

Editorial

WINTER ISSUE: THE MANY FACES OF INTERNATIONAL LAW

The Amsterdam Law Forum Editorial Board

The Amsterdam Law Forum welcomed a team of seven new editors and three dynamic board members for the 2018 – 2019 academic year. Together as a team, we are proud to announce the first issue of the year: The Winter Issue. Two more issues will follow including a themed issue that will revolve around the Amsterdam Law Forum conference that is scheduled for late spring.

This year, it is the ambition of the board to have all scientific articles undergo a blind peer review. We are making great progress as all scientific articles in the first issue have undergone a blind peer review. We are grateful to all the peer reviewers who have provided insightful comments to the authors. The new board of Amsterdam Law Forum is also pleased to announce that several academic scholars will be joining the 2018 – 2019 Advisory Board. They will provide an advisory role to the ALF board with their guidance and input. The ALF board is excited to work with them in the coming months with the next issues. The Winter Issue is proud to feature three compelling scientific articles and a captivating commentary. All articles involve aspects of international law and its on-going importance to society.

The first contribution by Theodore Baird and Thomas Spijkerboer focuses on the human rights obligations of carriers. Baird and Spijkerboer construct a persuasive argument for dismantling the existing system of carrier sanctions in Europe, North America, and Australia. By applying the UN's Guiding Principles to these sanctions, the authors first identify five points of human rights leakage stemming from their use: (1) the refusal of boarding, (2) positive obligations, (3) the limited possibilities for the identification of refugees by carriers, (4) the limited possibilities for foreseeing what adverse human rights impact might follow a refusal to board an individual, and, finally (5) the harsh economic consequences likely to follow for carriers systematically transporting insufficiently documented passengers. These leakages are understood to contribute to the structural injustices of denial of refugee protection, and border deaths, that frequently characterize the contemporary migratory movement. By herein adopting Iris Young's Social Connection Model of Responsibility to these human rights consequences the authors argue that the carriers themselves may – in contrast to the conventional liability model – be assigned responsibility for this contribution through a sense of 'shared accountability' incurred by connection or relation to structurally unjust social processes. Envisioned this way responsible carriers as 'gatekeepers' would ultimately have to perform their role in a different way to limit their own role in the process – by, for example, transporting all passengers with insufficient documentation or engaging in limited and strategic civil disobedience.

The second scientific article, written by Sarah Redmond, explores religious discrimination towards children in France and in Ireland. The juxtaposition of their vastly different ways of addressing religion in schools makes this article a riveting piece. The Irish education system is vastly made up

of religious schools where religious symbols are encouraged, whereas France disallows religious symbols in its public schools. Both countries attempt to act in the best interest of the public, yet their policies may reflect paternalistic governance that support the status quo and fails to notice the growing multicultural communities. The article includes the international community response to the “denomination domination” take of Ireland and that of “state domination” in France. Redmond discusses the rights of children, including the right to education and religious freedom, by diving into national law, international conventions, and court cases. She argues that French and Irish education violate the international rights of children and offers remedies for the countries to enact national change.

The next scientific article is by Daniele Fabris, a PhD candidate at the University of Pavia, Italy, and VU University graduate of the LL.M. International Business Law program. This piece focuses on the proliferating special tax regime in the European Union (EU) that grants lower taxation for Multinational Enterprises (MNE’s) on intellectual property related income. Fabris discusses how ‘Patent Boxes’ incentivise companies to have income generated from research and development (R&D) and patents taxed in countries that offer a more attractive and profitable atmosphere. He analyses the OECD and EU framework ‘Action Plan on Base Erosion and Profit Shifting (BEPS)’ for clues on how to evaluate the Patent Box regime, and he examines the extent to which the framework can enable profitable R&D as well as protection against tax erosion. The benefits and shortcomings of the OECD’s so-called ‘Nexus Approach’ and the conflicts between the ‘Modified Nexus Approach’ and European law are explored. Fabris argues that while the ‘Modified Nexus Approach’ may lead to a reduction of overall R&D investment in certain countries, it remains the best possible compromise between the BEPS and EU Internal market law.

Finally, this issue features a commentary article written by Xiao Mao, Yingxin He, Wanlu Zhang, and Qingyang Luo that documents the conference held by the International Nuremberg Principles Academy on the 70th anniversary of the judgment of the Tokyo Trial. The Tokyo Trial, also known as the International Military Tribunal for the Far East, shaped modern-day international criminal law by not only having war criminals tried, rather than being executed summarily, but also by providing valuable records on prosecuting those international crimes. The commentary offers a review of the views of the many speakers at the conference and includes discussions on obstacles faced by the Tokyo Trial, comparisons to its counterpart in Nuremberg, its importance to The Hague, and its lasting impact. Towards the end, the authors offer potential further areas of research within international criminal law and on the Tokyo Trial, leaving no doubt that the trial continues to be of great historical and legal importance.

On a final note, we would like to thank all our contributors for their articles. It was a pleasure for the team to work with the authors. We would also like to give a special thanks to our team of editors. As a student-run journal our team consist of students in the Masters programs at Vrije Universiteit Amsterdam that take on editorial roles in addition to their coursework. Lastly, we would like to thank our readers for their continuous support. We are excited for the new year and we hope you have an enjoyable reading experience!

Ariana Lopez - Editor-in-Chief
Sophia Mård - Associate Chief Editor
Maximilian Fenner - Senior Editor

The ALF Board 2019