

# Judicial Review of TPRs

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# International Tribunals

- ECJ (many examples: Cafaggi)
- Possibly:
  - WTO AB (e.g. food safety, environment)
  - ECtHR

(relevant IL doctrine: state responsibility for private action on territory)

# Conditioning Factors for NC Willingness to Review

## Locally-based TPRs/Foreign TPRs

Domestic stakeholders

### Examples:

- Antitrust suits against ICANN-VeriSign deal
- Civil suits against CRAs
- Public law petitions for executive passivity

### Examples:

- Civil suits against foreign accountants
  - Global sport TPRs
- Issues:
- Jurisdiction
  - Applicable law

Foreign Stakeholders

### Examples:

- Bhopal, Texaco
- Hoffman-La Roche

### Issues:

- Protecting local public/private interests
- What role for Domestic NC?
- Collective action problem

### Examples:

- Applying Antitrust or Securities Law to Foreign activities
- Violations of IL

### Issues:

- Sovereignty/ Comity
- Protecting domestic market
- Exception: ATCA (US)

# Tools

## Substantive Law:

- Private Law (+responsibility to third parties: “Drittwirkung”)
- Regulatory Law (competition, consumer protection, securities regulation, etc.)
- Public law (“state action,” Datafin, etc)

## Procedure:

- Class actions

## Questions:

- Review of outcome or also of process?
- Divergence of norms
- Different attitude to applicability of public law

### Positive:

- Information gathering tools

### Negative:

- Differences across jurisdictions (e.g. on class action)
- Higher standing req.(showing of direct harm)
- Inclusion of stakeholders?
- Litigation costs
- Judges’ awareness