VOLUME 11 ISSUE 2 JULY 2021 ISSN 2044-2513

Asian Journal of International Law

Asian Journal of International Law

The Asian Journal of International Law is the journal of the Asian Society of International Law. It publishes peer-reviewed scholarly articles and book reviews on public and private international law. The regional focus of the journal is broadly conceived. Some articles may focus specifically on Asian issues; others will bring one of the many Asian perspectives to bear on issues of global concern. Still others will be of more general interest to scholars, practitioners, and policy-makers located in or working on Asia.

The journal is published in English as a matter of practical convenience rather than political endorsement. English language reviews of books in other languages are particularly welcomed. The journal is produced for the Asian Society of International Law by the National University of Singapore Faculty of Law and succeeds the *Singapore Year Book of International Law*.

For further information, forthcoming pieces, and guidelines on how to submit articles or book reviews, please visit www.AsianJIL.org.

INSTRUCTIONS FOR CONTRIBUTORS

The Asian Journal of International Law welcomes unsolicited articles and proposals for book reviews. For details, visit www.AsianJIL.org.

© Asian Journal of International Law ISSN 2044-2513 E-ISSN 2044-2521

This journal issue has been printed on FSCTM-certified paper and cover board. FSC is an independent, nongovernmental, not-for-profit organization established to promote the responsible management of the world's forests. Please see www.fsc.org for information.

Asian Journal of International Law

EDITORIAL BOARD

Chair Surya P. SUBEDI, QC

Hilary CHARLESWORTH Yifeng CHEN **B.S. CHIMNI** Eliana CUSATO Tara DAVENPORT Hikmahanto JUWANA Ratna KAPUR Victor KATTAN Borhan Uddin KHAN Тотту КОН LU Song Benoit MAYER Djamchid MOMTAZ

Hitoshi NASU NGUYEN Hong Thao Raul PANGALANGAN Jaruprapa RAKPONG Prabhash RANJAN Harry L ROQUE Mavluda SATTAROVA Sergey SAYAPIN Mohammad SHAHABUDDIN SHIN Hae Bong Jaturon THIRAWAT XUE Hanqin

Ex officio Shirley SCOTT President of the Asian Society of International Law

Editors

Antony ANGHIE

Simon CHESTERMAN

TAN Hsien-Li

Book Review Editor

Lucia ORIANA

Assistant Production Editor

Yvette FOO

Senior Associate Editors

Marija JOVANOVIC

KIM Heejin

Amiel VALDEZ

Associate Editors

Charalampos GIANNAKOPOULOS Dawoon JUNG

Assistant Editors

LEE Kay Han NG Qi Le, Jordan

https://doi.org/10.1017/S2044251321000588 Published online by Cambridge University Press

TAN Xiao Tong

Asian Society of International Law

EXECUTIVE COUNCIL

President Shirley SCOTT

Vice-Presidents

Upendra ACHARYA Andrew BYRNES LEE Keun-Gwan Raul Cano PANGALANGAN

Secretary-General Antony ANGHIE

Treasurer

KUNIYA Shiro

Members

ABE Kohki Arie AFRIANSYAH Pouria ASKARY Mohammad Nazmuzzaman BHUIAN Srinivas BURRA CHEN Yifeng DANY Channraksmeychhoukroth Miras DAULENOV Tara Maria DAVENPORT Alison DUXBURY Amal Kumar GANGULI Venkatachala Gajanana HEGDE Jean HO Francis JARDELEZA Nartnirun JUNNGAM Sorajak KASEMSUVAN LIU Huawen Mostafa M NASER Muhammad MAHBUBUR RAHMAN MOGAMI Toshiki OH Seung-Jin PHAN Duy Hao PARK Pae-Keun Vincent-Joel PROULX Pawat SATAYANURUG Mavluda SATTOROVA Wasantha SENEVIRATNE TAN Hsien-Li Yin Yin WIN ZHANG Xinjun

Ex officio

Harry L ROQUE

ADVISORY COUNCIL

OWADA Hisashi (Chair) Georges ABI-SAAB Awn Shawkat AL-KHASAWNEH Dalveer BHANDARI Edith BROWN-WEISS Jayavadh BUNNAG Simon CHESTERMAN B.S. CHIMNI Richard FALK Mary GEORGE Borhan Uddin KHAN KO Swan Sik Abdul KOROMA Djamchid MOMTAZ PAIK Jin-Hyun Moragodage Christopher Walter PINTO Pemmaraju Sreenivasa RAO Lucy REED Harry ROQUE Surakiart SATHIRATHAI SHI Jiuyong Bruno SIMMA Surya P. SUBEDI, QC Jaturon THIRAWAT XUE Hanqin

RESEARCH COMMITTEE Shirley SCOTT (Chair)

Contents

NOTES AND COMMENTS

- 223–231 Contextualising Radhabinod Pal's Dissenting Opinion in Contemporary International Criminal Law Sumedha CHOUDHURY
- 232–244 Custom as a Source Under Article 21 of the Rome Statute *Amit KUMAR*
- 245–252 Sustainable Green Finance towards a Green Belt and Road *Allison GOH*
- 253–260 Adamakopoulos and Others v. Cyprus: "Massive" Problems Concerning a Mass Claims Proceeding in Investment Treaty Arbitration? *Keer HUANG*

ARTICLES

- 261–280 International Legal Fictions: Lessons from the South China Sea Award *Reece LEWIS*
- 281–298 Free Access to and from the Ocean in the Convention on the Legal Status of the Caspian Sea: The Law of the Sea and the Caspian "Body of Water" *Alberto PECORARO*
- 299–328 Palestine's Accession to Geneva Convention III: Typology of Captives Incarcerated by Israel Mutaz M. QAFISHEH and Ihssan Adel MADBOUH
- 329–350 International Juridical Forms and Legal Subjectivity: A History of the Subject in Southeast Asia from the Anglo-Dutch Treaty of 1824 to the ASEAN Charter Jose Duke BAGULAYA
- 351–371 China's Participation in the Second Hague Conference and the Concept of Equal Sovereignty in International Law Ryan Martínez MITCHELL
- 372–390 State Responsibility for COVID-19: Does International Contagion Constitute Transboundary Harm? Sophie CAPICCHIANO YOUNG

BOOK REVIEWS

Dispute Settlement

391–392 New York Convention: Article-by-Article Commentary (Oxford: Hart Publishing an imprint of Bloomsbury Publishing, 2019)
 edited by Reinmar WOLFF (Reviewed by Christopher BOOG)

History and Theory of International Law

392–393 A Chinese Theory of International Law (China: Law Press China, 2020) Zhipeng HE and Lu SUN (Reviewed by Ming DU) 393–394 The Rise of China and International Law: Taking Chinese Exceptionalism Seriously (Oxford: Oxford University Press, 2019) Congyan CAI (Reviewed by Luping ZHANG)

Human Rights

- 394-395 The UN Convention on the Rights of the Child: A Commentary (Oxford: Oxford University Press, 2019)
 John TOBIN (Reviewed by Irina CRIVEŢ)
- 395–396 Violence Against Women's Health in International Law (Manchester: Manchester University Press, 2020)
 Sara DE VIDO (Reviewed by Gabrielle SIMM)

International Criminal Law

396–397 The Elgar Companion to the Extraordinary Chambers in the Courts of Cambodia (Cheltenham UK/Northampton MA: Edward Elgar Publishing, 2018) Nina H. B. JØRGENSEN (Reviewed by Sergey SAYAPIN)

International Economic Law

- 397–398 Asian Capitalism and the Regulation of Competition: Towards a Regulatory Geography of Global Competition Law (Cambridge/New York: Cambridge University Press, 2013) edited by Michael W. DOWDLE, John GILLESPIE, and Imelda MAHER (Reviewed by Sungjin KANG)
- 398–399 India and Bilateral Investment Treaties: Refusal, Acceptance, Backlash (Oxford/New Delhi: Oxford University Press, 2019) Prabhash RANJAN (Reviewed by Dilini PATHIRANA)
- 400–401 The BRICS in the New International Legal Order on Investment: Reformers or Disrupters (Leiden/Boston: Brill Nijhoff, 2020) edited by Congyan CAI, Huiping CHEN, and Yifei WANG (Reviewed by Peng WANG)

Law of Armed Conflict (IHL)

- 401–402 Humanitarian Disarmament: An Historical Enquiry (Cambridge/New York/Melbourne: Cambridge University Press, 2020)
 Treasa Moira DUNWORTH (Reviewed by Christopher P. EVANS)
- 402–403 International Humanitarian Law and Non-State Actors: Debates, Law and Practice (The Hague, Netherlands: TMC Asser Press, 2019) edited by Ezequiel HEFFES, Marcos D. KOTLIK, and Manuel J. VENTURA (Reviewed by Mohd IMRAN)

Law of the Sea

403-404 Building a New Legal Order for the Oceans (Singapore: National University of Singapore Press, 2019)

Tommy KOH (Reviewed by Abdullah Al ARIF)

Other Areas of International Law

404–405 A Legal Analysis of the Belt and Road Initiative: Towards a New Silk Road? (Switzerland: Palgrave MacMillan as part of Springer Nature, 2020) edited by Giuseppe MARTINICO and Xueyan WU (Reviewed by Punsara AMARASINGHE and Lucia LEONTIEV)

ADDENDUM

406–406 Palestine's Accession to Geneva Convention III: Typology of Captives Incarcerated by Israel – ADDENDUM Mutaz M. QAFISHEH and Ihssan Adel MADBOUH