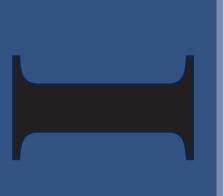


# NETHERLANDS INTERNATIONAL LAW REVIEW



INTERNATIONAL LAW CONFLICT OF LAWS



T.M.C.ASSER PRESS

**C**AMBRIDGE

## **JOURNALS**

# New for 2009

# HAGUE JOURNAL ON THE RULE OF LAW

Marketed and distributed for T.M.C Asser Press

### Hague Journal on the Rule of Law

is available online at journals.cambridge.org/rol

### To subscribe contact Customer Services

### in Cambridge:

Phone +44 (0)1223 326070 Fax +44 (0)1223 325150 Email journals@cambridge.org

### in New York:

Phone (845) 353 7500 Fax (845) 353 4141 Email subscriptions newyork@cambridge.org

### Editors-in-Chief

Julio Faundez, Warwick University, UK Randall Peerenboom, Professor of Law, La Trobe Univerity Melbourne, Associate Fellow Oxford University Centre for Socio-Legal Studies, Director Oxford Foundation for Law, Justice and Society China Rule of Law Programme, China

This exciting new journal provides a timely forum for the rapidly-expanding field of the rule of law, encapsulating cutting-edge study from all related disciplines. The journal aims to deepen and broaden the knowledge of the rule of law and its relation to economic growth, poverty reduction, promotion of democracy, protection of human rights and geopolitical stability.

Price information is available at journals.cambridge.org/rol

### Free email alerts

Keep up-to-date with new material – sign up at journals.cambridge.org/register

For a free online sample visit journals.cambridge.org/rol



# NETHERLANDS INTERNATIONAL LAW REVIEW http://journals.cambridge.org/NLR

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 indexed in the *International Bibliography of Social Sciences, IBZ, International Political Science Abstracts* and *Peace Research Abstracts*.

### 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 <a href="http://journals.cambridge.org">http://journals.cambridge.org</a>>.

**Subscription rates and specimen copies**: Combined annual subscription to the *Netherlands International Law Review* (Vol. LVI, 2009) and to the *Netherlands Yearbook of International Law* (Vol. XL, 2009): print + online: GBP 340.00 / USD 575.00 / EUR 505.00; print only: GBP 320.00 / USD 555.00 / EUR 475.00; online only: GBP 310.00 / USD 525.00 / EUR 460.00. Subscription orders and requests for sample copies should be sent to Cambridge University Press, The Edinburgh Building, Shaftesbury Road, Cambridge CB2 2RU, UK.

**Advertising**: To advertise in the journal please contact the relevant Advertising Promoter for your area: in the USA, Canada or Mexico: journals\_advertising@cup.org or telephone +1 (212) 337 5053; in the UK, Europe or rest of the world: ad\_sales@cambridge.org or telephone +44 (1223) 325757.

**Photocopying:** This journal is registered with the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923, USA. Organizations in the USA who are also registered with the C.C.C. may, therefore copy material (beyond the limits permitted by sections 107 and 108 of US Copyright law) subject to payment to the C.C.C. of the per copy fee of \$15.00. This consent does not extend to multiple copying for promotional or commercial purposes. Code 0165-070X/09. 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 the copyright owner. Please apply to the Editorial Office of the *Netherlands International Law Review* (see above).

### ISSN 0165-070X

Library of Congress catalogue card number LC 79-65199

© 2009 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

P. Vlas. Editor-in-Chief

Professor of Comparative and Private International Law, VU University Amsterdam; Vice-Chairman of the Netherlands Standing Government Committee on Private International Law

Th.M. de Boer

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

P. van Dijk

Member of the Netherlands Council of State

T D Gill

Associate Professor of Public International Law, University of Utrecht; Professor of Military Law, University of Amsterdam

K. Henrard

Associate Professor of Human Rights and Constitutional Law, Erasmus University Rotterdam

M.T. Kamminga

Professor of Public International Law, University of Maastricht

E. Liinzaad

Ministry of Foreign Affairs, The Hague

N.J. Schrijver

Professor of Public International Law, University of Leiden

L. Strikwerda

Advocate General of the Dutch Supreme Court; Vice-Chairman 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

E. de Wet

Professor of International Constitutional Law, University of Amsterdam

E.V. Koppe, Managing Editor

T.M.C. Asser Instituut, The Hague; Associate, Freshfields Bruckhaus Deringer LLP, Amsterdam

### CORRESPONDENTS

I Rlom

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

J. Erauw

Professor of International Law, University of Ghent, Belgium

M.W. Janis

Professor of Law, University of Connecticut, USA

P.H. Kooijmans

Professor Emeritus of Public International Law, University of Leyden; Former 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

G. Parra-Aranguren

Judge of the International Court of Justice; Professor at the University of Caracas, Venezuela R. Rayfuse

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

K. Siehr

Professor Emeritus, University of Zürich, Switzerland

B. Simma

Judge of the International Court of Justice

C. Stahn

Associate Professor of Public International Law, University of Leiden

M. Williams

Professor of International Law, University of Buenos Aires, Argentina

C. Van den Wyngaert

Judge of the International Criminal Tribunal for the former Yugoslavia

Yuko Nishitani

Associate Professor of Private International Law, Tohoku University, Sendai, Japan

NILR 2009	III
NETHERLANDS INTERNATIONAL LAW REVIEW VOL. LVI 2009/1	
CONTENTS	
Articles	
MD. R. ISLAM; S. ALAM, Preferential Trade Agreements and the Scope of GATT Article XXIV, GATS Article V and the Enabling Clause: An Appraisal of GATT/WTO Jurisprudence	1
F. MESSINEO, The House of Lords in <i>Al-Jedda</i> and Public International Law: Attribution of Conduct to UN-Authorized Forces and the Power of the Security Council To Displace Human Rights	35
Book Reviews	
A. Boyle; C. Chinkin, <i>The Making of International Law</i> (P. de Waart)	63
Hague Case Law – Latest Developments (E.V. KOPPE)	69
Documents	
Advisory Committee on Issues of Public International Law,  Advisory Report on the Application of Protocol No. 14 to the European  Convention on Human Rights and Fundamental Freedoms, The Hague,  November 2008	71

93

**Books Received and Available for Review** 

### **AUTHORS' GUIDE**

### CONTENTS OF THE NETHERLANDS INTERNATIONAL LAW REVIEW (NILR)

The NILR 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.

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, 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. 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.

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

### FEES

Authors will not receive a fee, but will be presented with a complimentary 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 request and 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. 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.

### 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.