

ISSN 0165-070X  
Vol. XLVII-2000- Issue 3

# NETHERLANDS INTERNATIONAL LAW REVIEW

INTERNATIONAL LAW  
CONFLICT OF LAWS  
COMPARATIVE LAW

T.M.C. ASSER PRESS

MARTINUS NIJHOFF PUBLISHERS



T · M · C · A S S E R P R E S S

THE HAGUE – THE NETHERLANDS

## A CENTURY OF INTERNATIONAL ADJUDICATION: The Rule of Law and its Limits

by Jean Allain

This study analyzes the first century of the evolution of international adjudication as a permanent fixture of the international society. Through a case study approach, examining specific international courts, the study seeks to demonstrate the various limitations to effective adjudication on the international plain.

By examining the 'Hague System' of adjudication, as manifest in the Permanent Court of Arbitration and the World Court, the structural limitation of a system predicated on volunteer acceptance of adjudication is drawn out. Beyond this most important limitation to ensuring full respect of the international rule of law, the 1908 Central American Court of Justice is considered to demonstrate the political machinations which can impede and, in this case, ultimately destroy an international court. Focus then shifts to a comparative study on the Inter-American and European courts of human rights during the 1980–1998 era to demonstrate how limits in financing and staffing reduced the Inter-American Court to a shadow of its European

counterpart despite appearing similar on paper. The role which judges play in the process of adjudication is the final limitation which is considered. Various cases before the Yugoslav Tribunal are taken into account to demonstrate the extent to which judges have sought to establish an 'effective' international criminal law system often at the expense of the rights of the accused.

Finally, the European Court of Justice is examined to demonstrate that the rule of law can be effectively implemented internationally if States so desire and that it is simply the intransigence of States, over the last century, which has limited the rule of law on the international plain.

JEAN ALLAIN is Assistent Professor of Public International Law, Department of Political Science, The American University in Cairo, Egypt.

ISBN 90-6704-125-4

price NLG 185.00 / USD 90.50 / GBP 57.50  
2000; pages: 282; hardbound

**Distributed for T · M · C · A S S E R P R E S S by Kluwer Law International:**

*For USA, Canada, Central and South America:*  
Kluwer Law International, Order Department  
675 Massachusetts Avenue  
Cambridge, MA 02139, USA  
Tel (617)354-0140. Fax (617)354-8595  
Toll free in USA & Canada. 1-800-577-8118  
email: sales@kluwerlaw.com

*For Europe and Rest of World:*  
Kluwer Law International, Order Department  
P.O.Box 322  
3300 AH Dordrecht, The Netherlands  
Tel +31 (0)78-6546454. Fax +31 (0)78-6546474  
Freephone in the UK: 0800 963 955  
email: sales@kli.wkap.nl

# NETHERLANDS INTERNATIONAL LAW REVIEW

Recommended citation: NILR

Published three times a year, complemented by the Netherlands Yearbook of International Law, in co-operation with the T.M.C. Asser Instituut, Institute for Private and Public International Law, International Commercial Arbitration and European Law (20-22, Schimmelpennincklaan, The Hague, phone (0)70-3420300), founded in 1965 by eight Dutch universities offering courses in international law. The Institute is responsible for the promotion of education and research in international law, particularly by setting up documentation projects and carrying out research programmes in the fields covered by the Institute.

Indexed in: *The Netherlands International Law Review* is abstracted and/or indexed in the *International Bibliography of Social Sciences*, *IBZ*, *International Political Science Abstracts*.

Rates: Combined annual subscription to the Netherlands International Law Review and to the Netherlands Yearbook of International Law: Dfl. 646.00, shipping and handling included. Subscription orders and requests for specimen copies should be sent to Kluwer Law International, P.O. Box 85889, 2508 CN The Hague, The Netherlands.

Advertising: full page only; size 120 mm x 200 mm. Material: originals or camera-ready copy to be sent to the undermentioned address; closing dates: two months prior to month of publication; for details concerning the price, please contact Kluwer Law International, Sales Department, P.O.Box 85889, 2508 CN The Hague, The Netherlands.

## PHOTOCOPYING

*In the U.S.A.:* The journal is registered at the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923. Authorisation to photocopy items for internal or personal use, or the internal or personal use of specific clients, is granted by Kluwer Academic Publishers for users registered with the Copyright Clearance Center (CCC) Transactional Reporting Service, provided that the fee of USD 18.00 per copy is paid directly to CCC. For those organisations that have been granted a photocopy licence by CCC, a separate system of payment has been arranged. The fee code for users of the Transactional Reporting Service is 0165-070X/2000 USD18.00.

Authorisation does not extend to other kinds of copying, such as that for general distribution, for advertising or promotional purposes, for creating new collective works, or for resale.

*In the rest of the world:* Permission to photocopy must be obtained from the copyright owner. Please apply to T.M.C. Asser Instituut, P.O. Box 30461, 2500 GL The Hague, The Netherlands.

ISSN 0165-070X

Library of Congress catalogue card number LC 79-65199

© 2000 T.M.C. Asser Instituut, The Hague, and contributors.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright owners.

*The views expressed in any article are those of the individual author and do not necessarily represent the views of the Board of Editors.*

## **AUTHORS' GUIDE**

### **CONTENTS OF THE NILR**

The NILR invites the submission of articles on legal questions, legal developments, commentaries, analysis and comprehensive overviews in the fields of public international law, private international law and comparative law. These articles must be original and may be of any length up to a maximum of around 35 printed pages each of approximately 450 words. Shorter articles and commentaries of between 5 and 10 printed pages are also published.

The NILR also publishes book reviews and reports of Dutch judicial decisions involving questions of private international law. These have a maximum length of 5 and 15 printed pages, respectively.

The NILR is an English-language publication.

### **SUBMISSION OF MATERIAL**

Authors are requested to send three copies of each manuscript to the Secretariat: P.O.Box 30461, 2500 GL The Hague, The Netherlands. All submitted material should be in English and should be typed using a personal computer (preferably using WordPerfect). Material may be submitted at any time of the year and, if accepted for publication, will be published at the earliest available opportunity.

### **FEES**

Authors will not receive a fee, but will be presented with the issue of the NILR in which their contribution appears, together with 25 off-prints of their work in the case of articles and case reports and 5 off-prints in the case of book reviews. Additional off-prints may be ordered, upon payment of a standard fee.

### **COPYRIGHT**

Copyright is exclusively vested in the NILR and the author(s) jointly. Acceptance of the Board of Editors' offer to publish implies, however, that authors agree to an embargo on publication elsewhere, either in English or another language, for a period of two years following the date of publication in the NILR.

The agreement of the Board of Editors will be necessary before the article can be subsequently published elsewhere.

### **EDITORIAL POLICY AND DISCRETION**

The Board of Editors exclusively reserves the right to suggest modifications and/or additions to all materials accepted for publication, and further reserves the right at any time to reject or to withhold or postpone the publication of any material.

The decision of the Board of Editors will be final.

### **REVISION**

All material accepted for publication may, at the discretion of the Managing Editor, be subjected to linguistic and grammatical revision. This will apply mainly to contributions written by authors whose mother-tongue is not English.

In all such cases the revised text will be sent to the author for his/her approval.

### **CORRECTION OF PROOFS AND MODIFICATIONS TO THE TEXT**

Authors will receive galley proofs for correction. All accepted material will have been adapted and type-set in the NILR house-style. The NILR does not accept any significant departures from its house-style. Examples of the house-style are available upon request.

Authors may make minor changes or additions to the galley proofs. Substantial modifications, however, may only be made in consultation with and with the consent of the Board of Editors.

## BOARD OF EDITORS

*M. Bos, Honorary Editor-in-Chief*

*P. Vlas, Editor-in-Chief*

Professor of Comparative and Private International Law, Free University of Amsterdam; member of the Netherlands Standing Government Committee on Private International Law

*Th.M. de Boer*

Professor of Private International Law, Director of the Centre of Foreign Law and Private International Law, University of Amsterdam

*P. van Dijk*

Member of the Netherlands Council of State

*C.J.R. Dugard*

Professor of Public International Law, University of Leyden

*C. Flinterman*

Professor of Human Rights Law, University of Utrecht

*T.D. Gill*

Associate Professor of Public International Law, University of Utrecht

*A.W. Heringa*

Professor of Comparative Constitutional and Administrative Law, University of Maastricht

*E. Hey*

Professor of International Natural Resources Law, Erasmus University Rotterdam

*E.H. Hondius*

Professor of Civil Law, University of Utrecht

*M.T. Kamminga*

Professor of Public International Law, University of Maastricht

*E. Lijnzaad*

Ministry of Foreign Affairs, The Hague

*L. Strikwerda*

Advocate General of the Dutch Supreme Court; member of the Netherlands Standing Government Committee on Private International Law

*A.V.M. Struycken*

Professor of Private International Law and Comparative Law, University of Nijmegen; Chairman of the Netherlands Standing Government Committee on Private International Law

*G.J. Tanja*

European Director of Education and Training, Clifford Chance Pünder LLP, Amsterdam

*A. Fijalkowski, Managing Editor*

T.M.C. Asser Instituut, The Hague

## CORRESPONDENTS

*Professor J. Blom*

University of British Columbia, Vancouver, Canada

*Professor Dr. J. Erauw*

University of Ghent, Belgium

*Professor M.W. Janis*

University of Connecticut, USA

*Sir Robert Y. Jennings Q.C.*

Former Judge of the International Court of Justice, The Hague, The Netherlands

*P.H. Kooijmans*

Emeritus Professor of Public International Law, University of Leyden; Judge of the International Court of Justice

*J.H.A. van Loon*

Secretary General of the Hague Conference

on Private International Law, The Hague, The Netherlands

*H.E. Judge G. Parra-Aranguren*

Judge of the International Court of Justice; Professor at the University of Caracas, Venezuela

*Professor Dr. P. Schlechtriem*

Albert-Ludwigs-Universität, Freiburg, Germany

*Professor Dr. K. Siehr*

University of Zürich, Switzerland

*Professor T. Varady*

Central European University, Budapest, Hungary

*Professor M. Williams LL.M., Ph.D.*

University of Buenos Aires, Argentina

NETHERLANDS INTERNATIONAL LAW REVIEW  
VOL. XLVII 2000/3

CONTENTS

**Articles**

- G. BOAS, Comparing the ICTY and the ICC: Some Procedural and Substantive Issues 267
- M. FERIA TINTA, Commanders on Trial: The *Blaškić* Case and the Doctrine of Command Responsibility under International Law 293
- V. KRONENBERGER, A New Approach to the Interpretation of the French Constitution in Respect to International Conventions: From Hierarchy of Norms to Conflict of Competence 323

**Netherlands Judicial Decisions Involving Questions of Private International Law**

- Supreme Court, 12 November 1999, *The United States of America v. Havenschap Delfzijl/Eemshaven* – J. SPIEGEL 359
- Supreme Court, 7 January 2000 – T.H.M. VAN WECHER 368

**Book Reviews**

- P. Alston, ed., *The EU and Human Rights* (T. King) 375
- J. Collier; V. Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (M. Happold) 379
- I.F. Fletcher, *Insolvency in Private International Law: National and International Approaches* (A. Berends) 381

**Hague Case Law – Latest Developments** (M.T. KAMMINGA) 391

**Books Received and Available for Review** 394

**Contents of Volume XLVII** 395