### THE JOURNAL OF THE ASIAN SOCIETY OF INTERNATIONAL LAW

VOLUME 13 ISSUE 1 JANUARY 2023 ISSN 2044-2513

# Asian Journal of International Law

https://doi.org/10.1017/S2044251322000601 Published online by Cambridge University Press

## Asian Journal of International Law

The Asian Journal of International Law is the journal of the Asian Society of International Law. It publishes peer-reviewed scholarly articles and book reviews on public and private international law. The regional focus of the journal is broadly conceived. Some articles may focus specifically on Asian issues; others will bring one of the many Asian perspectives to bear on issues of global concern. Still others will be of more general interest to scholars, practitioners, and policy-makers located in or working on Asia.

The journal is published in English as a matter of practical convenience rather than political endorsement. English language reviews of books in other languages are particularly welcomed. The journal is produced for the Asian Society of International Law by the National University of Singapore Faculty of Law and succeeds the *Singapore Year Book of International Law*.

For further information, forthcoming pieces, and guidelines on how to submit articles or book reviews, please visit www.AsianJIL.org.

INSTRUCTIONS FOR CONTRIBUTORS

The Asian Journal of International Law welcomes unsolicited articles and proposals for book reviews. For details, visit www.AsianJIL.org.

© Asian Journal of International Law 2023 ISSN 2044-2513 E-ISSN 2044-2521

This journal issue has been printed on FSC-certified paper and cover board. FSC is an independent, nongovernmental, not-for-profit organization established to promote the responsible management of the world's forests. Please see www.fsc.org for information.

## Asian Journal of International Law

#### EDITORIAL BOARD

Editors Antony ANGHIE Simon CHESTERMAN TAN Hsien-Li

Raul PANGALANGAN Shirley SCOTT Hilary CHARLESWORTH CHEN Yifeng B. S. CHIMNI Eliana CUSATO Tara DAVENPORT Hikmahanto JUWANA Ratna KAPUR Victor KATTAN Borhan Uddin KHAN LU Song Benoit MAYER Djamchid MOMTAZ Hitoshi NASU NGUYEN Hong Thao Jaruprapa RAKPONG Prabhash RANJAN Harry L ROQUE Mavluda SATTOROVA Sergey SAYAPIN Mohammad SHAHABUDDIN SHIN Hae Bong Jaturon THIRAWAT XUE Hanqin

Ex officio Hikmahanto JUWANA

Senior Associate Editors Marija JOVANOVIC KIM Heejin

Associate Editors Charalampos GIANNAKOPOULOS Dawoon JUNG Amiel Ian VALDEZ

#### Book Review Editor Lucia Meilin ORIANA

Assistant Production Editor Yvette FOO

Assistant Editors CHUA Kang Le DING Kar En, Johan JIANG Zhifeng KHOO Geng Kit, Wiesiek LEE Kay Han NG Qi Le, Jordan SITI NURELLISHA Khairi Sallehudin TAN Xiao Tong ZHANG Yizhen

## Asian Society of International Law

#### EXECUTIVE COUNCIL

President Hikmahanto JUWANA

#### Vice-Presidents

Arie AFRIANSYAH Miras DAULENOV LIU Huawen PHAM Lan Dung Wasantha SENEVIRATNE

Secretary-General Antony ANGHIE

**Treasurer** MOGAMI Toshiki

#### Members

ABE Kohki Elizabeth AGUILING-PANGALANGAN Md Jobair ALAM Pouria ASKARY BAEK Buhm-Suk Srinivas BURRA Andrew BYRNES CHEAH Wui Ling CHEN Yifeng DANY Channraksmeychhoukroth Tara Maria DAVENPORT Alison Duxbury Jean HO Nartnirun JUNNGAM Koesrianti Hyun Jung KIM Mostafa M NASER

Muhammad MAHBUBUR RAHMAN I Eduardo MALAYA Salawati MAT BASIR NGUYEN Toan Thang OHTANI Mikiko Nilufer ORAL PARK Pae-Keun Raul Cano PANGALANGAN Vincent-Joel PROULX Ravindran RAJESH BABU Pawat SATAYANURUG Mavluda SATTOROVA Sergey SAYAPIN Prabhakar SINGH Yin Yin WIN ZHANG Xinjun

#### ADVISORY COUNCIL

OWADA Hisashi (Chair) Georges ABI-SAAB Upendra ACHARYA Awn Shawkat AL-KHASAWNEH Dalveer BHANDARI Edith BROWN-WEISS Jayavadh BUNNAG Simon CHESTERMAN B S CHIMNI Richard FALK Mary GEORGE Borhan Uddin KHAN KO Swan Sik Abdul KOROMA LEE Keun-Gwan Djamchid MOMTAZ PAIK Jin-Hyun Pemmaraju Sreenivasa RAO Lucy REED Harry ROQUE Surakiart SATHIRATHAI Shirley SCOTT SHI Jiuyong Bruno SIMMA Surya P. SUBEDI, QC TAN Hsien-Li Jaturon THIRAWAT XUE Hanqin

RESEARCH COMMITTEE LEE Keun-Gwan (Co-Chair) MOGAMI Toshiki (Co-Chair)

## Contents

#### NOTES AND COMMENTS

- 1-9 Immunity Ratione Materiae of the Marines as Vessel Protection Detachments: A Case Note on the M/V Enrica Lexie Case Yurika ISHII
- 10–21 The TRIPS Waiver Decision at the World Trade Organization: Too Little Too Late! Prabhash RANJAN and Praharsh GOUR

#### ARTICLES

- 22–45 An Outstanding Claim: The Ryukyu/Okinawa Peoples' Right to Self-Determination under International Human Rights Law *Ai ABE*
- 46–75 Contesting Freedom of Information: Capitalism, Development, and the Third World *Wanshu* CONG
- 76–96 Would the "Optional Protocol" Effectuate India's Due Diligence Obligation Under the Women's Convention? Vasudevan SHRITHA
- 97–123 Self-Judging Security Exception Clause as a Kind of Carte Blanche in Investment Treaties: Nature, Effect and Proper Standard of Review Mohammad-Ali BAHMAEI and Habib SABZEVARI
- 124–145 The Approach of the Commission on the Limits of the Continental Shelf to Submissions Involving Unresolved Disputes: Should It Be Modified? *Huu Duy Minh TRAN*
- 146–168 Looking Forward Through and Beyond the Western Classics of International Law *Ignacio DE LA RASILLA*
- 169–187 The New Recipe for a General Principle of Law: Premise Theory to "Fill in the Gaps" OCHI Megumi

**BOOK REVIEWS** 

- 188–189 Access to Justice and International Organisations: Coordinating Jurisdiction between the National and Institutional Legal Orders (Cambridge: Cambridge University Press, 2022)
  *Rishi GULATI (Reviewed by Ashwita AMBAST)*
- 189–190 The WTO Dispute Settlement System: How, Why and Where? (Cheltenham, UK; Massachusetts, USA: Edward Elgar Publishing, 2022) Petros MAVROIDIS (Reviewed by Chien-Huei WU)
- 190–191 Sustainable Fisheries Management and International Law: Marine Fisheries in Bangladesh and the Bay of Bengal (Routledge Research in International Environmental Law Series. London: Routledge, 2021) Abdullah-Al ARIF (Reviewed by Arron N. HONNIBALL)

- 191–192 Envisioning Our Environmental Future: Stockholm+50 and Beyond (Amsterdam, The Netherlands, Berlin, Germany, Washington, DC, USA: IOS Press, 2022) edited by Bharat H. DESAI (Reviewed by Anupam JHA)
- 193–194 Our Earth Matters: Pathways to a Better Common Environmental Future (Amsterdam/Berlin/Washington, DC: IOS Press, 2021) edited by Bharat H. DESAI (Reviewed by Amrendra KUMAR)
- 194–195 To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870 (Cambridge: Cambridge University Press, 2021) *Marti KOSKENNIEMI (Reviewed by Punsara AMARASINGHE)*
- 195–196 Colonial Wrongs and Access to International Law (Brussels: Torkel Opsahl Academic EPublisher, 2020) edited by Morten BERGSMO, Wolfgang KALECK, and Kyaw Yin HLAING (Reviewed by Harshit RAI)
- 196–197 International Human Rights Law and Diplomacy (Cheltenham, UK; Massachusetts, USA: Edward Elgar Publishing, 2020) *Kriangsak KITTICHAISAREE (Reviewed by Tikumporn RODKHUNMUANG)*
- 197–198 Global Criminal Law: Postnational Criminal Justice in the Twenty-First Century (London, New York, Shanghai: Palgrave Macmillan, as part of Springer Nature, 2021) *Adán Nieto MARTÍN (Reviewed by Ascharya DAGUR)*
- 198–199 Global Counter-Terrorist Financing and Soft Law, Multi-Layered Approaches (Cheltenham, United Kingdom/Northampton, Massachusetts: Edward Elgar Publishing, 2020) Doron GOLDBARSHT (Reviewed by Sau Wai LAW)
- 200–201 Intellectual Property Objectives in International Investment Agreements (Cheltenham, UK: Edward Elgar Publishing, 2022) *Pratyush Nath UPRETI (Reviewed by Chen YU)*
- 201–202 National Security of India and International Law (Leiden: Brill Nijhoff, 2020) edited by Bimal N. PATEL (Reviewed by Shannu NARAYAN)
- 202–203 Submarine Cables Protection and Regulations: A Comparative Analysis and Model Framework (Springer/Singapore: Springer Publications, 2021) Utpal Kumar RAHA and K.D. RAJU (Reviewed by Meenakshi NAGAMANICKAM)
- 203–204 Sexual and Gender Based Violence in International Law: Making International Institutions Work (Singapore: Springer Nature, 2022)
   Bharat H. DESAI and Moumita MANDAL (Reviewed by Sakshi TIRTHANI and Tonina TANGTANGA)
- 204–206 Analysis of International Law 5th ed. (*guojifa xilun*) (Beijing: China Renmin University Press, 2022) YANG Zewei (Reviewed by Gang TANG)

#### ERRATUM

207–207 All Is Well: Catastrophe and the Making of the Normal State by Saptarishi BANDOPADHYAY. Oxford: Oxford University Press, 2022. ix + 320 pp. Hardcover: £47.99. and Crisis Narratives in International Law edited by Makane Moïse MBENGUE and Jean D'ASPREMONT. Leiden/Boston: Brill Nijhoff, 2021. vi + 194 pp. Softcover: €61.00. – ERRATUM