Board of Editors

M. Ambrus
(Managing Editor)
Erasmus University Rotterdam

J.E. Nijman
University of Amsterdam

M.K. Bulterman
Ministry of Foreign Affairs

F. Weiss
University of Vienna

I.F. Dekker
(General Editor)
Utrecht University

W.G. Werner
VU University, Amsterdam

W.J.M. van Genugten
Tilburg University

R.A. Wessel
University of Twente

E. Hey
(General Editor)
Erasmus University Rotterdam
Aims and Scope

The Netherlands Yearbook of International Law (NYIL) was first published in 1970. It has two main aims. It offers a forum for the publication of scholarly articles of a more general nature in the area of public international law including the law of the European Union. In addition, it aims to respond to the demand for information on state practice in the field of international law. Each Yearbook therefore includes an overview of state practice of the Netherlands.

The NYIL is published under the auspices of the T.M.C. Asser Instituut.

T.M.C. Asser Instituut

Located in the ‘international zone’ of The Hague—the City of Justice, Peace and Security, The T.M.C. Asser Instituut is a leading, inter-university research institute operating in the broad field of international law.

Founded in 1965, the Institute’s international community of scholars is engaged in research, postgraduate training and dissemination of knowledge in furtherance of the purposes and principles of international law. This inter-university institute cooperates closely with and supports the Dutch universities’ activities in the relevant disciplines. The academic fields covered by the Institute are Private International Law, Public International Law, Law of the European Union, International Commercial Arbitration, International Humanitarian Law, International Criminal Law and International Sports Law.

The Institute enjoys an excellent reputation at national and international level for its development, organisation and hosting of conferences and academic meetings, demand driven postgraduate programmes and training. Its ancillary websites and data collections all contribute to a coherent and integral strategy in the area of knowledge transfer.

The Institute has its own publishing house, T.M.C. Asser Press. T.M.C. Asser Press not only serves the publishing needs of the T.M.C. Asser Instituut, but also those of academics and practitioners worldwide in the fields of International and European Law.

T.M.C. Asser Instituut
Institute for Private and Public International Law
International Commercial Arbitration and European Law

Institute Address:
R. J. Schimmelpenninklaan 20-22
2517 JN, The Hague
The Netherlands

Mailing Address:
P.O. Box 30461
2500 GL The Hague
The Netherlands
Tel.: +3170 342 0300
Fax: +3170 342 0359
Internet: www.asser.nl
Publisher’s Note

In the interests of timely publication and wide dissemination of the Documentation Section of the Netherlands Yearbook of International Law, T.M.C. Asser Press is pleased to announce that from now on, this section will only be made available online (free of charge) at www.asser.nl/NYIL/documentation. This brings the added benefit of documentation that is fully searchable, thereby more easily serving the needs of scholars, students and practitioners.
Contents

Part I  General Articles

1  T.M.C. Asser and Public and Private International Law: The Life and Legacy of ‘a Practical Legal Statesman’ 3
   Geert De Baere and Alex Mills

2  Legal Aspects of the Transfer of Authority in UN Peace Operations 37
   Terry D. Gill

Part II  Agora: The Case of Iraq: International Law and Politics

3  After ‘Iraq’: Back to the International Rule of Law?
   An Introduction to the NYIL 2011 Agora 71
   Janne Nijman

4  Between a Rock and a Hard Place: Providing Legal Advice on Military Action Against Iraq 95
   Kenneth M. Manusama

5  Whose International Order? Which Law? 123
   Thomas Mertens and Janine van Dinther

6  Forging International Order: Inquiring the Dutch Support of the Iraq Invasion 139
   Tanja E. Aalberts

7  ‘Public’ International Law? Democracy and Discourses of Legal Reality 177
   Philip Liste
8  Does Might Still Make Right? International Relations Theory and the Use of International Law Regarding the 2003 Iraq War . . .  193
Bertjan Verbeek

9  Libya and Lessons from Iraq: International Law and the Use of Force by the United Kingdom. .......................... 215
Nigel D. White

Table of Cases.  ................................................................. 231

Index  ................................................................. 233
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AA</td>
<td>Ars Aequi</td>
</tr>
<tr>
<td>Aanh. Hand. I/II</td>
<td>Aanhangsel tot het Verslag der Mededelingen van de Eerste/Tweede Kamer der Staten Generaal</td>
</tr>
<tr>
<td>AB Kort</td>
<td>Administratiefrechtelijke Beslissingen Kort</td>
</tr>
<tr>
<td>AB</td>
<td>Administratiefrechtelijke Beslissingen</td>
</tr>
<tr>
<td>AJCL</td>
<td>American Journal of Comparative Law</td>
</tr>
<tr>
<td>AJIL</td>
<td>American Journal of International Law</td>
</tr>
<tr>
<td>ASIL Proc.</td>
<td>American Society of International Law Proceedings</td>
</tr>
<tr>
<td>Australian YIL</td>
<td>Australian Yearbook of International Law</td>
</tr>
<tr>
<td>BDIEL</td>
<td>Basic Documents of International Economic Law</td>
</tr>
<tr>
<td>BGBl</td>
<td>Bundes Gesetzbblatt</td>
</tr>
<tr>
<td>BNB</td>
<td>Beslissingen in Belastingzaken Nederlandse Belastingrechtspraak</td>
</tr>
<tr>
<td>Buffalo CLR</td>
<td>Buffalo Criminal Law Review</td>
</tr>
<tr>
<td>BVerfGE</td>
<td>Entscheidungen des Bundesverfassungsgericht</td>
</tr>
<tr>
<td>BYIL</td>
<td>British Yearbook of International Law</td>
</tr>
<tr>
<td>California LR</td>
<td>California Law Review</td>
</tr>
<tr>
<td>Calif. Western ILJ</td>
<td>California Western International Law Journal</td>
</tr>
<tr>
<td>CMLRev.</td>
<td>Common Market Law Review</td>
</tr>
<tr>
<td>Columbia JEL</td>
<td>Columbia Journal of European Law</td>
</tr>
<tr>
<td>Columbia JTL</td>
<td>Columbia Journal Transnational Law</td>
</tr>
<tr>
<td>Columbia LR</td>
<td>Columbia Law Review</td>
</tr>
<tr>
<td>Cornell ILJ</td>
<td>Cornell International Law Journal</td>
</tr>
<tr>
<td>DD</td>
<td>Delikt en Delinkwent</td>
</tr>
<tr>
<td>Denver JIL and Pol.</td>
<td>Denver Journal of International Law and Policy</td>
</tr>
<tr>
<td>ECR</td>
<td>European Court Reports</td>
</tr>
<tr>
<td>EJIL</td>
<td>European Journal of International Law</td>
</tr>
<tr>
<td>ETS</td>
<td>European Treaty Series</td>
</tr>
<tr>
<td>European LJ</td>
<td>European Law Journal</td>
</tr>
<tr>
<td>European LR</td>
<td>European Law Review</td>
</tr>
</tbody>
</table>
Abbreviations

GA Res. UN General Assembly Resolutions
Georgia LR Georgia Law Review
G Washington ILR George Washington International Law Review
GYIL German Yearbook of International Law
Hand. I/II Verslag der Handelingen van de Eerste/Tweede Kamer der Staten Generaal
Harvard HRJ Harvard Human Rights Journal
Harvard ILJ Harvard International Law Journal
ICJ Rep. International Court of Justice Reports
ICLQ International and Comparative Law Quarterly
ILM International Legal Materials
ILR International Law Review
IRRC International Review of the Red Cross
JB Jurisprudentie Bestuursrecht
JV Jurisprudentie Vreemdelingenrecht
Kamerstukken I/II Bijlagen bij het Verslag der Handelingen van de Eerste/Tweede Kamer der Staten Generaal
Leiden JIL Leiden Journal of International Law
LJN Landelijke Jurisprudentie Nummers website with full text Dutch case law <www.rechtspraak.nl>
M en R Milieu en Recht
MRT Militair Rechtelijk Tijdschrift
NAV Nieuwsbrief Asiel- en Vluchtelingenrecht
NILR Netherlands International Law Review
NIPR Nederlands International Privaatrecht
NJ Nederlandse Jurisprudentie
NJB Nederlands Juristenblad
Nordic JIL Nordic Journal of International Law
NYIL Netherlands Yearbook of International Law
OJ Official Journal of the European Communities
RdC Recueil des cours
RGDIP Revue Générale de Droit International Public
RIAA Reports of International Arbitral Awards
RSV Rechtspraak Sociale Verzekeringen
RV Rechtspraak Vreemdelingenrecht
RvdW Rechtspraak van de Week
SEW Sociaal-Economische Wetgeving—Tijdschrift voor Europees en Economisch Recht
Stb. Staatsblad van het Koninkrijk der Nederlanden
Stc. Nederlandse Staatscourant
St. John’s LR St. John’s Law Review
USZ Uitspraken Sociale Zekerheid
Valparaiso Univ. LR Valparaiso University Law Review
Virginia JIL Virginia Journal of International Law
Yale JIL Yale Journal of International Law
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yale LJ</td>
<td>Yale Law Journal</td>
</tr>
<tr>
<td>Yearbook ILC</td>
<td>Yearbook of the International Law Commission</td>
</tr>
<tr>
<td>ZaöRV</td>
<td>Zeitsschrift für ausländisches öffentliches Recht und Völkerrecht</td>
</tr>
</tbody>
</table>
General Information for Authors

1. **Embargo**
   Articles submitted to NYIL should not be simultaneously under consideration elsewhere. Acceptance of the Editors offer to publish implies, that authors agree to an embargo on publication elsewhere, either in English or another language, for a period of two years following the year of publication of the Yearbook containing the article in question.

2. **Copyright**
   Copyright is exclusively reserved to the author(s), but T.M.C.ASSER PRESS has the full exploitation of the contributions, both in hardcopy and electronic formats.

3. **Fees**
   Authors will not receive a fee, but will be presented with a copy of the Yearbook containing their article and a free PDF file of their article.

4. **Editorial policy**
   All papers are refereed by the Board of Editors. The Board of Editors reserves the right to suggest modifications and/or additions to the paper submitted, and further reserves the right to reject, or to revoke acceptance or to withhold publication of any paper.

5. **Language**
   Authors are requested to submit their paper in English. Papers accepted for publication may, at the discretion of the Editors, be linguistically revised.

6. **Submission of papers**
   Manuscripts should be sent in Word format to the Managing Editor at nyil@asser.nl. A hard copy will only be requested if necessary. The length of the manuscript should not exceed 15,000 words, including footnotes. Together with the manuscript an abstract of 150-250 words, and a list of 10 keywords should be submitted. The first footnote of your contribution (marked with an asterisk) should contain name, position, (institutional) affiliation and the e-mail address of each author. The text should be clearly divided in sections and subsections. Authors should carefully
check for errors before submitting. Authors are responsible for accuracy of quotations, for supplying complete and correct references, and for obtaining permission, where needed, to cite another author’s material.

For house-style information please contact the Managing Editor at <nyil@asser.nl>.