

VOLUME 8 ISSUE 1

JANUARY 2018

ISSN 2044-2513



Asian Journal of
International Law

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

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

Chair

Surya P. SUBEDI, QC

Hilary CHARLESWORTH

B.S. CHIMNI

Hikmahanto JUWANA

Ratna KAPUR

Borhan Uddin KHAN

Tommy KOH

LU Song

Djamchid MOMTAZ

NGUYEN Hong Thao

ONUMA Yasuaki

Raul PANGALANGAN

Jaruprapa RAKPONG

Shirley SCOTT

SHIN Hae Bong

Jaturon THIRAWAT

XUE Hanqin

Ex officio

Harry L ROQUE

President of the Asian Society of International Law

Editors

Antony ANGHIE

Simon CHESTERMAN

TAN Hsien-Li

Book Review Editor

Shirley SCOTT

Associate Book Review Editor

Lucia ORIANA

Assistant Editors

CHEE Wei Jia

KOW Fangjie, Joshua

LEE De Rong, Moses

NGUYEN Vu Lan

Alastair Simon CHETTY

Asian Society of International Law

EXECUTIVE COUNCIL

President

Harry L ROQUE

Vice-Presidents

Upendra ACHARYA
Francis JARDELEZA

Sorajak KASEMSUVAN
MA Xinmin

Secretary-General

Antony ANGHIE

Treasurer

KUNIYA Shiro

Members

AGO Shin-ichi
Pouria ASKARY
Mohammad Nazmuzzaman BHUIAN
Srinivas BURRA
Andrew BYRNES
Miras DAULENOV
Alison DUXBURY
Amal Kumar GANGULI
Venkatachala Gajanana HEGDE
Nartnirun JUNNGAM
LEE Keun-Gwan
LIU Huawen

Mostafa M NASER
Muhammad MAHBUBUR RAHMAN
MOGAMI Toshiki
NGUYEN DANG Thang
Arif Havas OEGROSENO
OH Seung-Jin
Raul PANGALANGAN
PARK Pae-Keun
Lucy REED
TAN Hsien-Li
ZHU Wenqi

Ex officio

PAIK Jin Hyun

ADVISORY COUNCIL

OWADA Hisashi (Chair)
Georges ABI-SAAB
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
Djamchid MOMTAZ
ONUMA Yasuaki
Moragodage Christopher Walter PINTO
Pemmaraju Sreenivasa RAO
Surakiart SATHIRATHAI
Shirley SCOTT
SHI Jiuyong
Bruno SIMMA
Surya P. SUBEDI
Jaturon THIRAWAT
XUE Hanqin

RESEARCH COMMITTEE

Surya P. SUBEDI (Chair)

Prize Committee

Hilary CHARLESWORTH (Chair)

Contents

INVITED ARTICLES: SYMPOSIUM ON THE SOUTH CHINA SEA ARBITRATION

- 1-11 Arbitration of the Philippine Claim Against China
M.C.W. PINTO
- 12-23 Merits Award Relating to Historic Rights in the South China Sea Arbitration: An Appraisal
MA Xinmin
- 24-35 South China Sea Arbitration and its Application to Dokdo
Seokwoo LEE and Leonardo BERNARD
- 36-50 The *South China Sea* Arbitration: Bindingness, Finality, and Compliance with UNCLOS Dispute Settlement Decisions
Hao Duy PHAN and Lan Ngoc NGUYEN
- 51-63 The *South China Sea Award*: How Should We Read the UN Convention on the Law of the Sea?
Douglas GUILFOYLE
- 64-75 Enforcement Options and Paths to Compliance: Disputants and Global Stakeholders in *Philippines v. China*
Diane A. DESIERTO
- 76-90 Island-Building in the South China Sea: Legality and Limits
Tara DAVENPORT

ARTICLES

- 91-115 The UNCLOS Dispute Settlement System: What Role Can It Play in Resolving Maritime Disputes in Asia?
Lan Ngoc NGUYEN
- 116-142 Disaster Response in Southeast Asia: The ASEAN Agreement on Disaster Response and Emergency Management
Gabrielle SIMM
- 143-165 Legal Preparedness for the Facilitation of International Humanitarian Assistance in the Aftermath of Vanuatu's Cyclone Pam
Rebecca BARBER
- 166-188 Is the Law an Ass When It Comes to Mules? How Indonesia Can Lead a New Global Approach to Treating Drug Traffickers as Human Trafficked Victims
Felicity GERRY QC, Thomas HARRÉ, Nathalina NAIBAHU, Julia MURASZKIEWICZ, and Neil BOISTER
- 189-224 The Impact of Human Trafficking in ASEAN: Singapore as a Case-Study
Jaya ANIL KUMAR
- 225-257 The Law on Trafficking in Persons: The Quest for an Effective Model
Anupam JHA
- 258-292 The ASEAN Convention Against Trafficking in Persons: A Preliminary Assessment
Ranyta YUSRAN

BOOK REVIEWS

History and Theory of International Law

- 293–294 From Community to Compliance? The Evolution of Monitoring Obligations in ASEAN (Cambridge: Cambridge University Press, 2015)
Simon CHESTERMAN (Reviewed by Koesrianti)

Human Rights

- 294–295 Refugees, Regionalism and Responsibility (Cheltenham / Northampton, MA: Edward Elgar Publishing, 2016)
Penelope MATHEW and Tristan HARLEY (Reviewed by Andrew WOLMAN)

International Criminal Law

- 295–296 Trials for International Crimes in Asia (Cambridge: Cambridge University Press, 2016)
edited by Kirsten SELLARS (Reviewed by Bonhoefer BERNARDEZ)

Law of the Sea

- 296–299 Recent Developments in the South China Sea Dispute: The Prospects of a Joint Development Regime (London / New York: Routledge, 2014)
edited by WU Shicun and Nong HONG
The South China Sea Disputes and Law of the Sea (Cheltenham / Northampton, MA: Edward Elgar Publishing, 2014)
edited by S. JAYAKUMAR, Tommy KOH, and Robert BECKMAN
The South China Sea Arbitration: A Chinese Perspective (Oxford / Portland, OR: Hart Publishing, 2014)
edited by Stefan TALMON and Bing Bing JIA
The China-Japan Border Dispute: Islands of Contention in Multidisciplinary Perspective (Farnham / Burlington, VT: Ashgate, 2015)
edited by Tim F. LIAO, Kimie HARA, and Krista WIEGAND
Arbitration Concerning the South China Sea: Philippines Versus China (Farnham / Burlington, VT: Ashgate, 2016)
edited by Shicun WU and Keyuan ZOU (Reviewed by Wim MULLER)

Other Areas of International Law

- 300–300 A Level Playing Field for “Open Skies”: The Need for Consistent Aviation Regulation (The Hague: Eleven International Publishing, 2016)
Peter Paul FITZGERALD (Reviewed by Jae Woon LEE)