

Editorial

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It is my pleasure, as editor-in-chief of Utrecht Journal of International and European Law, to present our 79th issue on General International and European Law. This is our second 'General' issue¹ and does not have a specific theme as many previous issues have had. However, one binding element of all these publications, and one that Utrecht Journal endeavours to deliver in all its publications, is their strong relevance to the most important issues in international law today, as well their unique contribution to academic debates surrounding them.

On July 17, one week prior to the time of writing, a commercial flight heading from Amsterdam to Kuala Lumpur was shot down by a surface-to-air-missile over Eastern Ukraine. 298 people on board, including 193 Dutch passengers, lost their lives. In the week following this tragic event, various issues have come to the forefront of political discourse including actions to be taken regarding Russian arms companies that allegedly supplied the military equipment used² including Rosoboronexport, the sole state intermediary agency for Russia's exports and imports of arms.³

Rosoboronexport is used as a case study by Caspar Plomp in his article 'Aiding and abetting: The responsibility of business leaders under the Rome Statute of the International Criminal Court.' Plomp looks at whether business leaders may be held accountable for the involvement of their companies in international crimes at the International Criminal Court ('the ICC') using Rosoboronexport's actions in Syria as a case study. He draws attention to the fact that, historically, international criminal law tribunals have overlooked the involvement of businesses and other economic actors in armed conflict. To date, the ICC, has never charged anyone for acts they have committed in their capacity as business leaders. The article provides a detailed explanation of the roles of aiding and abetting, *actus reus* and *mens rea* within international criminal law. Drawing on the Rome Statute and the jurisprudence of the ICC, as well as the jurisprudence of the *ad hoc* criminal tribunals, Plomp concludes that the awareness required to be convicted for the purpose of facilitating a crime should not be direct intent, but should be oblique intent in common law terminology or direct intent in the second degree in civil law terminology. Plomp then applies his conclusions to the role of business leader of Rosoboronexport, Mr Isaikin, concluding that even if this standard were adopted and Russia were party to the Rome Statute, it would be very difficult to secure a conviction under current international law. He concludes that 'the project of international law continues to be largely incapable of holding economic actors accountable for their contributions to armed conflict and human rights violations. It is time for this to change.'

'Aiding and abetting: The responsibility of business leaders under the Rome Statute of the International Criminal Court,' adds another perspective to the broad array of research articles that Utrecht Journal of International and European Law has published on the subject of holding businesses accountable for human

¹ To view Utrecht Journal of International and European Law's previous General issue please visit: <http://www.utrechtjournal.org/issue/view/6>.

² 'Zuidas link to Russian missile maker likely behind MH17 crash' DutchNews (21 July 2014) http://www.dutchnews.nl/news/archives/2014/07/zuidas_link_to_russian_missile.php last accessed 27 July 2014).

³ See for instance, the controversies over a recent deal between France and Russia to provide Rosoboronexport with two helicopter carriers ('France rejects UK censure of Russia deal' PressTV, (24 July 2014) <http://www.presstv.ir/detail/2014/07/24/372558/france-rejects-uk-censure-of-russia-deal> last accessed 27 July 2014).

rights violations. This includes perspectives on: codes of conduct,⁴ multistakeholder initiatives,⁵ extraterritorial jurisdiction,⁶ non-judicial mechanisms,⁷ and mandatory CSR disclosure provisions.⁸

Another situation that presents an ongoing challenge for international law and the international community as a whole is the Israeli-Palestinian conflict. At the time of writing, a 24-hour humanitarian truce, negotiated between Israel and the Gaza region after high profile diplomatic talks, was terminated prematurely in the early hours of this morning.⁹ Israel's most recent bombing of the Gaza region has resulted in over 1000 deaths so far.

In 'Israel's Associated Regime: Exceptionalism, Human Rights and Alternative Legality,' Federica D'Alessandra focusses on the legal protection accorded to the Palestinian population under Israeli control. The article takes a three pronged approach, reviewing the protection afforded under domestic law, international humanitarian law and international human rights law. It describes how Israel has restricted rights as prescribed by its own Basic Law on Human Dignity and Liberty through declaring a 'state of emergency' since the first day of independence and that, through an 'alternative legality' regarding citizenship and nationality, Israel has denied basic rights and privileges to non-Jewish nationals regardless of whether they have Israeli citizenship. It provides an analysis of Israel's own arguments that Geneva Convention IV, which relates to the protection of civilian persons, does not apply to either the Occupied Territories or Palestinian fighters and concludes that Israel's arguments are not valid according to international humanitarian law. D'Alessandra ends the article with an interesting discussion of the evolution of the *lex specialis* principle in the application of international human rights law and international humanitarian law, concluding that the principle cannot be applied to avoid the application of human rights law, but that both bodies of law co-exist in times of armed conflict.

Cedric Ryngaert provides us with his case note, 'Jones v United Kingdom: the European Court of Human Rights restricts individual accountability for torture,' in which he discusses the European Court of Human Rights' decision that Article 6 of the European Convention on Human Rights, on the right to a fair trial, was not violated where state immunity was invoked to dismiss a case concerning allegations of torture. Ryngaert analyses the developments regarding state immunity in both criminal and civil liability proceedings, and draws attention to the accountability gaps created by wide applications of state immunity. He concludes that tort claims should be able to be enforced against individuals who have committed crimes under international law.

This issue concludes with two interviews with international criminal lawyers Karim A.A. Khan, QC, lead defence counsel in the Kenya I case and Adesola Adeboyejo, lead prosecutor in the Kenya II case, carried out and authored by Brianne McGonigle Leyh. The Kenya I case and Kenya II case are the first ICC cases against sitting politicians; Kenya I is a case against William Ruto, Deputy President of the Republic of Kenya, and Joshua Sang and Kenya II is case against Uhuri Muigai Kenyatta, the President of Kenya. One particular challenge for the Court has been the Kenyan government's recent withdrawal from the ICC and the repealing of its domestic legislation criminalising international crimes. Although this withdrawal does not affect the current cases before the Court from a legal perspective, it makes cooperation with Kenya for the purpose of further investigations more difficult. Khan and Adeboyejo speak about these and other prevalent issues the ICC faces in these informative interviews.

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⁴ Carola Glinski, 'Competing Transnational Regimes under WTO Law' [2014] Utrecht Journal of International and European Law 30(78) 44.

⁵ Justine Nolan, 'Refining the Rules of the Game: The Corporate Responsibility to Respect Human Rights' [2014] Utrecht Journal of International and European Law 30(78) 7.

⁶ Chilenye Nwapi 'Jurisdiction by Necessity and the Regulation of the Transnational Corporate Actor' [2014] Utrecht Journal of International and European Law 30(78) 24 and Benjamin Thompson, 'Was Kiobel Detrimental to Corporate Social Responsibility? Applying Lessons Learnt From American Exceptionalism' [2014] Utrecht Journal of International and European Law 30(78) 82.

⁷ Scott Robinson, 'International Obligations, State Responsibility and Judicial Review Under the OECD Guidelines for Multinational Enterprises Regime' [2014] Utrecht Journal of International and European Law 30(78) 68.

⁸ Jeffrey Van Detta, 'Sexual Orientation, Human Rights, and Corporate Sponsorship of the Sochi Olympic Games: Rethinking the Voluntary Approach to Corporate Social Responsibility' [2014] Utrecht Journal of International and European Law 30(78) 99.

⁹ 'Israel resumes Gaza offensive after Hamas rockets' *BBC News* (27 July 2014) <http://www.bbc.com/news/world-middle-east-28508970> (last accessed 27 July 2014).

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