

# Exploring the Frontiers of International Law Research Programme

Annual Report 2016



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## Introduction

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Dear reader,

We are pleased to present the 2016 Annual Report for the Exploring the Frontiers of International Law (EFIL) research programme

The programme is a continuation of the ‘Securing the Rule of Law in a World of Multi-Level Jurisdiction’ research programme which was split into smaller and more specialised projects in 2015. The split has allowed us to target our research and to address the macro challenges that international law faces today.

The EFIL programme is grounded in the idea that the growing extension of global norms and institutions (e.g., through regulation, executive action, adjudication, norm diffusion or institutional interaction) presents challenges for the international legal order (e.g., coherence, fairness, integrity, transparency) that require careful scrutiny. The concept of frontiers provides an innovative framework to understand such processes.

With our new focus, we have based our research programme on three core pillars that explore the normative, systemic, and institutional transformations of the international legal order.

Within these pillars, we explore a diverse range of sub-fields of international law, including air and space law, international criminal law, international institutional law, international humanitarian law,

the law of the sea, international trade law and arbitration, and others.

The main purpose is to assess whether and how international law applies to new social phenomena and global challenges, such as peace, justice, sustainable development or environmental protection. Our programme pursues three macro objectives: to identify existing international norms and practices, to engage with their critiques, and to identify ways and means to improve the *status quo*.

We hope this annual report will provide you with an overview of our ongoing research inquiries, and some of the findings and outputs. It provides a ‘taste’ of the rich research agenda that drives our scholarship, increasing links between theory and practice, and some fresh perspectives on international law in context. We thank all staff, senior and junior, for their important contributions in 2016.

*Carsten Stahn, EFIL  
Coordinator*



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## Some Highlights from 2016

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### Leiden Law School's First International Law MOOC!



18 January 2016 was a big day for the Grotius Centre for International Legal Studies and the Leiden Law School—the first Massive Open Online Course prepared by the centre went live through Coursera! Entitled ‘International Law in Action: A Guide to the International Courts and Tribunals in The Hague’, the course was presented by Professor Larissa van den Herik, Dr Yannick Radi, and Dr Cecily Rose. Running over

5 weeks, the course introduces participants to the courts and tribunals functioning in the Hague and discussed the themes of the interaction between law and politics; state consent; and the role that international courts and tribunals play in the protection of the public interest and global values. As of February 2017, nearly 1,600 students have completed the course with over 10,000 active learners. The course has been described by past participants as “very well put together”, “brilliantly constructed”, and “extremely informative with a holistic perspective” and has been ranked an average of 4.7 out of 5 stars by a massive 347 reviews—for the first MOOC, a wonderful achievement.

### A Second MOOC Launched

Expanding further into the world of online learning, the Grotius Centre launched its second MOOC in September 2016. Following on from the success of the first MOOC, the ‘International Law in Action: Investigating and Prosecuting International Crimes’ course explored the atrocities that produce unspeakable forms of violence. Run by Professor Carsten Stahn with contributions from Dr Sergey Vasiliev and Joe Powderly, the course is designed to expand upon the knowledge students learnt in ‘International Law in Action: A Guide to the International Courts and Tribunals in The Hague’ and give them an ‘insider’s perspective’ into the operation of the Hague’s international criminal tribunals. Students learn about how international criminal justice functions; who the actors are; what outcomes it produces; and how it can be improved. The course ultimately aims to answer the question to what extent we are living in an ‘Age of Accountability’? It has attracted over 3,420 active learners and 495 course completers in its first six months. Rated 4.8 out of 5 stars on Coursera by 101 past participants, the course was very well-received.

A third MOOC will be recorded in 2017, by Professor Eric de Brabandere. The third leg of the series will cover international arbitration in the Hague.

Together, the two MOOCs run by the Grotius Centre (and the forthcoming third MOOC)

indicate a new commitment to foster synergies between research and teaching, and to engage a global audience in debate about the transformation of the international legal order.

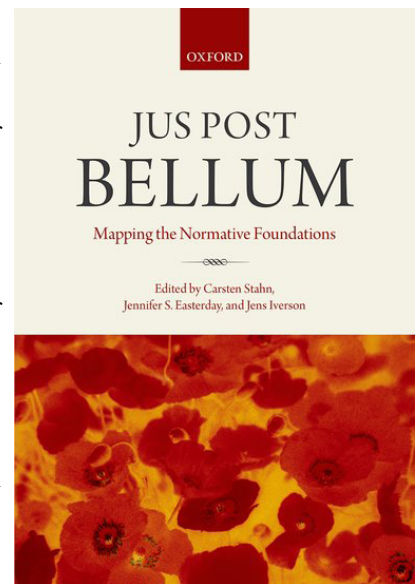
### Final touches of the *Jus Post Bellum Vidi project*

Six years of research concluded on 29 and 30 September 2016 at the final conference of the *Jus Post Bellum Project*, on “*Jus Post Bellum* and the Justice of Peace”, held at the Peace Palace. Launched in mid-2012 and supported by a Vidi grant from the NWO—the Netherlands Organisation for Scientific Research—the Grotius Centre’s project explored the notion of post-conflict justice and its role in fair and sustainable conflict termination and peacemaking.

Lead by Professor Carsten Stahn, and researchers Jens Iverson and Jennifer Easterday, the *Jus Post Bellum* Project aimed to clarify the historical origin,



normative basis and meaning of the concept of *jus post bellum* in just war theory and international law and its contemporary relevance and implications; investigate whether and how a *jus post bellum* can improve fairness and sustainability of contemporary peacemaking techniques; identify the normative content of a modern *jus post bellum*; elucidate the status and the relationship of different norms, legal regimes and institutions and to indicate how the international community can make better use, and build on, contemporary legal rules and practice in the area of peacemaking; and develop a set of policy principles and ‘best practices’ on post-conflict peace.



The *Jus Post Bellum* Project resulted in several volumes with Oxford University Press, that bring together researchers from different disciplines. The first, *Jus Post Bellum: Mapping the Normative Foundations* is currently available, the second one on the *Protection of the Environment in Transition from Conflict to Peace* is in production, and the final one on *Jus Post Bellum and the Justice of Peace* is under contract. All three books will be available open access, signaling an ambition to make high quality research accessible all over the globe.

## Collaboration between Nuremberg Academy and Grotius Centre

In April 2016, the Grotius Centre for International Legal Studies and the Nuremberg Academy signed a [Memorandum of Understanding](#) in the historic Courtroom 600 in Nuremberg to initiate cooperation in international criminal law between the two institutions. Collaboration focuses on the application of complementarity in ICC situation countries. The Signing Ceremony was witnessed by King Willem-Alexander and Queen Maxima of the Netherlands.

In July and December 2016, the Grotius Centre and the Nuremberg Principles Academy held expert meetings in The Hague to frame the research methodology and discuss country studies. More information on the project can be found [here](#).



## Mamadou Hébié wins the Paul Guggenheim Prize

Assistant Professor Mamadou Hébié won the 2016 Paul Guggenheim Prize in International Law for his thesis, *Les accords conclus entre les entités politiques locales et les puissances coloniales en droit international*, which was published as the monograph *Souveraineté territoriale par traité: une étude des accords entre puissances coloniales et entités politiques locales*. The Prize is awarded by the Paul Guggenheim Foundation every two years to a 'PhD thesis in public international law characterised by its exceptional quality and is the first outstanding work of a young author at the beginning of his/her career'. The Grotius Centre congratulates him on this truly wonderful achievement!



## PhD Defences

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In 2016, the Exploring the Frontiers of International Law Research Programme was pleased to have six candidates successfully defend their PhD theses.

### **Dustin Sharp**

#### **Transitional Justice and Liberal Post-Conflict Governance**

On 14 January 2016, Dustin Sharp defended his thesis, ‘Transitional Justice and Liberal Post-Conflict Governance: Synergies and Symmetries, Frictions and Contractions’. He was supervised by Professor Carsten Stahn. Sharp’s research focusses on the way that societies respond to legacies of large-scale atrocities through tribunals, truth commissions, reparations, and other mechanisms. Noting the frictions and blindspots the dynamics of transitional justice and traditional peace and justice traditions have created, Sharp argues that the liberal transitional justice lens has significantly biased our conceptions of what it means to ‘do justice’ as well as the modalities for bringing justice about. Sharp argues that we need to revisit and deconstruct the field’s core normative metanarratives and assumptions as a prelude to seeking a more emancipatory ground for transitional justice policy and practice that is true to human rights ideals while becoming more open-textured and attuned to local needs and context.

### **Christian de Vos**

#### **A Catalyst for Justice? The International Criminal Court in Kenya, Uganda, and the Democratic Republic of Congo**

On 16 March 2016, Christian de Vos defended his thesis, ‘A Catalyst for Justice? The International Criminal Court in Kenya, Uganda, and the Democratic Republic of Congo’. De Vos was supervised by Professor Carsten Stahn and Professor Larissa van den Herik. Drawing on several years of field research as part of an NWO-funded project on “Post Conflict Justice and Local Ownership”, De Vos analyses what effects framing the International Criminal Court as a ‘catalyst’ for domestic investigations and prosecutions has had in three distinct situation-country contexts (Uganda, Kenya and the DRC). He examines how both state and non-state actors have relied upon the principle of complementarity as the logic through which the Court’s catalytic potential can be best realised, as well as a transnational site and adaptive strategy for entrenching the norm of international criminal accountability domestically.



**Meagan Wong**  
**The Crime of Aggression and Public International Law: Legal Interests of the Aggressed State**

On 14 April 2016, Meagan Wong defended her thesis, 'The Crime of Aggression and Public International Law: Legal Interests of the Aggressed State'. She was supervised by Professor Niels Blokker. Wong's research examines international responsibility for the crime of aggression from a public international law perspective. Under customary international law, as well as the amendments to the Rome Statute of the International Criminal Court adopted in the Review Conference in Kampala in 2010, an act of aggression by a State is a part of the definition of the crime of aggression. This definition plainly encompasses two separate wrongful conducts by two different actors. Wong argues that it is less clear how international responsibility arises for both the aggressor state and the individual, and why responsibility for the latter can be predicated only upon the former.

**Farouk El Hosseny**  
**The Role of Civil Society in Investment Treaty Arbitration: Status and Prospects**

Farouk El Hosseny defended his thesis, 'The Role of Civil Society in Investment Treaty Arbitration: Status and Prospects' on 26 May 2016. He was supervised by Professor Larissa van den Herik and Professor Eric de Brabandere. El Hosseny argues that the contemporary global framework of foreign investment has for long addressed in limited

ways environmental protection, public health, human rights, or other public policy concerns that may be affected by foreign investment activity. Procedurally, an amicus role for civil society may be sufficient in ensuring a mechanism for broader public interests to be voiced before investor-state tribunals. However, unless the entire investment treaty arbitration regime is re-thought, civil society's standing as an additional disputing party would not be feasible, nor perhaps desired. That said, third party intervention as a non-disputing party would present a realistic alternative.

**Moses George**  
**Legal Implications of Airport Privatization in India**

On 24 November 2016, Moses George defended his thesis, 'Legal Implications of Airport Privatization in India'. George was supervised by Professor Pablo Mendes de Leon and BF Havel (from the University of Chicago). George argues that 2006 saw the start of airport infrastructure privatisation in India (with New Delhi and Mumbai airports). However, this has not solved the problems that came with state-owned airports and has raised additional legal problems.

## **Dan Saxon**

### **Autonomous Weapon Systems, Human Dignity and International Law**

On 1 December 2016, Dan Saxon defended his thesis, 'Autonomous Weapon Systems, Human Dignity and International Law'. Saxon was supervised by Professor Carsten Stahn. Saxon's research explores the relationship between autonomous weapon systems, the concept of human dignity, and international law. He argues that there are certain kinds of decision-making responsibilities that humans should not delegate to autonomous machines. More specifically, the transfer of decisions involving complex (and often contradictory) values to artificial intelligence software violates human dignity and, therefore, international law. Saxon argues that to preserve the principle of human dignity (and ultimately international law), autonomous weapons should have a 'co-active' design that ensures teamwork and interdependence between humans and the computer software that directs these weapons.



## Conferences and Events – the year in review

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### Conference on ‘Pluralist Approaches to International Criminal Justice’

On 7-8 January 2016, Sergey Vasiliev (Leiden University) and Elies van Sliedregt (VU Amsterdam/Leeds University) convened an international conference on pluralism in international criminal law held at the Royal Netherlands Academy of Sciences (Amsterdam). The conference concluded the NWO-funded project “Pluralism and/or Harmonization of International Criminal Law” and served as a platform for the interdisciplinary and critical debate on the normative, institutional, and legal-cultural diversity of international criminal justice. Besides the conveners, the speakers at the conference included Carsten Stahn (Leiden University), James Stewart (University of British Columbia), Cassandra Steer (McGill University), Alex Whiting (Harvard University), Robert Cryer (Birmingham University), Megan Fairlie (Florida International University), Elinor Fry and Marjolein Cupido (VU Amsterdam), Darryl Robinson (Queen’s University), Emily Haslam (Kent University), Lachezar Yanev (Tilburg University), Harmen van der Wilt (University of Amsterdam), Nicola Palmer (King’s College London), Phil Clark (SOAS), Sarah Nouwen (Cambridge University), and Asad Kiyani (Western Law).

### 5th Expert Seminar on Investment Law: ‘Foreign Investment and Facilitation’

Professor Eric de Brabandere (Leiden University); Tarcisio Gazzini (University of Lausanne); and Makane Mbengue (University of Geneva) co-organised the 5th Expert Seminar on Investment Law, held in Geneva between 18 and 19 February 2016. The conference brought together academics and practitioners to discuss the tools for the facilitations of foreign investment. Speakers included Robert Kolb (Geneva); Gabrielle Marceau (WTO and Geneva); Tabe van Hoolwerff (Shell); Hery Ranjeva (Foley Hoag); Christina Binder (Vienna); Nathalie Bernasconi (IISD); and Leiden University’s Assistant Professor Mamadou Hébié.

### Lectures for Judges of the Supreme Court of Iran

In early February, a week of lectures was organised for judges of the Supreme Court of Iran. The course, run as a collaboration between the Grotius Centre for International Legal Studies and the Hague Centre for Law and Arbitration, focused on the application of international law by domestic judiciaries.

### ILA Study Group UN Sanctions Seminar in Bonn

Between 3 and 4 March 2016, the International Law Association Study Group on UN Sanctions on International Law Seminar was held at the

University of Bonn. The seminar was organised and chaired by Professor Larissa van den Herik. The seminar was hosted by Erika De Wet at the Institute for Public International Law, University of Bonn, in the lead-up to the International Law Association's Annual Meeting in Johannesburg.

### **Panel Discussion on 'The Dynamics of the Syria Conflict: Challenges for Contemporary International Law' in honour of Professor Emeritus Frits Kalshoven**

On 30 March 2016 the Grotius Centre for International Legal Studies and the Kalshoven-Gieskes Forum held a panel discussion in honour of the winner of the San Remo Prize for the Promotion, Dissemination and Teaching of International Humanitarian Law, Professor Emeritus Frits Kalshoven. The panel consisted of Professor Nico Schrijver, Professor Peter Rodrigues, Dr Giulio Bartolini and Dr Robert Heinsch and was moderated by Professor Niels Blokker.

### **Vanderbilt Panel on ICC and Treaty Norms**

On Tuesday 5 April 2016, Prof. Carsten Stahn spoke at Vanderbilt University on whether the ICC threatens treaty norms. He argued that the Rome Statute treats conflicts with prior bilateral treaty arrangements as an enforcement, rather than a jurisdictional problem, and that it contains multiple safeguards to address concerns relating to the exercise of ICC jurisdiction. The panel included Prof. Roger O'Keefe (UCL), as well as Prof. Mike Newton and Prof Ingrid Wuerth from Vanderbilt

University. Contributions were published in the Vanderbilt Journal of Transnational Law.

### **Partnering in Opening the Skies of South East Asia**

On 7 April 2016 in Jakarta, Indonesia, the Institute for Air and Space Law held a one-day conference on 'Partnering in Opening the Skies of South East Asia'. The event was attended by over 250 people representing academics, regulators, airlines, airport managements, and other stakeholders in the aviation industry from 18 countries. The Ministry of Transportation of the Republic of Indonesia and PT Angkasa Pura II (Persero) sponsored the event and was attended by Professor Pablo Mendes de Leon.

## Symposium on Legal Aspects of Space Resource Utilisation

On 17 April 2016, the International Institute of Air and Space Law held a Symposium on Legal Aspects of Space Resource Utilisation as part of the Hague Space Resources Governance Working Group's activities (which is hosted by the Institute). Speakers from all over the world attended and discussed various issues related to space resources.



## Christopher Weeramantry: Guest Lecture

On 21 April 2016, we welcomed former judge of the International Court of Justice, Christopher Weeramantry, to the Lorentz Lecture Hall. Judge Weeramantry presented on 'The International Court of Justice: its achievements and potential'.

## 50 years of ICCPR and ICESCR: Impact, Interplay and the Way Forward

On 19 May 2016, Professors Nico Schrijver and Titia Loenen convened a conference to celebrate the 50th anniversary of the ICCPR and ICESCR at Leiden Law School. The conference looked at the inspiration and impact generated by the Covenants and how the protection of human rights can be further enhanced. Professor Schrijver spoke on 'Putting Universality and Indivisibility into Practice. The need for a creative approach'.

## International Aviation Conference

The International Aviation Conference, 'Thorny Issues in Aviation', was held in Abu Dhabi between 22 and 23 May 2016.

## EALA 5th Copenhagen Air Finance Legal Seminar

Professor Pablo Mendes de Leon gave a welcoming address at the EALA 5th Copenhagen Air Finance Legal Seminar held at the Hotel Skt. Petri between 2 and 3 June 2016.



## Symposium: Legal Diversity and the Universal Vocation of International Law

On 2 June 2016, McGill University's Faculty of Law and the Grotius Centre for International Legal Studies held a one-day symposium on the theme of legal diversity and the theory and practice of contemporary international law. Speakers included Judge Hisashi Owada of the International Court of Justice, Justice David Baragwanath of the Special Tribunal for Lebanon, and Justice Bertram Schmitt of the International Criminal Court.

## IHEID Panel on Accountability as a Common Goal

On 3 June 2016, Professor Carsten Stahn participated in a Panel at the Graduate Institute on International and Development Studies in Geneva on accountability as a common goal between The Hague and Geneva.

The panel involved UN High Commissioner on Human Rights, Prince Zeid Ra'ad Al Hussein and

ICC Prosecutor Fatou Bensouda. Stahn pleaded in favour of 'thick' understanding of accountability that includes justice, truth, effective remedies and prevention. He argued that justice is not only about the perpetrator, but also about victims. Similarly, human rights law is not only about victims of violations. It also about perpetrators. He discussed various synergies in relation to human rights fact-finding. The video of the discussion is available [here](#).

The panel was followed by a joint meeting of students of the [Leiden Adv LLM programme](#) in Public International Law and the [Geneva Academy LLM](#) at the [Villa Moynier](#), the home of the Geneva Academy of International Humanitarian Law and Human Rights.

## 3rd Aviation International Law Conference

LUISS University, Studio Pierallini, Leiden's International Institute of Air and Space Law, and the European Aviation Club co-organised the 3rd Aviation International Law Conference in Rome. Professor Pablo Mendes de Leon attended the conference and moderated the panel, 'Free or fair competition in a global aviation market?'

## Professor Bharat Desai: Guest Lecture

On 19 July 2016, Professor Desai presented a lecture on 'Current Challenges in International Environmental Governance'. The lecture discussed the global challenge of the environment under the rubric of international environmental governance.



Professor Desai provided a ‘guided tour’ of the of international environmental governance regime, discussing upgrading UNEP into a ‘specialised agency’ called UNEPO; the revival of the UN Trusteeship Council to address global commons and the environment; and sorting out the maze of ‘multilateral environment agreements’.

### **Symposium Professor Hans Franken**

Professor Nico Schrijver spoke at a symposium on Professor Hans Franken, former Law Faculty Dean, on the occasion of his 80th birthday on 9 September 2016.

### **Jus Post Bellum and the Justice of Peace**

The final conference of the *Jus Post Bellum* Project was held at the Peace Palace on 29 and 30 September 2016. In the final conference, the participants explored to what extent international law contains norms and principles of just and sustainable peace in general and in specific areas. The final report is available on the [Post-Conflict Justice website](#), which features research in the field.

### **Christos Stylianides: IHL and Humanitarian Assistance in Contemporary Armed Conflicts against the Background of the Current Refugee Crisis**

Christos Stylianides, EU Commissioner for Humanitarian Aid and Crisis Management, presented the Common Fall Lecture of the Regular and Advanced Public International Law

LLM Programmes and the Opening Lecture of the 2016/2017 International Humanitarian Law Lecture Series on 27 October 2016.

### **28th Annual EALA Conference**

On 3 and 4 November 2016, EALA held its 28th Annual Conference in Warsaw. The conference provided an opportunity to learn about topical developments in air law and to discuss these developments with the many experts that attend these events both as speakers and as delegates.

### **Judge Bertram Schmitt: Procedural Issues of the Trial at the ICC: Observations by a Presiding Judge**

On 8 December 2016, we were pleased to welcome Judge Schmitt to the Kamerlingh Onnes Gebouw for the lecture ‘Procedural Issues of the Trial at the ICC: Observations by a Presiding Judge’. Judge Schmitt has extensive judicial and academic experience, having served on the bench of the German Federal Court, a German Regional Court, and the European Court of Human Rights. Since 2000, he has been an adjunct professor of criminal law, criminal procedure, and criminology at the University of Würzburg. The lecture took place within the framework of the Regular LLM Programme in Public International Law course on International Criminal Law, which is provided by [Dr Sergey Vasiliev](#) and [Jens Iverson](#).

## Researchers in Focus

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### Nico Schrijver

In late August Professor Nico Schrijver attended the Biannual Conference of the International Law Association (the principle world organisation of professionals in international law, consisting of academics, practitioners, and judges) in Johannesburg (South Africa). He was the chair of the committee on the Role of International Law in Sustainable Natural Resource Management for Development; and presided over the Committee on International Islamic Law.

In early December 2016, Professor Schrijver visited Turkmenistan on behalf of the United Nations Development Programme as an advisor to the government on the issue of strengthening human rights reporting.



2016 also saw Professor Schrijver become a member of the Curatorium of the Hague Academy of International Law.

### Niels Blokker

In 2016, Professor Niels Blokker gave a number of presentations on his research project 'Governance of International Courts and Tribunals'. On 26 April he addressed *Le club de droit international*, a network of diplomats and legal advisers to embassies in The Hague. On 4 November he discussed 'Governance of the International Tribunal for the Law of the Sea' at a Law of the Sea Conference in Benevento (Italy). On 8 November he gave a guest lecture at University Roma III on 'Quis custodiet ipsos custodiet?' His contributions to the research programme lie primarily under the pillar of Institutional Transformation, and include the significant publications 'Constituent Instruments – creating a genie that may escape from the bottle?' in *The Oxford Handbook of International Organizations*; 'Asian and Pacific International Organizations: Mainstream or Sui Generis? An International Institutional Law Perspective' in *A New International Legal Order: Collected Courses of the Xiamen Academy of International Law*; and 'On the Nature and Future of Partnerships in the Practice



of International Organizations' in the *International Organizations Law Review*.

### **Pablo Mendes De Leon**

In 2016, Professor Pablo Mendes de Leon contributed the chapter 'The Practice of Shared Responsibility and Liability in Space Law' with Hanneke van Traa to *The Practice of Shared Responsibility in International Law* (Cambridge University Press); 'An Analysis of Unmanned Aircraft Systems under Air Law' with Benjamyn Scott to *Drones and Unmanned Aerial Systems, Legal and Social Implications for Security and Surveillance*; '*Les efforts de l'Union européenne pour forcer la réduction des émissions de gaz à effet de serre par l'aviation civile : Reculer pour mieux sauter?*' in *Revue des Affaires Européennes*; and '100 Years of Air Law – Turning the History of Air Law into its Future: From Unilateral Acts to International

Agreement through Comity and Diplomacy' on the celebration of the Institute of Air and Space Law of the University of Cologne's 90th Birthday.

He spoke extensively on air law, including at the Royal Aeronautical Society (London) and the annual conference of the European Air Law Association (Warsaw).



### **Tanja Masson-Zwaan**

Assistant Professor Tanja Masson-Zwaan's 2016 activities include contributions to the *Proceedings of the International Institute of Space Law*; seminars delivered at the ECSL Summer Course on Space Law and Policy, the Academie de l'Air et de l'Espace in Belgium, the 10th United Nations Workshop on Space Law in Vienna; as well as contributions to audit reports for the space activities of various bodies. She has been

interviewed extensively on the topic of space law and has contributed to a European Commission Report (with Pablo Mendes de Leon) on the *Application of the UN Space Law Treaties to the Spacecraft Owned by the EU* (forthcoming, 2017).







### Catherine Harwood

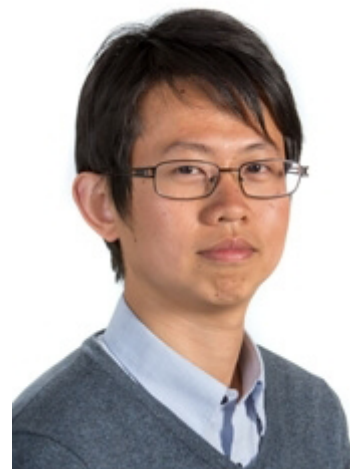
Catherine Harwood, a PhD Candidate at the Grotius Centre for International Legal Studies, had several opportunities during 2016 to develop and share her research findings with wider audiences. She presented a research paper entitled 'International Commissions of Inquiry as Law-Makers' at the ESIL Research Forum, 'The Making of International Law', at Istanbul in April 2016.

The paper, which explored whether commissions could contribute to the incremental development of international law, was subsequently included in an ESIL Paper Series on SSRN. In December 2016, Ms Harwood was invited to present at the Annual Conference of Association of Defence Counsel Practicing before the International Criminal Tribunal for the former Yugoslavia. Her presentation, entitled 'International COIs as a Complement to International Criminal Prosecutions', discussed the extent to which commissions should function as precursors to judicial trials, and some consequences of their turn towards criminal law. Also in December 2016, Ms Harwood gave a presentation at the annual 'Toogdag' of the Netherlands School of Human Rights Research, in which she identified opportunities and challenges for the rule of law in international inquiry, focussing on themes of accountability, impartiality and procedural fairness.

In December 2016, Professor Carsten Stahn and Catherine Harwood published a jointly-authored post on the *European Journal of International Law's* leading *EJIL: Talk!* Blog in which they analysed the increasing engagement of international commissions of inquiry with individual responsibility for violations and discussed some potential opportunities and challenges arising from the identification of suspected perpetrators in this non-judicial setting.

### Yang Xie

Yang Xie is a PhD candidate at the Grotius Centre for International Legal Studies. His research is on the cooperation between the International Criminal Court and non-State Parties. On 21 March 2016, he participated a conference on international criminal justice held by Zhejiang University in Hangzhou, China. He spoke about the institutional independence of the ICC viewed through the lens of the amendment of the Rules of Procedure and Elements. Mr Xie argued that drafters of the Rome Statute intended to establish a "truly independent court". As a consequence, the Court was created outside the UN regime. Mr Xie claimed that judges' attempts to amend Regulations and adopting Practice Manuals can be seen as a struggle to





maintain the Court's independence as well as efficiency.

### **Franke Eleveld**

Franke Eleveld is a PhD-candidate at the Grotius Centre for International Legal Studies at Leiden University under supervision of [Professor Niels Blokker](#). His research interests include the law of international organisations and the law governing the use of force.

His PhD-research focusses on the possibility of the North Atlantic Treaty Organization incurring responsibility for internationally wrongful acts. To this end, the research concentrates on a number of issues: the legal personality of the organisation, the substantive rules binding on the organisation, and the ways of attributing wrongful conduct of member state troops to the organization.



### **Floris Tan**

Floris Tan, a PhD candidate since September 2015, started at the Grotius Centre after obtaining *cum laude* LLM degrees in Dutch criminal law and international and European law in Nijmegen, and having worked as a junior lecturer at Utrecht University. His research is in the fields of human rights law and humanitarian law, especially where these bodies overlap. The topic for his dissertation addresses the scope and contents of the duty to investigate, under the interplay of human rights law and humanitarian law.



The research project has thus far resulted in presentations at the International Humanitarian and Criminal Law Platform of the Asser Institute in The Hague (June 2016), and the Duitsland Instituut at the University of Amsterdam (September 2016). Further, Floris forms part of the Leiden Court Watchers, in which context he regularly publishes Dutch extracts of European Court of Human Rights cases in *Nederlands Juristenblad*. Further, he co-authors the chronical on European human rights law of *Ars Aequi KwartaalSignaal*, and is managing editor at the *Nederlands Tijdschrift voor de Mensenrechten*|NJCM-Bulletin.

## Xuechan Ma

Xuechan Ma has been a PhD candidate of the Grotius Centre for International Legal Studies at Leiden University since September 2015. Her main research interest includes public international law, the law of the sea, and international dispute settlement.

The research project has resulted in scholarly presentations on several occasions, including the Edinburgh University Postgraduate Law Conference in the United Kingdom (January 2016), a public meeting organised by Netherlands Atlantic Youth in Leiden (April 2016), and a seminar organised by Maastricht University in Maastricht (September 2016). Xuechan also authored several publications, including a scholarly paper on intertemporal principle published in the *Edinburgh Student Law Review* (2016), and a paper on the South China Sea dispute published in *Atlantisch Perspectief* (2016).



## Teodora Jugrin

Teodora Jugrin joined the Grotius Centre as a PhD candidate in November 2014, after having worked at the International Criminal Court, as assistant legal officer in Chambers. Her research project focuses on crimes against humanity. It aims to develop the legal framework for the characterisation of armed non-state actors that engage in the commission of crimes against humanity. The project takes an empirical approach and it draws on studies on armed groups from the fields of sociology and political science. In November-December 2016, Teodora conducted part of her research at the University College London (UCL), where she gave a presentation on 'Mechanisms ensuring control and coherence within rioting mobs engaged in widespread violence'. Since September 2014, Teodora is also Managing Editor of the *Leiden Journal of International Law*.





### **Evelien Campfens**

In January 2016 Evelien Campfens joined the Grotius Centre for International Legal Studies in relation to her PhD-research in the field of International Cultural Property Law. Prior to that she has been the director of the Dutch Restitutions Committee (2002 - 2016).

In her research she focuses on the legal framework for looted cultural objects.

Her thesis is that developments in the field of Holocaust-related art claims may be a sign of the formation of a customary rule calling for equitable solutions to disputes regarding artefacts lost as a result of human rights violations.

She is a member of the Kuratorium of the German Lost Art Foundation (Deutsches Zentrum Kulturgutverluste), lectures at the Free University of Amsterdam and has published on restitution issues (e.g.: *Fair and Just Solutions? Alternatives to Litigation in Nazi-looted Art Disputes, Status Quo and New Developments*, Eleven Publishers, The Hague, 2015).

### **Merinda Stewart**

Merinda is a PhD candidate at the International Institute of Air and Space Law (IIASL) and the Centre for Law and Digital Technologies (eLaw) of Leiden University. She is part of the ILS 2.0 project 'Policing the High Seas', researching the use of new technology, in particular in the air and outer space, by EU actors for maritime surveillance in the high seas of the Mediterranean Sea. Merinda is the managing editor of the *Kluwer Journal of Air & Space Law* and in 2016 made two contributions to *The Law of Unmanned Aircraft systems: An Introduction to the Current and Future regulation under National, Regional and International Law* (published by Kluwer) on the topics of Australia and Privacy. She is also the coach of the Leiden team for the Leiden-Sarin International Air Law Moot Court Competition.



## Cecily Rose

In 2016 Cecily Rose was especially active in the field of international dispute settlement. Together with a former colleague from the International Court of Justice (ICJ), she published an article in the *Journal of International Dispute Settlement* on the value of site visits in inter-state arbitration and adjudication. This piece contrasts the practice of the ICJ and a number of recent arbitral tribunals under the auspices of the Permanent Court of Arbitration. Their work contributes to a growing body of academic literature on procedural and evidentiary issues in inter-state litigation. Cecily also dealt with the issue of fraudulent evidence at the ICJ in a conference presentation that she gave at the annual conference of the American Society of International Law in April 2016. In addition, in November 2016 Cecily participated in a symposium at the Asser Institute concerning the ICJ's South

West Africa judgments of 1966. Apart from her research in the field of international dispute settlement, Cecily continues to pursue research in the field of transnational criminal law, particularly with respect to corruption and money laundering.



## Giulia Pinzauti

Dr Giulia Pinzauti joined the Grotius Centre as an Assistant Professor of Public International Law in November 2016, after having worked as an associate legal officer at the International Court of Justice, the International Criminal Tribunal for the former Yugoslavia and the Special Tribunal for Lebanon. In November 2016, Dr Pinzauti presented her research on the expansion of the protective reach of the law of armed conflict at a Public International Law Lunchtime Discussion Group at All Souls College in Oxford. In her presentation, Dr Pinzauti argued that there is no general “adverse party” requirement for war crimes, provided that the nexus with the armed conflict is demonstrated. More information on the event is available [here](#).



## Jens Iverson

Jens Iverson is an Assistant Professor of International Law. In 2016, he co-organised and presented at the *Jus Post Bellum* Project Final Conference, which will result in the third in a series of edited volumes published by Oxford University Press (*Jus Post Bellum and the Law of Peace*). He co-edited a volume (*Environmental Protection and*



*Transitions to Peace*, OUP, forthcoming). He helped organise, moderate, and present at two summer schools at Leiden University (Human Rights and International Criminal Law), and moderated and



organised a Guest Lecture from Professor Bharat Desai. His research focus is the normative and historical foundations of the international law applicable to the transition from armed conflict to peace (*jus post bellum*). A member of the California Bar, the Thurston Society, and the Order of the Coif, he received his Juris Doctor *cum laude* from the University of California, Hastings, and his Bachelor of Arts from Yale University.

His research interests include *jus post bellum*, international criminal law, international humanitarian law, public international law, human rights, and gender.

### Yudan Tan

Yudan Tan, a PhD candidate at the Grotius Centre for International Legal Studies since September 2013. She has been working on her PhD degree with Professor William Schabas and Dr Robert Heinsch at Leiden University. Her research topic is about the Rome Statute as evidence of customary international law, focusing on selected provisions

concerning war crimes, crimes against humanity, indirect perpetrator liability, and immunity.

Part of the research project has resulted in presentations on several occasions, including presentations at the ESIL Research Forum “the Making of International Law” Conference (Istanbul, April 2016) and the International Humanitarian and Criminal Law Platform of the Asser Institute (The Hague, June 2016). Her research paper entitled “The Identification of Customary Rules in International Criminal Law” was subsequently included in an ESIL Paper Series on SSRN.



Yudan also authored a post on the Cambridge International Law Journal Blog, in which she analysed the impact of Burundi’s withdrawal upon the Burundi Situation (December 2016).



## Mamadou Hébié

In 2016, Mamadou presented on ‘The Contribution of Africans to International Jurisprudence’; ‘International law in a non-judicial context: government lawyering and foreign affairs decision-making’; ‘Le respect des décisions de la Cour Africaine des droits de l’Homme et des Peuples’; ‘Territorial Sovereignty by Treaty: A Study of the Agreements between Colonial Powers and Local Political Entities’; ‘Legal Pluralism and the Acquisition of Territorial Sovereignty during European Colonial Expansion’; ‘The Legal Significance of Aristotle’s Doctrine of Natural Slavery in the European Colonial Expansion from the 15th to the 16th Century’; and ‘Facilitation through National Codes’.

Mamadou also participated in a joint research project of the University of Geneva on Jurisdiction and Dispute Resolution in the Internet Era: Governance and Good Practices, which materialized in the [Geneva Internet Dispute Resolution Policies 1.0 \(GIDRP 1.0\)](#) project and drafted the policies on *How shall immunities apply on the Internet?*



## Cale Davis

Cale Davis joined the Grotius Centre for International Legal Studies as a PhD Candidate and Research Programme Manager. Cale is a graduate of Leiden’s Advanced LLM Programme in International Criminal Law and will be continuing his research into prosecutorial discretion at international courts and tribunals, building upon the work he started in 2013, including a publication in the *International Criminal Law Review*.



## PhD Research

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### The Grotius PhD Track

The External PhD at the Grotius Centre is grouped under the Grotius PhD Track, to offer external PhD students a flexible programme and a stimulating research environment. It is a programme particularly attractive to and designed for 'external' PhD candidates, that work part-time or full-time. The programme is headed by [Professor Eric de Brabandere](#).

The Grotius Centre developed its own targeted PhD track in international law in 2008, aimed at enhancing research interaction between candidates working in different areas of law. It encompasses 34 carefully selected researchers. It includes established academics, who are already recognised in the field, international legal practitioners (e.g., PCA staff) and emerging academic talent. Progress is monitored in organised PhD seminars. Currently, the Centre is engaged in the process of upgrading the Grotius PhD track into the Grotius Graduate School in International Law.



### PhD Research Meetings

Within the Grotius Centre PhD meetings are organised approximately every month. In these meetings the research proposal or a part of a candidate's PhD thesis is extensively discussed among PhD candidates. Not only are these meetings beneficial to the piece of writing under discussion, but these meetings also enhance cooperation between researchers and lead to the development of research skills, such as discussing and providing critical feedback. In addition, more general topics, such as the approach to customary law or the definition of 'authorities', might come up in the work of several researchers, who can benefit from the exchange of approaches or research output. The meetings are coordinated by [Ms Hilde Roskam](#), PhD Candidate.

# **The Kalshoven-Gieskes Forum on International Humanitarian Law**

## **Introduction**

The Kalshoven-Gieskes Forum on International Humanitarian Law was established in 2011 and named after Professor Emeritus Frits Kalshoven and the [Gieskes-Stijbis Fund](#). The Forum provides a neutral platform for the research, teaching and further dissemination of international humanitarian law and aims to create better protection and assistance for victims of war and more respect for humanity in armed conflicts and crisis situations. The Forum is directed by [Associate Professor Dr Robert Heinsch](#).

## **Research Project: ‘Conduct of hostilities under IHL—21st Century Warfare’**

Dr Heinsch has pursued the project of a closer examination of ‘The conduct of hostilities under international humanitarian law—challenges of 21st century warfare’ through the work of the International Law Association study group. As the initiator of the group and appointed Rapporteur, together with Professor Terry Gill from Amsterdam University as Chair, and Professor Robin Geiss from Glasgow University as Co-Rapporteur, he is coordinating the work of this group. In addition, the group has now about 25 members, all leading experts in the area of international humanitarian law. After the initial workshop meeting in Leiden in 2013, a second ILA study group workshop in Berlin in November 2014, the ILA study group organised

a third successful workshop in Oslo in October 2015.

Dr Heinsch and his colleagues presented their final report at the 77th ILA conference in South Africa in summer 2016, which will soon be published with on the ILA-website. The intermediate reports are already available [here](#). A photo from the conference is below!



## **IHL Clinic Exchange Conference 2016**

The Kalshoven-Gieskes Forum on International Humanitarian Law and the Grotius Centre for International Legal Studies hosted the second annual ‘International Humanitarian Law Clinic Exchange Conference’, from 8 to 14 December 2016, in the Hague. The idea to organise the conference stems from a collaboration programme between the International Humanitarian Law (IHL) Clinics

of Leiden Law School (Netherlands), Emory Law School (USA) and Radzyner Law School (Israel), as well as the International Committee of the Red Cross (ICRC). As the Hague serves as the home of international courts and tribunals, the conference focused on 'The Hague: Centre of International Justice and Enforcement of IHL'.

### **IHL Clinic Completed Reports**

The Forum's IHL Clinic has so far completed the following reports:

- Report on the Legality of Lethal Autonomous Weapons under International Law
- Report on Possible Crimes under the Rome Statute for an International Criminal Court committed in Iraq
- Report on Specific Questions Concerning Article 8 of the Rome Statute for an International Criminal Court
- Report on the Crime of Aggression under the Rome Statute of the International Criminal Court
- Report on the Respect for International Humanitarian Law
- Report on the Relationship between Jus ad Bellum and Jus in Bello
- Report on Witness Protection before the International Criminal Court

### **IHL Clinic Project 'Positive Examples of Respect for IHL'**

On 5 July 2016, the Forum's IHL Clinic team, consisting of Angèle Jeangeorge, Eva Vaz Nave, Matt Brown and Nargiz Arupova finished their four-month research on positive examples for the respect of IHL, and handed over their 262 pages report to the ICRC. The report is part of a cooperation between the three IHL clinics at Leiden, Emory and Radzyner Law School. Before the handover, Mr Vincent Bernard and Ms. Joelle Germanier from the ICRC gave our Summer School students an insight into the work of the ICRC and its role in disseminating IHL.



## Events in 2016

Members of the Forum were actively engaged in research dissemination work in 2016:

- On 18 October 2016, Associate Professor Dr Robert Heinsch participated in an expert workshop on “Litigating Drone Attacks”, hosted by the European Center for Constitutional and Human Rights (ECCHR) in Berlin.
- On 4 October 2016, Roma Tre Law School launched their newly established IHL Clinic, directed by Associate Professor Dr Giulio Bartolini. For this occasion, Associate Professor Dr Robert Heinsch and Ms Sofia Pouloupoulou, LLM of the Forum, were invited to Rome to give the inaugural lecture at the start of the University’s IHL Course / Clinic.
- On 3 October 2016, Associate Professor Dr Robert Heinsch was invited to give a presentation to the Legal Advisors of the Italian Armed Forces at the “Centro Alti Studi per la Difesa” in Rome. During this visit, he presented an overview of the current version of the ILA study group report on “The Conduct of Hostilities under IHL—Challenges of 21st Century Warfare.
- On 7-11 August 2016, Associate Professor Dr Robert Heinsch and Professor Robin Geiss attended the 77th ILA conference in Johannesburg, South Africa. During the conference, they presented the final report of

their study group on “Conduct of Hostilities under IHL—Challenges of 21st Century Warfare”. This concludes a 4-year process of research and discussion within a group of 25 IHL experts from around the world. The report will be published later in the year.





## The Hague Space Resources Governance Working Group

The International Institute of Air and Space Law hosts the Hague Space Resources Governance Working Group. In the absence of a clear international framework to govern the development of space resource activities, there is a need to examine the concepts that are being discussed in order to ensure that they meet existing treaty obligations regarding on-orbit operations and space resource rights. These concepts need to enable, support and co-ordinate the use of space resources and be acceptable for space-faring nations and other interested states.

The Working Group aims to assess, on a global scale, the need for a regulatory framework for space resource activities and to prepare the basis for such regulatory framework. Where the need is established, the Working Group will encourage states to engage in negotiations for an international agreement or non-legally binding instrument.

The Working Group members are stakeholders of space resource activities and represent consortium partners, industry, States, international organisations, academia and NGOs.

Consortium partners include the Catholic University of Santos (Brazil); the Centre for Resources, Energy and Environmental Law, University of Melbourne (Australia); the Indonesian Centre for Air and Space Law, Padjajaran University (Indonesia); the Secure World Foundation (SWF) (USA); and the University of Cape Town (UCT) (South Africa).

### Tasks

The Working Group will engage in the following tasks:

- Identification and formulation of building blocks for the governance of space resource activities as a basis for negotiations on an international agreement or non-legally binding instrument
- Recommendations on the implementation strategy and forum for negotiations on an international agreement or non-legally binding instrument



## Progress

Three meetings were held in 2016, with two more planned for 2017. It is expected the Working Group will produce its conclusions by the end of that year. An update on the Group's activities is forthcoming in the 2016 Proceedings of the International Institute of Space Law.

## Symposium on Legal Aspects of Space Resource Utilisation

On 17 April 2016, a Symposium on Legal Aspects of Space Resource Utilisation was held as part of the Working Group's activities. Speakers from all over the world attended and discussed various issues related to space resources.



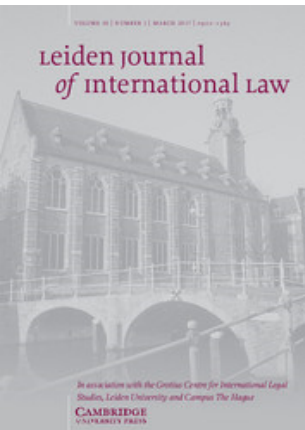
## Leiden Journals

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### The Leiden Journal of International Law

The *Leiden Journal of International Law*, Edited in Chief by Leiden's Professor Eric de Brabandere and the Amsterdam Centre for International Law's Ingo Venzke, is one of Europe's leading journals on international law and provides a discussion forum for international legal theory and international dispute settlement. The Journal also provides comprehensive coverage of the world's most important international tribunals in the Hague (such as the ICJ, ICTY, ICC and others) and elsewhere, as well as examining new trends in international legal thinking. In 2017, the Journal will celebrate its 30th year.

In 2016, the Journal published 4 issues and held symposia Martti Koskeniemi's *From Apology to Utopia*; The Future of Restrictivist Scholarship on the Use of Force; Symposium on the Fight against ISIL and International Law; and the Changing Role of Scholarship in International Law.



### The International Organizations Law Review

The *International Organizations Law Review*, Edited in Chief by Leiden's Professor Niels Blokker and the University of Twente's Professor Ramses Wessel is now in its 13th year. The journal is a leading voice on the law of international organisations and serves as a discussion forum for both academics and practitioners active in this discipline. The Review offers two foci: one based in the world of scholarship and the other in the world of practice. Academic scholarship offered in the Review focuses on general and theoretical developments in international institutional law, while practitioner views offer a forum to identify and discuss legal developments within existing international organizations.



In 2016, the Journal published research on UN Peacekeeping, Trust-Funded Partnership Programmes of the World Bank under the ARIO, the rules of attribution, the future of partnerships within international organisations, and others.

## Highlighted Publications

### The International Criminal Court: A Commentary on the Rome Statute

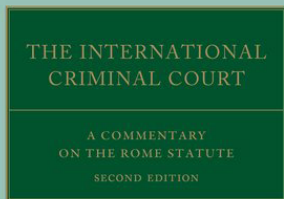
The second edition of Bill Schabas's seminal work, *The International Criminal Court: A Commentary on the Rome Statute*, was released by Oxford University Press in late 2016. The book analyses, one by one, all 128 articles of the Rome Statute of the International Criminal Court and spans over 1,700 pages. The second edition of Schabas's text includes updates to the Rome Statute adopted at the 2010 Kampala Review Conference (where, among others, the definition on the crime of aggression was integrated into the Statute). Each article includes a discussion of the relevant case law and an overview of the drafting history, as well as

relevant secondary sources for further reading. Schabas's text has become a valuable resource for academics, practitioners, and judges.

### The Rome Statute of the International Criminal Court: A Commentary

Professor Carsten Stahn, Professor Larissa van den Herik, Joe Powderly, and Niamh Hayes contributed multiple pieces to the third edition of Otto Triffterer and Kai Ambos's *The Rome Statute*

*of the International Criminal Court: A Commentary* on the crimes against humanity of murder, extermination, enslavement, deportation, imprisonment, torture, rape, forced pregnancy, persecution, enforced disappearance, apartheid, and other inhumane acts. This acclaimed text, edited by two renowned scholars, brings together contributions from leading academics and provides detailed analysis of all Rome Statute articles; as well as the Elements of Crimes; Rules of Procedure and Evidence; and the Regulations of the Court. The second edition won the American Society of International Law Certificate of Merit for High Technical Craftsmanship and Utility to Practicing Lawyers and Scholars, and the third edition continues this fine tradition.



WILLIAM A. SCHABAS

OXFORD

### The Rome Statute of the International Criminal Court

A Commentary

Third Edition

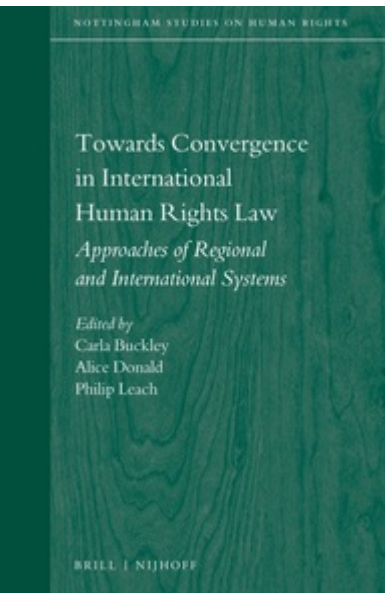
C.H.BECK · Hart · Nomos

## **Towards Convergence in International Human Rights Law: Approaches of Regional and International Systems**

Professor Larissa van den Herik and Professor Helen Duffy contributed 'Human Rights Bodies and International Humanitarian Law: Common but Differentiated Approaches' to the edited

volume, *Towards Convergence in International Human Rights Law: Approaches of Regional and International Systems*. The book contains contributions from leading scholars and jurists with first-hand experience of human rights adjudication and litigation. It explores the fragmentation of human rights norms; the relationships between different human rights systems; and whether the global human rights system is becoming more or less coherent. van den Herik and

Duffy's contribution recognises the notion of 'trans-judicial dialogue' between human rights bodies and the extent that these bodies apply norms from other areas of international law, such as sanctions, immunities, and state responsibility. In particular, it addresses the interplay between the application of international humanitarian law and international human rights law.



## **Towards a Convention on the Criminal Accountability of UN Personnel Including UN Military Experts on Mission and UN Police Officers**

Zsuzsanna Deen-Racsmany, in the *Military Law and Law of War Review*, argues that in spite of the United Nations' enduring efforts to curb misconduct and crime in peacekeeping operations, the international convention on the criminal accountability of UN officials and experts on mission envisaged in 2006 has still not materialised. One of the controversies inhibiting progress concerns the range of persons to be covered. It has been argued that UN military experts on mission and UN Police should be left out as they fall under the (exclusive) (military) criminal jurisdiction of seconding States. To assess those claims, her study explores the status and criminal accountability of these personnel categories (also in comparison to that of other UN experts on mission) and considers whether relevant rules of international law necessitate or can justify (calls for) their exclusion from a future convention.

Her piece was also published as [Grotius Centre Working Paper 2015/047-ICL](#).



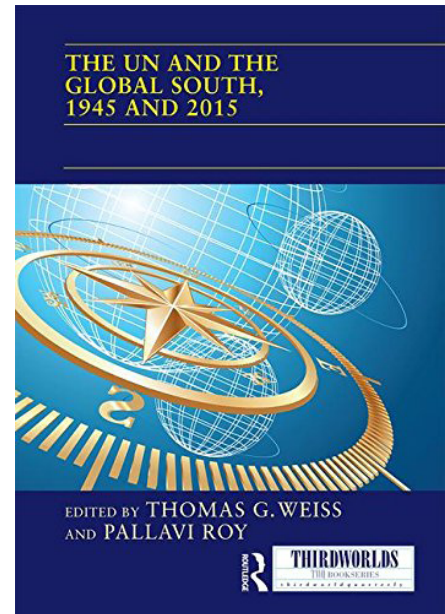
## Small Satellites

Tanja Masson-Zwaan contributed the chapter 'Registration of Small Satellites and the Case of the Netherlands' to this volume, edited by Irmgard Marboe. This book addresses the booming phenomenon of small satellites. However, the importance of complying with existing rules and regulations that are in place to ensure that outer space is used and explored in a safe and responsible manner is sometimes overlooked. The book addresses this challenge and shows how it can be met. The contributors are renowned academics and practitioners from many different countries that share their experiences and insights and suggest practical solutions.



## Managing the global commons: common good or common sink?

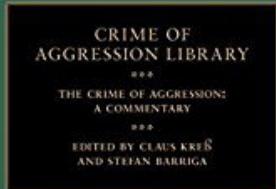
Professor Nico Schrijver's piece was published in the *Third World Quarterly*. In 2017, it will be included as a chapter in the edited volume, 'The UN and the Global South, 1945 and 2015'. Schrijver's argued that the historic concept of *mare liberum* digressed into 'first come, first served' advantages for industrialised countries. At the initiative of developing countries, Schrijver argues that there is an emerging trend of cooperation towards the protection of the environmental commons. The commons have therefore become a laboratory for testing new legal principles and duties. Several of these experiments have been ground-breaking, such as the ban on whaling; penalties for the production of ozone-depleting substances; and the freezing of claims to sovereignty over Antarctica.



## Conditions for the exercise of jurisdiction

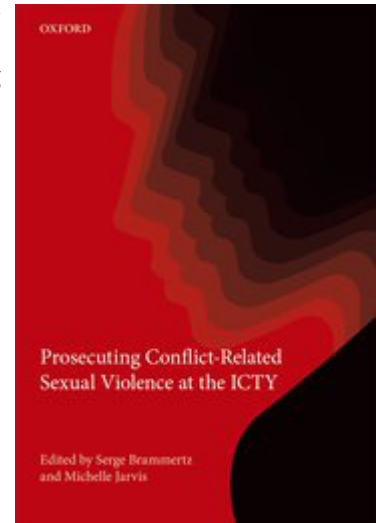
Professor Niels Blokker and Stefan Barriga contributed two chapters, 'Conditions for the exercise of jurisdiction based on Security Council referrals' and 'Conditions for the exercise of jurisdiction based on state referrals and proprio motu investigations' to the Claus Kress and Stefan Barriga-edited, 2-volume text, *The Crime of Aggression, A Commentary*. The text provides the first analysis of the history, theory, legal interpretation and future of the crime of aggression. As well as explaining the positions of the main actors in the negotiations, the

authoritative team of leading scholars and practitioners set out exactly how countries have themselves criminalised illegal war-making in domestic law and practice. In light of the anticipated activation of the Court's jurisdiction over this crime in 2017, this work offers a comprehensive legal analysis of how to understand the material and mental elements of the crime of aggression as defined at Kampala.



## Contextualizing Sexual Violence: Selection of Crimes

Dr Giulia Pinzauti, with Laurel Baig, Michelle Jarvis, and Elena Martin Salgado contributed the chapter 'Contextualizing Sexual Violence: Selection of Crimes' to *Prosecuting Conflict-Related Sexual Violence at the ICTY*. Edited by Serge Brammertz and Michelle Jarvis, this text documents the experiences, achievements, challenges, and fundamental insights of the OTP in prosecuting conflict-related sexual violence crimes at the ICTY over the past two decades. It draws on an extensive dossier of OTP documentation, court filings, trial exhibits, testimony, ICTY judgements, and other materials, as well as interviews with current and former OTP staff members. The authors provide a unique analytical perspective on the obstacles faced in prioritizing, investigating, and prosecuting conflict-related sexual violence crimes.



## State's Reassertion of Control over International Investment Law

Professor Eric de Brabandere contributed the chapter 'States' reassertion of control over international investment law: (re)defining 'fair and equitable treatment' and 'indirect expropriation' to

the text, *Reassertion of Control over the Investment Treaty Regime*, edited by Andreas Kullick. This is the first book of its kind to examine the many issues of procedure, substantive law, and policy which arise from the trend of contracting parties to investment agreements pursuing many avenues in order to curb a system that is being perceived, correctly or not, as having run out of control. Each chapter tackles one of these avenues and evaluates its potential to serve as an instrument in states' reassertion of control.

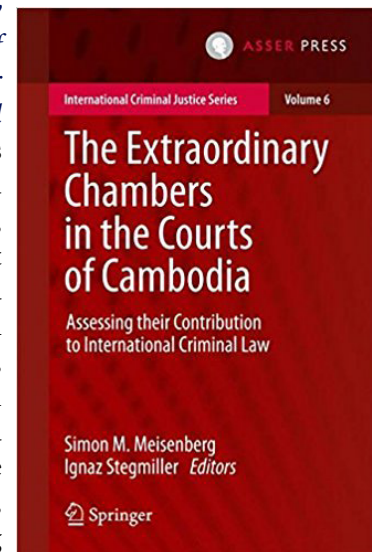
### Reassertion of Control over the Investment Treaty Regime

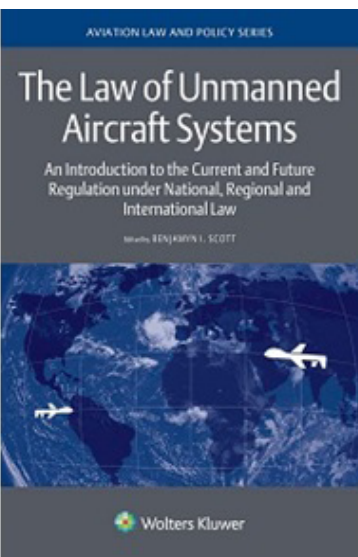
Edited by Andreas Kullick



## The Trial Process at the ECCC

Dr Sergey Vasiliev contributed the chapter 'The Trial Process at the ECCC: The Rise and Fall of the Inquisitorial Paradigm in International Criminal Law?' to *The Extraordinary Chambers in the Courts of Cambodia: Assessing their Contribution to International Criminal Law*. The book entails an analysis of the work and jurisprudence of the ECCC, providing a detailed assessment of their legacies and contribution to international criminal law. The collection, containing 20 chapters from leading scholars and practitioners with inside knowledge of the ECCC, discuss the most pressing topics and its implications for international criminal law. These include the establishment of the ECCC, subject matter crimes, joint criminal enterprise and procedural aspects, including questions of trying frail accused and the admission of torture statements into evidence.





## The Law of Unmanned Aircraft Systems

Merinda Stewart contributed pieces on Australia and Privacy to this collection of expert essays that provides a comprehensive overview of the areas of air law relevant to Unmanned Aircraft Systems. The authors, working in many different parts of the world, are all in some way affiliated with the International Institute of Air and Space Law at Leiden University as alumni, faculty members or students.

approaches, both at the supranational and national level, on how to tackle this problem.

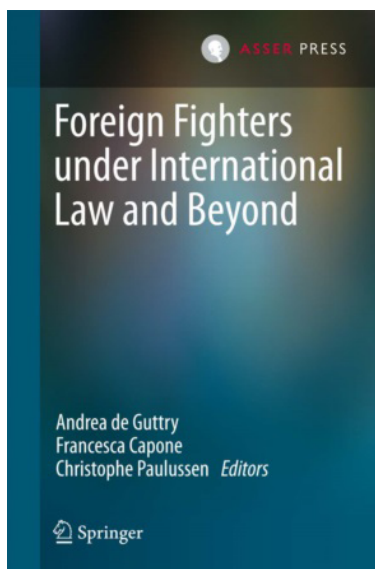
## International Organisations

In the area of the law of international organisations, Professor Niels Blokker has published a number of studies. One of these analyses constituent instruments of international organisations. These are a unique category of treaties. Even though there is a great variety in names, size, content and parties, they share a number of characteristics of which the creation of a new legal person is most fundamental. When it comes to their interpretation, a most important and sometimes underestimated role is played by 'practice of the organisation' as a technique of constitutional development. This technique provides constitutions with the necessary

interpretative stretch and it enables organisations to influence and to respond to societal developments. The International Court of Justice has since its earliest advisory opinions played an important role in this area, recognising both the special nature of constitutions of international organisations as well as the importance of 'practice of the organization'. Another study analyses Asian and Pacific international organisations. It examines 58 organisations in this part of the world and demonstrates that, even though there are

## Foreign Fighters and International Criminal Law

Associate Professor Dr Robert Heinsch contributed this chapter to *Foreign Fighters under International Law and Beyond*. This book offers various perspectives, with an international legal focus, on an important and underexplored topic, which has recently gained momentum: the issue of foreign fighters. It provides an overview of challenges, pays considerable attention to the status of foreign fighters, and addresses numerous



significant differences – as far as membership, institutional structure, powers, etc. are concerned – in many respects they are similar, not only to each other but also to IOs outside the region. In short: there is unity within diversity. A third study examines the nature and future of partnerships in the practice of international organisations. It shows that there is a wide variety of forms of cooperation between international organisations and external entities in the current practice of international organisations. No single concept or term has emerged for such forms of cooperation. Some of these are called partnerships, others carry different names. It is argued that the need for international organisations to cooperate with external entities is likely to stay, that this need may further increase in the future, and that this is in principle a positive development.



## Broader Public Service Functions

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The research group has a strong record in providing public service. Many members of the group contribute to international and local media. Several researchers have contributed to widely read international blogs, such as *EJIL: Talk!* or *Opinio Juris*, or the Leiden Law School blog. Professor Bill Schabas hosts a blog on PhD studies in Human Rights. Research findings are further shared through educational activities, such as the multiple Summer Schools held in 2016; prestigious courses on advanced international criminal law and arbitration; as well as the Massive Open Online Courses. These activities are complemented by the work of the Kalshoven-Gieskes Forum which provides a platform for lectures and research in international humanitarian law. Members of the research group lecture on these programmes.

### Summer Schools and Courses

#### *Advanced International Criminal Law*

Run in conjunction with the Hague Academy of International Law, Professor Carsten Stahn coordinated this course which provided in-depth training on the theory and practice of international criminal law with a focus on international criminal justice, migration, and human trafficking. The course ran from 30 May to 8 June 2016.

#### *International Criminal Law Summer School*

The 14th Session of this summer school ran from 20 June to 1 July 2016 and took place in the Hague, the international city of peace and justice.

#### *International Humanitarian Law Summer School*

The first annual IHL Summer School in July 2016 brought together a long list of IHL experts, including Judge Christopher Greenwood from the International Court of Justice and the Head of the Legal Section of the International Committee of the Red Cross, Dr Knut Dörmann, who gave the 28 participants from 20 countries a deep insight into the theory and practice of international humanitarian law. The IHL Summer School 2016 included visits to the archives and the tracing unit of the Netherlands Red Cross and the International Criminal Tribunal for the Former Yugoslavia as well as a simulation of applying IHL rules in practice.

#### *Human Rights and Transitional Justice Summer School*

This school ran from 4 July to 8 July and addressed the theme of ‘Gender in Transitional Societies’.

### ***International Children's Rights Summer School***

Running between 11 and 15 July 2016, this school took a look at contemporary children's rights issues from a legal perspective, accompanied by reflections from other academic disciplines, legal systems, local perceptions, and realities.

### ***Sexual Orientation and Gender Identity in International Law Summer School***

From 1 to 5 August 2016, this school looked at the emergence of SOGI issues in different areas of international law, such as human rights law, refugee law and international criminal law. Special attention was paid to important test-cases that have helped to achieve some international protection against homophobia and transphobia.

### ***International Arbitration Training Course***

Between 22 and 26 August, this programme offered several thematic courses on certain aspects of international arbitration, such as recognition and enforcement of arbitral awards and institutional arbitration, as well as area-specific courses such as the arbitration of disputes in the financial sector, in the area of intellectual property rights or international sports arbitration.

### **Blog Posts**

#### ***What's the point of 'naming names' in international inquiry?***

Professor Carsten Stahn and Catherine Harwood published a jointly-authored post on the *European Journal of International Law's* leading *EJIL: Talk!* Blog in which they analysed the increasing engagement of international commissions of inquiry with individual responsibility for violations and discussed some potential opportunities and challenges arising from the identification of suspected perpetrators in this non-judicial setting.

#### ***Regionalization as a Blessing or as a Curse?***

On the *Opinio Juris* blog, Professor Carsten Stahn explored the European Union's engagement with the broader international criminal justice project. Stahn argues that the EU's approach embodies features that are key to the success of international criminal justice, however work is still to be done. By highlighting the problems associated with transplanting and internalising legal norms and perpetrators being seen as community representatives, Stahn demonstrates the values of domestic criminal procedures; the need to strengthen international courts and tribunals; and highlights some larger macro issues that the EU and its members will need to address in future strategies.

### ***Book Discussion: Taking Economic, Social and Cultural Rights Seriously in International Criminal Law***

Professor Larissa van den Herik and Professor Carsten Stahn engaged in a discussion on the *EJIL: Talk!* blog about Evelyne Schmid's book, *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law*. van den Herik's contribution concerned the methodology adopted and Stahn focussed on the claim that there is a 'bias' towards civil and political rights. Both consider Schmid's work to be a valuable contribution to the field.

### ***Tribunals are Dead, Long Live Tribunals***

Professor Carsten Stahn's post on the *EJIL: Talk!* blog explores the emerging topic of 'new hybridity' in international criminal justice, where special judicial mechanisms (such as the Kosovo Specialist Chambers) are established in lieu of ad hoc tribunals or the ICC. By focussing on the MICT and the Kosovo Specialist Chambers, Stahn demonstrates the value and problems presented by this emerging model of internationalised criminal justice.

## Voices on the Grotius Centre

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“The Grotius Centre at Leiden University enjoys a remarkable reputation among international law scholars. The breadth of the research areas covered by its staff, the excellence of its researchers, the quality of its teaching programmes, and the lively atmosphere of Leiden University Law School make of the Grotius Centre a unique place. The fact that academic research spreads over so many different domains is also rather exceptional. In some of these areas – it suffices to think of international criminal law, post-conflict justice and counterterrorism – the Centre has a worldwide reputation, due to the excellence of the academics and researchers involved. To have gathered the different strands of research under the banner of ‘Frontiers of International Law’ is strategically wise in terms of pooling resources and ensuring the overall coherence of the research programme. Also the blending of established academics and promising young researchers involved in many research projects appears to be a winning strategy. The number of research grants, some of which highly competitive, further attests to the outstanding quality of research at the Grotius Centre. Together with a handful of other institutions such as the Graduate Institute in Geneva, the Erik Castren Institute in Helsinki, and the Max Planck Institute in Heidelberg, the

Grotius Centre contributes to keeping the tradition of excellence of European public international law scholarship very much alive.”

***Andrea Bianchi, Professor of International Law, Graduate Institute, Geneva.***

“The Grotius Centre is without a doubt one of Europe’s leading institutions for the study of



international law. It hosts one of the world’s most interesting and intellectually stimulating journals in the field, it boasts a sizeable faculty of great distinction, and it has generated cutting edge research in various fields,

including especially international criminal law and international humanitarian law.”

***Philip G Alston, John Norton Pomeroy Professor of Law, Co-Chair, NYU Center for Human Rights and Global Justice, New York and UN Independent Expert on Human Rights and Extreme Poverty***



“The Grotius Centre can look back on a centuries-long and deep tradition of excellent public international law scholarship. It stands out in various special areas ranging from international institutional

law over IHL and international criminal law to international economic law and arbitration. Its close relationship to international legal practice as lived at the international institutions in the Hague is a great asset. The Leiden Journal of International Law hosted here is one of the world’s top journals in the field. Due to its attractive size with its critical mass of internationally recognized specialist in all areas of international law it is in the position to launch ambitious research lines and to offer a wide gamut of classes. The Grotius Centre is always among my top recommendations for studying, teaching, and researching international law.”

*Anne Peters, Director, Max Planck Institute for Comparative Law and International Law, Heidelberg.*

“The Grotius Centre for International Legal Studies plays a unique and productive role in the foundational research, international collaboration, and public outreach of Leiden University. I am



impressed by the extremely high standard and innovations of the research that the Centre has fostered, the outstanding support it provides for doctoral and early career researchers, and the collegial and

interdisciplinary intellectual environment that it has facilitated. In my view, it is a flagship program for international legal studies not just for Leiden University but for The Netherlands more generally.”

*Anne Orford, Redmond Barry Distinguished Professor and Michael D Kirby Chair of International Law at Melbourne Law School*



## Personnel Changes

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### New Colleagues

In 2016 we welcomed these new colleagues to the *Exploring the Frontiers of International Law* research programme:

- Evelien Campfens, PhD Candidate (Leiden)
- Thea Coventry, PhD Candidate (Leiden)
- Mamadou Hébié, Assistant Professor (the Hague)
- Giulia Pinzauti, Assistant Professor (the Hague)
- Merinda Stewart, PhD Candidate (Leiden)
- Sergey Vasiliev, Assistant Professor (Leiden and the Hague)

## Working Papers

The Grotius Centre for International Legal Studies continues to publish the [Grotius Centre Working Paper Series](#) on SSRN under the Leiden Law School Legal Studies Research Paper Series. This series contains English-language articles or book chapters submitted for publication but not yet approved for publication; or approved for publication but not including reviewer-suggested amendments. In 2016, the Centre published the following Working Papers on the freely-accessible SSRN:

- Yannick Radi, *Labour Provisions and Dispute Settlement in International Investment Agreements* (Grotius Centre Working Paper 2016/051-IEL)
- Niels Blokker, *Asian and Pacific International Organizations: Mainstream or Sui Generis? An International Institutional Law Perspective* (Grotius Centre Working Paper 2016/052-PIL)
- Cecily Rose, *Non-Binding Instruments and Democratic Accountability* (Grotius Centre Working Paper 2016/053-PIL)
- Catherine Harwood, *Contributions of international commissions of inquiry to transitional justice* (Grotius Centre Working Paper 2016/054-ICL)
- Eric De Brabandere, *States' Reassertion of Control over International Investment Law - (Re)Defining 'Fair and Equitable Treatment'*

and *'Indirect Expropriation'* (Grotius Centre Working Paper 2016/055-IEL)

- Eric De Brabandere, *The Use of Precedent and External Case-Law by the International Court of Justice and the International Tribunal for the Law of the Sea* (Grotius Centre Working Paper 2016/057-PIL)
- Eric De Brabandere and David Holloway, *Sanctions and International Arbitration* (Grotius Centre Working Paper 2016/058-IEL)
- Eric De Brabandere, *'Mercantile Adventurers'? The Disclosure of Third-Party Funding in Investment Treaty Arbitration* (Grotius Centre Working Paper 2016/059-IEL)

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*'Mercantile Adventurers'? The Disclosure of Third-Party Funding in Investment Treaty Arbitration*

Eric De Brabandere



Grotius Centre  
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Legal Studies



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## Publications

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### Books

- Dauchy S., Martyn G., Musson A., Pihlajamäki H. & Wijffels A.A. (eds.) (2016), *The Formation and Transmission of Western Legal Culture. 150 Books that Made the Law in the Age of Printing*. Cham: Springer.
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