

Contents

Part I Between Pragmatism and Predictability: Temporariness in International Law

1 Between Pragmatism and Predictability: Temporariness in International Law	3
Mónika Ambrus and Ramses A. Wessel	
1.1 Introduction	4
1.2 Forms of Temporariness	5
1.2.1 Temporary Objects	6
1.2.2 Temporary Subjects	8
1.3 International Law and Change	9
1.3.1 Temporary Objects and International Law	9
1.3.2 Temporary Subjects and International Law	13
1.4 Conclusion: All Relative?	15
References	16
2 Temporariness and Change in Global Governance	19
Rene Uruena	
2.1 Introduction	20
2.2 International Law in a Constant Present	21
2.3 Change and Temporariness	26
2.3.1 Change and Temporariness in a Global Regulatory Space	28
2.3.2 Thinking About Change in the Constant Present	32
2.4 Normative Challenges	33
2.5 Conclusion	37
References	38

3	Temporary International Legal Regimes as Frames for Permanent Ones	41
	Jean Galbraith	
3.1	Introduction	42
3.2	Why Use Temporary International Legal Regimes?	44
3.2.1	Factors Favouring the Use of Temporary Regimes	44
3.2.2	Sources of Strength for Temporary Regimes	47
3.3	Temporary Regimes as Foundations for Permanent Regimes	48
3.3.1	Causes	49
3.3.2	Implications	51
3.4	Case Studies	54
3.4.1	Refugee Law	54
3.4.2	International Criminal Law	58
3.4.3	Climate Change	61
3.5	Conclusion	63
	References	63
4	The International Rule of Law Time After Time: Temporary Institutions Between Change and Continuity	67
	Sofia Ranchordás	
4.1	Introduction	68
4.2	The (International) Rule of Law as a Source of Legal Certainty	71
4.2.1	The Rule of Law: Here, There and Everywhere?	71
4.2.2	The International Rule of Law and Time	76
4.2.3	The International Rule of Law as a Law of Lasting Rules?	78
4.3	Temporary Rules, Institutions and Measures	82
4.3.1	Temporary Legislation and the Rule of Law at Home	82
4.3.2	International Temporary Institutions, Rules and Measures	85
4.4	Conclusion	87
	References	89
5	International Law and Time: A Reflection of the Temporal Attitudes of International Lawyers Through Three Paradigms	93
	Christian Djeflal	
5.1	International Law in Time: The Familiar Stranger	94
5.2	Paradigm Shifts	96
5.2.1	The Temporalisation of International Law	97
5.2.2	The Flexibilisation of International Legal Time?	104
5.3	General Conclusions	115
	References	117

6	(Inter)Temporal Considerations in the Interpretative Process of the VCLT: Do Treaties Endure, Perdure or Exdure?	121
	Panos Merkouris	
6.1	Introduction	122
6.2	Definitional Issues	125
6.2.1	Endurantism, Perdurantism, and Exdurantism.	125
6.2.2	Intertemporal Law	128
6.2.3	Principle of Contemporaneity and Evolutive/Dynamic Interpretation	129
6.3	Silence Can Speak Volumes: The Lack of Explicit References to Intertemporal Considerations in the VCLT	134
6.3.1	Pre-VCLT Considerations on the Topic	134
6.3.2	Rejection of Explicit Incorporation of the Doctrine of Intertemporal Law in the VCLT: Draft Article 56	135
6.3.3	Rejection of Explicit Solutions to Intertemporal Considerations Through the Backdoor of Article 31	137
6.4	Points of Entry of Intertemporal Considerations in Article 31 VCLT.	139
6.4.1	Direct Point of Entry	139
6.4.2	Indirect Point of Entry	144
6.5	Limits	150
6.6	Conclusion	151
	References.	152
7	Shifting Demands in International Institutional Law: Securing the United Nations' Accountability for the Haitian Cholera Outbreak.	157
	Kate Nancy Taylor	
7.1	Introduction	158
7.2	The Responsibility of the UN for the Cholera Outbreak.	159
7.3	The UN's Jurisdictional Immunity.	161
7.4	Alternative Modes of Dispute Settlement	164
7.4.1	The UN's Obligation to Settle Private Law Disputes.	164
7.4.2	Would the Cholera Claims Fall Within the Scope of the UN's Liability?.	165
7.4.3	Dispute Settlement Mechanisms in UN Peacekeeping Operations	169
7.5	Shifting Demands in the Law of International Organisations	172
7.5.1	Would a Domestic Court Be Willing to Adjudicate the Cholera Claims?.	172
7.5.2	Elevating the Cholera Claims to an International Level	176
7.5.3	The Rule of Law in the UN and the Handling of the Cholera Claims.	178
7.5.4	The Human Rights Imperative	180
7.5.5	Demands for the Enhanced Accountability of the UN.	183

7.6	Permanent Versus <i>Ad Hoc</i> Solutions	187
7.6.1	Theorising Permanent Solutions	187
7.6.2	<i>Ad Hoc</i> Solutions: A Revised Role for Domestic Courts?	189
7.7	Conclusion	191
	References	192
8	Protecting Human Rights During Emergencies: Delegation, Derogation, and Deference	197
	Evan J. Criddle	
8.1	Introduction	198
8.2	The Resilience of Derogation Standards	201
8.3	Derogation Standards as Delegations	206
8.4	Deference for an Altruistic Regime	212
8.5	Conclusion	218
	References	219
9	Temporary Protection: Hovering at the Edges of Refugee Law	221
	Jean-François Durieux	
9.1	Introduction	222
9.2	Time in the International Legal Regime	226
9.2.1	Time as ‘Attachment’	226
9.2.2	Time as Deadline	227
9.2.3	A Clash of Times	230
9.3	Temporary Protection in Europe, 1992–2001	232
9.3.1	A Time of Crisis	233
9.3.2	After the Crisis	240
9.4	Hovering on	244
9.5	Conclusion: Time for a Showdown	249
	References	252
10	Between the Devil and the Deep Blue Sea: Enhancing Flexibility in International Climate Change Law	255
	Harro van Asselt	
10.1	Introduction	256
10.2	Flexibility in the United Nations Climate Change Regime	258
10.2.1	Delegated Law-Making	259
10.2.2	Scientific Input	260
10.2.3	Review and Amendment	262
10.2.4	Entry into Force, Reservations and Withdrawal	265
10.2.5	Differentiation	266
10.2.6	Implementation	268
10.2.7	Compliance	269
10.2.8	Flexibility in the Climate Change Regime: Advances and Limitations	271

10.3	A Pluralist Approach to International Climate Change Law as an Alternative Model	272
10.3.1	The Virtues of a Pluralist Approach.	273
10.3.2	The Baby and the Bathwater	276
10.4	Enhancing Flexibility in International Climate Change Law	278
10.5	Conclusions	281
	References.	282
11	Commissions of Inquiry: Flexible Temporariness or Permanent Predictability?	287
	Christian Henderson	
11.1	Introduction	288
11.2	Commissions of Inquiry as Temporary Adjudicative Bodies of International Law.	289
11.3	The Impact of Temporary Commissions of Inquiry Upon International Legal Adjudication	295
11.3.1	The Formality of International Legal Adjudication.	295
11.3.2	The Principle of Non-intervention.	300
11.3.3	Procedural Fairness	303
11.4	Concluding Remarks: A Permanent Commission of Inquiry?	307
	References.	310
12	Special Temporary Measures and the Norm of Equality	311
	Adeno Addis	
12.1	Introduction	312
12.2	The Nature of Special Temporary Measures	317
12.2.1	Special Rights and Special Measures	317
12.2.2	The Nature of Special Measures	318
12.3	Equality and Special Measures	321
12.3.1	Equality as Non-discrimination (Equality of Treatment)	321
12.3.2	Equality as Equality of Opportunity	322
12.4	Temporariness and Predictability: The Issue of Durational Limit . . .	325
12.5	Temporariness and Predictability: The Virtue of Candor.	327
12.6	Conclusion	329
	References.	330
13	Paradise Postponed? For a Judge-Led Generic Model of International Criminal Procedure and an End to ‘Draft-as-You-Go’	331
	Michael Bohlander	
13.1	Introduction	332
13.2	A Case in Point: The STL	337
13.3	The Conceptual Framework: Purpose, Fairness and Efficiency . . .	341
13.3.1	Characteristics of Domestic Procedures	341

13.3.2	Problems of International Procedure: Geo-Politics, Mass Atrocities and Creation of a Historical Record . . .	342
13.3.3	Sources of International Criminal Procedure: The Limited Role of Human Rights Law	343
13.3.4	International Criminal Procedure and General Sources of International Law	344
13.3.5	Efficiency in Fairness: The Path Forward	345
13.4	Preferring the Judge-Led Model: Reasons and Parameters	346
13.4.1	Romantic Views of the Role of the Judge in the Adversarial Trial	346
13.4.2	Absence of the Dichotomy Between Spheres of Professional and Lay Adjudication	347
13.4.3	Efficiency Aspects: Adversarial Versus Judge-Led Model	348
13.5	Conclusion	354
	References	355

Part II Dutch Practice in International Law

14	Platforms, Protestors and Provisional Measures: The <i>Arctic Sunrise</i> Dispute and Environmental Activism at Sea	359
	Richard Caddell	
14.1	Introduction	360
14.2	The <i>Arctic Sunrise</i> Dispute	362
14.2.1	Jurisdiction of the Tribunal	365
14.2.2	Non-participation of the Respondent State	368
14.2.3	Prompt Release and Provisional Measures	370
14.3	Platforms and Protest Activism	374
14.3.1	Offshore Installations and the Law of the Sea	374
14.3.2	Freedom of Speech at Sea	378
14.4	Concluding Remarks	382
	References	383
	Table of Cases	385
	Index	393

Netherlands Yearbook of International Law 2014
Between Pragmatism and Predictability: Temporariness
in International Law

Ambrus, M.; Wessel, R.A. (Eds.)

2015, XII, 413 p., Hardcover

ISBN: 978-94-6265-059-6

A product of T.M.C. Asser Press