

## CONSENTING TO INTERNATIONAL LAW

The obligations stemming from international law are still predominantly considered, despite important normative and descriptive critiques, as being 'based' on (State) consent. To that extent, international law differs from domestic law where consent to the law has long been considered irrelevant to law-making, whether as a criterion of validity or as a ground of legitimacy. In addition to a renewed historical and philosophical interest in (State) consent to international law, including from a democratic theory perspective, the issue has also recently regained importance in practice. Various specialists of international law and the philosophy of international law have been invited to explore the different questions this raises in what is the first edited volume on consent to international law in the English language. The collection addresses three groups of issues: the notions and roles of consent in contemporary international law; its objects and types; and its subjects and institutions.

SAMANTHA BESSON holds the Chair of *International Law of Institutions* at the Collège de France, Paris, and is Professor of Public International Law and European Law at the University of Fribourg (Switzerland). She is an associate member of the Institute of International Law and Co-chair of the ILA Study Group on the International Law of Regional Organizations.

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# Consenting to International Law

*Edited by*

**SAMANTHA BESSON**

Collège de France & University of Fribourg

*With the assistance of*

**LOUIS HILL**



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## Contents

<i>List of Contributors</i>	<i>page ix</i>
<i>Preface</i>	xi
<b>Consenting to International Law: An Introduction</b>	<b>1</b>
<i>Samantha Besson</i>	
PART I NOTIONS AND ROLES OF CONSENT	
<b>1 Consenting Is Not Willing</b>	<b>31</b>
<i>Alain Pellet</i>	
<b>2 State Consent and the Legitimacy of International Law</b>	<b>49</b>
<i>David Lefkowitz</i>	
<b>3 Controlling Consent: Insights from Binding Dispute Settlement</b>	<b>72</b>
<i>Christian J. Tams</i>	
<b>4 International Organizations and the Disaggregation of Consent</b>	<b>100</b>
<i>Catherine Brölmann</i>	
<b>5 Consenting to International Law in Five Moves</b>	<b>117</b>
<i>Jean d'Aspremont</i>	
PART II OBJECTS AND TYPES OF CONSENT	
<b>6 Do International Agreements Have a Consent Problem?</b>	<b>137</b>
<i>Duncan B. Hollis</i>	

7	<b>Consenting to Treaty Commitments: Endorsing Rules or Endorsing a Regime of Discursive Commitments?</b>	163
	<i>Fuad Zarbiyev</i>	
8	<b>State Consent in the Evolving Climate Regime: Individual and Collective Aspects</b>	180
	<i>Jutta Brunnée</i>	
9	<b>Consent and Sources: The European Court of Human Rights and the International Law Commission</b>	204
	<i>Georg Nolte</i>	
10	<b>Variations around the Notion of Consent in Investment Arbitration</b>	223
	<i>Laurence Boisson de Chazournes</i>	
PART III SUBJECTS AND INSTITUTIONS OF CONSENT		
11	<b>The Consent of International Organizations in the Making of General and Conventional Rules of International Law</b>	251
	<i>Fernando Lusa Bordin</i>	
12	<b>Consent and Informal Law-Making: The View from the Court of Justice of the European Union</b>	274
	<i>Eva Kassoti</i>	
13	<b>Consent as a Guarantee of the Democratic Legitimacy of International Law</b>	296
	<i>Monique Chemillier-Gendreau</i>	
14	<b>From Equal State Consent to Equal Public Participation in International Organizations: Institutionalizing Multiple International Representation</b>	314
	<i>Samantha Besson and José Luis Martí</i>	
15	<b>Autonomy in International Law: About the Legal and Societal Limits to the Exercise of Consent</b>	347
	<i>Yannick Radi</i>	
	<i>Index</i>	369

## Contributors

**Jean d'Aspremont** is Professor of International Law at Sciences Po Law School, Paris, France, and at the University of Manchester, United Kingdom.

**Samantha Besson** is Professor at the Collège de France, Paris, where she holds the Chair of International Law of Institutions, and Professor of Public International Law and European Law at the University of Fribourg, Switzerland.

**Laurence Boisson de Chazournes** is Professor of International Law at the University of Geneva, Switzerland, and Director of the Geneva Centre for International Dispute Settlement (CIDS).

**Fernando Lusa Bordin** is Assistant Professor of International Law at the University of Cambridge, United Kingdom, John Thornely Fellow in Law at Sidney Sussex College, and Fellow of the Lauterpacht Centre for International Law.

**Catherine Brölmann** is Associate Professor of International Law and Research Fellow at the University of Amsterdam, Netherlands.

**Jutta Brunnée** is Dean, University Professor and James M. Tory Professor of Law at the University of Toronto, Canada.

**Monique Chemillier-Gendreau** is Emeritus Professor of Public Law and Political Science at the University of Paris Cité, France.

**Louis Hill** is former Research Assistant at the Chair International Law of Institutions, Collège de France, Paris.

**Duncan B. Hollis** is Laura H. Carnell Professor of Law at Temple Law School, Philadelphia, United States.



**Eva Kassoti** is Senior Researcher in International and European Law at the T.M.C Asser Institute, The Hague, Netherlands.

**David Lefkowitz** is Professor of Philosophy at the University of Richmond, Virginia, United States.

**José Luis Martí** is Associate Professor of Philosophy of Law at the University of Pompeu Fabra, Barcelona, Spain.

**Georg Nolte** is Judge of the International Court of Justice, The Hague, Netherlands, and Professor at the Humboldt University of Berlin, Germany.

**Alain Pellet** is Emeritus Professor of International Law at the University of Nanterre, France.

**Yannick Radi** is Professor of International Law at the Catholic University of Louvain, Belgium.

**Christian J. Tams** is Professor of International Law at the University of Paris, 1 Panthéon-Sorbonne, France.

**Fuad Zarbiyev** is Associate Professor of International Law at the Geneva Graduate Institute, Switzerland.

## Preface

The obligations stemming from international treaties, but also from international legal sources in general – together with the jurisdiction of international courts and tribunals – are still predominantly considered, despite important normative as much as descriptive critiques, as being ‘based’ on (State) consent. To that extent, international law differs from domestic law, where consent to the law has long been considered peripheral or irrelevant to law-making, whether as a criterion of validity or as a ground of legitimacy.

This is, of course, an old chestnut in international legal theory, but one that still puzzles most theorists. In addition to a renewed historical and philosophical interest in (State) consent to international law, including from a democratic theory perspective, the question is still also highly relevant in practice. Thus, the notions of consent and agreement remain difficult to grasp in international treaty law, not to mention their controversial role in the formation of customary international law. Unexpectedly, given some of the original arguments to the contrary, the question of consent has also recently resurfaced, with other private law analogies, in debates pertaining to the normativity of international soft law and other forms of transnational regulation, raising issues as to what consent does and should amount to in those new normative practices. Moreover, after being, maybe too quickly, considered as outdated, the consensual jurisdiction of international courts and tribunals has also been given renewed attention lately. Finally, it has become increasingly common to refer to the ‘will’ of international organizations, including with respect to the law adopted by and within them, but also to the ‘consent’ of other private ‘stakeholders’ of international law-making.

Various specialists of both international law and the philosophy of international law were invited to explore those issues and many others in a conference that took place at the Collège de France in Paris on 23–24 June 2022. This volume gathers those contributions and a few additional

chapters. It addresses (i) the notions and roles of consent in contemporary international law, but also (ii) its objects and types, and (iii) its subjects and institutions. The various chapters also shed light on the increasingly vexed topics of the normativity, authority and legitimacy of what we refer to as international ‘law’ today.

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Samantha Besson,  
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