

Grotius Centre Newsletter

Spring 2017



**Universiteit
Leiden**
Grotius Centre

Discover the world at Leiden University

Welcome! From the Directors



**Grotius Centre
for International
Legal Studies**



Dear colleagues,

I am pleased to introduce this first edition of the revived Grotius Centre Newsletter! It appears at a time when international relations are being shaken up vehemently and the preservation of global peace and justice is seriously at stake. BREXIT, the rise of nationalism in Europe, the annexation of the Crimea, the war in Syria and the refugee flows to Europe all pose tremendous challenges, while President Trump upsets key chapters of international co-operation by seeking to withdraw from the Paris Climate Agreement, the Iran deal and several UN programmes. Any responses would be best guided by sticking to the core elements of the rule of law and global justice, i.e. legality, legal certainty, the prohibition of arbitrariness, access to justice, respect for human rights, non-discrimination and equality before the law.

The first half of 2017 has been a productive and exciting one. One needs only to look at the publication list at the back of this newsletter to see the amount of high-quality research our Centre is producing. And this just follows up on the very positive scores we received in the external review and assessment of our research performance during the past five years. Something to be proud of. Furthermore, the Grotius Centre has continued its tradition of public and community engagement by organising mooted competitions with partner institutions and summer schools. Inside, you will find several articles on some key events that have taken place so far this year, as well as individual updates on our colleagues' activities.

I hope that you enjoy this publication as much as I do and I wish you an enjoyable summer and a successful second half of the year!

Professor Nico Schrijver, *Grotius Centre Director*



Dear all,

What a wonderful start to the year! It is clear from reading this newsletter that the Grotius Centre continues its proud tradition of producing cutting-edge legal research. The conclusion of Kees Waaldijk's LawsAndFamilies project is merely one of many achievements that we have seen so far in 2017 of which him and his colleagues can be immensely proud. We must also congratulate all PhD candidates who have successfully defended their theses—including Assistant Professors Joe Powderly and Emma Irving. Nico Schrijver and Niels Blokker continue bridging theory and practice, having organised a two-day high-level seminar on the role of non-permanent members of the United Nations Security Council. The Kalshoven-Gieskes Forum, headed by Robert Heinsch, has also continued exploring topical issues in international humanitarian law. At the back of this newsletter you will also find a list of all publications released so far in 2017—I hope you take the time to read it and learn about the diverse topics our Centre and our colleagues have been engaged with.

I wish you the very best of success for the rest of the year!

Professor Carsten Stahn, *Exploring the Frontiers of International Law Research Programme Director*

Contents

| | |
|---|----|
| LawsAndFamilies Project Concludes | 3 |
| Congratulations Professor Helen Duffy | 5 |
| Quality Control in Preliminary Examinations | 7 |
| Assistant Professor Joe Powderly Defends his PhD | 9 |
| Non-Permanent UNSC Members Seminar | 11 |
| Assistant Professor Emma Irving Defends her PhD | 13 |
| Mooting Competitions | 15 |
| Kalshoven-Gieskes Forum on International Humanitarian Law | 21 |
| News from Around the Centre | 23 |
| Publications (January-June) | 28 |



LawsAndFamilies Project Concludes

Photo by Sylvain Courant

Five years, 21 states, 50 legal experts, and over 200,000 data points: the LawsAndFamilies project came to and end this year. Professor Kees Waaldijk shares his experience of being part of the EU-funded large FamiliesAndSocieties research project.

Five years ago, [Professor Kees Waaldijk](#) received a phone call from [Dr Livia Oláh](#) of Stockholm University. He had been a Professor for less than a year, holding the Chair of Comparative Sexual Orientation Law, and with this call he was about to embark on a research project that would occupy him for the next five years.

Oláh and her team, mainly consisting of demographers, had designed a project to look at family policy in the European context. While it was interdisciplinary, it lacked a legal perspective.

“The project needed to become more inclusive and more interdisciplinary by adding law and by adding a focus on same-sex families”,

says Kees.

The EU-funded [FamiliesAndSocieties](#) project was by no means going to be a small venture. Led by Stockholm University, it was set to explore the position of families across European states. 25 research partner institutions from 15 European states and three civil society actors were coming together to provide a comprehensive analysis of changing families and policies across Europe. Law, demography, sociology, psychology, and statistics would combine and make research on the topic comprehensible for each other.

Leiden University would be responsible for the legal project, called *LawsAndFamilies: Aspects of Legal Family Formats for Same-Sex and*

Different-Sex Couples.

The French Institute for Demographic Studies—[INED](#)—would provide the technical support for the legal project, and coordinate and analyse qualitative interviews with same-sex families in four states and statistics on same-sex marriages and registered partnerships in twelve.

“We could build on a previous project”, says Kees. He had worked with INED between 2003 and 2005 and developed a methodology “to systematically see what the legal content is of different family formats (such as marriage, partnership, and cohabitation) for same-sex or different-sex couples”. That project—[More or Less Together](#), which focussed on nine coun-

tries in 2003—would form the methodological basis for the new project.

“I saw it as an excellent chance to update and expand the study”, Kees says. “Now we had the ambition to cover many more European countries”. The new project was also going to have a much wider temporal scope, looking at the position of each country in every year between 1965 and 2016.

The database would act as a comprehensive record of the status of 60 legal aspects of family life across 23 European jurisdictions. Importantly, it would also contain references to legislation, case law, and in some instances administrative practices, to support the findings.

Kees and his team of Jose Villaverde, Natalie Nikolina, and Giuseppe Zago built upon the *More or Less Together* survey to create 60 questions covering 6 themes (formalisation, income and troubles, parenting, migration, splitting up, and death) that would be sent to two legal experts from each of the jurisdictions. Daniel Damonzé would also later join the team at the Grotius Centre.

The experts would then complete the surveys, cross-check the answers with each other, and provide the nuanced legal explanations for their answers. “The collection phase took 18 months”, says Kees, “leaving just a few months for the analysis”. After a process of reviewing and revising, it was then up to Kees and his team to analyse the data.

“More countries have more rights for more couples”, says Kees. However, he notes, “there are certain rights that are more likely to be given, and given early, than other rights. It seems that if a certain right of marriage has to do with deep sadness—death, violence, illness—then countries are more likely to start giving rights to accommodate more couples for those pur-

poses. Whereas rights that have to do with enhancing your life—like having children, paying less income tax, using each others name, or acquiring the citizenship of the other—these are extended more slowly”.

The research revealed that same-sex marriages and/or registered partnerships are now possible in 21 of the 28 EU member states. Back in 2005, the number was only 10. And already a majority of the 47 members of the Council of Europe are in the same boat.

But there is still work to be done. Some states, such as Romania, are still lagging behind, failing to allow for same-sex marriages or registered partnerships. Romania hardly recognises cohabitation between same-sex couples. The situation is only marginally better in Poland and Bulgaria.

The [LawsAndFamilies Database](#) was officially launched on 25 April. At its core is the legal survey Kees’ team conducted: an interactive, colour-coded system that allows family rights for the 60 indicators to be compared between European jurisdictions over a 50 year period. That equates to more than 200,000 data points. Two more studies, a statistical survey and a sociological survey, provide data on how many same-sex couples got registered or married, and how same-sex couples see the law affecting their lives.

At a ceremony at Leiden’s Campus the Hague, Kees presented the [More and More Together](#) report and the database to [Professor Pearl Dykstra](#), deputy chair of the European Commission’s High Level

Group of Scientific Advisors. “Sociologists”, Dykstra says, “are not sufficiently aware that policy and legislation influence the opportunities that people have in their lives, particularly for homosexual and lesbian couples. I hope that the database will be broadened to include more countries than the 21 that it currently covers”. Derk Brouwer, founder of the [Betsy Brouwer Foundation](#) that sponsors Kees’ chair in Comparative Sexual Orientation Law, also spoke at the ceremony.

So where to from here? With all of the data now so readily available, Kees hopes that the database will become a useful tool for civil society, researchers, and government to track the progress of states towards equality. It is now easier than ever to compare jurisdictions and highlight areas where states are lagging behind others. It is also now possible to point to the specific laws that need to be amended.

Kees reveals that they have already received a request from lawyers in Romania “about a pending test case in the ECJ regarding the recognition of foreign same-sex marriages for immigration”.



Kees Waaldijk presenting the report to Pearl Dykstra



Congratulations Professor Helen Duffy

On 13 March, Professor Helen Duffy delivered her inaugural lecture at the Academiegebouw. As an experienced human rights litigator, Professor Duffy shared her thoughts on the legal process and encouraged the audience to look at it beyond the ‘Champagne Moment’.

In 2015, Professor Helen Duffy was appointed the Gieskes Chair of Human Rights and International Humanitarian Law.

Helen started her legal education in Scotland, before continuing at London and Leiden. Over a varied career, she has served as Legal Director of INTERIGHTS and of CALDH a Guatemalan NGO, worked at the ICTY, acted as Counsel to Human Rights Watch in New York, and been a legal advisory to the United Kingdom during the Arms for Iraq Inquiry. She also holds an Honorary Professorship at the University of Glasgow.

Today, Helen also runs Human Rights in Practice. The organisation, though based in the Hague, runs strategic human rights litigation

before domestic and regional courts throughout Europe and the world. These include the European Court of Human Rights and the Inter-American Court of Human Rights. The idea, Helen says, is to give a voice and secure reparation for victims. In addition, she hopes her work can influence human rights standards through the cases she is involved in.

Helen delivered her inaugural lecture on 13 March at the Academiegebouw in Leiden. This important event was attended by family, friends, colleagues and students. For the occasion, she chose to speak on ‘Strategic Human Rights Litigation: Bursting the Bubble on the Champagne Moment’.

The ‘Champagne photo’—one known to

many lawyers—depicts happy lawyers and happy clients celebrating a legal victory on judgment day.

Helen, however, encouraged the audience to redefine success, and think of the significance of strategic human rights litigation within a broader picture. Judgments, she reminded, may remain unimplemented. There may be a political backlash that worsens the situation on the ground. On the other side of the coin, an ‘unsuccessful’ case might highlight injustices and be the impetus needed to create a movement for change and reform.

The solution? To consider the significance of human rights litigation in a more sophisticated manner in which the judgment is only

part of the process. Helen argued that to properly understand all aspects of human rights litigation, it needs to be considered in all its dimensions, over time, and in the context of surrounding agents for change. This allows for the positives and negatives of litigation to be explored beyond its outcome and in light of whether it contributed, directly or indirectly, to change.

Helen stressed that the concept of litigable human rights is a relatively new one: it was only in 1950 that Sir Hartley Shawcross, the former British attorney-general who was the UK Chief Prosecutor at Nuremburg, wrote that allowing British citizens to lodge claims against the state in Strasbourg was “wholly opposed to the theory of responsible government”.

Today, not only has there been a proliferation of enforceable human rights laws, but also courts, civil society actors, and categories of defendants. Unfortunately, the access to remedies that some victims enjoy has not been spread universally, and human rights violations still occur. And, for those who technically do have access to remedy, financial and other burdens still pose very real barriers to justice. There is work to be done.

Drawing from her own experience, Helen recounted examples of litigation impact, positive and negative, anticipated and not, that may arise before or long after the proverbial champagne moment. For example, a Guatemalan case to highlight the power of the human rights litigation process. In 1982, as part of the Guatemalan genocide, 268 victims were killed in the indigenous community of Plan de Sanchez. Helen asked the survivors what they wanted out of the case and they answered: schools, hospitals, crops. Helen expressed her apologies. Unfortunately, schools, hospitals,

and crops probably aren't going to come about as a result of what we're embarking on.

Helen was wrong. Remarkably, despite not being traditionally considered the benefits of litigation, the case brought about far wider socioeconomic effects than she originally expected. Roads, sewage systems, teachers, psycho-social support, medical centres, and measures to promote Mayan culture all saw significant improvements as a result of the litigation. Before the case had concluded, the Government apologised and erected a chapel in honour of those who had been slaughtered. In other examples the power of the process lay not in 'landmark judgments' but in the empowerment of victims and civil society movements (as in a slavery case from Niger), or in securing access to lawyers in preparation of the case and with them protection and exposure (as in the Guatanamo litigation).

Change, Helen said, happens gradually, cumulatively and is often disguised. When combined with civil society, the media, and legislatures, strategic human rights litigation can have a positive effect on society. Bringing about change is a joint effort, and one that continues long after the champagne has been popped on judgment day.

Helen's roles with Leiden and Human Rights in Practice blend theory and practice, taking concepts beyond the classroom and applying them in real life in the hope of securing respect for human rights for those vul-

nerable to their abuse. When not conducting litigation, she is based at the Hague campus. Her book, *The War on Terror and the Framework of International Law*, is available from Cambridge University Press. She is currently working on a book on strategic human rights litigation.

MOOCs

The Grotius Centre now offers two exciting MOOCs as part of a series of courses on *International Law in Action* through Coursera.

International Law in Action: A Guide to the International Courts and Tribunals in The Hague is taught by Professor Larissa van den Herik; Assistant Professor Cecily Rose; and Dr Yannick Radi. Over 5 weeks, the course explains the functions of each international court and tribunal present in The Hague, and looks at how these institutions address contemporary problems. On the basis of selected cases, and through interviews with judges and lawyers, the course explores the role of these courts and tribunals and their potential to contribute to global justice.

International Law In Action: Investigating and Prosecuting International Crimes is taught by Professor Carsten Stahn; and Assistant Professors Sergey Vasiliev and Joe Powderly. This second course gives students an insider's perspective into the work of international criminal courts and tribunals and how international crimes are investigated and prosecuted.

A third MOOC on International Arbitration in the Hague, taught by Professor Eric de Brabandere and Assistant Professor Giulia Pinzauti, will be available in early 2018.

“The power of the process also deserves emphasis”



Quality Control in Preliminary Examinations

The second stage of a significant research project funded by the Norwegian Ministry of Foreign Affairs saw internationally-reknown experts gather in the Hague to discuss the important topic of preminary examinations at the International Criminal Court.

The process of preliminary examinations at the International Criminal Court (‘ICC’) is one of the most important phases a matter goes through. It is during this stage that the Prosecutor decides whether there is a “reasonable basis to proceed with an investigation” under article 15(3) of the *Rome Statute*. Regardless of which decision is ultimately reached, the outcome has significant ramifications for victims, defendants, witnesses, and states.

Yet despite their importance, preliminary examinations are also one of the more mysterious processes in the Court. “Preliminary examinations as a theme remains under-researched”, says Carsten Stahn, Professor of International Criminal Law at Leiden University.

“If you look into the big commentaries, you find hardly anything.”

Preliminary examinations take place beyond the oversight of the Chambers and in a realm where the Prosecutor is afforded great discretion as to how they conduct the examination and the transparency they afford to it.

This broad discretion can involve matters sitting in the Preliminary Examination phase for years, leading to uncertainty for the affected parties with little to no power for them to do anything about it. The Situation in Colombia has been in the Preliminary Examination phase for 13 years, having first been opened in June 2004. The Situation in Afghanistan—

involving, potentially, offences committed by the United States—has been under preliminary examination since at least 2007 when it was made public for the first time. Another, the preliminary investigation into Iraq and the United Kingdom, was closed in 2006 but was subsequently reopened in 2014 when the Office of the Prosecutor recieved some new information regarding alleged offences. Other preliminary examinations are also currently underway and are at different stages.

“Some argue that it is better to keep preliminary examinations short and to pass on to formal investigation, since investigation entails greater pressure for compliance”, Carsten says. “Others argue it is precisely the unpredictability of preliminary examinations that makes them

a powerful instrument”.

Of course, there are legitimate reasons why a matter might be under preliminary examination for such a long time. Assessing whether there is reasonable evidence to proceed with an investigation is no simple task; and the requirement that the Prosecutor only bring cases when a state that would otherwise have jurisdiction over it is unwilling or unable to genuinely prosecute the matter may mean that the Prosecutor needs to watch how domestic proceedings play out before making a decision.

All this reveals a number of issues. “The big question”, Carsten says, “is what is the point of preliminary examination? Does it have a predominantly an internal function, or an external function? The debate on the function of preliminary examinations goes to the very identity of the ICC as a body”.

“One theory to justify preliminary examinations is expressivism. Expressive theories suggest that the value of criminal law lies not only in its ability to control crime, but to convey social meaning”.

“Preliminary examinations have a very strong expressivist function. Their impact exceeds their actual legal power”.

There are other questions, too. What can be improved in the preliminary examination process, if anything? What is the normative framework the Prosecutor needs to comply with in conducting preliminary examinations? What role does transparency play? Is the existing legal framework suitable? What are appropriate policy considerations in determining how a preliminary examination should be conducted?

In 2015, the Norwegian Ministry of Foreign Affairs granted funding to a significant research project to investigate these practical and doctrinal issues surrounding preliminary examinations. The *Quality Control in Preliminary Examinations* project follows on from the

earlier project *Quality Control in Fact-Finding*, which concluded in 2013 with the publication of an [edited volume through the Torkel Opsahl Academic ePublisher](#). It will be succeeded by a forthcoming project on *Quality Control in Criminal Investigation*.

The *Quality Control in Preliminary Examinations: Reviewing Impact, Policies and Practices* conference was held on 13 and 14 June 2017 at the Peace Palace. It was co-organised by Carsten Stahn and Professor Morten Bergsmo. “The idea of the conference was to start a dialogue on the foundations, and to try to bridge some of the existing gaps between communities”, says Carsten.

The conference was well-attended. In his opening remarks, Carsten noted the significance of the gathering by recognising that “there has never been an event quite like this”.

Leiden-affiliated speakers included Professor Carsten Stahn; Assistant Professor Jens Iverson; Ana Cristina Rodríguez Pineda; and Assistant Professor Dov Jacobs. They all presented papers on various aspects of the preliminary examination process.

The diversity of the papers presented was one of the strengths of the conference. “It is great that the contributions focussed not only on the ICC, but also on practices of domestic jurisdictions”, remarks Carsten. “They have to do much of the groundwork in international criminal justice”.

Papers from the conference will be reviewed and considered for publication in a volume edited by Carsten Stahn and Professor Morten

Bergsmo. It is expected that the volume will be published at the end of 2017 as an open-access publication through the Torkel Opsahl Academic ePublisher.

Working Papers

The Grotius Working Paper Series gives Leiden academics the possibility to publish English language papers that have been accepted for publication on SSRN, so long as reviewer comments have not been implemented.

So far this year, the following papers have been published in the series:

- > Eric De Brabandere and Maryse Hazelzet, *Corporate Responsibility and Human Rights: Navigating between international, domestic and self-regulation*
- > Zsuzsanna Deen-Racsmány, *The Relevance of Disciplinary Authority and Criminal Jurisdiction to Locating Effective Control under the ARIO*
- > Sergey Vasiliev, *Cross Fertilisation under the Looking Glass: Transjudicial Grammar and the Reception of Strasbourg Jurisprudence by International Criminal Tribunals*
- > Eric De Brabandere and Saskia Lemeire, *The jurisdiction ratione temporis of international investment tribunals: Some observations on the Decision of the Tribunal in Ping An v Belgium*
- > Eric De Brabandere, *Fair and Equitable Treatment and (Full) Protection and Security in African Investment Treaties: Between Generality and Contextual Specificity*

To publish a paper in the series, please email it to c.j.davis@law.leidenuniv.nl.



Assistant Professor Joe Powderly Defends his PhD

Assistant Professor Joe Powderly is fascinated by the notion of judicial creativity in international criminal justice. In February, he defended his PhD on the topic at the Irish Centre for Human Rights.

Several years ago Joe Powderly embarked on his PhD journey at the Irish Centre for Human Rights, NUI Galway. His topic concerned judicial creativity and the progressive development of international criminal law.

“Throughout my studies in law I have always been fascinated by the role of the judge, particularly in a criminal justice context”, Joe says. “My interest in international criminal law was sparked during my LLM in International Human Rights Law at the Irish Centre for Human Rights. Having William Schabas as a lecturer and mentor made an obsession with the subject almost inevitable. It was clear to me that the concept of the judicial function had been under-theorized in international criminal

law”. Given the comparative immaturity of international criminal law it seemed presumed that judges had the role of developing and breathing life into the law. “I wasn’t convinced there was any theoretical meat to that particular presumption”.

Joe set about trying to understand the role of international criminal judges. Crucially, he says, looking at the men and women that occupy the role was fundamental to this process. “I did intensive research into the 227 individuals who have been appointed to the bench of international courts and tribunals since 1993”, he says. “I wanted to see whether the stereotypes conformed to the data”. Joe was shocked by the gender disparity on the criminal law bench:

three out of every four positions are occupied by men. “The bench is meant to be representative of the international community”, Joe says, “international society is not made up of men in their sixties”.

He also realised that international criminal law trials—common-law styled, adversarial processes—were presided over by judges who mainly came from civil law systems with no additional training. Amazingly, Joe also discovered that only 70% of international criminal judges had prior judicial experience. Put conversely, Joe found that 30% of international criminal judges had never sat in adjudication, despite being eminently qualified lawyers. “This data I found fascinating”.

Joe's research also gave him insights into the nature of the broader international legal system. "My starting point was that international criminal law was a Dante-esque hell for a positivist lawyer", he says. His research allowed him to delve into not only international legal theory, but also legal theory more generally.

Shortly after commencing his PhD research, an opportunity arose that would put his research on the backburner for a number of years. He had been appointed a 'Government of Ireland Scholar' and, at the same time, a Doctoral Fellow at the Irish Centre for Human Rights. "I was working on a project funded by the Irish Department of Foreign Affairs which was a very active investigation into crimes against humanity committed against the Rohingya in Burma", he says. "My mind was in Burma and everything to do with Burma: its history, its politics, its post conflict and transitional justice system, learning investigative techniques and putting them into practice, doing field research, conducting interviews".

As the project neared its end in 2010, Joe decided to move to the Netherlands to be closer to the international courts and tribunals his PhD was concerned with. "I really wanted to come here to see how the sausages are made, so to speak. It's very difficult to assess judicial mentalities or judicial culture from afar". He took a full-time position with the TMC Asser Institute, before joining the Grotius Centre a year later as an Assistant Professor. "Being here really did add to my understanding". His move to the Grotius Centre coincided with the publication of his and Dr. Shane Darcy's edited collection *Judicial Creativity at the International Criminal Tribunals* (OUP, 2011).

Joe found his writing progressed in bursts.

He had a clear structure in mind from the beginning, and several chapters were written intensively. Nevertheless, his entire piece was in a state of constant revision driven in part, he admits, by his "tendency toward perfectionism". The last six months in particular were especially constructive in which his thesis came together as a cohesive piece. "The more intensive and more immersive the environment you have around you the better the quality of work you produce".

Joe's defence took place at Galway. On his panel were Professors Ray Murphy, Professor Rob Cryer, and Dr Shane Darcy. He did not know what to expect from the process. He knew nothing about the examiners' thoughts on the thesis; nor what they would ask or what would be discussed. Nevertheless, Joe considers that "not knowing was a little bit liberating". He knew his topic inside out: "it limited the extent to which I could worry about specific issues". The Defence took 90 minutes and was a success. But there was no

time to relax: "I had agreed in advance that I would give a lecture immediately after", Joe says, "straight into another 90 minute presentation".

While not studying judicial creativity, he is researching cultural heritage law. "I'm particularly fascinated by issues relating to the looting and trafficking of cultural goods", Joe says. "I'm collaborating a little bit with colleagues in the Archaeology Faculty at Leiden University on issues around cultural heritage destruction and trafficking". He is also

looking at the rhetoric of opening and closing statements in international criminal proceedings, harking back to his days as an undergraduate in English literature.

Joe is based in The Hague and teaches International Criminal Law and International Criminal Litigation on the Advanced Masters Programme in Public International Law, and International Criminal Law at Leiden University College. In addition, he is Academic Coordinator of the Advanced Masters Programme, and a member of the Editorial Board of the Leiden Journal of International Law and Criminal Law Forum.


Summer Schools

Over the summer, the Grotius Centre arranges many summer schools for students and practitioners to expand their knowledge of international law by learning from Leiden academics and leading experts. This year, the Centre is offering exciting courses in:

- > International Criminal Law
- > Frontiers of Children's Rights
- > International Humanitarian Law
- > Human Rights and Transitional Justice
- > Sexual Orientation and Gender Identity
- > International Arbitration

The Grotius Summer Schools are held in the Hague in cooperation with NGOs, the Dutch Ministry of Foreign Affairs, UNICEF, and the Hague Academy of International Law.

More information on the Grotius Summer Schools can be found at the [Grotius Summer School Website](#).

 I'm collaborating a little bit with colleagues in the Archaeology Faculty



Non-Permanent UNSC Members Seminar

On 11 and 12 May, Professors Nico Schrijver and Niels Blokker convened a seminar with the assistance of the Dutch Ministry of Foreign Affairs on the role of non-permanent members of the United Nations Security Council.

Next year, the Netherlands will commence a one-year term as a non-permanent member of the United Nations Security Council. Unlike the Permanent Five, the non-permanent members—otherwise known as ‘elected members’—have to campaign for a position on the Council and are only members of the Council for a limited time.

Professors Nico Schrijver and Niels Blokker considered that the time was right to reflect on substantive and procedural matters concerning the role of the elected members.

“Elected members are not just there on behalf of their country or their region, they have a global duty to promote peace and security, respect human rights, and all the

other goals and objectives of the United Nations”, says Nico. “That’s a major task that requires advance organisation. But the term of service on the United Nations Security Council is only short—normally two years, but for the Netherlands, only one year.”

The conference commenced on Thursday in the beautiful old Library of the Eerste Kamer—the Dutch Senate—in the Hague. The invited guests were treated to a tour of the building and learnt about its rich history, which is also the workplace of Professor Schrijver in his capacity as a Senator and Chair of the Senate Foreign Affairs Committee. On the first day, the Seminar heard presentations on the role of non-permanent members from the

perspective of the UN Charter, as well as more practical issues—such as the campaigning for a seat on the Council.

“We discussed mostly matters of procedure and substance”, says Nico. “In regard to substance, we emphasised how important it is to have a comprehensive view. Security is not just military or national security, but it has many dimensions including human security—especially in view of the recent emergence of the concept of the responsibility to protect.” Therefore, Nico says, “elected members need to be well-equipped to serve on the United Nations Security Council”.

“We learnt a lot from participants about the so-called ‘penholder’ system in which

countries take the lead on certain thematic topics”, Nico says. “So it really matters whether or not there is room for the elected members, rather than the permanent members, to table proposals and convene groups and formal sessions”.

On Friday, the Seminar continued at Leiden’s Academiegebouw. Participants spoke on a variety of topics, including the past experiences of a number of States with previous experience as non-permanent members and the various niches into which non-permanent members are able to inject their expertise into the work of the Council. The seminar concluded with a session on the future role of non-permanent members on the Council, and the possibility for change and reform of the Council as a whole.

Guests included past and present United Nations Ambassadors; the Assistant Secretary-General for Legal Affairs; colleagues from the Ministry of Foreign Affairs; as well as

researchers from Australia, Mexico, Sweden, the United Kingdom, and elsewhere. In addition, the Seminar was pleased to welcome the Vice President of the International Court of Justice, Abdulqawi Yusuf; the Foreign Affairs Spokesperson of the VVD in the Tweede Kamer, Han ten Broeke; the Director Multilateral Organisations and Human Rights from the Dutch Ministry of Foreign Affairs, Peter van Vliet; Coordinator of the Task Force for the UN Security Council Membership of the Dutch Ministry of Foreign Affairs, Mariët Schuurman; and Leiden University Law Faculty Vice Dean of Research, and member of the Grotius Centre, Professor Larissa van den Herik as panel chairs. The United Kingdom Deputy Permanent Representative to the Security Council even joined a panel through a video link from New York!

In general, participants concluded that the ten non-permanent members could play a vital and useful role in many ways, in addition to

the five permanent members of the Security Council (China, France, Russia, United Kingdom, United States). This was despite the limited opportunities that short terms pose for large-scale change and the work of the Council being dominated by current crises and power politics.

As a result of the conference, the organisers intend to produce a book. “We have invited all the speakers to elaborate their ideas into book chapters”, says Nico. “We have the bold ambition to have the book ready by Christmas—perhaps not in print, but in content!”

The conference would not have been possible without the organisation and support of Grotius Centre staff Sophie Starrenburg and Hilde Roskam, as well as the Eerste Kamer and the Dutch Ministry of Foreign Affairs, as well as the student assistants who were present at the Seminar to ensure the smooth running of the event.



A portrait of Assistant Professor Emma Irving, a woman with long, wavy brown hair and glasses, smiling. She is wearing a light-colored top. The background shows a wall with framed pictures and a desk with various items.

Assistant Professor Emma Irving Defends her PhD

On 24 March 2017, Assistant Professor Emma Irving defended her PhD on the ‘Shared Protection of Human Rights at the International Criminal Court’.

Emma Irving commenced her PhD at the University of Amsterdam in 2012 on ‘The Shared Protection of Human Rights at the International Criminal Court’, within the SHARES Project, funded by an ERC grant awarded to UvA’s Professor André Nollkaemper. Her goal was to identify whether human rights are adequately protected during international criminal proceedings, given that an individual at any one time can fall under the protection of several actors.

When Emma was writing her proposal, she was struck by the realisation that the more actors that were involved in a situation, the more disadvantageous it became to the individual concerned. This was not because it was ambig-

uous what rights an individual had, but rather who was responsible for protecting those rights.

“You’re more likely to drown if you’re watched by a whole group of people than if there’s only one person watching you drowning”, Emma explains. “If there’s only one person on the beach, they know it’s either me or it’s no one: if there’s a whole group of people on the shore, they’re all looking at each other wondering who is going to jump in”. This theme was not unique to Emma’s research. It appeared across many areas of the SHARES Project.

The International Criminal Court doesn’t escape these problems. Many actors can simul-

taneously have the responsibility to protect an individual’s human rights: their home State, the Netherlands, and the Court itself. “What sometimes happens, because of the strange circumstances, is that actors are not sure of what their obligations are”, Emma says. “It’s this ambiguity that leads to problems for human rights protection”.

Emma’s research also revealed another problem. While actors might be genuinely confused about the human rights obligations they owe to an individual, they can also use this confusion to ‘buck pass’ and hide behind other actors. This is common where two actors might share comparable obligations, and there is a dispute about which one of these actors is

required to effect the obligation.

Emma highlighted these problems with an example. Several years ago, four witnesses came from the Democratic Republic of the Congo to give evidence at the ICC. They were in custody at the time in the DRC on crimes unrelated to those they

were to give evidence about. “When they came over, they remained detained at the ICC. But when it came time for them to go back, after they finished giving evidence, they applied for asylum in the Netherlands”.

The Netherlands denied that it had primary responsibility for these witnesses, as they were in the Netherlands under the auspices of the ICC. The ICC considered that the asylum application was unrelated to the work of the Court, and therefore it was not responsible for any matters arising out of it.

There was another problem, too: this matter took years to resolve. All the while, these witnesses remained detained at the ICC Detention Centre. “There was no one that appeared to be reviewing their detention status”, Emma explains. “They lodged an application with the ICC to have their detention reviewed. But the Court said they were detained on behalf of the DRC, and as such, it had no legal right to review their detention”.

The individuals therefore approached the Netherlands. They could not approach the DRC, because to do so would be to harm their asylum application on the basis that the DRC was able to provide them with protection. “They fell into this legal loophole”.

The problem of these four witnesses gave Emma’s research a human element. These were not abstract concepts she was looking into, but rather real, practical problems. For the first three years of her research, she followed the legal developments concerning these individ-

uals as they arose. “While this problem only formed one chapter of my research at the end of the book, it gave my research a face. It had a very personal aspect”.

Emma’s research was not limited to witness situations like those involving the DRC detainees. “As I went in, I had certain preconceptions about where I would find the biggest problems. It actually turned out that some of the areas that I thought were problematic were actually in practice quite simple. And there were other areas where the problems were much bigger than I thought.”

Arrest proceedings and the enforcement of sentences were two areas that Emma thought would be the most challenging. To her surprise, however, the obligations and legal frameworks were comparatively clear-cut. “Interim release, however, was very problematic”, she says. “People who are released on interim release have to have somewhere to go. It will often be the case that they can’t be released back into the community they come from”.

Emma explains that the ICC lacks the tools necessary for it to effect interim release—it has no territory, after all—so it needs a State to volunteer. If no State does, the person remains detained. “It was overturned on appeal, but in *Bemba*, there was a point in time where he was granted interim release but no one would take him—his rights were being violated because there was no State with a corresponding obligation to enforce them”.

Emma’s defence took place in the Agnietenkapel, in the centre of Amsterdam. Her panel consisted of of Leiden Professors Larissa van der Herik and Niels Blokker and Professors

Elies van Sliedregt, Yvonne Donders, Marjoleine Zieck, and Dr Denis Abels.

Emma has taken up the position of Assistant Professor in Public International Law at Leiden. “It’s fantastic to be at the Grotius Centre”, she says. “Everyone at Leiden has been very supportive of me going through the post-PhD adjustment period.” Based at the Leiden office, Emma teaches Principles of Public International Law at Leiden University College and the Privatissimum in the Public International Law track of the Masters of Law.

She remains interested in shared responsibility for human rights, and is currently investigating the topic of how technological developments are taken into account in international criminal and humanitarian law.



Professor Larissa van den Herik asks a question



Mooting Competitions

Leiden students participated in four international competitions in the first half of 2017, honing their advocacy skills and putting into practice the knowledge they gained in the classroom. The Grotius Centre was proud to host both the ICC and Telders competitions.

Telders Moot Court Competition

The Telders Moot Court Competition celebrated its 40th anniversary this year. What began as a competition between four universities in 1977—the universities of Leiden, Cologne, Bonn and Strasbourg—has grown into a pan-European competition.

The moot was a wonderful opportunity for students of the Leiden LLM programme to not only hone their advocacy skills, but also meet fellow students within the field of international law from across Europe. Rehab Jaffer, one of the members of the Leiden team, noted: “As well as developing memorial drafting and oral presentation skills, it was a great opportunity to get firsthand experience of practicing at an

international level, whilst meeting like-minded students and legal practitioners from all over the world”.

The team was overall highly positive about their experiences, and greatly appreciated their ability to take part in Telders. Conor Keegan, who represented Leiden as part of the Applicant team in the final, stated: “I found it a really enjoyable and challenging experience, and excellent in terms of developing teamwork, legal writing and presentational skills, in preparation for practice in future”.

For this special edition of Telders, teams from 23 countries participated. The international rounds are under the direction of the Supervisory Board, which includes Leiden’s

Professor Nico Schrijver and Professor Niels Blokker, and is organised by the Telders Organising Office, headed by Mette Léons.

This year’s problem—drafted by Dr. Giulia Pinzauti, Assistant Professor at Leiden—was inspired by the *Immunities and Criminal Proceedings (Equatorial Guinea v France)* case, which is currently pending before the International Court of Justice. The so-called ‘Twigan Cultural Centre Dispute’ revolved around three issues: that of the diplomatic immunity of family members of diplomatic agents; the nature of diplomatic missions and their premises; and the suspension of treaty obligations.

The Leiden University team mirrored the LLM programme’s international character,

consisting of Conor Keegan (Ireland); Nikolas Sabjan (Slovakia); Rehab Jaffer (the United Kingdom); and Peter Sprietsma (the Netherlands). Leiden was represented by Conor Keegan and Nikolas Sabjan in the final, which was held in the Great Hall of Justice at the Peace Palace between Leiden University and the University of Cologne. The team was coached by Assistant Professor Simone van den Driest and Sophie Starrenburg.

The team put on a great performance during the entirety of the competition, winning the Max Huber Award for Best Overall Score

(comprised of the scores awarded for the memorial and the oral argumentation of both Applicant and Respondent); the Award for the Best Oral Argumentation for the Applicant; and the Best Oralist Award, for Conor Keegan.

By a happy coincidence of history, the Max Huber Award was awarded to the Leiden Team by Marion Kappeyne van de Coppello, current ambassador of the Netherlands to Chile and the first Leiden competitor in the Telders competition forty years ago.

—Sophie Starrenburg

ICC Moot Court Competition

The ICC Moot Court Competition is now in its 14th year. Started by Professors Matthew Brotmann and Gayl Western at Pace Law School in the United States, the competition began as an in-class exercise. The exercise was a good one. The next year, Pace invited other law schools to take part, and in 2006, the competition was opened to the rest of the world.

Today, hundreds of students from across the world gather each year in the Hague to participate. The international rounds are under the direction of Leiden's Professor Carsten



Stahn and Case Western Reserve University's Professor Michael P Scharf, and organised by Lienneke Louman and Ioana Moraru. Pace organises the regional rounds for the Americas.

The case this year concerned three hot issues in international criminal law: what constitutes a protected group for the purposes of genocide; whether being a child soldier absolves someone of criminal responsibility for the acts they commit; and what constitutes the effective control required for a government to consent to the ICC's jurisdiction.

The competition also included an educational and social programme. This year, the competition was honoured to welcome Benjamin Ferencz—the last surviving prosecutor from the Nuremberg Military Tribunals—as the opening speaker. Ferencz shared his harrowing experiences entering concentration camps and how that motivated him to press for the Einsatzgruppen trial (of which he ultimately became Chief Prosecutor). After the trial, Ferencz spent the rest of his life pressing the message “Law, Not War” and lobbying for the creation of the ICC. The Court was eventually created, and Ferencz gave the closing address in its first trial. His story left the crowd inspired. He left them with a message: “Remember your humanity. Forget the rest”—and received a standing ovation.

The Leiden University team consisted of Hugh McGowan; Lena Ellen Becker; Stephen (Fen) Greatley-Hirsch; Mariana Leite; and Lilla Ozoráková, and was coached by Assistant Professor Jens Iverson and Sara Pedroso. Fen Greatly-Hirsch appeared for the Defence in the grand final and put on a stunning performance. Leiden University was proud to win the competition and have Hugh McGowan awarded runner-up for Best Prosecution Counsel.

—Cale Davis

Philip C Jessup International Law Moot

Leiden University took part in the 58th edition of the Philip C Jessup Moot—the world's largest and truly global international law moot court competition. This year the competition attracted over 640 teams of students from 95 jurisdictions. The *Compromis* concerned a range of topics including the equitable use of shared natural resources, namely transboundary aquifers; the protection of world heritage sites; repatriation of cultural property; and financial implications of refugee crises. The Leiden team put on a brilliant performance at the Dutch qualifying competition. It progressed to the final round with the highest score and ended up just one point short of victory. The team consisted of Lamyae Ramdani, Qiaozi Guanglin, Eve-anne Travers (LLM Reg) and Raihana Haidary (LLM Adv). It was coached by Sergey Vasiliev and Sophie Schiettekatte. Thereafter, Sophie also judged preliminary rounds in the Jessup World Championship held on 9-15 April 2017 in Washington DC.

—Sergey Vasiliev

Frits Kalshoven International Humanitarian Law Competition

Leiden University also succeeded to the final round of the Frits Kalshoven International Humanitarian Law (‘IHL’) Competition in 2017. This competition aims to take IHL “out of the books” through simulations, role plays and a moot court. In fictitious but realistic scenarios of armed conflict, teams' knowledge and practical understanding of IHL is evaluated by a jury of experts in international law. The tenth edition of the Kalshoven Competition was celebrated by holding the moot court final at the Supreme Court of the Netherlands. Leiden University was represented by Kaetlin Gale, André Nwadiakwa and Toby Varian, and was coached by Catherine Harwood.

—Catherine Harwood



The Jessup team and coach Sergey Vasiliev

National Moot Court Competition

In June, the Grotius Centre was proud to collaborate with the City of the Hague in hosting the [National Moot Court Competition](#) for high school students in the Netherlands. The National Moot Court Competition gives students who are interested in studying law the opportunity to learn about international criminal law and have a go at advocacy in the international city of peace and justice.

The competition was attended by 44 students from 18 high schools in the Hague region at held at the Wijnhaven campus. They received a masterclass in international criminal law and advocacy from Cale Davis (Grotius Centre, the Hague) before competing. The students argued a fictional case before the ICC on whether it was a war crime to attack a church where it was suspected rebels were planning military operations.

In the end, 12 students were selected for the All Star Team to represent the Netherlands in the [International Moot Court Competition](#), which will take place in the Hague in January 2018.

The competition would not have been possible without the hard work of Mette Léons, Lieneke Louman, Ioana Moraru, and the Grotius Centre interns who made sure the event ran smoothly.



National Moot Competition competitors



©ICC-CPL. Used with permission.







Kalshoven-Gieskes Forum on International Humanitarian Law

Now in its 7th year, the Kalshoven-Gieskes Forum on International Humanitarian Law is a platform within the Grotius Centre that aims to create better protection and assistance for victims of war and more respect for humanity in armed conflicts and crisis situations.

In the first half of 2017, the Kalshoven-Gieskes Forum on International Humanitarian Law has been active in the fields of research, education, and dissemination.

During the last six months, the Forum's IHL Clinic has worked on six and completed four research projects, resulting in several reports for its cooperation partners in the areas of IHL, international human rights law and international criminal law. In the context of the KGF's on-going cooperation with the ICRC, the respective IHL Clinic team participated in a research visit to Geneva in January, where the students and their supervisors were offered the opportunity to participate in IHL-related sessions and discuss the status of their project.

On 18 February, the Leiden IHL Moot Court team consisting of Ms K Gale, Mr A Nwadike and Mr T Varian won second place at the 2017 Frits Kalshoven Competition with an impressive performance in the Dutch Supreme Court in The Hague.

In February, the Forum's Director, Dr Robert Heinsch, gave a lecture on 'The Basic IHL Principles Governing the Conduct of Hostilities with regard to Unlawful Attacks' to a group of staff members of the Office of the Prosecutor of the International Criminal Court in The Hague. On 13 March 2017, Prof Helen Duffy was officially appointed as Gieskes Professor of International Humanitarian Law and Human Rights at the Grotius Centre for International

Legal Studies. During her inaugural lecture she gave an insight into strategic human rights litigation, addressing 'Bursting the Bubble on the Champagne Moment'. On the same day, KGF Assistant Professor Dr Giulia Pinzauti addressed the Senior Course 130 at the NATO Defence College in Rome. Dr Pinzauti spoke on the subject of 'The United Nations and International Courts' to an audience comprised of 54 military officers and government officials from 19 different countries. In June, the Forum's PhD Fellow Sofia Pouloupoulou LLM attended the 'International Disaster Response Law Course' at the San Remo Institute of Humanitarian Law in Italy. In the same month, Dr Heinsch gave an intensive IHL training to

Judges and Prosecutors at the Leadership Development and Civic Education Centre of the German Armed Forces in Koblenz.

On 8 June 2017, in order to call attention to the 40th anniversary of the 1977 Additional Protocols, the KGF organised a celebratory panel discussion, in cooperation with the Grotius Centre and the Netherlands Red Cross. The panel featured esteemed guests, including Judge Alphons Orie (ICTY), Prof Horst Fischer (Leiden University), Dr Hans Boddens Hosang (NL Ministry of Defence), and Ms Mireille Hector (NL Ministry of Foreign Affairs).

In the area of research Dr Heinsch, together with his colleagues Prof Terry Gill (Amsterdam) and Prof Robin Geiss (Glasgow), finished a five-year process of examining ‘The Conduct of Hostilities under International Humanitarian Law - Challenges of 21st Century Warfare’ in the context of an ILA study group. The respective final report will now be published soon on the [ILA website](#). On 9 May 2017, the ECCHR published a new booklet on ‘Litigating Drone Strikes: Challenging the Global Network of Remote Killing’, including a chapter on “Difficulties in Prosecuting Drones Strikes as War crime under International Criminal Law” by Dr Heinsch and Ms Pouloupoulou LLM. In addition, Dr Heinsch contributed a chapter on ‘The ICRC and the Geneva Conventions of 1949’ to a recently published volume on ‘Humanizing the Laws of War—The Red Cross and the Development of International Humanitarian Law’, published by Cambridge University Press.

—Robert Heinsch and Lotte Chevalier



News from around the Grotius Centre

Cecily Rose Speaks at the British Institute of International and Comparative Law

On Friday, 12 May 2017, [Cecily Rose](#) participated in a conference held in London by the Investment Treaty Forum (British Institute of International and Comparative Law). The [28th Investment Treaty Forum Public Conference](#) concerned economic crime and international investment law, and brought together practitioners in the field of investor-State arbitration, as well as academics. Cecily participated in a panel on the evidentiary challenges raised by allegations of economic crimes in investor-state disputes. Drawing on her [study](#) of how arbitral tribunals have handled allegations of corruption, Cecily discussed when tribunals might draw adverse inferences, make use of circumstantial evidence, or shift the burden of proof, as well as the standard of proof that tribunals have used in evaluating such claims. Cecily is based in Leiden.



Professor Eric de Brabandere Shares his Knowledge on Investment Arbitration

In the first half of 2017, Leiden Professor Eric de Brabandere shared his knowledge on investment treaty arbitration



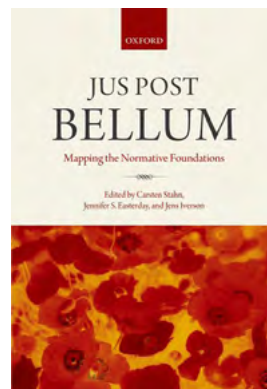
across Europe and the world. He <https://www.universiteitleiden.nl/binaries/content/gallery/ul2/portraits/law/publiekrecht/eric-de-brabandere.jpg/eric-de-brabandere.jpg/d200x250> presented on 'The Principles of Investment Treaty Arbitration' and 'The Hybridity of Investment Treaty Arbitration' at Ghent University in Belgium; was a discussant on panels concerning investment law and arbitration at the Society of International Economic Law's 6th Conference of the Postgraduate and Early Professionals at Tilburg University in the Netherlands; and from 23 to 26 January conducted a training session on 'International Investment Law and Arbitration' at the University of Indonesia in Jakarta, Indonesia. Eric is based at the Hague office.

Jus Post Bellum Becomes Open Access

Carsten Stahn, Jennifer Easterday, and Jens Iverson's volume, *Jus Post Bellum: Mapping the Normative Foundations* (Oxford University Press, 2014) has become open access and is available through Oxford University Press's website, [here](#). This text, the result of several years of work by leading scholars, provides a detailed overview of each aspect of the doctrine—the law, the temporal scope, and the nature of the conflict—to further our understanding of the laws and principles applicable to a state's transition from conflict to peace.

Jus Post Bellum engages with the foundations of the doctrine; related legal notions; and the problems it poses. Stahn, Easterday, and Iverson have further assembled contributions that not only engage with the theoretical framework of the doctrine, but also engage with practical matters such as the status of foreign armed forces in post-conflict environments; amnesties; and the cessation of transitional administrations. Through 26 chapters, the work presented in *Jus Post Bellum* provides a valuable contribution for both scholarship and practice.

Jus Post Bellum includes contributions from Leiden scholars Carsten Stahn, Jennifer Easterday, Jens Iverson, Eric de Brabandere, Dov Jacobs, and Freya Baetens. More information regarding the project can be found on the Jus Post Bellum Project website, [here](#).



Nobuo Hayashi defends his PhD on Military Necessity

On 11 May 2017, Nobuo Hayashi defended his PhD entitled 'Military Necessity' at the Academiegebouw. He argued that two influential views on military necessity exist under today's international humanitarian law (IHL). According to one, IHL prohibits all acts lacking in military necessity. They become

unlawful simply because they are militarily unnecessary, even if they do not violate any of the law's specific rules.

The other holds that military necessity and humanity inevitably conflict with each other. Since IHL already embodies a compromise between them, neither pleas are admissible vis-à-vis its unqualified rules.

Hayashi challenged both positions and developed a new, contextualised theory.

He was supervised by Professor Carsten Stahn, and the Committee consisted of Professors Larissa van den Herik, Terry Gill, Jan Kleffner, Helen Duffy, and Associate Professor Robert Heinsch.

PhD Candidate *Promoclub* 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.

In each meeting, one or two 'reviewers' start of the discussion with extensive feedback on the draft text. The meetings contribute to the research project under discussion as well as to the development of research skills and the cooperation and exchange of output among colleagues. In addition, the discussion of more general themes, such as the method to identify customary international law or writing styles is beneficial to other research projects. The meetings are coordinated by Hilde Roskam, PhD Candidate.

Since December 2016, the meetings have discussed the work of Evelien Campfens (A Normative Framework for Cultural Objects Misappropriated in the Past); Yudan Tan (Policy as a customary Law Requirement for Crimes Against Humanity); Yang Xie (The Duty to Cooperate with the ICC for Non-State Parties to the ICC); and Floris Tan (The Duty to Investigate Human Rights Violations Committed During Armed Conflict and Occupation under the ECHR). The group also received a special presentation from Helen Beckman on The Process of Writing a PhD.



Seun Bakare presenting at the conference

Seun Bakare attends Panel Discussion at the AHRI/Frame Conference in Leuven

On Friday 28 April 2017, Seun Bakare sat on a panel at the Association of Human Rights Institutes (AHRI) / Frame Conference in Leuven, Belgium. Seun was one of five panellists who represented more than 3,000 professionals and academics of the alumni community of the Global Campus for Human Rights, spanning twenty generations and six continents. The panellists brought experiences from the international and regional justice systems and drew on recent cases, in order to reflect on the gap between the role of courts and the attainment of justice for individuals and communities across several regional systems.

In particular, Seun spoke on the African human rights systems, its roles in promoting rights, the challenges the system faces in navigating the murky waters of rights and politics as well as certain observable improvements due to recent legal and structural reforms. The panel discussion reflected on barriers to accessing justice in different regional systems, the question of implementation of decisions from regional courts and tribunals as well as the roles that civil societies play in promoting

and protecting rights. The consensus was that more efforts are required to close the widening gap between the progressive provisions of human rights statutes on one hand, and the attainment of justice on the other hand.

Sergey Vasiliev attends Expert Seminar on Hybrid Justice: Internal and External Resilience in Post-Conflict Societies

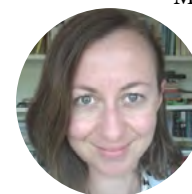
On 24-25 March 2017, Sergey Vasiliev took part in the inaugural expert seminar 'Hybrid Justice: Internal and

External Resilience in Post-Conflict Societies' at the London School of Economics organised by Kirsten Ainley and Mark Kersten. This project examines the role and impact of hybrid criminal justice mechanisms in post-conflict and transitioning states and aims at developing policy guidelines for setting up these institutions and for structuring their relationship with the ICC. Sergey's opening remarks concerned the choice of procedural models for the hybrid courts and struggles over their applicable law, which has greater importance for building societal resilience in post-conflict settings than meets the eye.



Visiting Researcher Rosemary Grey

Rosemary Grey is a Postdoctoral Fellow at Melbourne Law School, in the University of Melbourne (Australia). Her research focuses on the prosecution of sexual and gender-based crimes under international criminal



law. She is currently writing a book on the ICC's practice in this regard. Rosemary holds a PhD from the University of New South Wales, where she has also lectured in international criminal law. Alongside her academic work, she has worked as an external consultant to NGOs in the field of international criminal law, including Amnesty International and Women's Initiatives for Gender Justice. As a visiting researcher at the Grotius Centre, she is conducting interviews with ICC officials, monitoring trials and connecting with other scholars in her field.



Visiting Researcher Kushtrim Istrefi

Dr Kushtrim Istrefi teaches Human Rights Law at the Riga Graduate School of Law. He was a visiting researcher at the Lauterpacht Centre in Cambridge, Graduate Institute in Geneva, Max Planck Institute in Heidelberg and the European Court of Human Rights. His research interests lie in the areas of human rights and international security, the law of treaties, and international law in domestic courts. Kushtrim has successfully litigated (pro bono) a case concerning forced disappearances before the EULEX Human Rights Review Panel, and advised international and national institutions on the rule of law. At the Grotius Centre, Kushtrim is working on his forthcoming book entitled *European Judicial Responses to Security Council Resolutions: A Consequentialist Assessment* (Brill | Nijhoff), and co-organizing a conference on *The Derogation from the ECHR under Contemporary Situations of Emergency*.

Daniëlla Dam-de Jong presents on natural resources related themes in diverse settings



Daniëlla participated in various seminars, where she spoke on diverse topics related to her principal expertise. On 19 January, Daniëlla participated in an expert seminar on indigenous peoples and international law at Trento University, where she spoke about indigenous peoples' rights over natural resources. She also participated as external examiner in a PhD defence on Indigenous Rights and the Protection of Biodiversity that same day. On 12 May, Daniëlla presented on 'Non-Permanent members and Agenda-setting: the Security Council as peace broker' at a seminar on The Role of Non-Permanent Members of the Security Council in the Pursuit of Peace and Justice organized by our own Grotius Centre for International Legal Studies. On 18 May, she presented on 'Informal mechanisms as a benchmark for sanctions termination' at a workshop on Termination of Sanctions in International Law organized by the ILA Study Group on UN Sanctions and International Law at Roma Tre University. The day after, Daniëlla attended a Conference on Accountability and International Business Operations organized by the Utrecht Centre for Accountability and Liability Law, where she presented on 'The Viability of Due Diligence as a Model to Establish Corporate Accountability Under International Criminal Law'.

Miriam Cohen defends her PhD on Reparations for International Crimes and the Development of a Civil Dimension of International Criminal Justice

Miriam's research looked into the develop-

ment of a civil dimension of international justice and whether it can exist within the ethos of international criminal proceedings. It investigated whether this dimension should be integrated in the international criminal process or whether a separation of these mechanisms is preferred; in this latter case, it inquired whether other mechanisms, such as domestic civil litigation and/or administrative mechanisms, such as trust funds, should be the way forward.

The goal of Miriam's research was to examine whether, and to what extent, international criminal justice should be concerned with a civil dimension, by which justice theories it is guided, how this dimension is best shaped and how it should further develop. In this light, her thesis started by looking at punishment and reparation through the analysis of the interplay between retributive and restorative or reparative justice theories. It then examined the leading International Criminal Court decisions on reparations and dwelled upon whether some aspects of criminal justice (e.g. standard of evidence, rights of the accused, prosecutorial discretion, etc.) are in tension with the civil nature of reparations. Building on domestic experiences, case studies and criminal law theories, her research provides a fresh outlook on the question of reparations for victims of international crimes in international criminal proceedings and beyond.

Miriam was supervised by Professors Larissa van den Herik and Carsten Stahn.

Larissa van den Herik

Larissa is currently the Vice-Dean of Research at the Faculty of Law. The first half of the year saw two of her PhD supervisees successfully defend their theses (Miriam Cohen, *'Reparations for International Crimes and the Development*



of a Civil Dimension of International Criminal Justice'; and Jasmina Mackic, 'Proofing Discriminatory Violence at the ECtHR').

She also gave conference presentations on 'The Role of Parliaments in the Recognition and Prevention of International Crimes' (at the ESIL conference on post conflict justice in Kiev, 27 May 2017); 'The Importance of Fact-Finding in International Law: Martens' Idea of Inquiry Revisited' (at the Higher School of Economics in St Petersburg and Moscow and the Sacharov Centre in Moscow, 24-26 May 2017); and 'The Construction of Custom and Cross-Referencing in International Criminal Law' (at the Arbeitskreis Völkerstrafrecht, the Hague, 12 May 2017). Larissa also organised the conference on Termination of Sanctions, an ILA Study Group Meeting, at Roma Tre on 18 and 19 May 2017.

On 13 February 2017, the Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations had its Hague launch. The Asser Institute organised a panel discussion for the occasion. Larissa chaired the panel composed of Professor Michael Schmitt; Ms Marina Kaljurand; Mr Steven Hill; and Dr Marten Zwanenburg.

Larissa also drafted, in her capacity as vice-chair, the [Advisory Report on the Scope for and the Significance and Desirability of the use of the term 'Genocide' by Politicians](#) and wrote a blog post on [International Commissions of Inquiry as a Template for a MH17 Tribunal? A Reply to Jan Lemnitzer](#), which was published on EJIL: Talk! Her book chapter on *The individualization of Enforcement in International Law - Exploring Interplays between United Nations Targeted Sanctions and International Criminal Proceedings* was also published.

Wijnhaven Building Opens in the Hague

On 10 February 2017, the new Wijnhaven building in the Hague was officially opened.

This new campus is located a short walking distance from Station Den Haag Centraal and is a purpose-built learning and research facility for 4,500 students. It is the third location that makes up Leiden's Campus the Hague. The Grotius Centre's Professor Eric de Brabandere spoke at the opening, along side colleagues from the other faculties that will use the new facility.

The Grotius Centre's Hague operations are now based here, providing an unmatched environment in which to learn and research international law.



Professor Eric de Brabandere



Hague mayor Jozias van Aartsen

Jan Waszink works on Hugo Grotius' *De Iure Praedae*—‘The Law of Prize and Booty’: a new, critical edition of the manuscript kept in Leiden

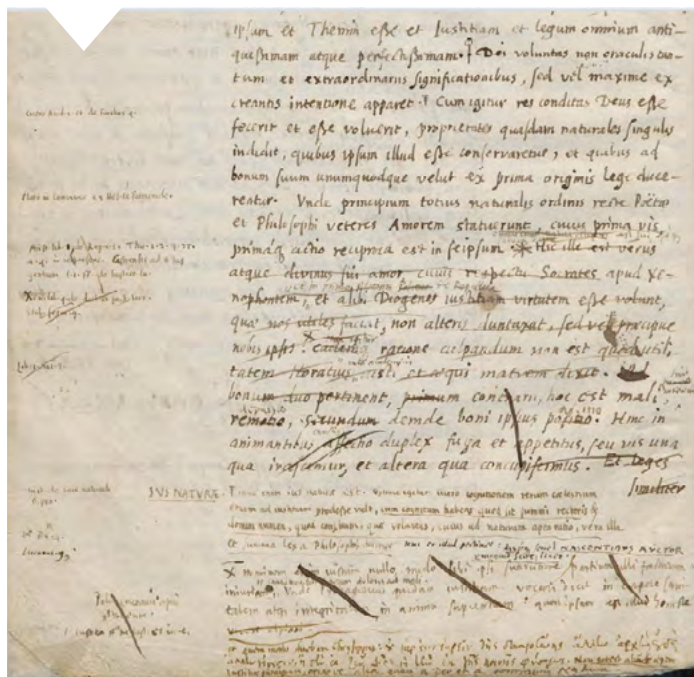
This treatise is Hugo Grotius's (1583-1645) first treatise touching on the matter of Natural Rights and international legal relations. Grotius wrote it in 1604-1606 at the request of the Dutch East India Company, who had captured a richly laden Portuguese vessel in the Strait of Malacca in 1603, and asked Grotius to write a theoretical defence of this action. In response Grotius formulated the first elements of this theory of natural rights, which he would develop further in his famous magnum opus of 1625, *De Iure Belli ac Pacis* (the Rights of War and Peace). The earlier treatise *De Iure Praedae* was never published and remained in manuscript until it was re-discovered in 1864—giving a huge boost to the interest in Grotius as a crucial theorist of international law.

The first printed version of the work (edited by Gerard Hamaker) appeared in 1869, which is also the basis of all current translations of this text. However, and although Hamaker's edition is generally reliable, it was made by 19th-century editorial standards which no longer satisfy the demands of scholarly and intellectual debate.

Although a version of the text was finished in 1606, Grotius kept working on his argument for a long time, adding and deleting bits of text on every page of his manuscript, including a number of substantial revisions of longer portions of text. Hamaker's edition presents only the final stage of the text, omitting any reference to its earlier stages. The purpose of this project is to provide an new (electronic) edition which contains all variants from the manuscript, and to use the instruments of digital publishing to provide easy access to the various stages of the text, facilitate comparison between the stages, etc. In addition, a paper

version will appear in the future presenting the original state of the text as it was provisionally finished in 1606.

The electronic edition is now almost finished and will be formally presented in September 2017.



Folio 5v of the manuscript, showing text with deletions, additions and deleted additions in the lower margin of the page

Editor and Articles: C Davis

Contributors: S Bakare, L Chevalier, E de Brabandere, D Damde Jong, R Grey, C Harwood, R Heinsch, L van den Herik, K Istrefi, C Rose, H Roskam, S Starrenburg, S Vasiliev, J Waszink and the subjects of the articles.

Abstracts and blurbs copyright the respective publishers.

Please contact c.j.davis@law.leidenuniv.nl for submissions.

Publications

January to June

Articles

Eric de Brabandere, 'Fair and Equitable Treatment and (Full) Protection and Security in African Investment Treaties: Between Generality and Contextual Specificity' (2017) 18 *Journal of World Investment and Trade* 530.

> Available [here](#).

This article seeks to test whether African investment treaties present a specific approach – i.e. distinct from the North-American and Western Hemisphere – to fair and equitable treatment (FET) and (full) protection and security (FPS). The first main argument is that the concepts of FET and FPS are not substantially impacted by the mere fact of being included in investment agreements to which African States are party. The second main argument is that the understanding, interpretation and definitions of these concepts within Africa is not fundamentally different than in other regions. Thirdly, notwithstanding the similarity in the wording of these standards of treatment in African investment treaties, there may still be room for taking into account the specific circumstances of the States in which the investment is made, including the level of development of the host State.

Eric de Brabandere and Ingo Venzke, 'The Leiden Journal of International Law at 30' (2017) 30(1) *Leiden Journal of International Law* 1.

> Available [here](#).

In 2017 the Leiden Journal is celebrating its 30th anniversary. Since the inception of the journal in 1988, much has changed. This includes not only the structure, layout, organization and publisher of the journal, but also the general environment in which the journal is published. This editorial's aim is to briefly sketch the journal's life over the past 30 years and to reflect on it.

Thea Coventry, 'Pretrial detention: Assessing European Union Competence under Article 82(2) TFEU' (2017) 8(1) *New Journal of European Criminal Law* 43.

> Available [here](#).

Intuitively setting European Union (EU)-wide common standards on pretrial detention appears advisable: It strengthens fair trial standards for persons accused of criminal offences and aids cooperation among the judiciary of Member States. However, at second glance, the European Parliament and Council's competence to act appears somewhat shaky. This article examines whether the EU has competence to legislate on pretrial detention under Article 82(2) of the Treaty for the Functioning of the EU.

Larissa van den Herik, 'Proceduralising Article 51' (2017) 77 *Heidelberg Journal of International Law* 65 (forthcoming).

> Available via SSRN [here](#).

The unilateral use of force by a State against a non-State actor in another State is nowadays routinely justified by invoking Art. 51 of the

Charter of the United Nations (UN Charter). The preference for a Charter-based exception has moved alternative legal bases to the background. The reliance on Art. 51 in a non-State actor context has provoked intense debate whether self-defence is indeed available as a legal basis for such uses of force, and if so under what exact conditions and threshold criteria. In interpreting the applicable law, there are, as is well-known, two main camps, referred to as the "expansionists" and the "restrictivists". Those two camps seem to become ever more entrenched in their positions without much appetite for compromise.

Emma Irving, 'When International Justice Concludes: Undesirable but Unreturnable Individuals in the Context of the International Criminal Court' (2017) 15(1) *Journal of International Criminal Justice* 115.

> Available [here](#).

The story of international criminal justice does not end when the verdict is read; for both the affected communities and for the individual accused, the story goes on. This article explores the situation facing some accused before the International Criminal Court (ICC) once their trial is over, their sentence (if convicted) is served, and they are released from custody. In many cases, the former ICC accused will simply return home and continue on with a life similar to the one they led before their ICC trial. But for some this will not be possible, particularly where the situation in their home country is such that they would be at risk if they returned there. In that case, they will need to find another country where they can safely reside, but such efforts will often be hindered by a reluctance on the part of states to host persons accused of international crimes, no matter the outcome of the trial. In these cases, such individuals can often become stuck in the legal limbo of being 'undesirable but unreturnable'

(hereinafter, UbU): undesirable because they are unwelcome in other states, but unreturnable because they cannot be returned home. This article explores what the expression ‘undesirable but unreturnable’ means, how the situation that it describes arises in general international law, and in particular how the situation arises in the ICC context. The article then looks at the practice of the ICC to date in dealing with former accused who face being caught in the ‘UbU’ limbo, and goes on to set out three ways in which the ICC could play a bigger role in addressing the issue.

AEM Leijten and Floris Tan, ‘KwartaalSignaal Europese mensenrechten’ (2017) 143 *Ars Aequi KwartaalSignaal* 8371.

Xuechan Ma, ‘Historic Title Over Land and Maritime Territory’ (2017) 4(1) *Journal of Territorial and Maritime Studies* 31.

> Available here.

This article intends to give a better understanding of the theoretical roots and practical operations of the concept “historic title” under two different spatial frameworks of land and sea. The opinions of publicists and judicial decisions rendered by international courts and tribunals pertinent to “historic title” are examined. Moreover, the analysis adopts comparative approach. The concept “historic title” has separate and independent development paths under the frameworks of land and sea which indeed mirrors the historical development of these two corresponding spatial orders. Furthermore, the norm of “*effectivité*” over land territory and “historic title” over maritime territory share the same legal structure. But “historic title” over land territory has a distinct problem, the lack of applicability in practice. Few researchers have touched on the topic in comparison of the same concept “historic title” in different spatial contexts, as well as the

comparison between “historic title” and “*effectivité*.” Therefore, the findings make original contributions to these topics and also have important implications for the states involved in territorial sovereignty disputes.

Xuechan Ma, ‘Introducing Non-legal Adjudicators as a Counterbalanced Measure for Non-appearance in Inter-State Adjudication and Arbitration’ (2017) 2 *Transnational Dispute Management*.

> Available [here](#).

Non-appearance, which is not uncommon in the practice of inter-State adjudication and arbitration, adds significant difficulties to fact-finding. International adjudicators face a special duty of fact-finding in these cases. Unfortunately, adjudicators tend to adopt a reactive attitude towards fact-finding. As a result, the cases of non-appearance requires a proactive measure to ensure factual accuracy. This article investigates the practice of introducing external experts into these cases as a possible solution, and concludes that this practice is subject to the risks of fraud and party’s non-compliance. However, as revealed by the *Indus Waters* case, introducing non-legal adjudicators may provide a promising solution to eliminate these risks

Nico Schrijver, ‘Het belang van het Weens verdragenrecht bij de strubbelingen over de Associatieovereenkomst EU-Oekraïne en het Canada-EU verdrag’ (2017) 178(1) *Rechtsgeleerd Magazijn Themis* 1.

> Available [here](#).

Een van de mooiste verdragen is het Verdrag van Wenen inzake het verdragenrecht, ook wel het Weens Verdragenverdrag genoemd. Dit verdrag geeft de regels die gelden voor onder meer de sluiting, goedkeuring, bekrachtiging, voorlopige toepassing, interpretatie, wijziging, opschorting en beëindiging van verdragen.

De tekst van het verdrag is helder, terwijl de inhoud rijk en allesbehalve ongerijmd is. De tekst komt uit de schoot van de VNCommissie voor Internationaal Recht, een gremium van onafhankelijke deskundigen uit alle windstreken en rechtssystemen van de wereld dat in de jaren 50 en 60 van de vorige eeuw zo’n 15 jaar met de opstelling ervan bezig is geweest. Het Weens Verdragenverdrag (WVV) geldt als een van de eerste multilaterale verdragen waar ook de ontwikkelingslanden hun stempel op hebben kunnen drukken.

Nico Schrijver and Ige Dekker, ‘Volkenrecht’ (2017) 66 *Ars Aequi KwartaalSignaal*.

> Available [here](#).

Carsten Stahn, ‘Daedalus or Icarus? Footprints of International Criminal Justice over a Quarter of a Century’ (2017) 77 *Heidelberg Journal of International Law* 1 (forthcoming).

> Available via SSRN [here](#).

International criminal justice has taken a long journey over the past quarter of a century. This essay analyses the evolution through an analogy to the Greek myth Daedalus and Icarus. It argues that, similar to the flight in the tale, the journey of international criminal justice is marked by rise and fall and need for re-orientation. It examines some of the major developments and critiques through a contextualisation of seven key moments: 1) *Tadić*: The Grounding of the Humanist Tradition; 2) *Akayesu*: New Consciousness Regarding Sexual and Gender-Based Violence; 3) *Kristić*: The ‘New Law’ on Genocide; 4) The *Al-Bashir Arrest Warrant*: Law v Politics; 5) *Lubanga*: The Global Victim as Constituency; 6) *Charles Taylor*: Even-Handedness and Dilemmas of Accessory Liability; and 7) *Saif Gadafi and Al Senussi*: The New Frontiers of Complementarity. It shows that each of them marks an impor-

tant turning point for modern understandings of international criminal justice. It concludes that like Icarus, international criminal jurisdiction is ill-advised to fly too close to the sun, and too low to the sea.

Carsten Stahn, 'Damned If You Do, Damned If You Don't: Challenges and Critiques of Preliminary Examinations at the ICC' (2017) *Journal of International Criminal Justice* (forthcoming).

> Available via SSRN [here](#).

Preliminary examinations are one of the most important, yet under studied elements of International Criminal Court (ICC) practice. Hardly any policy document raises greater anxiety than the yearly Office of the Prosecutor (OTP) report on preliminary examinations. The current docket covers some of the world's most daunting crises (e.g. Ukraine, Palestine, Iraq, Afghanistan). When the Rome Statute was drafted, little attention was devoted to preliminary examination. Most work on international criminal procedure focuses on investigations. This contribution shows that preliminary examinations have turned partly into a new species of proceedings, somewhere between internal analysis, atrocity alert, and monitoring of situations. The OTP Strategic Plan (2016-2018) associates preliminary examination with ambitious rationales, such as early warning, deterrence, or complementarity. But the functioning, purpose and effectiveness of preliminary examinations remain contested. There is a significant gap between expectations and reality. This contribution revisits some of the competing approaches to preliminary examinations in particular, and ICC practice in general: the grey zones in the legal framework and emerging methodological challenges (e.g. phased-based approach, prioritization, confidentiality v. transparency). It argues that certain dilemmas will never fully go away and

do not necessarily lend themselves to abstract legal regulation. But it suggests certain improvements to practice, including deeper engagement with situations and their context, a better connection between atrocity alert and complementarity strategies, and a more thorough explanation of choices not to proceed. The longer a preliminary examination lasts, the more pressing these requirements become.

Books

Nico Schrijver, Daniela Heerdt, and Willem van Genugten, *Discover International Law* (Wolf Legal Publishers, 2017).

> Available [here](#).

International law has a huge impact on everyday life, but often only specialists are aware of that. The goal of this book is to make international law accessible for all people interested but not (yet) being such experts. It is an invitation to Discover International Law, and to see how it links to major challenges of today's world. A second goal of the book is to highlight and explain the long-standing relationship between international law and the City of The Hague, "an epicentre of international justice and accountability" in the words of UN Secretary General Ban Ki-moon. Describing international law as it is and discussing trends and barriers, the authors draw optimistic conclusions in the end, despite the fact that putting international law into practice is in many ways an uphill struggle. They reach their conclusions by looking at international law as part of the 'ongoing civilization of relations between states'. Analyzing a range of topics, they also make clear that international law serves as a domain that tackles 'problems without passports' in increasing interaction between people(s), states, the civil society (NGOs, trade unions, religious groups) and companies, all that being supported and critically followed by

the academic community.

Book Chapters

Freya Baetens, 'The Iron Rhine case: On the right track to sustainable development?' in MC Cordonier Segger, Y Saaito, and JCG Weeramantry (eds), *Sustainable Development Principles in the Decisions of International Courts and Tribunals 1992 – 2012* (Routledge, 2017).

> Available [here](#).

The 2002 New Delhi Declaration of Principles of International Law relating to Sustainable Development set out seven principles on sustainable development, as agreed in treaties and soft-law instruments from before the 1992 Rio 'Earth Summit' UNCED, to the 2002 Johannesburg World Summit on Sustainable Development, to the 2012 Rio UNCS. Recognition of the New Delhi principles is shaping the decisions of dispute settlement bodies with jurisdiction over many subjects: the environment, human rights, trade, investment, and crime, among others.

This book explores the expanding international jurisprudence incorporating principles of international law on sustainable development. Through chapters by respected experts, the volume documents the application and interpretation of these principles, demonstrating how courts and tribunals are contributing to the world's Sustainable Development Goals, by peacefully resolving disputes. It charts the evolution of these principles in international law from soft law standards towards recognition as customary law in certain instances, assessing key challenges to further judicial consideration of the principles, and discussing, for instance, how their relevance for compliance and disputes related to the 2015 Paris Agreement on climate change. The volume provides a unique contribution of great interest to law and pol-

icy-makers, judges, academics, students, civil society and practitioners concerned with sustainable development and the law, globally.

Sharif Bhuiyan, Philippe Sands, and Nico Schrijver, “I Believe in the Power of Human Beings to be Agents of Change”: An Interview with Kamal Hossain’ in Sharif Bhuiyan, Philippe Sands, and Nico Schrijver (eds), *International Law and Developing Countries. Essays in Honour of Kamal Hossain* (University Press Limited, 2017)

> Available [here](#).

This book celebrates Kamal Hossain’s lifelong and significant contribution to the development of international law and the cause of developing countries. It brings together an interview with Hossain by the editors, and thirteen essays written in his honour by scholars representing a wide spectrum of expertise in international law. The interview provides an introduction to the rich and varied life of a statesman, a drafter of his country’s constitution, and an acclaimed constitutional and international lawyer. The subjects covered in the essays include the new international economic order (NIEO), human rights, counter-terrorism, climate change, oil and gas law, arbitration, law of the sea, international trade law and judicial reform. These essays offer important perspectives on the issues addressed.

Niels Blokker, ‘Member State Responsibility for Wrongdoings of International Organizations: Beacon of Hope or Delusion?’ in Ana Sofia Barros, Cedric Ryngaert, and Jan Wouters (eds), *International Organizations and Member State Responsibility: Critical Perspectives* (Brill, 2017).

> Available [here](#).

International Organizations and Member State Responsibility: Critical Perspectives is the first

international public law book entirely devoted to the topic of member state responsibility. Throughout its ten contributions, it takes stock of the legal developments brought about by the International Law Commission’s work on international responsibility, and critically unveils the major remaining conceptual gaps in the field.

The novel approaches offered in the book serve as a repository of the various understandings within academia and legal practice that reflect the evolution of the contemporary law of international (member state) responsibility.

Contributors: Ana Sofia Barros, Cedric Ryngaert, Jan Wouters, Antonios Tzanakopoulos, Catherine Brölmann, Esa Paasivirta, Francesco Messineo, Ige Dekker, Jean d’Aspremont, Niels Blokker, Paolo Palchetti, Ramses Wessel, Tom Dannenbaum

This Volume was previously published as (2015) *International Organizations Law Review* 12(2).

Niels Blokker and Stefan Barriga, ‘Conditions for the Exercise of Jurisdiction Based on Security Council Referrals’ in Claus Kreß and Stefan Barriga (eds), *The Crime of Aggression: A Commentary* (Cambridge University Press, 2017) vol 1.

> Available [here](#).

The 2010 Kampala Amendments to the Rome Statute have paved the way for the International Criminal Court to prosecute the ‘supreme crime’ under international law: the crime of aggression. This landmark commentary provides the first comprehensive analysis of the history, theory, legal interpretation and future of the crime of aggression after Kampala. As well as explaining the positions of the main actors in the negotiations, the authoritative team of leading scholars and practitioners set out how countries have themselves criminalized

illegal war-making in domestic law and practice. In light of the anticipated activation of the Court’s jurisdiction over this crime in the very near future, this book offers a meticulous legal analysis of how to understand the material and mental elements of the crime of aggression as defined at Kampala. Alongside *The Travaux Préparatoires of the Crime of Aggression* (Cambridge, 2011), this commentary provides the definitive resource for anyone concerned with the illegal use of force.

Eric de Brabandere, “‘Mercantile Adventurers’? The Disclosure of Third Party Funding in Investment Treaty Arbitration’ in Willem van Boom (ed), *Litigation, Costs, Funding and Behaviour* (Routledge, 2017).

> Available [here](#).

This collection explores the practical operation of the law in the area of litigation costs and funding, and confronts the issue of how exposure to cost risks affects litigation strategy. It looks at the interaction of the relevant legal regime, regulatory framework and disciplinary rules with the behaviour of litigants, courts and legislatures, examining subjects such as cost rules and funding arrangements. The book discusses a wide range of topics such as cost-shifting rules, funding and mass tort litigation, cost rules and third-party funding (TPF) rules in specific areas such as intellectual property (IP) litigation, commercial arbitration, investment arbitration, the role of legal expense insurance arrangements, fee regulation and professional ethics. The contributors include renowned scholars, experts in their respective fields and well-versed individuals in both civil procedure and the practice of litigation, arbitration and finance. Together, they present a broad approach to the issues of costs, cost-shifting rules and third-party funding. This volume adds to the existent literature in combining topics in law and practice and presents an analysis of

the most recent developments in this fast developing area.

Eric de Brabandere and Maryse Hazelzet, 'Corporate Responsibility and Human Rights – Navigating between international, domestic and self-regulation' in Yannick Radi (ed), *Research Handbook on Human Rights and International Investment Law* (Edward Elgar, 2017).

> Available [here](#).

> Available as Grotius Centre Working Paper 2017/056-HRL, [here](#).

To date, corporations have had no direct human rights obligations under international law. Nonetheless, the increasing role of non-state actors in international society, and as a consequence, the increasing impact of non-state actors on human rights can no longer be ignored. This chapter explores the factual and normative dimensions of international corporate responsibility for human rights violations. It also analyses existing mechanisms and new proposals for enhancing the accountability of transnational corporations, either through the use of 'soft' instruments, domestic mechanisms or through self-regulatory mechanisms.

Daniëlla Dam-de Jong, 'Internationale instellingen en de aanpak van conflict-grondstoffen' in H de Coninck et al (eds), *Rood-groene politiek voor de 21e eeuw: een pact tussen generaties* (Van Gennip, 2017).

> Available [here](#).

Onze planeet staat op het spel. De politiek kan niet alleen het tij ten goede keren, maar ze heeft wel een duidelijke opdracht. Zich breed maken, niet gokken op de goede wil van sommige ondernemers of de bereidheid van bewuste burgers, maar sturen op betere wetten en betere regels. Waarom en hoe, daarover schrijven in dit handboek voor rood-groene

politiek onderzoekers, ondernemers en strategen, van jong tot oud, maar allemaal ervaren en geëngageerd.

Oudgedienden Jan Pronk en Ed Nijpels verhouden zich tot de opdracht die het boek uitspreekt, namelijk dat de politiek zich on-dubbeltzinnig breed maakt om een rol te spelen in het debat over vergroening, duurzaamheid en klimaatbeheersing. Als zij tot een vergelijk komen, dan kan 'Den Haag' niet achterblijven. De jonge auteurs Lieke Melsen, Socrates Schouten en Heleen de Coninck nemen die handschoen op, met als een doel een pact dat generaties overstijgt én behoedt. Attje Kuiken (PvdA-Tweede Kamerfractie, o.v.) en Wijnand Duyvendak (mede auteur aan het boek) reageren.

Daniel Damoné, 'Compensation for wrongful death in Europe – a comparative case study of question 6.6 in the LawsAndFamilies Database' in Kees Waaldijk (ed), *More and more together: Legal family formats for same-sex and different-sex couples in European countries – Comparative analysis of data in the LawsAndFamilies Database 75* (Stockholm University, 2017).

> Available [here](#).

This is chapter 7 of a report that offers a comparative analysis of legal and other data concerning same-sex (and different-sex) families, in marriage, in registered partnership, and in cohabitation. These data (from a legal survey among legal experts in 21 European countries, from sociological interviews with same-sex families in four European countries, and from a statistical survey of twelve European countries) have been brought together in *the LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples* (www.LawsAndFamilies.eu).

This chapter of the report shows how com-

pensation entitlements after the death of one's partner have developed through both case law and legislation. Upon the death of the primary victim, the secondary victims may have a compensation claim. However, some jurisdictions have strict requirements as to who may bring such a claim. All jurisdictions surveyed provide a compensation entitlement to married surviving partners, but not all jurisdictions include unmarried and/or same-sex partners.

Daniel Damoné, 'Statutory protection against domestic violence in Europe – a comparative case study of question 2.7 in the LawsAndFamilies Database' in Kees Waaldijk (ed), *More and more together: Legal family formats for same-sex and different-sex couples in European countries – Comparative analysis of data in the LawsAndFamilies Database 75* (Stockholm University, 2017).

> Available [here](#).

This is chapter 3 of a report that offers a comparative analysis of legal and other data concerning same-sex (and different-sex) families, in marriage, in registered partnership, and in cohabitation. These data (from a legal survey among legal experts in 21 European countries, from sociological interviews with same-sex families in four European countries, and from a statistical survey of twelve European countries) have been brought together in *the LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples* (www.LawsAndFamilies.eu).

This chapter of the report analyses legal trends on statutory protection against domestic violence in 23 jurisdictions in Europe. The data reveal that presently, all selected jurisdictions have specific statutory protection against domestic violence, albeit with one or more qualifying condition(s) in some jurisdictions. Different-sex married, registered or cohab-

iting partners are the most protected against domestic violence. Same-sex partners are still not protected in a few countries. The data also reveal that specific statutory protection against domestic violence is a relatively recent phenomenon in the jurisdictions surveyed. There has been an evolution from a lack of specific protection to well-regulated forms of protection.

Helen Duffy, 'Detention and Interrogation Abroad: The 'Extraordinary Rendition' Programme' in A Nollkaemper and I Plakokefalos (eds), *The Practice of Shared Responsibility in International Law* (Cambridge University Press, 2017).

> Available [here](#).

This is the third book in the series *Shared Responsibility in International Law*, which examines the problem of distribution of responsibilities among multiple states and other actors. In its work on the responsibility of states and international organisations, the International Law Commission recognised that attribution of acts to one actor does not exclude possible attribution of the same act to another state or organisation. Recognising that the applicable rules and procedures for shared responsibility may differ between particular issue areas, this volume reviews the practice of states, international organisations, courts and other bodies that have dealt with the issue of international responsibility of multiple wrongdoing actors in a wide range of issue areas, including energy, extradition, investment law, NATO-led operations and fisheries. These analyses jointly assess the fit of the prevailing principles of international responsibility and provide a basis for reform and further development of international law.

Larissa van den Herik, 'The Individualisation of Enforcement in International Law:

Exploring the Interplay between United Nations Targeted Sanctions and International Criminal Proceedings' in Tiyanjana Maluwa, Max du Plessis, and Dire Tladi (eds), *The Pursuit of a Brave New World in International Law: Essays in Honour of John Dugard* (Brill, 2017).

> Available [here](#).

The Pursuit of a Brave New World in International Law presents critical perspectives on various inter-related themes in the areas of human rights, international law, terrorism and international criminal justice. The discussions reflect the wide-ranging subjects that John Dugard has engaged with over the last five decades as an international law scholar, teacher and judge. The essays pay homage to Professor Dugard's impressive body of work as both a theorist and practitioner of international law and international human rights law. While some of the discussions in the volume critically examine his views, as expressed in his academic writings, judicial opinions and official United Nations reports, others deal with subjects that have been inspired by or are related to Dugard's work.

Natalie Nikolina, 'Evolution of parenting rights in Europe – a comparative case study about questions in section 3 of the LawsAndFamilies Database' in Kees Waaldijk (ed), *More and more together: Legal family formats for same-sex and different-sex couples in European countries – Comparative analysis of data in the LawsAndFamilies Database 75* (Stockholm University, 2017).

> Available [here](#).

This is chapter 5 of a report that offers a comparative analysis of legal and other data concerning same-sex (and different-sex) families, in marriage, in registered partnership, and in cohabitation. These data (from a legal survey

among legal experts in 21 European countries, from sociological interviews with same-sex families in four European countries, and from a statistical survey of twelve European countries) have been brought together in the *LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples* (www.LawsAndFamilies.eu).

This chapter of the report shows that in most European jurisdictions there exists a hierarchy of family formats when it comes to parental rights, with different-sex spouses having all the possible parenting rights and same-sex cohabitants having few to none. Especially over the last 20 years more and more jurisdictions have made adoption possible for married and registered same-sex partners, to the point that now more jurisdictions allow adoption by same-sex partners in a formalised relationship than by different-sex partners in cohabitation. On the other hand, legal parentage without adoption is impossible for the female partner of the legal mother in most jurisdictions, while it is possible for the male cohabitant of the mother in all jurisdictions.

Cecily Rose, 'Non-Binding Instruments and Democratic Accountability' in H Cullen, J Harrington, and C Renshaw (eds), *Experts, Networks and International Law* (Cambridge University Press, 2017).

> Available [here](#).

Highlighting how the challenges raised by globalization - from environmental management to financial sector meltdowns - have encouraged the emergence of experts and networks as powerful actors in international governance, the contributions in this collection assess the methods and effectiveness of these new actors. Unlike other books that have focused on networks or experts, this volume brings these players together, showing how they interact and share the challenges of establishing legit-

imacy and justifying their power and influence. The collection shows how experts and networks function in different ways to address diverse problems across multiple borders. The reader is provided with a broader and deeper practical understanding of how informal authority actually operates, and of the nature of the relationship between different actors involved in policymaking. Through a range of case studies, the contributions in this collection explain how globalization is reshaping traditional forms of power and authority.

William Schabas, 'Introduction' in W Schabas and S Murphy (eds), *Research Handbook on International Courts and Tribunals* (Edward Elgar, 2017).

> Available [here](#).

This collection takes a thematic and interpretive, system-wide and inter-jurisdictional comparative approach to the debates and controversies related to the growth of international courts and tribunals. By providing a synthetic overview and critical analysis of these developments from a variety of perspectives, it both contextualizes and stimulates future research and practice in this rapidly developing field.

Nico Schrijver, 'Groningers hebben het internationale recht aan hun kant' in PAJ van den Berg and G Molier (eds), *In Dienst van het Recht* (Boom Juridisch, 2017).

> Available [here](#).

In 2017 nam prof. mr. J.G. Brouwer afscheid als hoogleraar Algemene Rechtswetenschap aan de Rijksuniversiteit Groningen. Met deze bundel willen de auteurs hun waardering voor het werk en de persoon van Jan Brouwer kenbaar maken. Als titel is gekozen: In Dienst van het Recht. Het gemeenschappelijke kenmerk van zijn geschriften over onderwerpen als aan koffiesshops gerelateerde drugsoverlast, voetbalrellen, gebiedsverboden, burenruzies en

de Groningse aardbevingsproblematiek is immers dat zij getuigen van een maatschappelijke betrokkenheid met de rechtsstaat als leidraad.

De bijdragen in deze bundel sluiten bij die benadering aan. De auteurs hebben vrijwel allemaal geschreven over vergelijkbare actuele en maatschappelijk relevante onderwerpen, waarbij tevens voor een kritisch-juridisch perspectief is gekozen. De verschillende bijdragen zijn ondergebracht in vier clusters: openbare-orderecht en de verhouding tussen wetgever, bestuur en rechtspraak; de spanning tussen de handhaving van de openbare orde en de bescherming van grondrechten; de (gespannen) verhoudingen binnen het vernieuwde Statuut voor het Koninkrijk; en, tot slot, de afhandeling van conflicten tussen overheid en burger, waarbij uiteraard ook de Groningse aardbevingsproblematiek aan de orde komt.

Nico Schrijver, 'Managing the Global Commons: common good or common sink?' in TG Weiss and P Roy (eds), *The UN and the Global South, 1945 and 2015* (Routledge, 2017).

> Available [here](#).

The global commons, comprising the areas and resources beyond the sovereignty of any state, build upon the heritage of Grotius's idea of *mare liberum* – an idea that aimed to preserve the freedom of access for the benefit of all. However, the old *mare liberum* idea digressed into 'first come, first served' advantages for industrialised countries. Especially at the initiative of developing countries, it has now been replaced by a new law of international cooperation and protection of natural wealth and resources beyond the limits of national jurisdiction. The global commons have thus served as the laboratory for testing new legal principles and the rights and corollary duties emanating from them. Occasionally path-breaking innovations in regulation have been practised,

most notably the imposition of a ban on whaling, penalties for the production and use of ozone-depleting substances and the freezing of claims to sovereignty over Antarctica.

Nico Schrijver, 'The Absence of Peace Agreements: Commentary' in Nico Schrijver, Steven van Hoogstraten, Otto Spijkers, and Anneleen de Jong (eds), *The Art of Making Peace: Lessons Learned from Peace Treaties* (Brill, 2017).

> Available [here](#).

This unique volume looks at international peace treaties, at their results, effects and failures. It reflects the outcome of an international conference held in the Peace Palace (The Hague) on the occasion of the Centenary of this institution, which opened its doors on the eve of World War I.

The volume offers the reflections of the leading experts attending the conference and the open debate which followed. The Treaty of Versailles of 1919, the mother of all peace treaties, is the first to be critically discussed. How should this treaty be viewed with the knowledge of today? What are the lessons learned in the light of historic developments? Subsequently, the Dayton Agreement, which sealed the end to the bloody conflict in the former Yugoslavia (1992-1995), and the Sudan Agreement, which came into being after lengthy negotiations in 2005, are analysed in the same way. Finally, the situations which arose in relation to the devastating wars between Iran and Iraq (1980-1988) and between Kuwait and Iraq are discussed. As these states could not reach a settlement themselves, the United Nations Security Council imposed the terms of the ceasefire and peaceful cooperation in important and innovative resolutions.

The book offers additional perspective by looking at the role of judicial settlement by the International Court of Justice or the Per-

manent Court of Arbitration, vis-a-vis the instrument of political mediation between states with the help of a third party. Mediation can be very effective, but certain conditions are required for it to be successful, conditions which are not easy to bring about in today's world. Dispute settlement under international law is and continues to be the core business in the Peace Palace.

Sergey Vasiliev, 'Between International Criminal Justice and Injustice: Theorising Legitimacy' in Nobuo Hayashi and Cecilia Bailliet (eds), *The Legitimacy of International Criminal Tribunals* (Cambridge University Press, 2017).

> Available [here](#).

With the ad hoc tribunals completing their mandates and the International Criminal Court under significant pressure, today's international criminal jurisdictions are at a critical juncture. Their legitimacy cannot be taken for granted. This multidisciplinary volume investigates key issues pertaining to legitimacy: criminal accountability, normative development, truth-discovery, complementarity, regionalism, and judicial cooperation. The volume sheds new light on previously unexplored areas, including the significance of redacted judgements, prosecutors' opening statements, rehabilitative processes of international convicts, victim expectations, court financing, and NGO activism.

Kees Waaldijk, 'Conclusion' in Kees Waaldijk (ed), *More and more together: Legal family formats for same-sex and different-sex couples in European countries – Comparative analysis of data in the LawsAndFamilies Database 75* (Stockholm University, 2017).

> Available [here](#).

This is chapter 9 of a report that offers a com-

parative analysis of legal and other data concerning same-sex (and different-sex) families, in marriage, in registered partnership, and in cohabitation. These data (from a legal survey among legal experts in 21 European countries, from sociological interviews with same-sex families in four European countries, and from a statistical survey of twelve European countries) have been brought together in the LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples (www.LawsAndFamilies.eu).

This final chapter of the report brings together the main results presented in the eight other chapters, making connections between legal and sociological findings, and highlighting the social importance of laws for the lives of people in same-sex families. It finds support for the theory that legislation is not only influenced by public opinion, but also one of the factors influencing public opinion.

A general conclusion is that over the last few decades there has been great convergence in the legal situation of same-sex couples in Western and Central Europe. At the same time, this has led to more divergence with the most Eastern countries of the EU (and with countries beyond the EU). The developing European legal minimum standards are not met in all countries. More and more countries allow same-sex couples to marry or at least to register as partners. The findings of the legal survey lead to a rejection of the hypothesis that in Europe the legal recognition of informal cohabitation only plays a limited role in the trend towards further legal recognition of same-sex couples. Furthermore, the study has found several indications that the pattern and the impact of this legal trend of recognition has not been gender-neutral (especially in the field of parenting, where most exceptions to the emerging legal equality can be found).

This chapter also assesses if the legal findings

offer an explanation for the statistical finding that marriage and partnership registration are rather more popular among same-sex couples in some countries than in other countries. It also tests various other hypotheses that were formulated at the start of the project. The chapter highlights potentials for further research. It concludes with recommendations for the political, administrative and judicial bodies of the EU and of all European countries, and points out how the European Court of Human Rights could build on the emerging legal consensus between European countries (as highlighted in chapter 2 of the report) and how thereby it could guide countries that are only beginning to legally recognise same-sex families.

Kees Waaldijk, 'Introduction to the legal survey and its methods' in Kees Waaldijk (ed), *More and more together: Legal family formats for same-sex and different-sex couples in European countries – Comparative analysis of data in the LawsAndFamilies Database 75* (Stockholm University, 2017).

> Available [here](#).

This report offers a comparative analysis of legal and other data concerning same-sex (and different-sex) families, in marriage, in registered partnership, and in cohabitation. These data (from a legal survey among legal experts in 21 European countries, from sociological interviews with same-sex families in four European countries, and from a statistical survey of twelve European countries) have been brought together in the LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples (www.LawsAndFamilies.eu). This chapter of the report presents the database and the methodology of the legal survey.

The report is available in open access at <http://www.familiesandsocieties.eu/wp-con->

tent/uploads/2017/04/WorkingPaper75.pdf.

Kees Waaldijk, 'Overview of the results from the legal survey' in Kees Waaldijk (ed), *More and more together: Legal family formats for same-sex and different-sex couples in European countries – Comparative analysis of data in the LawsAndFamilies Database 75* (Stockholm University, 2017).

> Available [here](#).

This is chapter 2 of a report that offers a comparative analysis of legal and other data concerning same-sex (and different-sex) families, in marriage, in registered partnership, and in cohabitation. These data (from a legal survey among legal experts in 21 European countries, from sociological interviews with same-sex families in four European countries, and from a statistical survey of twelve European countries) have been brought together in the LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples (www.LawsAndFamilies.eu).

This chapter of the report presents and analyses the main results from the legal survey. For 26 selected substantive questions, it calculates the level of “same-sex legal recognition consensus” among the 21 countries. It finds that the consensus among the countries surveyed is particularly strong as regards legal protections for times of death (such as: tenancy continuation; reduced inheritance tax; survivor’s pension) or of other great sadness (such as: next of kin provisions; protection against domestic violence; leave from work in case the partner’s child or parent is in need of care); and as regards the right to come and live in the same country as your partner. For each of the 26 issues, the level on consensus has increased considerably over the last 10 years.

For each of these 21 countries the degree is calculated in which they now legally recognise

same-sex couples for these 26 issues. Among these 21 countries, over the last 10 years, the number of countries that recognise same-sex cohabitation has gone up from 71% to 86%, and the number of countries that introduced same-sex registered partnerships has gone up from 52% to 81%. Meanwhile the number of countries that allow same-sex marriage went up from 10% to 41%. The chapter finds many examples where a specific country on a specific issue does not meet the minimum standards that have been developed by the European Union and by the European Court of Human Rights.

The report is available in open access at <http://www.familiesandsocieties.eu/wp-content/uploads/2017/04/WorkingPaper75.pdf>.

Kees Waaldijk, 'Recognition of foreign same-sex marriages and registered partnerships' in Kees Waaldijk (ed), *More and more together: Legal family formats for same-sex and different-sex couples in European countries – Comparative analysis of data in the LawsAndFamilies Database 75* (Stockholm University, 2017).

> Available [here](#).

This is chapter 6 of a report that offers a comparative analysis of legal and other data concerning same-sex (and different-sex) families, in marriage, in registered partnership, and in cohabitation. These data (from a legal survey among legal experts in 21 European countries, from sociological interviews with same-sex families in four European countries, and from a statistical survey of twelve European countries) have been brought together in the LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples (www.LawsAndFamilies.eu).

This chapter of the report analyses whether or not foreign same-sex marriages and/or foreign same-sex registered partnerships were

being recognised for four different purposes in 21 European countries in 2005, in 2010, and in 2015/16. The four purposes are: residence entitlement for non-European partner of national citizen, residence entitlement for non-European partner of foreign EU citizen, impediment to marry someone else, and inheritance without testament.

This chapter finds that most of the 21 countries surveyed do indeed recognise foreign same-sex marriages and foreign registered partnerships for these four purposes, and that the number of countries that do so is going up. Several countries that themselves do not allow same-sex couples to marry and/or to register as partners, do recognise same-sex spouses and same-sex registered partners from other countries.

Giuseppe Zago, 'The right to refuse to testify against your partner in criminal procedures – a comparative case study of question 2.8 in the LawsAndFamilies Database' in Kees Waaldijk (ed), *More and more together: Legal family formats for same-sex and different-sex couples in European countries – Comparative analysis of data in the LawsAndFamilies Database 75* (Stockholm University, 2017).

> Available [here](#).

This is chapter 4 of a report that offers a comparative analysis of legal and other data concerning same-sex (and different-sex) families, in marriage, in registered partnership, and in cohabitation. These data (from a legal survey among legal experts in 21 European countries, from sociological interviews with same-sex families in four European countries, and from a statistical survey of twelve European countries) have been brought together in the LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples (www.LawsAndFamilies.eu).

This chapter of the report shows that almost all the countries examined guarantee a certain degree of legal protection to a person who is not willing to give evidence against his/her partner who is accused in criminal proceedings. The legal framework on cohabitation tends to be more fragmented than the one on marriage and registered partnership. However, the general trend seems to suggest that, once a legislature or judiciary starts including the testimonial privilege as a legal consequence of different-sex cohabitation, such right is later extended to same-sex couples.

Editorships

Sharif Bhuiyan, Philippe Sands, and Nico Schrijver (eds), *International Law and Developing Countries. Essays in Honour of Kamal Hossain* (University Press Limited, 2017)

> Available [here](#).

Nico Schrijver, Steven van Hoogstraten, Otto Spijkers, and Anneleen de Jong (eds), *The Art of Making Peace: Lessons Learned from Peace Treaties* (Brill, 2017).

> Available [here](#).

This unique volume looks at international peace treaties, at their results, effects and failures. It reflects the outcome of an international conference held in the Peace Palace (The Hague) on the occasion of the Centenary of this institution, which opened its doors on the eve of World War I.

The volume offers the reflections of the leading experts attending the conference and the open debate which followed. The Treaty of Versailles of 1919, the mother of all peace treaties, is the first to be critically discussed. How should this treaty be viewed with the knowledge of today? What are the lessons learned in the light of historic developments? Subse-

quently, the Dayton Agreement, which sealed the end to the bloody conflict in the former Yugoslavia (1992-1995), and the Sudan Agreement, which came into being after lengthy negotiations in 2005, are analysed in the same way. Finally, the situations which arose in relation to the devastating wars between Iran and Iraq (1980-1988) and between Kuwait and Iraq are discussed. As these states could not reach a settlement themselves, the United Nations Security Council imposed the terms of the ceasefire and peaceful cooperation in important and innovative resolutions.

The book offers additional perspective by looking at the role of judicial settlement by the International Court of Justice or the Permanent Court of Arbitration, vis-a-vis the instrument of political mediation between states with the help of a third party. Mediation can be very effective, but certain conditions are required for it to be successful, conditions which are not easy to bring about in today's world. Dispute settlement under international law is and continues to be the core business in the Peace Palace.

Databases

Kees Waaldijk et al (eds), *The LawsAnd-Families Database - Aspects of legal family formats for same-sex and different-sex couples* (INED, 2017) <<http://www.lawsandfamilies.eu>>

> Available [here](#).

Same-sex families are gaining legal recognition. More and more countries are making marriage and partnership available to them. Or attaching (some) rights and benefits to their cohabitation. Just as rights and benefits are being attached to different-sex cohabitation. But laws of many countries continue to treat different types of couples differently. And their children too.

The LawsAndFamilies Database (available in open access at www.lawsandfamilies.eu) aims to document, highlight and analyse these developments and diversities. It does so from three perspectives: law, statistics, sociology. The database has three parts:

The main component of LawsAndFamilies is an interactive database. It covers 50 years of legal development, more than 60 legal issues (divided over six themes), in 21 European countries (three jurisdictions for the UK). This legal database looks at marriage, registered partnership, and cohabitation. For same-sex and different-sex couples. The LawsAndFamilies Database contains not only this interactive database with legal data, but also 132 papers with the answers provided by the legal experts for the 23 jurisdictions covered.

The second component is a collection of statistical data on same-sex marriage and partnership in 12 countries: Belgium, Denmark, Finland, France, Iceland, Netherlands, Norway, Slovenia, Spain, Sweden, Switzerland, and United Kingdom.

The third component of the database is a sociological analysis of interviews held in Iceland, Italy, France and Spain: 108 people were interviewed about the legal and social recognition of their same-sex families.

The text of the legal LawsAndFamilies questionnaire, plus the text of the guidance document provided to legal experts answering this questionnaire, is available at <http://www.familiesandsocieties.eu/wp-content/uploads/2016/12/WP64-Waaldijketal2016.pdf>.

An analysis of the data has been published in the report: More and more together: Legal family formats for same-sex and different-sex couples in European countries. Comparative analysis of data in the LawsAndFamilies Database (edited by Kees Waaldijk, FamiliesAnd-Societies Working Paper Series 75(2017), <http://www.familiesandsocieties.eu/wp-con->

[tent/uploads/2017/04/WorkingPaper75.pdf](http://tenthreads.org/uploads/2017/04/WorkingPaper75.pdf).

Reports

Kees Waaldijk (ed), *More and more together: Legal family formats for same-sex and different-sex couples in European countries – Comparative analysis of data in the LawsAndFamilies Database 75* (Stockholm University, 2017)

> Available [here](#).

This report (edited by Kees Waaldijk) includes contributions by Daniel Damonzé, Marie Dig-
oix, Marina Franchi, Natalie Nikolina, José Ig-
nacio Pichardo Galán, Giulia Selmi, Matias de
Stéfano Barbero, Matthias Thibaud, Jose A.M.
Vela, Kees Waaldijk, and Giuseppe Zago.

This report offers a comparative analysis of legal and other data concerning same-sex (and different-sex) families, in marriage, in registered partnership, and in cohabitation. These data (from a legal survey among legal experts in 21 European countries, from sociological interviews with same-sex families in four European countries, and from a statistical survey of twelve European countries) have been brought together in the LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples (www.LawsAndFamilies.eu). The report presents the database and the methodology of the legal survey, followed by an overview and analysis of the main results of that survey for the different countries in light of European minimum standards, plus five comparative cases studies on specific legal issues for which the database now provides detailed information, and a synthesis of the findings from the qualitative interviews. The conclusion highlights the main findings on the situation of same-sex couples, including gender aspects, and offers recommendations for further research and for legal policy; it connects legal and sociological find-

ings, and presents correlations between laws, public attitudes, and statistics. The general theme of the report is increasing legal equality for increasing diversity of families.

The text of the legal LawsAndFamilies questionnaire, plus the text of the guidance document provided to legal experts answering this questionnaire, is available at <http://www.familiesandsocieties.eu/wp-content/uploads/2016/12/WP64-Waaldijketal2016.pdf>.

Conference Papers

Yudan Tan, 'The Identification of Customary Rules in International Criminal Law' (Paper presented at the 2016 European Society of International Law Research Forum, Istanbul, 21-22 April 2016).

> Available [here](#).

This paper aims to examine whether a different methodology has emerged to identify customary rules in the field of international criminal law. It briefly touches upon debates regarding customary international law as a source of international criminal law. In order to seek whether a different theory in academia has been reached, it critically studies the classic two-element (State practice and *opinio juris*) identification methodology of customary law, its modifications and one-element approaches. It then explores the unique characteristics and difficulties in identifying customary rules of international criminal law. Finally, it recapitulates the jurisprudence of international criminal tribunals to ascertain whether these tribunals have formed a consistent method for custom identification.

It concludes that a different method has not been reached in academia or adopted by judges in practice to identify customary rules of international criminal law. The two-element approach still serves as guidance for general identification, but it should not be too rigid in

specific criminal cases. International practitioners, particularly judges, should be cautious in the identification of customary rules of international criminal law, so as to prosecute and punish suspects of international crimes without endangering the principle of legality.

Annotations

Eric de Brabandere, 'Rb. Den Haag, 20-04-2016, nr. C/09/477160 / HA ZA 15-1: De Voorlopige Toepassing van het Verdrag inzake het Energiehandvest (ECT) – Een Commentaar op het vonnis van de Rechtbank Den Haag in de Yukos-Zaak' (2017) 19(1) *Tijdschrift voor Arbitrage* 26.

Doctoral Theses

Miriam Cohen, *Reparations for International Crimes and the Development of a Civil Dimension of International Criminal Justice* (2017).

Nobuyo Hayashi, *Military Necessity* (2017).

Inaugural and Valedictory Lectures

Helen Duffy, *Strategic Human Rights Litigation: 'Bursting the Bubble on the Champagne Moment'* (Inaugural Lecture 2017).

Alfred van Staden, *Internationaal Leiderschap en Legitimiteit* (Valedictory Lecture, 2017).

Newspaper and Online Articles

Xuechan Ma, 'China-Philippines Relations and the South China Sea Situation' (2017) *US-China Forum*.



the Grotius Centre

for International Legal Studies