

ISSN 0165-070X
Vol. XLIX - 2002 - Issue 1

NETHERLANDS INTERNATIONAL LAW REVIEW

INTERNATIONAL LAW
CONFLICT OF LAWS
COMPARATIVE LAW

T.M.C. ASSER PRESS

MARTINUS NIJHOFF PUBLISHERS



T · M · C · ASSER PRESS

THE HAGUE – THE NETHERLANDS

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW

Volume 3 – 2000

General Editor: Horst Fischer

Managing Editor: Avril McDonald

**NOW
AVAILABLE**

The world's only annual publication devoted to the study of the laws of armed conflict, the *Yearbook of International Humanitarian Law* provides a truly international forum for high-quality, peer-reviewed academic articles focussing on this highly-topical branch of international law.

Shorter articles treat of current developments of particular interest or importance. A unique and useful feature of the Yearbook is Correspondents' Reports, a section surveying state practice in the field of international humanitarian law, compiled from information gathered by the Yearbook's worldwide network of correspondents. Correspondents' Reports is the world's only systematic review of state practice in the field of humanitarian law. The Yearbook also includes a selection of documents from the reporting period, many of which are not accessible elsewhere and a comprehensive bibliography of all recent publications in humanitarian law and other relevant fields. Ease of use of the Yearbook is guaranteed by the inclusion of a detailed index.

Distinguished by its topicality and 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.

Contents

Volume 3 features Articles and Current Developments on the following topics:

Humanitarian intervention (*Adam Roberts*); Targeting and proportionality after Operation Allied Force (*Bill Fenrick*); The principle of distinction in the Kosovo War (*Eric David*); Protecting the environment during war (*Richard Desgagné*); The doctrine of command responsibility (*Bing Bing Jia*); The year in review (*Avril McDonald*); The Optional Protocol to the child's convention on children and armed conflict (*Matthew Happold*); The ECOWAS Moratorium on Small Arms in West Africa (*Mutoy Mubiala*); The emblems (*Zidane Meribouté*); The elements of the crimes in the ICC Statute (*Herman von Hebel and Maria Kelt*); The ICC Rules of Procedure and Evidence (*Silvia Fernández de Gurmendi and Håkan Friman*); Canadian implementing legislation for the ICC Statute (*William Schabas*); INTERFET's Detainee Management Unit in East Timor (*Bruce Oswald*); The case of *Nulyarimma v. Thompson* (*Andrew Mitchell*); Establishing an individual complaints procedure for violations of international humanitarian law (*Jann Kleffner and Liesbeth Zegveld*)

2002, ISBN 90-6704-140-8; 873 pp., hardbound;
EUR 152.00 / USD 140.00 / GBP 96.00

Distributed for T. M. C. ASSER PRESS by Kluwer Law International:

For North, Central and South America:
Kluwer Academic Publishers
101 Philip Drive, Norwell, MA 02061, USA
Toll free in the US 866-269-WKAP
all other customers: + 1 781-871-6600
Fax: + 1 781-681-9045
email: Kluwer@wkap.com

For all other countries:
Kluwer Law International, Order Department
P.O. Box 322
3300 AH Dordrecht, The Netherlands
Tel + 31 (0)78-6576000. Fax + 31 (0)78-6576254
Freephone in the UK: 0800 963 955
email: sales@kli.wkap.nl

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.

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 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: EUR 344.00/USD 344.00, 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). The 'services' for users can be found on the internet at: www.copyright.com. For those organisations that have been granted a photocopy licence by CCC, a separate system of payment has been arranged.

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 *Netherlands International Law Review*, c/o 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

© 2002 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.

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; Professor of Military Law, University of Amsterdam

A.W. Heringa

Professor of Comparative Constitutional and Administrative Law, University of Maastricht

E. Hey

Professor of International Natural Resources Law, Erasmus University Rotterdam

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 Emeritus 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 LLP, Amsterdam

K. Henrard, Managing Editor.

T.M.C. Asser Instituut, The Hague; University of Groningen

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

CONTENTS

Foreword	V
Articles	
A. ABASS and M.A. BADERIN, <i>Towards Effective Collective Security and Human Rights Protection in Africa: An Assessment of the Constitutive Act of the New African Union</i>	1
C. FUDALI, <i>A Critical Analysis of the WTO Dispute Settlement Mechanism: Its Contemporary Functionality and Prospects</i>	39
T. MALUWA, <i>International Law-Making in Post-Colonial Africa: The Role of the Organization of African Unity</i>	81
Civil Jurisdiction and Enforcement of Judgments in Europe – P. VLAS, M. ZILINSKY and F. IBILI	105
Book Reviews	
K. Kittichaisaree, <i>International Criminal Law</i> (G. Sluiter)	139
M. Los; A. Zybortowicz, <i>Privatizing the Police-State: The Case of Poland</i> (A. Fijalkowski)	143
P. Okowa, <i>State Responsibility for Transboundary Air Pollution in International Law</i> (R. Lefeber)	148
Hague Case Law – Latest Developments (K. HENRARD)	155
Books Received and Available for Review	158

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 their manuscript to the Editorial Office NILR, 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. All submitted material should be in English and should be typed using a personal computer (preferably using WordPerfect or Word). Material may be submitted at any time of the year and, if accepted for publication, will be published at the earliest available opportunity.

FEEES

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 prior to publication, 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 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.