

# INTERNATIONAL & COMPARATIVE LAW QUARTERLY

VOLUME 73

PART 3

JULY 2024

## ARTICLES

Revisiting the Five-Powers War Risk Exclusion  
Of War and International Investment Law

*Richard L. Kilpatrick Jr*  
*Kathryn Greenman*

Towards a Legal Era of Islands: The International and  
Constitutional Legal Status of Island Territories

*Harry Hobbs and Donald Rothwell*

The Extent and Legitimacy of the Judicial Function in  
UNCLOS Dispute Settlement

*Douglas Guilfoyle and Joanna Mossop*

Between Disability and Culture: The Search for a Legal  
Taxonomy of Sign Languages in the European Union

*Delia Ferri, Iryna Tekuchova and Eva Krolla*

The Use of Scholarship by the European  
Court of Human Rights

*Kanstantsin Dzehtsiarou and Niccolò Ridi*

## SHORTER ARTICLES

Voting Protocols as Informal Judicial Institutions:  
the Politics of Enforceability and Strategic Breaching

*Mauro Arturo Rivera León*

US and UK Military Strikes in Yemen and the *Jus ad Bellum*

*Christian Henderson*

A Newcomer to Maritime Law: The Beijing Convention  
on the International Effects of Judicial Sales of Ships

*Yingfeng Shao, Laura Carballo Piñeiro and  
Maximo Q Mejia Jr*

## BOOK REVIEWS

Public International Law  
Private International Law  
Comparative Law  
Human Rights  
European Law



British Institute of  
International and  
Comparative Law



## **British Institute of International and Comparative Law**

**The British Institute of International and Comparative Law** (BIICL) is a leading independent legal research and membership organisation with charitable status, unaffiliated to any university. It is the only body of its kind in the UK and one of very few in the world. It is not publicly or privately funded by any one government, institution or person. Established in 1958 and based in London with a dedicated team of staff, it brings together legal practitioners in private and public practice, in-house counsel, scholars and students, as members and contributors. It has developed a strong global network in international and comparative law and the rule of law.

BIICL undertakes five key activities: **applied legal research, events, capacity-building training, publications and membership services**. We conduct research around the world across the broad range of public international law, private international law, comparative law, competition law, European law and international investment law and the rule of law. Our focus is on applied research, based on strong conceptual foundations, which is practical, offers examples of good practice, and recommendations for policy and legal actions. Our activities often cross the traditional boundaries of law, so as to engage with contemporary national, regional and international issues, and we consistently have an impact on law and policy worldwide.

BIICL has created **a diverse community** of scholars and practitioners and serves as an unrivalled focal point for our substantial membership base. BIICL members include judges, practising lawyers, government officials, regulators, international civil servants, academics and students. We keep our members abreast of the latest developments in international and comparative law.

Within BIICL, the **Bingham Centre for the Rule of Law** is devoted to the study and promotion of the rule of law worldwide. Launched in 2010, the Centre has established a broad base of work internationally that highlights threats to the rule of law while promoting high quality studies and training.

## INSTRUCTIONS FOR CONTRIBUTORS

The ICLQ welcomes the submission of contributions for consideration by the Board of Editors with a view to publication. All manuscripts must be submitted online via the ScholarOne platform: <http://mc.manuscriptcentral.com/iclq>.

The Board of Editors will only consider material which complies with the following:

1. The submission should be an original, unpublished work not currently under consideration for publication elsewhere. Please note that our exclusive submission policy means you cannot submit your work to another journal until you have received a decision from us. If you would like to submit to another journal, you must withdraw your article from consideration by the ICLQ.

2. The ICLQ publishes articles that deal with public international law, private international law, comparative law, human rights law and European Union law. It particularly encourages the submission of innovative and original articles whose theme or content illuminate more than one of these subject areas. Articles which do no more than rehearse familiar and well-known material, or which are concerned only with national law (other than private international law) in a non-comparative way, should not be submitted.

3. Long articles should not exceed 12,000 words (15,000 words including footnotes). Pieces of up to 8,000 words (including footnotes) will usually be considered for the 'Shorter Articles' section. The Editors will decide on the section to which all contributions, irrespective of length, are best suited should they be accepted for publication. ScholarOne will require you to enter the word count (including footnotes) when submitting your article, and to indicate if you intend it for the 'Shorter Articles' section.

4. Footnotes should be numbered consecutively throughout the article and be in the form normally used by the ICLQ. Please see the Style Guide for further information. Footnoting should not be excessive.

5. A short (50–100 words) abstract of the article should be supplied. We reserve the right to edit abstracts for length and style. Please also supply a minimum of five keywords (maximum ten) for your article to enable digital searching.

6. Authors should state their present academic or professional affiliation and indicate any professional or personal involvement in the subject matter of the article.

7. The ICLQ only accepts submissions online via the ScholarOne platform. To upload your manuscript please go to: <http://mc.manuscriptcentral.com/iclq>. Detailed instructions for submitting your manuscript online can be found at the submission website by clicking on the 'Instructions and Forms' link in the top right of the screen; and then clicking on the 'Author Submission Instructions' icon on the following page. The Managing Editor will acknowledge receipt

of the manuscript, with a reference number, which should be quoted in all correspondence.

For the ICLQ Style Guide, please visit [www.journals.cambridge.org/iclq/ifc](http://www.journals.cambridge.org/iclq/ifc). In all matters not included in this Guide, the ICLQ follows the OSCOLA citation system for house style; please visit [www.law.ox.ac.uk](http://www.law.ox.ac.uk) for details.

## SUBSCRIPTIONS

Subscriptions, orders, and enquiries should be sent to Cambridge University Press, University Printing House, Shaftesbury Road, Cambridge, CB2 8BS, UK, email: [journals@cambridge.org](mailto:journals@cambridge.org). Current prices can be found at <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/subscribe>. Back issues of all volumes are now available at the current cover price. For more information on the journal see <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly>.

The views expressed in the contributions to this journal are those of their author(s) and do not necessarily reflect the views either of the Board of Editors of the journal or of the British Institute of International and Comparative Law (BIICL). BIICL is a registered charity and an independent research institute committed to supporting high standards of scholarship in all aspects of international and comparative law.

The ICLQ has been selected for coverage in Clarivate's products and services. The journal is indexed and abstracted in the Social Sciences Citation Index, the Journals Citation Reports/Social Sciences Edition and Current Contents/Social and Behavioural Sciences.

## PERMISSIONS

For all matters concerning rights and permissions please contact Cambridge University Press. For more information go to: <http://www.cambridge.org/about-us/rights-permissions>.

---

### © 2024 British Institute of International and Comparative Law

Printed in Great Britain by Henry Ling Limited, The Dorset Press, Dorchester, DT1 1HD

This journal issue has been printed on FSC<sup>TM</sup>-certified paper and cover board. FSC is an independent, non-governmental, not-for-profit organization established to promote the responsible management of the world's forests. Please see [www.fsc.org](http://www.fsc.org) for information.

Authors of accepted articles in International & Comparative Law Quarterly now have the option to publish on a Gold Open Access basis.

**Cambridge Journals Online:** For further information about this journal please go to the journal web site at [www.cambridge.org/ICLQ](http://www.cambridge.org/ICLQ).

---

## BIICL GOVERNANCE

### President

The Rt Hon the Lord Neuberger of  
Abbotsbury

### Vice Presidents

The Rt Hon the Lord Collins of Mapesbury

The Rt Hon Sir David Edward KCMG KC

Sir Christopher Greenwood GBE CMG KC

### Director

Professor Spyros Maniatis

### Board of Trustees

#### Chair:

Eve Salomon CBE

Chiann Bao

Guy Beringer CBE KC (Hon)

Professor Thom Brooks

Shehzad Charania MBE

Dean Curtis

Naomi Hart

Alex Just

Dr Sorcha MacLeod

Professor Iain MacNeil

Habib Motani

Liz Perks

Professor Dan Sarooshi KC

Rupert Skilbeck

Professor Elies van Sliedregt

### Advisers to the Board of Trustees

Martin Paisner CBE

---

## ICLQ EDITORIAL BOARD

### Co-General Editors

Professor Alex Mills, University College  
London

Professor Spyros Maniatis, British Institute of  
International and Comparative Law

### Board Members

Professor Richard Barnes,  
University of Lincoln

Professor Paula Giliker,  
University of Bristol

Dr Lawrence Hill-Cawthorne,  
University of Bristol

Professor Angus Johnston,  
University of Oxford

Professor Urfan Khaliq,  
Cardiff University

Professor Andrew Lang,  
University of Edinburgh

Professor Chin Leng Lim,  
Chinese University of Hong Kong

Professor Dominic McGoldrick,  
University of Nottingham

Professor Louise Merrett,  
University of Cambridge

Professor Lavanya Rajamani,  
University of Oxford

Professor Philippa Webb,  
King's College London

Professor Katja S Ziegler,  
University of Leicester

### Managing Editor

Anna Riddell-Roberts,  
British Institute of International and  
Comparative Law

### Book Review Editor

Professor Angus Johnston,  
University of Oxford



**British Institute of  
International and  
Comparative Law**

# International and Comparative Law Quarterly

---

Volume 73

July 2024

Part 3

---

## ARTICLES

- REVISITING THE FIVE-POWERS WAR RISK  
EXCLUSION *Richard L. Kilpatrick Jr* 551
- OF WAR AND INTERNATIONAL INVESTMENT LAW *Kathryn Greenman* 579
- TOWARDS A LEGAL ERA OF ISLANDS: THE INTERNATIONAL AND  
CONSTITUTIONAL LEGAL STATUS OF ISLAND TERRITORIES  
*Harry Hobbs and Donald Rothwell* 609
- THE EXTENT AND LEGITIMACY OF THE JUDICIAL FUNCTION IN UNCLOS  
DISPUTE SETTLEMENT *Douglas Guilfoyle and Joanna Mossop* 641
- BETWEEN DISABILITY AND CULTURE: THE SEARCH FOR A LEGAL TAXONOMY OF  
SIGN LANGUAGES IN THE EUROPEAN UNION  
*Delia Ferri, Iryna Tekuchova and Eva Krolla* 669
- THE USE OF SCHOLARSHIP BY THE EUROPEAN COURT OF HUMAN RIGHTS  
*Kanstantsin Dzehtsiarou and Niccolò Ridi* 707

## SHORTER ARTICLES

- VOTING PROTOCOLS AS INFORMAL JUDICIAL INSTITUTIONS:  
THE POLITICS OF ENFORCEABILITY AND STRATEGIC  
BREACHING *Mauro Arturo Rivera León* 747
- US AND UK MILITARY STRIKES IN YEMEN AND THE *JUS AD BELLUM*  
*Christian Henderson* 767
- A NEWCOMER TO MARITIME LAW: THE BEIJING CONVENTION ON THE  
INTERNATIONAL EFFECTS OF JUDICIAL SALES OF SHIPS  
*Yingfeng Shao, Laura Carballo Piñeiro and Maximo Q Mejia Jr* 793

## BOOK REVIEWS

- MAARTEN HILLEBRANDT, PÄIVI LEINO-SANDBERG and IDA KOIVISTO,  
*(In)visible European Government: Critical Approaches to  
Transparency as an Ideal and a Practice* (Rita Guerreiro Teixeira) 811
- ELIZA WATT, *State Sponsored Cyber Surveillance: The Right to Privacy of  
Communications and International Law* (Asaf Lubin) 813
- OLIVIER GAILLARD and KRISTA NADAKAVUKAREN SCHEFER, *Private  
International Law in East Asia: From Imitation to Innovation and  
Exportation* (Shuji Ju) 816