

Editorial

## **THE DISENCHANTMENT OF INTERNATIONAL LAW**

*The Amsterdam Law Forum Editorial Board*

Amsterdam Law Forum's Editorial Board is proud to present its Spring Issue 2017. Together with our team of editors we have worked hard on publishing this edition, which is our biggest issue yet. Not only does this issue contain a great selection of diverse scientific articles, it is also home to three opinion pieces and two commentaries. These commentaries on two academic events at the Universiteit van Amsterdam and Vrije Universiteit Amsterdam are a step towards a new vision, wherein ALF functions as more of an actual platform for academic discussion and debate.

With the publication of this Spring Issue we are nearing the end of our term as Editorial Board, as from September 2017 a new board and team of editors will start working on the journal. Before that time has come, however, we are still working towards organising our Annual Seminar and our Summer Themed Issue, which will correspond to the seminar.

Since its establishment in 2008, Amsterdam Law Forum has offered a meaningful platform for academic publications concerning transnational and international legal and policy issues. However, from September 2017, ALF will broaden its scope to include matters of a more criminological and social nature. We believe that this way ALF will be able to distinguish itself from other student-run legal journals in the Netherlands, as we are convinced that issues of legal nature do not only call for legal solutions, but need to be seen in their multidisciplinary totality in order to find better solutions and approaches. We believe that issues of international legal nature are broader and more complex than law itself. Therefore, the intersection of law with other fields of study related to law, can offer a more adequate tool of analysis which takes into account that law does not exist in a vacuum. This multidisciplinary legal learning approach is also recognisable in our upcoming seminar on the *Environment and International Law*. During this seminar, which will take place on Thursday 8<sup>th</sup> June at the Vrije Universiteit Amsterdam, academics and practitioners from various disciplines will offer in-depth insights into environmental issues, such as environmental crimes and climate change, and various approaches to these challenges.

It is believed by many that law – and international law in particular – is a fixed or given concept. One may therefore rely on law to be the most obvious and easiest solution to legal issues, whether these issues are of a national, transnational or international nature. Especially those who are not acquainted with legal practice

and its limitations, often have high hopes and idealistic expectations of what international law can actually provide. In this ALF Spring Issue, it becomes apparent that law should be approached with creativity in order to identify new tools to deal with continuously evolving challenges. The scientific and opinion articles included in this edition highlight the difficulties surrounding international legal practice and the often-underestimated risk that this practice actually leads to the opposite of the anticipated result. The commentaries on the two recent academic discussions also highlight the need to re-evaluate what we have come to accept as given facts.

The first article in this issue is written by Daniele Fabris and it discusses the *Enrica Lexie* case: a case between India and Italy of great international controversy which has been ongoing for more than five years. The article goes into the problematic aspects in which the United Nations Convention for the Law of the Sea is interpreted by both parties, which have led to intense debates within the international community and tense relations between the involved states.

Fabris's article is followed by Joanna Diane Caytas' overview of the unintended outcomes of (economic) sanctions and the way in which the effectiveness of Western sanctions can be undermined by the receiving party. She uses the example of Western sanctions on Russia, as a result of Russia's involvement in the Ukraine crisis.

In the third article, Jan-Willem Sap discusses the issue of sovereignty and constitution in the context of the European Union. The article starts by giving an overview of the historical and philosophical development of sovereignty and law. He then assesses whether human rights are fundamental rights granted by sovereign powers in a legal order, or innate rights that arise from universal natural law.

The next two articles of the issue critically assess the work of the International Criminal Court. Specifically, Sangeetha Yogendran examines whether the Draft Implementation Plan by the Trust Fund for Victims for reparations in the Lubanga case at the International Criminal Court (ICC) efficiently addresses the needs of child soldier victims. It also mentions the fact that due to the narrow focus of the confirmed charges – namely the recruitment and use of child soldiers – crimes of a sexual and gender-based nature were eventually not adequately addressed by the Court. Yogendran finds, however, that a success of the Draft Implementation Plan is that it manages to remedy this exclusion of the victims of sexual and gender-based violence.

The issue of sexual and gender-based violence at the ICC is further explored by Ana Martin Beringola. Based on a number of case studies and interviews with practitioners in the field, she looks at ways in which 'intersectionality' can make a contribution to the gravity assessment, contextualisation of crimes and drafting of charges concerning sexual and gender-based crimes. She demonstrates that the broader approach of intersectionality improves the understanding of crimes and the way in which the ICC can tackle these more effectively.

Michael Addaney and Onuora-Oguno Azubike also take the socio-legal approach to dealing with human rights violations further, by suggesting an educational

solution to ending child marriage in Africa. Their analysis examines international legal standards concerning child marriage, as well as legal and policy frameworks for dealing with child marriage in Uganda and Nigeria. The authors conclude by suggesting alternative institutional responses in which the voices of various stakeholder are included, in order to find solutions adopted to the social reality of this issue.

In this issue's first opinion piece Shadi Sakran discusses Palestine's pursuit to come into being as a recognised, sovereign state, and how the matter remains contentious, even decades of struggle later. The other two opinion articles follow the topic of Palestine by discussing the way in which different actors from Israel and Palestine use human rights discourse in order to justify the status of perpetrators versus that of victims. The article 'Human Rights and Domination' by Nicola Perugini and Neve Gordon is based on their new book 'The Human Right to Dominate' which was centre of discussion at the event organised around it at the UvA in April 2017. The opinion piece is followed by Anja Eleveld's reaction to this book. In her opinion piece, Anja focused on the difference in understanding of what human rights are, but also on what are the consequences of legal and social-political scholars invoking them. She then goes on to disentangle these different views by exploring human rights claims as speech acts, using the speech act theory.

In the last section of this issue, the commentaries, Helena de Sousa-Falcao Montull provides for background information on the authors of – and an extensive overview of the discussion on – the book 'The Human Right to Dominate'. She summarises the main arguments given by the authors of the book and the presentations of two book reviews given by Anja Eleveld and Maarten den Heijer.

Finally, in the second commentary article, Adina Nistor provides an overview of the seminar given by professor Mark Drumbl in April 2017 at Vrije Universiteit Amsterdam, on 'extracurricular international law'. During this seminar Drumbl discussed one of his most recent articles, which touches upon the topic of extracurricular international law. In this article, the author traced the effects of the International Courts and Tribunal's jurisprudence in the US, in particular in domestic civil litigation cases conducted under the Alien Tort Act. In her commentary, Nistor describes how the participants to the seminar engaged in a broader discussion on the potential fragmentation of international law at the national level, on international law's progressive versus regressive path and on the unexpected effects of the use of international legal standards in national settings.

We hope you enjoy reading this issue and that the articles contained within offer you an interesting insight into these timely and diverse matters of international law. Thank you to our contributors for their articles and a special thank you to the members of our Editorial Team for their work and commitment.

We would hereby also like to warmly welcome our readers to our Annual Seminar 'The Environment and International Law' on the 8<sup>th</sup> of June 2017 at Vrije Universiteit Amsterdam. During this seminar, various issues concerning the environment and international law will be discussed. Questions such as '*What environmental challenges does the world face today? How can (international) law and policy react*

*to these challenges? What types of environmental crimes are there, and how can these be countered? Should ecocide become an international crime, and what would ecocide then entail?*' will be addressed by experts in the field of environmental legal issues and environmental crimes. The seminar will consist of two moderated panel discussions, one on ecocide and environmental crimes and one on law, sustainability and climate change. Moreover, the event will offer students and recent graduates the opportunity to present their research on a variety of topics related to the seminar. We hope to see you there.

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Isabella Regan – Editor-in-Chief  
Adina Nistor – Associate Chief-in-Editor  
Caitlin Dykes – Senior Editor

The ALF board 2017