

VOLUME 22 | NUMBER 1 | MARCH 2009 | 0922-1565

# Leiden Journal *of* international law

Leiden Journal  
*of* international law

VOLUME 22 | NUMBER 1 | MARCH 2009

CAMBRIDGE

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

**CAMBRIDGE**  
**UNIVERSITY PRESS**

<https://doi.org/10.1017/S0922156508005724> Published online by 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, October and December. Four parts form a volume. The subscription price which includes delivery by air where appropriate (but excluding VAT) of volume 22 (2009), which includes print and electronic access, is £184.00 (US\$299.00 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 £164.00 (US\$264.00). Single parts are £48.00 (US\$74.00 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, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 8RU; 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.

## COPYING

This journal is registered with the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923, USA ([www.copyright.com](http://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.

*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>.

© Foundation of the Leiden Journal of International Law 2009  
ISSN 0922-1565

*Printed in the United Kingdom by the University Press, Cambridge*

# Contents

## ARTICLES

- 1–28 The Rhetoric of Fragmentation: Fear and Faith in International Law  
*Anne-Charlotte Martineau*
- 29–49 De-territorializing and Re-territorializing *Lotus*: Sovereignty and Systematicity as Dialectical Nation-Building in Early Republican Turkey  
*Umut Özsu*
- 51–78 International Law and the Objectivity of Value  
*Emmanuel Voyiakis*

## HAGUE INTERNATIONAL TRIBUNALS

### **International Criminal Tribunal for the Former Yugoslavia**

- 79–97 Is ICTY Sentencing Predictable? An Empirical Analysis of ICTY Sentencing Practice  
*Barbora Holá, Alette Smeulers, and Catrien Bijleveld*

### **International Criminal Court**

- 99–126 Is Peace in the Interests of Justice? The Case for Broad Prosecutorial Discretion at the International Criminal Court  
*Kenneth A. Rodman*

## CURRENT LEGAL DEVELOPMENTS

- 127–149 Two for the Price of One: Attempts by the Extraordinary Chambers in the Courts of Cambodia to Combine Retributive and Restorative Justice Principles  
*Brianne M. McGonigle*
- 151–169 US Supreme Court, *Medellín v. Texas*: More than an Assiduous Building Inspector?  
*John King Gamble and Christine M. Giuliano*

## BIBLIOGRAPHY

- 171–176 Books and Articles in the Field of the Prevention and Peaceful Settlement of International Disputes (Autumn 2008)  
*Ingrid Kost*

## REVIEW ESSAYS

- 177–190 Exploring the Theory and Practice of the Relationship between International Human Rights Law and Domestic Actors  
*Frans Viljoen*
- 191–209 Non-state Actors, State-Centrism and Human Rights Obligations  
*Eric De Brabandere*

## BOOK REVIEW

- 211–216 Robert Kolb, *Interprétation et création du droit international. Esquisse d'une herméneutique juridique moderne pour le droit international public*  
*Fouad Zarbiev*



# Leiden Journal of International Law

## EDITORS

Larissa van den Herik (Editor-in-Chief)  
Wouter Werner, Fleur Johns, and Tanja Aalberts (Articles)  
Santiago Villalpando (ICJ)  
Elies van Sliedregt (ICTY)  
Carsten Stahn (ICC)  
Jean d'Aspremont and Annemarieke Vermeer-Künzli (CLD)  
Florian Hoffmann (Book Reviews)  
Ingrid Kost (Bibliography)  
Gideon Boas (General Editor)  
Marcel Brus (General Editor)  
Thomas Skouteris (General Editor)

James Bischoff  
Lennert Breuker  
Cristina Hoss  
Volker Nerlich  
Vid Prislán  
Sandesh Sivakumaran  
B. Don Taylor III

## EDITORIAL OFFICE

Christine Tremblay (Managing Editor)  
Philippa Youngman (Copy Editor)  
Kerem Gülay, John Heintz, Moritz Moelle, Johan Nilsson,  
Robert Schaeffer, Rahel Weingärtner, and Rumiana Yotova  
(Assistant 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)