law Third: The Foreign Relations Law of the United States*, 86 AM. J. INT’L L. 608 (1992).

¹⁸ John B. Houck, *Restatement of the Foreign Relations Law of the United States (Revised): Issues and Resolution*, 1986 INT’L LAWYER 1361 (1986).

¹⁹ See Michael Traynor, *The Future of Foreign Relations Law of the United States*, 18 SW. J. INT’L L. 5, 6 (2011).

²⁰ For a description of the tensions associated with the Restatement (Third), see Paul B. Stephan, *Courts, the Constitution and Customary International Law: The Intellectual Origins of the Restatement (Third) of the Foreign Relations Law of the United States*, 44 VA. J. INT’L L. 33 (2003).

²¹ 489 U.S. 353, 375 (1989). Of particular concern to Justice Scalia was Restatement Third’s § 314, Comment *d* (1987) and § 325, Reporter’s Note 5. According to the former, if no statement of understanding accompanies the ratification of a treaty, an understanding can be inferred from “report[s] of the Senate Foreign Relations Committee or . . . Senate debates.” According to the latter, relevant to determining the meaning of a treaty are “[c]ommittee reports, debates, . . . [t]he history of the negotiations, . . . [and] internal official correspondence and position papers prepared for use of the United States delegation in the negotiation.”

There followed in turn the very recent Restatement (Fourth) of the Foreign Relations Law of the United States, which, appearing in 2018, was the first Restatement (Fourth) to be completed. The production of three successive Foreign Relations Restatements in a relatively short period of time naturally signifies the growing salience of international law cases in the courts of the United States, and in U.S. law more generally, as well as foreign relations law's rapidly evolving character. But it also signifies the ALI's alertness to significant developments in the law, an alertness demonstrated as well across other chapters in this volume. According to the Reporters, the participation of the State Department was considerably more supportive than had been the case with the Restatement (Third). This may be because the drafters of the Restatement (Fourth) were, by the account of one of them, less "aspirational" than their predecessors had been, because State Department personnel participated as advisory committee members on all parts of the Restatement, and because six of the eight Reporters were not only law school professors but also former staffers at the State Department themselves. This is not to say that there were no differences of view. For example, the Reporters thought the department took a distinctively expansive view of executive authority in foreign affairs. Still, by all accounts, the department's role was a decidedly constructive one.

Within a year of the Restatement (Fourth)'s appearance, the ALI approved a first Restatement of the U.S. Law of International Commercial and Investor-State Arbitration. The State Department contributed importantly to this Restatement as well, but—unsurprisingly in light of the subject—with scarcely any ideological overtones.

In content, the foreign relations and international arbitration law Restatements obviously deal with international subject matter. Even so, their focus is decidedly on the treatment of those subjects in U.S. law and, more particularly, in U.S. courts. In that respect, they are no different from any of the ALI's other Restatements. By contrast, as will be seen, the ALI's Principles of Law go well beyond restating U.S. law.

Still, the foreign relations and international arbitration Restatements are distinctive from many other Restatements in certain ways. They treat matters of federal law and, to one degree or another, are statute- and treaty-based. This is clearest in the case of international arbitration, where the Federal Arbitration Act (FAA) (including its Chapters Two and Three, implementing the New York and Panama Conventions, respectively)²² stands center stage, even if not field-preemptive of state law.²³ The statutory and treaty elements of foreign relations law are, by comparison, more fragmented, but they too are nevertheless prominent, as exemplified by the Foreign Sovereign Immunities Act²⁴ and the Hague Service²⁵ and Evidence²⁶ Conventions.

²² 9 U.S.C. §§ 9ff.

²³ *Kindred Nursing Centers Ltd. Partnership v. Clark*, 510 U.S. ___, 137 S. Ct. 1421, 1426 (May 15, 2017). The FAA is conflict-preemptive only. "The FAA thus preempts any state rule discriminating on its face against arbitration [and] displaces any rule that covertly accomplishes the same objective by disfavoring contracts that ... have the defining features of arbitration agreements."

²⁴ 28 U.S.C. §§ 1330ff.

²⁵ 20 U.S.T. 361, 658 U.N.T.S. 163 (1965).

²⁶ 23 U.S.T. 2555, T.I.A.S. 7444, 847 U.N.T.S. 231.

And yet, foreign relations and international arbitration law as fields exhibit the single most important characteristic justifying Restatements of the Law, namely, a sprawling case law in need of substantially greater clarity and coherence. For this reason, the drafting of these Restatements, despite their distinctiveness, followed basically the same goal and methodology that, over the decades and across fields of law, the ALI had perfected.

The following sections examine these two Restatement more closely, with attention to some of their distinctive features and challenges.

A. The Restatements of Foreign Relations Law of the United States

The several foreign relations law Restatements referred to above represent the paradigm of an international law subject as applied and enforced in U.S. courts. As described in the Restatement (Third) of the Foreign Relations Law of the U.S., the Restatement consists of “(a) international law as it applies to the United States; and (b) domestic law that has substantial significance for the foreign relations of the United States or has other substantial international consequences.”²⁷ The Restatement (Third), for which Louis Henkin and Andreas Lowenfeld served as Reporters, was especially broad and far-reaching in coverage, treating in separate parts (I) the relation between international law and U.S. law, (II) persons in international law, (III) treaties and other international agreements, (IV) jurisdiction and judgments, (V) the law of the sea, (VI) the law of the environment, (VII) protection of natural and juridical persons, (VIII) international economic relations, and (IX) remedies for violation of international law. It is best known, and controversially so, particularly for its treatment of the extraterritorial application of U.S. law and its embrace of international comity more generally.²⁸ The ALI’s interest in extraterritoriality has continued, as evidenced by its 2011 conference on the extraterritorial application of the U.S. securities law.²⁹

With the burgeoning of international law in U.S. courts, the ALI chose, when the time came for a Restatement (Fourth) of Foreign Relations Law of the U.S., to limit the Restatement provisionally to three main topics: jurisdiction, the domestic effect of treaties, and sovereign immunity. Even as limited, due to the explosion of law in the field, this was a massive enterprise, and conducted by the most elaborately structured constellation of Reporters in ALI history: Sarah Cleveland and Paul Stephan as Coordinating Reporters,³⁰ and Reporters William Dodge and Anthea Roberts (jurisdiction), David Stewart, and Ingrid Wuerth (sovereign immunity), and Curtis Bradley and Edward Swaine (treaties). The 2018 Restatement (Fourth) has drawn

²⁷ RESTATEMENT (THIRD) FOREIGN RELATIONS LAW § 1 (1987).

²⁸ See, e.g., Austen L. Parrish, *Reclaiming International Law from Extraterritoriality*, 93 MINN. L. REV. 815 (2009); Kathleen Hixson, *Extraterritorial Jurisdiction Under the Third Restatement of Foreign Relations Law of the United States*, 12 FORDHAM INT’L L.J. 127 (1988).

²⁹ See generally Genevieve Beyea, *Transnational Securities Fraud and the Extraterritorial Application of U.S. Securities Laws: Challenges and Opportunities*, 1 GLOBAL BUS. L. REV. 139 (2010).

³⁰ See THE RESTATEMENT AND BEYOND: THE PAST, PRESENT AND FUTURE OF FOREIGN RELATIONS LAW (Sarah Cleveland & Paul Stephan eds., 2020);

considerable interest, reflecting not only a growing consciousness of the field's importance but also the centrality of the Restatement within it.³¹

Unsurprisingly, the features and challenges that make the Restatements of Foreign Relations and International Arbitration Law distinctive are largely traceable to their international pedigree.

1. Distinctive Features of the Foreign Relations Law Restatement

Perhaps the most distinctive feature of the Foreign Relations Law Restatement is the necessity to take into consideration the work of judicial bodies outside the United States. Ignoring the authority of international courts and tribunals in a project on foreign relations law is simply not an option. Nor is it possible, or desirable, to ignore the products of international law-building entities like the International Law Commission, established by the UN General Assembly, or the law and practice in national jurisdictions outside the United States. These bodies set standards, impose constraints or create expectations that inevitably affect, if only indirectly, the margin of maneuver of international law decision makers in the United States.

More generally, the Restatement of Foreign Relations Law stands to have greater implications for foreign governments and persons than any other ALI Restatement. The Reporters of the Restatement (Fourth) needed constantly to determine whether and to what extent those implications should factor into their deliberations and determinations. At the very least, they thought it important to convene on more than one occasion a group of foreign advisers whose insights and experiences could potentially be instructive.

Given the uniqueness of the federal government's interest in U.S. foreign relations, the Foreign Relations Restatement also elicited within the federal government an unprecedented level of interest in, and contribution to, the project. That interest and contribution was heavily concentrated in the single body, the Department of State, chiefly responsible for the conduct of U.S. foreign relations. While the tenor of the Restatement is certainly not to be dictated by the State Department, neither are the department's views to be ignored.

2. Distinctive Challenges of the Foreign Relations Law Restatement

Both of the features just mentioned presented the Reporters of the Foreign Relations Restatement with challenges, but they are not alone in doing so. All fields of law addressed by a Restatement are subject to change, but they are particularly so in the international environment and under circumstances considerably beyond our control. Similarly, while the law in all fields has a political dimension, in foreign relations law that dimension is particularly salient. Among the most divisive issues in foreign relations law in a period of political polarization, is the extent to which the United States should "go its own way" vis-à-vis other nations,³² with all that that implies.

³¹ See generally Leila Nadya Sadat, *The Proposed Restatement (Fourth) of the Foreign Relations Law of the United States: Treaties—Some Serious Procedural and Substantive Concerns*, 2015 B.Y.U. L. REV. 1673 (2015); William S. Dodge, *Jurisdiction, State Immunity, and Judgments in the Restatement (Fourth) of US Foreign Relations*, 19 CHINESE J. INT'L L. 101 (2020); N.L. Dobson, *Reflections on "Reasonableness" in the Restatement (Fourth) of US Foreign Relations Law*, 62 Q.I.L. 19 (2019).

³² See generally Hilde Eliassen Restad, *Old Paradigms in History Die Hard in Political Science: US Foreign Policy and American Exceptionalism*, 1 A. POL. THOUGHT 53 (2012); Joseph Lepgold & Timothy McKeown,

Differences in international “outlook” within the United States are especially pronounced at the present time. It is exceptionally difficult for Restaters to strike the right balance and, in doing so, avoid the arousal of political passions and escape political attack. As best it could, and in consultation with the Reporters of the Restatement (Fourth), the ALI populated the project’s advisory committee with individuals having diverse perspectives. On some issues, the positions taken could be controversial internationally as well.

Reporters on the Foreign Relations Restatement, having participated as Advisers on other projects, report that they found the field especially challenging also due to a combination of three attributes of the project: (1) the multiplicity of sources of law bearing upon U.S. foreign relations, (2) the widely disparate and fragmented issues of which foreign relations law is composed, and (3) the absence of core organizing principles around which other fields of law are built and from which other Restatements benefit.

In all these respects, the Restatement of the Foreign Relations Law of the U.S. broke new ground.

B. The Restatement of U.S. Law of International Commercial and Investor-State Arbitration

In 2019, there appeared, close on the heels of the Restatement (Fourth) of Foreign Relations Law, a new international law product, the Restatement of the U.S. Law of International Commercial and Investor-State Arbitration,³³ with George Bermann as Reporter and Jack Coe, Christopher Drahozal and Catherine Rogers as Associate Reporters. Unlike the Foreign Relations Restatement, and as its name indicates, the International Arbitration Restatement focused on a specific and well-defined subfield of international law, chosen on account of its rapidly growing prominence and the judiciary’s relative lack of experience in the field, but above all the lack of clarity and consistency in the law, the existence of the FAA notwithstanding. This Restatement concerns itself with all situations in which arbitration agreements, arbitral proceedings, and arbitral awards come before U.S. courts. It thus covers principally (1) the enforcement or denial of enforcement of agreements to arbitrate, (2) the courts’ involvement in ongoing arbitral proceedings (as in the grant of interim relief or orders for the production of documents), and (3) post-award proceedings (most prominently actions to confirm or vacate awards made in the United States and actions to recognize or enforce awards made outside the United States).

110 POL. SCI. Q. 369 (1995); K.J.J. Holsti, *Exceptionalism in American Foreign Policy: Is It Exceptional?*, 17 EUR. J. INT’L REL. 381 (2011).

³³ On the International Arbitration Restatement generally, see George Bermann et al., *Restating the U.S. Law of International Commercial Arbitration*, 113 PENN ST. L. REV. 1333 (2009); Tiffany Ng, *Choice of Procedural Law in International Commercial Arbitration: Providing “Proper Notice” to a Foreign Party to Ensure That the Arbitral Award Can Be Enforced*, 10 HASTINGS BUS. L.J. 491 (2014); Peter B. Rutledge, *The Constitutional Law of International Commercial Arbitration*, 38 GA. J. INT’L & COMP. L. 1 (2009).

1. Distinctive Features of the International Arbitration Restatement

A truly distinctive feature of the Restatement of U.S. Law of International Commercial and Investor-State Arbitration is its concern, not with private behavior or the behavior of U.S. government departments and officials but with an adjudicatory system independent of the United States. U.S. courts are called upon to give effect to agreements that vest adjudicatory authority in privately constituted tribunals, to intervene in one fashion or another in those tribunals' proceedings, and above all, to enforce the international arbitral awards they render. U.S. courts thus powerfully affect the efficacy of an international adjudicatory order lying outside the U.S. judicial system. In this respect, the United States is no different from other jurisdictions, but it nonetheless places U.S. courts in an unusual posture.

The delicacy of the task is only heightened by the fact that prominent among the reasons why parties resort to arbitration over litigation is their determination to avoid judicial jurisdiction over their disputes.³⁴ Striking a sound balance between the authority of arbitral tribunals and national courts is a perennial preoccupation of all who operate in or near the international arbitral arena. Not a year goes by without a case implicating that balance making its way to the U.S. Supreme Court.³⁵

2. Distinctive Challenges of the International Arbitration Restatement

All that precedes represent challenges to any effort to restate U.S. international arbitration law. But there are other challenges as well. Those who practice in the international arbitration field constitute a powerful and highly cohesive community that both prizes its high degree of autonomy and acknowledges its accountability, impulses that are constantly in potential tension. Work on the Restatement repeatedly raised the navigational challenge of ensuring, at the same time, both the efficacy and the legitimacy of the international arbitration system. Illustrative are the debates surrounding the question of arbitrators' immunity from civil liability.

A second and not unrelated challenge arises from the fact that the United States operates in a highly competitive environment for the attraction of international arbitration activity. The degree to which a jurisdiction attracts international arbitration business depends in large part on the degree to which it is viewed as "arbitration-friendly."³⁶ The friendliness of a jurisdiction to arbitration depends in turn on its arbitration legislation and the practice of its courts. A Restatement may play a major part in affecting foreign perceptions in this regard.

³⁴ Daniel M. Kolkey, *Reflections on the U.S. Statutory Framework for International Commercial Arbitration: Its Scope, Its Shortcomings, and the Advantages of U.S. Adoption of the UNCITRAL Model Law*, 1 AM. REV. INT'L ARB. 491 (1990); Dalma R. Demeter & Kayleigh M. Smith, *The Implications of International Commercial Courts on Arbitration*, 33 J. INT'L ARB. 441 (2016).

³⁵ See Suzette Parmley, *How the "Predilection" for Arbitration Is Shaping Supreme Court Case Law*, N.J. L.J., Sept. 24, 2020, <https://www.law.com/njlawjournal/2020/09/24/how-the-predilection-for-arbitration-is-shaping-supreme-court-case-law/> (last visited Dec. 29, 2020); Richard Deutsch, Clare Cavaliero Pincoski, & Ian S. Wahrenbrock, *Important Issues Fill International Supreme Court Arbitration Docket*, PILLSBURY ALERT, <https://www.pillsburylaw.com/en/news-and-insights/international-arbitration-scotus.html> (last visited Dec. 29, 2020).

³⁶ See George A. Bermann, *What Does It Mean to Be Pro-Arbitration?*, 34 ARB. INT'L 341 (2018); Lance Roskens, *Pro-Arbitration Policy: Is This What the Parties Really Intended?*, 2005 J. DISP. RESOL. 1 (2005).

Further complicating the work of the Restatement was the need to deal in a single work with both international commercial arbitration and investor-state arbitration, the former arising out of contract and the latter arising chiefly out of international treaty, as well as allowing for the fundamental differences for U.S. courts between investor-state awards rendered under the auspices of the International Centre for the Settlement of Investments Disputes, on the one hand, and under the auspices of other arbitral institutions or on an ad hoc basis, on the other.

Just as in the case of the Foreign Relations Restatement, both the distinctiveness and the challenges associated with the International Arbitration Restatement reflect the fact that the law being restated is law operating in an international environment.

III. Principles of the Law in the International Law Fields

International law figures at least as prominently in a second important category of ALI products—Principles of the Law—as it does in Restatements of the Law. Like Restatements, Principles unquestionably help render the law clearer and more coherent than it would otherwise be. But they have other emphases and objectives as well.

Some sets of ALI Principles in the international law field deal exclusively with the law produced not by the United States, or any other country for that matter, but rather by international organizations.³⁷ The ALI takes an interest in such bodies of law if only because international law forms part of U.S. law and is binding upon it.³⁸

Other sets of Principles address neither the law as applied in U.S. courts nor the law produced by international organizations. Rather, they deal with *relations* between and among national legal systems, including but not limited to the United States. For want of a better term, projects falling within this second category may best, for reasons explained later, be viewed as projects of a “transnational” nature.

Both set of Principles, as well as other ALI activities associated with them, are examined in the following.

A. Principles of the Law of International Organizations

International law is made in significant part by international organizations in whose creation nation-States participate. Not all international organizations have lawmaking authority. For example, their importance notwithstanding, neither Interpol nor the World Health Organization has lawmaking authority as such. But other international organizations, among them the World Trade Organization (WTO), most certainly do.

³⁷ See generally JOSE E. ALVAREZ, *INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS* (2005).

³⁸ *Ware v. Hylton*, 3 U.S. (3 Dall.) 199, 281 (1796) (“When the United States declared their independence, they were bound to receive the law of nations, in its modern state of purity and refinement.”); *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 474 (1793) (“[T]he United States had, by taking a place among the nations of the earth, become amenable to the law of nations.”).

The ALI ventured energetically into the law made by international organization in 2001 through its project on *Principles of World Trade Law: The World Trade Organization*, the ultimate goal of which was not only to explicate the somewhat arcane, but important, case law of the WTO, and its predecessor the General Agreement on Tariffs and Trade (GATT) produced between 1948 and 2010, but also to subject that case law to scrutiny. This ambitious project was decidedly interdisciplinary, bringing together five economists (Kyle Bagwell of Columbia and now Stanford, Gene Grossman of Princeton, Henrik Horn of Stockholm, Doug Irwin of Dartmouth, and Robert Staiger of Stanford and now Dartmouth) and two lawyers (Petros C. Mavroidis of Columbia and Alan O. Sykes of Chicago and now Stanford). The project set out first to identify the purposes of the framers of the GATT and WTO, then determine the extent to which WTO case law, both of WTO panels and the Appellate Body, have been faithful to those purposes, and finally, to the extent it was not, explain the deviation and explore correctives. The project yielded a set of annual volumes, edited by Henrik Horn and Petros Mavroidis and published by Cambridge University Press, evaluating the case law of WTO panels and the Appellate Body for the period between 2001 and 2009, with a view to determining whether their rulings “made sense” from both an economic and legal point of view.³⁹ Among the recommendations to emerge was introduction into the WTO of institutional arrangements for collaboration between lawyers and economists. The work culminated in a 2013 book on *Legal and Economic Principles of World Trade Law*, again edited by Horn and Mavroidis, and published by Cambridge University Press.⁴⁰

B. Principles of Transnational Law

While the ALI is demonstrably interested in the law that emanates from international organizations, it is also interested in law that addresses relations *between and among* nation-states, the United States of course included. The ALI has come to address the study of legal relations *across* jurisdictions—that is, “transnational” as distinct from international law⁴¹—through two quite different approaches.

A first approach, reflected in a growing number of ALI projects, is premised on the interdependence of national legal systems, in recognition of the fact that, in this age, no legal system can effectively function entirely on its own. In short, understanding how legal systems interact and may improve their interactions is no less important than understanding the law that individual legal systems, such as the United States, produce. The ALI has devoted considerable resources to the problems and prospects for what may be described as “inter-jurisdictional cooperation.”

³⁹ <https://www.cambridge.org/core/series/american-law-institute-reporters-studies-on-wto-law/4217D8E1681E117423FB0970E3AC9A28> (last visited Dec. 29, 2020).

⁴⁰ <https://www.cambridge.org/core/books/legal-and-economic-principles-of-world-trade-law/10E3DA38FA9C71437110B4AED70918F1> (last visited Dec. 29, 2020).

⁴¹ The term “transnational” is variously defined as “going beyond national boundaries.” See <https://www.dictionary.com/browse/transnational>; <https://www.merriam-webster.com/dictionary/transnational>; <https://www.lexico.com/en/definition/transnational> (last visited Dec. 29, 2020).

Second, states (and their courts) around the world are increasingly facing the same or similar problems and have a distinct interest in addressing them collectively and arriving, to the extent circumstances allow, at common solutions. The ALI has entered onto this terrain as well, devising projects that, in a word, pursue what may be called “common solutions to shared problems.”

These two approaches represent distinctly different ways by which the ALI can contribute to the development of transnational law, as I have defined it here, and are best examined separately.

1. The Law of Interjurisdictional Cooperation

National legal systems, and national courts in particular, interact in a number of important ways. States can show restraint in exercising jurisdiction over non-nationals and nonresidents. They can render assistance to one another in the conduct of domestic litigation, for example, in obtaining evidence located abroad. They can limit the extraterritorial application of their own laws and otherwise take other countries’ interests into account in their policymaking. They can agree to enforce in their courts the laws of another country and the judgments of another country’s courts. They can of course also come into conflict, as through the issuance of anti-suit injunctions seeking to bar parties from pursuing litigation in a foreign court. All these matters of course arose in the three sets of Restatements treated earlier: the Restatements of Conflict of Laws, the Restatements of the Foreign Relations Law of the U.S., and the Restatement of the U.S. Law of international Commercial and Investor-State Arbitration.

However, the ALI has come to address some of these issues more frontally in the form of Principles of the Law, the exemplar of which is the product entitled *Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes* (2008), for which Jane Ginsburg and Rochelle Dreyfus served as Reporters.⁴² In the ALI’s own words:

This is a set of Principles on jurisdiction, recognition of judgments, and applicable law in transnational intellectual property civil disputes, drafted in a manner that endeavors to balance civil-law and common-law approaches. The digital networked environment is increasingly making multiterritorial simultaneous communication of works of authorship, trade symbols, and other intellectual property a common phenomenon, and large-scale piracy ever easier to accomplish. . . . Without a mechanism for consolidating global claims and recognizing foreign judgments, effective enforcement of intellectual property rights, and by the same token, effective defenses to those claims, may be illusory for all but the most wealthy litigants.⁴³

⁴² On these Principles, see generally Marketa Trimble, *Advancing National Intellectual Property Policies in a Transnational Context*, 74 MD. L. REV. 203 (2015); Andrew F. Christie, *Private International Law Principles for Ubiquitous Intellectual Property Infringement—A Solution in Search of a Problem*, 13 J. PRIV. INT’L L. 152 (2017); Rochelle Dreyfuss, *The ALI Principles on Transnational Intellectual Property Disputes: Why Invite Conflicts?*, 30 BROOK. J. INT’L L. 819 (2005); Francois Dessemontet, *A European Point of View on the ALI Principles—Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes*, 30 BROOK. J. INT’L L. 849 (2005).

⁴³ <https://www.wipo.int/edocs/lexdocs/laws/en/us/us218en-part1.pdf> (last visited Dec. 29, 2020).

The ALI approached the same general topic through a very different vehicle in its project on Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute,⁴⁴ produced by Andreas Lowenfeld and Linda Silberman. Although the project's initial impetus was the drafting of a federal statute to implement a potential Hague Jurisdiction and Judgments Convention, it was clear by the time the project got underway that no Convention was forthcoming. Even so, the ALI authorized continuing work on a federal statute on recognition and enforcement of foreign country judgments in light of the desirability of having a uniform federal regime in this area of the law. (The existing law varies from state to state, notwithstanding the existence of a Uniform Act on the subject.) On the agenda were also international *lis pendens* and provisional measures in aid of foreign proceedings.

This project culminated in a draft federal statute designed to implement the then contemplated Hague Convention on the Recognition and Enforcement of Foreign Judgments. Although that treaty did not come to be and implementation was thus not needed, the draft legislation has influenced the literature and practice of international civil procedure. In fact, the enactment of federal legislation on the subject should not be contingent on the United States' entry into a treaty, and Congress has shown at least some interest in enacting such a statute, even in the absence of a treaty and any need for implementing legislation. In 2011, a House of Representatives committee heard testimony from Reporter Linda Silberman urging congressional consideration of the ALI proposed federal statute, or something along the same lines, on the ground that "it will provide a Federal uniform standard for recognition and enforcement in foreign judgments in the United States and [have] the potential to enhance recognition and enforcement of U.S. judgments in other countries."⁴⁵ In 2019, a new Hague Convention on the subject of judgment recognition and enforcement was signed,⁴⁶ and the possibility that the ALI will return to the project of drafting federal implementing legislation cannot be excluded.⁴⁷

2. Law as Common Solutions to Shared Problems

A second set of the ALI's "transnational" projects studies the prospects for coordination among national legal systems in addressing legal problems they have in common, with a view to law reform and/or legal harmonization across jurisdictions. Perhaps the earliest and best known are the Principles of Transnational Civil Procedure, headed by Geoffrey Hazard, former Director of the ALI, and Michele Taruffo, produced in 2006 in partnership with the International Institute for the Unification of

⁴⁴ On the project, see generally Linda J. Silberman & Andreas F. Lowenfeld, *A Different Challenge for the ALI: Herein of Foreign Country Judgments, an International Treaty, and an American Statute*, 75 IND. L.J. 635 (2000); Yuliya Zeynalova, *The Law on Recognition and Enforcement of Foreign Judgments: Is It Broken and How Do We Fix It?*, 31 BERKELEY J. INT'L L. 150 (2013).

⁴⁵ Hearing before the Subcommittee on Courts, Commercial and Administrative Law of the Committee on the Judiciary, House of Representative, 112th Cong, 1st Sess. (Nov, 15, 2011), available at <https://www.govinfo.gov/content/pkg/CHRG-112hhrg71239/html/CHRG-112hhrg71239.htm> (last visited Dec. 30, 2020).

⁴⁶ Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matter (July 2, 2019), available at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=137> (last visited Dec. 30, 2020).

⁴⁷ 9 U.S.C. §§ 9ff.

Private Law (UNIDROIT).⁴⁸ The intent was to establish principles for the conduct of transnational litigation, bridging the common law/civil law divide, that could become an international standard incorporated in the procedural law of jurisdictions worldwide, as well as in the practice of international arbitration. The ALI conceived of the work as “reduc[ing] uncertainty for parties litigating in unfamiliar surroundings and promot[ing] fairness in judicial proceedings.”⁴⁹ The ALI later built on that achievement by taking part in a recent project on transnational civil procedure presented at the 2019 General Assembly of the European Law Institute (about which more later) in Vienna.⁵⁰ That enterprise, which as of this writing is ongoing, contemplates adoption of European Rules of Civil Procedure, with an initial focus on case management, pleadings, evidence, collective redress, and appeals.

The ALI pursued much the same purpose in connection with more particular substantive and procedural issues. The single substantive law issue receiving greatest attention was international insolvency, a project that, like the WTO Principles, proceeded in stages.⁵¹ Initially, Jay Westbrook examined the conduct of cross-border bankruptcy proceedings among the then NAFTA countries, with a view to establishing common ground and shared principles among the three countries. The initiative resulted in the ALI’s publication of *Transnational Insolvency Cooperation among the NAFTA Countries* (2003).

Thereafter, jointly with the International Insolvency Institute (III), the ALI went on to produce *Global Principles for Cooperation in International Insolvency Cases* (2012),⁵² on which Ian Fletcher, Bob Wessels, and Jay Westbrook took the lead, with the purpose of expanding the learning and recommendations of the NAFTA project to relations with and among other countries around the world. The principles have since been endorsed by the National Conference of Bankruptcy Judges, the National Bankruptcy Conference, and the Canadian Judicial Council.⁵³

Without doubt, the single most important procedural issue of international dimensions receiving the ALI’s attention was aggregate litigation. Under the leadership of Reporter Sam Issacharoff and Associate Reporters Robert Klonoff, Richard Nagareda, and Charles Silver, the ALI identified common solutions to common problems in the conduct of aggregate litigation, both the advantages and complexities of which

⁴⁸ See Geoffrey C. Hazard Jr. & Michele Taruffo, *Transnational Rules of Civil Procedure Rules and Commentary*, 30 CORNELL INT’L L.J. 493 (1997); See also Rolf Stürner, *The Principles of Transnational Civil Procedure: An Introduction to Their Basic Conceptions*, 69 RABEL J. COMP. & INT’L PRIVATE L. 201 (2005); H. Patrick Glenn, *The ALI/UNIDROIT Principles of Transnational Civil Procedure as Global Standards for Adjudication?*, 9 UNIF. L. REV. 829 (2004).

⁴⁹ See <https://www.ali.org/publications/show/transnational-civil-procedure/>.

⁵⁰ See <https://www.europeanlawinstitute.eu/projects-publications/completed-projects/completed-projects-sync/civil-procedure> (last visited Dec. 30, 2022).

⁵¹ The NAFTA Cooperation project formed part of the ALI’s Transnational Insolvency project, co-sponsored by the International Insolvency Institute.

⁵² The Global Principles for Cooperation in International Insolvency Cases formed part of the ALI’s Transnational Insolvency project, co-sponsored by the International Insolvency Institute. On the *Global Principles*, see Bob Wessels, *English and American Courts Apply Global Principles for Cooperation in International Cases*, LEIDENLAWBLOG (Oct. 28, 2013), available at <https://leidenlawblog.nl/articles/english-and-american-courts-apply-global-principles-for-cooperation-in-inte> (last visited Dec. 30, 2020); Ian F. Fletcher & Bob Wessels, *A Final Step in Shaping Rules for Cooperation in International Insolvency Cases*, 9 INT’L CORP. RESCUE 283 (2012).

⁵³ <https://www.ali.org/publications/show/transnational-insolvency/>.

were of growing interest worldwide. The result was the ALI's Principles of Aggregate Litigation.⁵⁴ The Reporters defined the term "aggregate litigation" broadly to encompass not only class actions but a wide range of other modes in which cases may be bundled together for trial and/or settlement, with a view to identifying the kind of cases to which the various modes best lend themselves. The Principles, which are addressed to judges, legislators, and counsel in making sound aggregation decisions and in effectively managing cases in which aggregation occurs, not only excited great interest but stimulated further discussion and debate on a grand scale.⁵⁵

Just as the ALI amplified its work on principles of international civil procedure by commissioning the drafting of a federal statute on the recognition and enforcement of foreign judgments, so too did it amplify its work on international cooperation and harmonization of law through means other than production of a set of principles. In this case, that other means was activity on the international law conference circuit. At a 2016 conference on Doing Business Across Asia: Legal Convergence in an Asian Century, which launched the Asian Business Law Institute,⁵⁶ former ALI President Michael Traynor addressed the question, "How Could a Set of Uniform Asian Rules Take Shape? Would the UNIDROIT Principles Be Useful?"

IV. The International Influence of the ALI

Besides greatly enriching its portfolio of activity, the ALI's turn to international law subjects has inured to its and the international legal community's benefit in other important, if collateral, ways.⁵⁷

The membership of the ALI has always, understandably, been comprised of U.S.-based judges, academics, and practitioners. However, the numbers of non-U.S.-based members in all three categories have grown of late, as has their active participation in specific ALI projects, mostly those of international dimension. They represent a growing ALI asset, particularly in the development of Principles of Law that are of interest outside as well as within the United States. Less obvious would seem to be the contribution of foreign jurists to the ALI Restatements of U.S. Law. But their activity in connection with Restatements is also observable, whether as members' consultative group participants, advisory committee members and even, albeit on rare occasions, Reporter.

⁵⁴ See generally Sam Issacharoff et al., *The ALI's New Principles of Aggregate Litigation*, 8 J.L. ECON. & POL'Y 183 (2011); Samuel Issacharoff, *The Governance Problem in Aggregate Litigation*, 81 FORD. L. REV. FORDHAM L. REV. 3165 (2013).

On the Principles of Aggregate Litigation, in this volume.

⁵⁵ Roger H. Trangsrud, *Aggregate Litigation Reconsidered*, 79 GEO. WASH. L. REV. 293 (2011) (collecting fifteen articles analyzing and evaluating different aspects of the project, and charting further evolution on the subject); Nancy J. Moore, *The Absence of Legal Ethics in the ALI's Principles of Aggregate Litigation: A Missed Opportunity—And More*, 79 GEO. WASH. L. REV. 717 (2010).

⁵⁶ See <https://law.asia/event/doing-business-across-asia-legal-convergence-in-an-asian-century/> (last visited Dec. 30, 2020); <http://www.mylegaladvisor.in/conference-on-legal-convergence-in-asia/> (last visited Dec. 30, 2020).

⁵⁷ See generally Michael Traynor, *The First Restatements and the Vision of the American Law Institute, Then and Now*, 32 S. ILL. U. L.J. 145, 146 (2007).

Independent of the growth in non-U.S. members, the ALI's international law work stands to bring comparative law as well into the equation. This was very much the hope of Michael Traynor, who wrote some twenty years ago in connection with the Restatements of Conflict of Laws:

The U.S. law of conflict of laws has not been marked by serious, sustained, and widespread attention to comparative law. The international implications of our law, however, are growing rapidly. We have much to learn from foreign countries. When the principles are substantially the same or in harmony, that fact alone can reinforce a sense that the domestic principle is an acceptable one. When the principles are different, that fact can prompt a reexamination of the domestic principle. That reexamination may lead to a reinforcement of the domestic principle or a modification of it in light of the teaching of comparative law.⁵⁸

... The international implications of commercial transactions, intellectual property, employment by multijurisdictional entities, torts, privacy, and various subjects are increasing. We can no longer afford to resolve such issues with approaches based on precepts that are rooted in old problems such as guest statutes (giving nonpaying guests the right to sue a negligent driver) or statutes limiting the contractual rights of married women or on parochial perspectives limited to the United States or particular states in the United States. We need to educate each other on comparative law principles and pull together to find the best principles and approaches that offer the promise of commanding wide acceptance.⁵⁹

Reporters have developed a corresponding urge to bring a comparative law dimension to the Restatements, if only in the Reporters' Notes. This is not a new idea. Michael Traynor advocated this very move as well:

[T]he ALI is making an effort to enhance its comparative law analysis in traditional projects. In particular, we are asking our Reporters to consider pertinent laws and approaches in other countries and to cite them in the Reporters' Notes. Even in such largely domestic subjects as restitution and unjust enrichment, agency, and property, the analysis will be enriched by such efforts. The ALI's work products may also become even more useful to practitioners, courts and scholars in the United States as well as in foreign countries. Moreover, in developing subjects such as employment law, privacy, international intellectual property, and torts that implicate more than one country, it has become increasingly relevant and important to know more about the law of other countries. This development will also lead to greater involvement of

⁵⁸ Michael Traynor, *Conflict of Laws, Comparative Law, and the American Law Institute*, 49 AM. J. COMP. L. 391, 395 (2001).

⁵⁹ *Id.* at 403.

foreign judges, scholars, and practitioners in ALI's work and corresponding enrichment of the final product.⁶⁰

The work of Reporters is of course onerous, and taking this path would heighten the burden considerably. But there are ways in which the burden may be shared by overseas ALI members who would almost certainly welcome the opportunity to contribute in this effort, and in the process strengthen their connection with the ALI. The more the ALI ventures into comparative law, as well as international law, the greater the exposure and prominence it will enjoy among foreign audiences, whether judicial, academic, or practitioner.

At the same time, the ALI's international law activities have fostered fuller engagement by the U.S. government in the activities of the ALI. The Foreign Relations and International Arbitration Restatements in particular have engaged the Department of State in the work of the ALI as never before, with ALI members, notably Jeffrey Kovar, Mary Catherine Malin, and Michael Mattler taking leading parts in the recent Restatement (Fourth) of the Foreign Relations Law of the U.S. and the Restatement of the U.S. Law of International Commercial and Investor-State Arbitration. The State Department's involvement was naturally aided by the presence of current and past Legal Advisers in the ALI Council, among them John Bellinger, Conrad Harper, and Harold Koh, and by the presence in ALI membership and among Reporters of current and past International Law Counselors at the Department. ALI member and frequent Adviser on Restatement projects, Peter Trooboff, has at the same time generated important ties with the American Society of International Law.

As the discussion of projects earlier in this chapter documents, inclusion of international law subjects on the ALI agenda has also opened up substantial possibilities for cooperation with foreign and international legal institutions,⁶¹ of which UNIDROIT is only one example. It is doubtful that the prospering of international partnerships with overseas entities into which the ALI has entered would have been achieved had the ALI not itself moved as it has into international law domains.

Especially worthy of mention is the ALI's working relationship with the European Law Institute (ELI), based in Vienna, Austria. Establishment of the ELI was inspired and facilitated in large measure by the ALI example, and ALI members, including Lance Liebman and George Bermann, were active in the ELI's founding. As of this writing, a joint ALI-ELI project on Principles for a Data Economy is well underway, with Neil Cohen and Christiane Wendehorst as Reporters for the ALI and ELI, respectively. As the ELI has written, "[w]ith the rise of an economy in which data is a tradeable asset globally, more certainty is needed with regard to the legal rules that are applicable to the transactions in which data is an asset." In its pursuit of greater clarity and certainty in the law, the project corresponds perfectly to the ALI's fundamental and time-honored objectives. At the same time, the project exemplifies the ALI's commitment to the search for common solutions to shared problems, recognized earlier in this chapter.

⁶⁰ *Id.* at 402–03.

⁶¹ Traynor, *supra* note 19, at 6–7.

Restatements and Principles do not exhaust the means by which the ALI can tackle international law subjects. Reference has already been made to the ALI's 1945 Statement of Essential Human Rights,⁶² its Proposed Federal Statute on Recognition and Enforcement of Foreign Judgments,⁶³ its participation in the ELI project on European Rules of Civil Procedure,⁶⁴ its conferences on Doing Business Across Asia: Legal Convergence in an Asian Century⁶⁵ and its work on the extraterritorial application of the U.S. securities laws.⁶⁶ Going forward, further expansion in the modes of the ALI's engagement with international law is to be expected.

Given the ever greater consciousness of U.S. law's connectedness to other parts of the world, there can be little doubt that the ALI's engagement with international law in its many manifestations will continue to grow apace.⁶⁷ International law is firmly and solidly part of the ALI profile.

⁶² See *supra* notes 2–6, and accompanying text.

⁶³ See *supra* note 46, and accompanying text.

⁶⁴ See *supra* note 52, and accompanying text.

⁶⁵ See *supra* note 58, and accompanying text.

⁶⁶ See *supra* note 30, and accompanying text.

⁶⁷ *Id.* at 8–9.