

NETHERLANDS INTERNATIONAL LAW REVIEW



INTERNATIONAL LAW CONFLICT OF LAWS



ASSER PRESS



Yearbook of International Humanitarian Law

Volume 16 - 2013

General Editor: T.D. Gill

Managing Editors: Robin Geiß and Heike Krieger Editor Correspondents' Reports: Tim McCormack Assistant Managing Editor: Christophe Paulussen

Editorial Assistant: Jessica Dorsey

This volume contains several articles on 'Detention in non-international armed conflict', including the Copenhagen Process, and moreover features contributions on autonomous weapons systems, Apartheid and the second Turkel Report. It also contains an elaborate 'Year in Review' and a special section on the high-level Symposium 'Boundaries of the Battlefield' (The Hague, January 2013), including indepth reflections on various other aspects of the Symposium.

The Yearbook of International Humanitarian Law is the world's only annual publication devoted to the study of the laws governing armed conflict. It provides a truly international forum for high-quality, peer-reviewed academic articles focusing on this crucial branch of international law. Distinguished by contemporary relevance, the Yearbook of International Humanitarian Law bridges the gap between theory and practice and serves as a useful reference tool for scholars, practitioners, military personnel, civil servants, diplomats, human rights workers and students.

www.asser.nl/AsserPress/?978-94-6265-037-4

Print ISBN: 978-94-6265-037-4 VIII + 347 p., hardcover, EUR 129.95 EBook/Online ISBN: 978-94-6265-038-1

For the Correspondents' Reports please click www.asser.nl/YIHL/correspondentsreports.

For ordering information: www.springer.com/978-94-6265-037-4

Read this book on SpringerLink: http://link.springer.com/978-94-6265-038-1

Distributed for T.M.C. Asser Press by Springer | springer.com



NETHERLANDS INTERNATIONAL LAW REVIEW http://www.nilr.nl - http://journals.cambridge.org/NILR

Recommended citation: NILR

The Netherlands International Law Review (NILR) is one of the world's leading journals in the fields of public and private international law. It is published three times a year, and features peer-reviewed, innovative, and challenging articles, case notes, commentaries, book reviews and overviews of the latest legal developments in The Hague. The NILR was established in 1953 and has since become a valuable source of information for scholars, practitioners and anyone who wants to stay up-to-date of the most important developments in these fields.

In the subscription to the *Netherlands International Law Review* the *Netherlands Yearbook of International Law (NYIL)* is included. A special membership rate is available to the members of the Dutch Society of International Law.

The *NILR* is published by T.M.C. Asser Press, in cooperation with the T.M.C. Asser Instituut, and is distributed by Cambridge University Press. The T.M.C. Asser Instituut, an inter-university institute for Private and Public International Law and European Law, was founded in 1965 by the law faculties of the Dutch universities. The Institute is responsible for the promotion of education and research in international law.

Editorial Office: *Netherlands International Law Review*, c/o T.M.C. Asser Instituut, P.O. Box 30461, 2500 GL The Hague, The Netherlands; Tel. +31(70)3420300; Fax +31(70)3420359; E-mail: nilr@asser.nl.

Indexed in: The Netherlands International Law Review is abstracted and/or listed in the International Bibliography of Social Sciences, IBZ, International Political Science Abstracts, ARC-ERA Journal List, Peace Research Abstracts, Scopus, JustCite, Index to Foreign Legal Publications and Westlaw UK Legal Journals Index.

Distribution

The Netherlands International Law Review and the Netherlands Yearbook of International Law are distributed for T.M.C.ASSER PRESS by Cambridge University Press, Cambridge, UK. The Netherlands International Law Review and the Netherlands Yearbook of International Law are also available online through the Cambridge Journals Online service. This service can be found at http://journals.cambridge.org/NILR.

Subscription rates and specimen copies: Combined annual subscription to the *Netherlands International Law Review* (Vol. LXI, 2014) and to the *Netherlands Yearbook of International Law* (Vol. XLV, 2014): print + online: GBP 417.00 / USD 705.00 / EUR 615.00; print only: GBP 394.00 / USD 680.00 / EUR 579.00; online only: GBP 377.00 / USD 639.00 / EUR 555.00. Subscription orders and requests for specimen copies should be sent to: Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 8RU, UK, E-mail: journals @cambridge.org; or in the USA, Canada and Mexico: Cambridge University Press, Journals Fulfillment Department, 100 Brook Hill Drive, West Nyack, New York 10994-2133, E-mail: subscriptions newyork@cambridge.org.

Advertising: To advertise in the journal please contact the relevant Advertising Promoter for your area: in the USA, Canada or Mexico: USAd_sales@cambridge.org; in the UK, Europe or rest of the world: ad sales@cambridge.org.

Photocopying and permissions: All rights reserved. No part of this publication may be reproduced in any form or by any means, photocopying, electronic, or otherwise, without permission in writing from Cambridge University Press. Permission inquiries from the USA, Mexico, and Canada should be addressed to the New York office of Cambridge University Press http://www.cambridge.org/uk/information/rights/contacts/newyork.htm; permission inquiries from elsewhere should be addressed to the Cambridge office http://www.cambridge.org/uk/information/contacts_mel bourne.htm>. Permission to copy (for users in the USA) is available from the Copyright Clearance Center (CCC), http://www.copyright.com, email: info@copyright.com. For republication specific written permission should be obtained from the copyright owner. Please contact the Editorial Office of the *Netherlands International Law Review* (see above).

ISSN 0165-070X

Library of Congress catalogue card number LC 79-65199

© 2014 T.M.C.Asser Instituut, The Hague, and contributors.

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

BOARD OF EDITORS

P. Vlas, Editor-in-Chief

Professor of Comparative and Private International Law, VU University Amsterdam; Chairman of the Netherlands Standing Government Committee on Private International Law; Advocate General of the Dutch Supreme Court

A.J. Berends

Ministry of Finance, The Hague

Th M de Boer

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

M.M.T.A. Brus

Professor of Public International Law, University of Groningen

K. Henrard

Professor of Human Rights and Constitutional Law, Erasmus University Rotterdam

M.T. Kamminga

Professor Emeritus of Public International Law, Maastricht University

E. Lijnzaad

Ministry of Foreign Affairs, The Hague; Extraordinary Professor Practice of International Law, Maastricht University

C.M.J. Ryngaert

Professor of International Law, Utrecht University

N.J. Schrijver

Professor of Public International Law, Leiden University

L. Strikwerda

Former Advocate General of the Dutch Supreme Court; Vice-Chairman of the Netherlands Standing Government Committee on Private International Law

E.V. Koppe, Managing Editor

T.M.C. Asser Instituut, The Hague; Assistant Professor of Public International Law, Leiden University

CORRESPONDENTS

J. Blom

Professor of Law, University of British Columbia, Vancouver, Canada

J Frauw

Professor of International Law, Ghent University, Belgium

M.W. Janis

Professor of Law, University of Connecticut, USA

J.H.A. van Loon

Former Secretary General of the Hague Conference on Private International Law; Member of the *Institut de droit international*, The Hague

Yuko Nishitani

Professor of Private International Law, Kyushu University, Fukuoka, Japan

G. Parra-Aranguren

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

R. Rayfuse

Professor of International Law, Director of International Law Programs, University of New South Wales, Australia

K. Siehr

Professor Emeritus, University of Zurich, Switzerland

R Simma

Judge of the Iran-United States Claims Tribunal; Former Judge of the International Court of Justice

C. Stahn

Professor of International Criminal Law and Global Justice, Leiden University

M. Williams

Professor of International Law, University of Buenos Aires, Argentina

C. Van den Wyngaert

Judge of the International Criminal Court

NILR 2014 III

NETHERLANDS INTERNATIONAL LAW REVIEW VOL. LXI 2014/3

CONTENTS

Articles	
к. ARTS, Twenty-Five Years of the United Nations Convention on the Rights of the Child: Achievements and Challenges	267
R. GROZDANOVA, 'Terrorism' – Too Elusive a Term for an International Legal Definition?	305
I. COUZIGOU, International Organisations and States within an Agency Relationship: The Distribution of Responsibility	335
Netherlands Judicial Developments	
District Court of The Hague, <i>Mothers of Srebrenica et al.</i> v. <i>State of the Netherlands</i> , Judgment of 16 July 2014 – Introductory note by C. RYNGAERT	365
Book Reviews	
M. Boersma, Corruption: A Violation of Human Rights and a Crime under International Law? (C. Rose)	455
A. Chechi, The Settlement of International Cultural Heritage Disputes / V. Vadi, Cultural Heritage in International Investment Law and Arbitration (L. Lixinski)	460
S. Hopgood, The Endtimes of Human Rights (M.W. Janis)	464
F. Maupain, The Future of the International Labour Organisation in the Global Economy (P.F. van der Heijden)	466
A.G. Oude Elferink, The Delimitation of the Continental Shelf between Denmark, Germany and the Netherlands: Arguing Law, Practicing Politics? (M. Wood)	470
Y. Shany, Assessing the Effectiveness of International Courts (H. Thirlway)	476
Hague Case Law – Latest Developments (E.V. KOPPE)	481
Books Received and Available for Review	485
Contents of Volume LXI	487

AUTHORS' GUIDE

CONTENTS OF THE NETHERLANDS INTERNATIONAL LAW REVIEW (NILR)

The NILR, a peer-reviewed English-language publication, invites the submission of articles on legal questions, legal developments, commentaries, analysis and comprehensive overviews in the fields of international law and the conflict of laws, including their comparative legal aspects. 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.

SUBMISSION OF MATERIAL

Authors are requested to send their manuscript to the Editorial Office NILR, E-mail: nilr@asser. nl. All submitted material should be in English, preferably in Word format, and should include an abstract of about 200 words, 4-8 keywords, and a 'header' of a maximum of 40 characters. All articles will be peer reviewed. Articles submitted to NILR may not have been previously published and should not simultaneously be under consideration elsewhere. Electronic pre-prints of a paper or article on public websites or networks, not including personal or departmental websites or institutional repositories, must be removed at the latest upon acceptance for publication.

Manuscripts may be submitted at any time of the year and, if accepted for publication, will be published at the earliest available opportunity.

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 proofs for approval. 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.

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. Authors grant the T.M.C. Asser Instituut and T.M.C. Asser Press the exclusive license to publish their contribution worldwide in hardcopy and on-line.

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

Authors retain the right to post either their own version of their contribution as submitted to the NILR or their own final version of their contribution as accepted for publication prior to editorial input of the publisher on their own personal or departmental websites or in the institutional repository of the institution they worked at the time the paper was first submitted, provided the posting is accompanied by a prominent statement that the paper has been accepted for publication and will appear in a revised form, subsequent to editorial input by the publisher, in the NILR, together with a copyright notice in the name of the copyright holder. The definitive version may be published on the author's personal or departmental website, no sooner than upon appearance of the NILR's online version, subject to file availability and including a prominent statement of full bibliographical details, copyright notice, and link to the online edition of the NILR. The definitive version may be posted on the institutional repository, no sooner than one year after first publication of the article in the NILR, subject to file availability and including a prominent statement of full bibliographical details, copyright notice, and link to the online edition of the NILR.

FEES

Authors will not receive a fee, but will be presented with a complimentary issue of the NILR in which their contribution appears, and a pdf of their contribution for their personal use.