

VOLUME 25 | NUMBER 1 | MARCH 2012 | 0922-1565

# Leiden Journal of international law

25<sup>TH</sup>  
ANNIVERSARY

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

**CAMBRIDGE**  
UNIVERSITY PRESS

Leiden Journal of international law

VOLUME 25 | NUMBER 1 | MARCH 2012

CAMBRIDGE

<https://doi.org/10.1017/S0922156511000549> 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, September and December. Four parts form a volume. The subscription price which includes delivery by air where appropriate (but excluding VAT) of volume 25 (2012), which includes print and electronic access, is £215.00 (US\$349.00 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 £192.00 (US\$308.00). Single parts are £56.00 (US\$86.00 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.

*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](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.

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](http://www.fsc.org) for information.

© Foundation of the Leiden Journal of International Law 2012  
ISSN 0922-1565

Printed in the United Kingdom by the University Press, Cambridge

# Contents

- 1–8 Introduction: LJIL in the Age of Cyberspace  
*Larissa van den Herik*

## INTERNATIONAL LEGAL THEORY

- 9–54 ‘The Sacred Conspiracy’: Religion, Nationalism, and the Crisis of Internationalism  
*Nathaniel Berman*
- 55–66 Shedding Light on the Conspiracy: A Reply to Berman  
*Lorenzo Zucca*
- 67–72 What’s New in Our Current ‘International Secularism’?  
*Jean-Claude Monod*
- 73–76 ‘Religion’, Genealogy, History: A Reply to Zucca and Monod  
*Nathaniel Berman*

## INTERNATIONAL LAW AND PRACTICE

- 77–107 Arbitrariness, the Fair and Equitable Treatment Standard, and the International Law of Investment  
*Jacob Stone*
- 109–130 The Terms of Reference of the Commission on the Limits of the Continental Shelf: A Creeping Legal Mandate  
*Bjørn Kunoy*

## HAGUE INTERNATIONAL TRIBUNALS

### International Court of Justice

- 131–133 *Nicaragua*: 25 Years Later  
*Cristina Hoss, Santiago Villalpando, and Sandesh Sivakumaran*
- 135–147 The Impact of the *Nicaragua* Case on the Court and Its Role: Harmful, Helpful, or In Between?  
*Lori Fisler Damrosch*
- 149–156 The Impact of the *Nicaragua* Case on Matters of Evidence and Fact-Finding  
*Paul S. Reichler*
- 157–164 The Principle of Non-Intervention 25 Years after the *Nicaragua* Judgment  
*Marcelo Kohen*

### International Criminal Court and Tribunals

- 165–219 The End of ‘Modes of Liability’ for International Crimes  
*James G. Stewart*

## BIBLIOGRAPHY

- 221–224 Books and Articles in the Field of the Prevention and Peaceful Settlement of International Disputes (Autumn 2011)  
*Ingrid Kost*

## REVIEW ESSAY

- 225–237 Investment Law of/for/before the Twenty-First Century  
*Martins Paparinskis*

**BOOK REVIEWS**

- 239–243 Anja Seibert-Fohr, *Prosecuting Serious Human Rights Violations*  
Stef Vandeginste
- 243–250 Christina Eckes, *EU Counter-Terrorist Policies and Fundamental Rights: The Case of Individual Sanctions*  
Iris Canor

# Leiden Journal of International Law

## EDITORS

Larissa van den Herik (Editor-in-Chief)  
Jean d'Aspremont (Editor-in-Chief)  
Tanja Aalberts (International Legal Theory)  
Eric De Brabandere (International Law and Practice)  
Tarcisio Gazzini (International Law and Practice)  
Santiago Villalpando (ICJ)  
Cristina Hoss (ICJ)  
Sandesh Sivakumaran (ICJ)  
Elies van Sliedregt (ICTY)  
Mark J. Osiel (ICTY)  
Carsten Stahn (ICC)  
Volker Nerlich (ICC)  
Robert Heinsch (ICC)  
Freya Baetens (Book Reviews)  
Vid Prislán (Book Reviews)  
Ingrid Kost (Bibliography)  
Dov Jacobs (Legal Blogging)  
Thomas Skouteris (General Editor)  
Wouter Werner (General Editor)  
Fleur Johns (General Editor)

## EDITORIAL OFFICE

Jennifer Easterday (Chair, Managing Editor)  
Christian De Vos (Assistant Editor)  
Sara Kendall (Assistant Editor)  
Christine Cressy (Copy Editor)

Robynne Croft, Esteban Giudici, Catherine Harwood, Emily Hay,  
Erich Melliger, Andrew Muirui, Mathew Truscott (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)