

VOLUME 23 | NUMBER 2 | JUNE 2010 | 0922-1565

Leiden journal *of* international law

Leiden journal
of international law

VOLUME 23 | NUMBER 2 | JUNE 2010

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/S0922156510000014> 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 23 (2010), which includes print and electronic access, is £192.00 (US\$311.00 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 £171.00 (US\$275.00). Single parts are £50.00 (US\$77.00 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 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 2010
ISSN 0922-1565

Printed in the United Kingdom by the University Press, Cambridge

Contents

CLEVERINGA LECTURE 2009

- 277–289 Ethics and International Law
Rosalyn Higgins, DBE, QC

ARTICLE

- 291–310 Habeas Corpus and the Normative Jurisprudence of International Law
Larry May

HAGUE INTERNATIONAL TRIBUNALS

International Criminal Court

Complementarity on Trial: Perspectives on *Katanga*

- 311–318 Perspectives on *Katanga*: An Introduction
Carsten Stahn
- 319–329 The *Katanga* Trial Chamber Decision: Selected Issues
Gilbert Bitti and Mohamed M. El Zeidy
- 331–342 The Importance of Being Earnest: The Timeliness of the Challenge to Admissibility in *Katanga*
Dov Jacobs
- 343–362 The Judgment on the *Katanga* Admissibility Appeal: Judicial Restraint at the ICC
Ben Batros
- 363–374 The *Katanga* Complementarity Decisions: Sound Law but Flawed Policy
Susana SáCouto and Katherine Cleary
- 375–377 Bibliography on the *Katanga* Case
Ingrid Kost

CURRENT LEGAL DEVELOPMENTS

- 379–400 The Last Citadel! Can a State Claim the Status of Persistent Objector to Prevent the Application of a Rule of Customary International Law in Investor–State Arbitration?
Patrick Dumberry
- 401–430 Crafting the International Economic Order: The Public Function of Investment Treaty Arbitration and Its Significance for the Role of the Arbitrator
Stephan W. Schill

BIBLIOGRAPHY

- 431–436 Books and Articles in the Field of the Prevention and Peaceful Settlement of International Disputes (Winter 2009–2010)
Ingrid Kost

REVIEW ESSAYS

- 437–447 International Territorial Administration and the Limits of Law
Simon Chesterman
- 449–471 Writing about Empire: Remarks on the Logic of a Discourse
Akbar Rasulov

BOOK REVIEW

- 473–477 Ruth Rubio-Marín (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*
Natalia Luterstein

Leiden Journal of International Law

EDITORS

Larissa van den Herik (Editor-in-Chief)
Jean d'Aspremont, Fleur Johns and Tanja Aalberts (Articles)
Santiago Villalpando (ICJ)
Elies van Sliedregt (ICTY)
Mark J. Osiel (ICTY)
Carsten Stahn (ICC)
Eric De Brabandere (CLD)
Tarcisio Gazzini (CLD)
Robert Heinsch (Book Reviews)
Ingrid Kost (Bibliography)
Thomas Skouteris (General Editor)
Wouter Werner (General Editor)

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

EDITORIAL OFFICE

Christine Tremblay (Managing Editor)
Philippa Youngman (Copy Editor)
Kenneth Chan Yoon Onn, Siobhan Enraght-Moony, Neil J. Fishman,
Eveline Houg, Sun K. Kim, Pablo Andrés Moscoso de la Cuba
(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)