

VOLUME 27 | NUMBER 2 | JUNE 2014 | 0922-1565

Leiden Journal *of* international law

*In association with the Grotius Centre for International Legal
Studies, Leiden University and Campus The Hague*

**CAMBRIDGE
UNIVERSITY PRESS**

Leiden Journal of International Law

Leiden Journal of International Law is published by Cambridge University Press for the Foundation of the Leiden Journal of International Law.

Firmly established as one of Europe's leading journals in the field, *Leiden Journal of International Law* (*LJIL*) provides a forum for two vital areas, namely international legal theory and international dispute settlement. It is unique in providing the most comprehensive coverage of the world's most important international tribunals in The Hague and elsewhere (such as the ICJ, ICTY, ICC and others), as well as examining new trends in international legal thinking. *LJIL* is essential reading for academics and practitioners who need to stay abreast of recent developments in these areas.

SUBSCRIPTIONS

Leiden Journal of International Law (ISSN 0922-1565) is published quarterly in March, June, September and December. Four parts form a volume. The subscription price which includes delivery by air where appropriate (but excluding VAT) of volume 27 (2014), which includes print and electronic access, is £248.00 (US\$403.00 in USA, Canada and Mexico) for institutions; £31.00 (US\$46.00 in USA, Canada and Mexico) for individuals, which includes print only. Students ordering direct from the publishers and certifying that the journal is for their personal use can subscribe to the print version at £25.00 (US\$38.00 in USA, Canada and Mexico). The electronic-only price available to institutions is £12.00 (US\$39.00). Single parts are £67.10 (US\$107.52 in USA, Canada and Mexico) plus postage. EU subscribers (outside the UK) who are not registered for VAT should add VAT at their country's rate. VAT registered members should provide their VAT registration number. Japanese prices for institutions (including ASP delivery) are available from Kinokuniya Company Ltd, PO Box 55, Chitose, Tokyo 156, Japan.

Orders, which must be accompanied by payment, may be sent to a bookseller, subscription agent or direct to the publisher: Cambridge University Press, University Printing House, Shaftesbury Road, Cambridge CB2 8BS; or in the USA, Canada and Mexico: Cambridge University Press, Journals Fulfillment Department, 100 Brook Hill Drive, West Nyack, New York 10994-2133, USA. Periodicals postage paid at New York, NY and at additional mailing offices.

Leiden Journal of International Law is indexed and abstracted in the following Thomson Reuters products services: Current Contents®/Social and Behavioural Sciences; Social Sciences Citation Index®/Social Scisearch®; Journal Citation Reports/Social Sciences Edition.

Leiden Journal of International Law is included in the Cambridge Journals Online journals service which can be found at <http://journals.cambridge.org>. For further information on other Press journals access <http://cambridge.org/journals>.

COPYING

This journal is registered with the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923, USA (www.copyright.com). Organizations in the USA which are also registered with the CCC may, therefore, copy material (beyond the limits permitted by sections 107 and 108 of US Copyright law) subject to payment to the CCC. This consent does not extend to multiple copying for promotional or commercial purposes. Code 0922-1565/08. ISI Tear Sheet Service, 3501 Market Street, Philadelphia, PA 19104, USA, is authorized to supply single copies of separate articles for private use only. Organizations authorized by the Copyright Licensing Agency may also copy material, subject to the usual conditions. For all other use, permission should be sought from Cambridge or from the US branch of Cambridge University Press.

This journal issue has been printed on FSC-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 for information.

© Foundation of the Leiden Journal of International Law 2014
ISSN 0922-1565

Printed in the UK by Bell & Bain Ltd., Glasgow.

Contents

EDITORIAL

- 303–308 In Defence of ‘Generalism’ in International Legal Scholarship and Practice
Yannick Radi

INTERNATIONAL LEGAL THEORY

- 309–330 Innate Cosmopolitan Dialectics at the ICJ: Changing Perceptions of International Community, the Role of the Court, and the Legacy of Judge Álvarez
Geoffrey Gordon
- 331–352 Rules, Lawyering, and the Politics of Legality: Critical Sociology and International Law’s Rule
Nikolas M. Rajkovic

INTERNATIONAL LAW AND PRACTICE

- 353–369 The Evolving Role of ECOWAS and the SADC in Peace Operations: A Challenge to the Primacy of the United Nations Security Council in Matters of Peace and Security?
Erika de Wet
- 371–396 Conceptualizing the Authority of the Sovereign State over Indigenous Peoples
Steven Wheatley
- 397–418 Accession as Dialogue: Epistemic Communities and the World Trade Organization
Lisa Toohey
- 419–445 *Lois Mémoires* in Post-Genocide Societies: The Rwandan Law on Genocide Ideology under International Human Rights Law Scrutiny
Pietro Sullo

HAGUE INTERNATIONAL TRIBUNALS

International Court of Justice

- 447–464 Cultural Rights in the Case Law of the International Court of Justice
Eleni Polymenopoulou

International Criminal Courts and Tribunals

- 465–477 Legal Developments of Civil Party Participation at the Extraordinary Chambers in the Courts of Cambodia
Ignaz Stegmiller
- 479–493 The Relationship between the International Criminal Court and its Host State: The Impact on Human Rights
Emma Irving
- 495–517 Comparing the Impact of the Interpretation of Peace Agreements by International Courts and Tribunals on Legal Accountability and Legal Certainty in Post-Conflict Societies
Alexia Solomou

BIBLIOGRAPHY

- 519–523 Books and Articles in the Field of the Prevention and Peaceful Settlement of International Disputes (Spring 2014)
Ingrid Kost

REVIEW ESSAYS

- 525–536 Two Ways of Knowing International Law
Viljam Engström

537–549 Realizing Whose Utopia? The Structure of Normative International Law Arguments
Benoît Mayer

BOOK REVIEW

551–556 Jean Allain (ed.), *The Legal Understanding of Slavery: From the Historical to the Contemporary*
Silvia Scarpa

ERRATUM

557 The Notion of Consent in Part One of the Draft Articles on State Responsibility -
ERRATUM
Cliff Farhang

Leiden Journal of International Law

EDITORS

Carsten Stahn (Editor-in-Chief)
Eric De Brabandere (Editor-in-Chief)
Tanja Aalberts (International Legal Theory)
Yannick Radi (International Legal Theory)
Ingo Venzke (International Legal Theory)
Tarcisio Gazzini (International Law and Practice)
Theodore Christakis (International Law and Practice)
Cecily Rose (International Law and Practice)
Santiago Villalpando (ICJ)
Cristina Hoss (ICJ)
Sandesh Sivakumaran (ICJ)
Elies van Sliedregt (ICTY)
Mark J. Osiel (ICTY)
Volker Nerlich (ICC)
Sara Kendal (ICC)
Sergey Vasiliev (ICC)
Dov Jacobs (ICC and Legal Blogging)
Freya Baetens (Book Reviews)
Vid Prislán (Book Reviews)
Ingrid Kost (Bibliography)
Larissa van den Herik (General Editor)
Jean d'Aspremont (General Editor)
Thomas Skouteris (General Editor)

EDITORIAL OFFICE

Jennifer Easterday (Chair, Managing Editor)
Roxanne Selby (Copy Editor)

Noah Al-Malt, Kyusun Rose Chung, Stephanie Fowler, Claire Henderson,
Katarzyna Lasinska, Sofia Nordengren, Michael Rowse, Havneet Kaur Sethi,
Burjis Shabir (Student Editors)

ADVISORY EDITORS

Nathaniel Berman (New York)
Laurence Boisson de Chazournes (Geneva)
Hilary Charlesworth (Canberra)
Christine Chinkin (London)
James Crawford (Cambridge)
John Dugard (Leiden)
Horst Fischer (Bochum & Leiden)
Rick Lawson (Leiden)
Philippe Sands (London)
Michael P. Scharf (Ohio)
Christoph Schreuer (Vienna)
Bruno Simma (The Hague)
Otto Triffterer (Salzburg)
Makau Wa Mutua (Buffalo)