International and Comparative Law Quarterly

(incorporating the *Quarterly* of the Society of Comparative Legislation and International Law and the *Transactions* of the Grotius Society)

VOLUME 41

LONDON

THE BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW 1992 Published by the British Institute of International and Comparative Law, typeset by Alphabyte Ltd, Cheltenham and printed in the United Kingdom by Bell and Bain Ltd, Glasgow.

© 1992 British Institute of International and Comparative Law

•

-

International and Comparative Law Quarterly

(incorporating the *Quarterly* of the Society of Comparative Legislation and International Law and the *Transactions* of the Grotius Society)

BOARD OF EDITORS

General Editor: HAZEL FOX Assistant General Editor: SARAH MCALEER

P. B. CARTER

LAWRENCE COLLINS

NORMAN S. MARSH

JOHN A. USHER

Contributions to the International and Comparative Law Quarterly express the views of their authors and not necessarily the views of the Editorial Board or of the British Institute of International and Comparative Law

The British Institute of International and Comparative Law

COUNCIL OF MANAGEMENT

President: THE RT. HON. LORD DENNING

Vice-President: SIR MAURICE BATHURST, C.M.G., C.B.E., Q.C., D.C.L.,

LL.D.

Chairman: THE RT. HON. LORD GOFF OF CHIEVELEY, P.C., D.C.L.,

F.B.A.

Chairman of the Executive Committee: N. FOX BASSETT

M. P. S. Barton

- F. D. Berman, C.M.G., O.C.
- Professor D. W. Bowett, Q.C.,

LL.D.

The Rt. Hon. Lord Browne-Wilkinson, P.C.

Professor Ian Brownlie, Q.C., F.B.A.

Lloyd N. Cutler

Professor A. L. Diamond, Q.C., LL.M., Hon. D.C.L., Hon. M.R.C.P.

Sir Vincent Evans, G.C.M.G., M.B.E., Q.C.

Professor R. M. Goode, O.B.E., Q.C., LL.D., F.B.A.

*M. Hidayatullah, O.B.E.

Professor Rosalyn Higgins, Q.C.

The Hon. Sir Leonard Hoffmann

*The Hon. Sir Isaac Hyatali, T.C., K.B.

Sir Jack I. H. Jacob, Q.C., LL.D.

The Rt. Hon. Lord Jauncey of Tullichettle, P.C. H.E. Judge Sir Robert Jennings, Q.C.

- The Rt. Hon. Sir Michael Kerr, P.C.
- *The Rt. Hon. Antonio Lamer, P.C.
- Jeremy Lever, Q.C.
- *R. St. J. Macdonald, O.C., Q.C., LL.D., Professor
- Norman S. Marsh, C.B.E., O.C.

*The Hon. Sir Anthony Mason, A.C., K.B.E.

- Sir Patrick Neill, Q.C.
- Dr. P. M. North, C.B.E., D.C.L., F.B.A.
- W. D. Park
- D. A. G. Sarre
- R. L. Sigmon
- Sir Ian Sinclair, K.C.M.G., Q.C.
- The Rt. Hon. Lord Slynn, P.C.
- Sir Arthur Watts, K.C.M.G., Q.C.

ADVISORY BOARD

Public International Law Section Chairman: SIR IAN SINCLAIR, K.C.M.G., Q.C.

Private International Law Section Chairman: DR. P. M. NORTH, C.B.E., D.C.L., F.B.A.

European Community Law Section Chairman: THE RT. HON. LORD SLYNN, P.C.

DIRECTOR

EDITOR

J. P. GARDNER

Lady Fox

https://doi.org/10.1017/S002058930005421X Published online by Cambridge University Press

TABLE OF CONTENTS

(an alphabetical list of contributors, a subject index, an index of cases noted and an index of book reviews will be found at the end of this volume)

ARTICLES

PAGE

CONSUMER CONTRACTS, EMPLOYMENT CONTRACTS AND THE	
ROME CONVENTION C. G. J. Morse	1
Issues of Compensation for the Taking of Alien	
PROPERTY IN THE LIGHT OF RECENT CASES AND PRACTICE	
C. F. Amerasinghe	22
THE IRISH INTERPRETATION OF THE POLITICAL OFFENCE	
EXEMPTION Geoff Gilbert	66
THE SOVIET UNION AND INTERNATIONAL CO-OPERATION IN	
PENAL MATTERS George Ginsburgs	85
THE POST-COLONIAL ERA IN RELATION TO LAND	
EXPROPRIATION LAWS IN BOTSWANA, MALAWI, ZAMBIA	
AND ZIMBABWE Clement Ng'ong'ola	117
AND ZIMBABWE Clement Ng'ong'ola REASONABLE EXTRATERRITORIALITY: CORRECTING THE	
"BALANCE OF INTERESTS" P. M. Roth	245
THE USE OF CRUDE OIL BY AN OCCUPYING BELLIGERENT	
STATE AS A MUNITION DE GUERRE Evan J. Wallach	287
International Treaty Obligations and the Irish	
CONSTITUTION: THE MCGIMPSEY CASE Clive R. Symmons	311
NATURE PROTECTION IN THE ARCTIC: RECENT SOVIET	
LEGISLATION Erik Franckx	366
OBSTACLES TO INTERNATIONAL COMMERCIAL ARBITRATION IN	
AFRICAN COUNTRIES Samson L. Sempasa	387
"THERE IS A WORLD ELSEWHERE": THE CHANGING	
PERSPECTIVES OF ENGLISH LAW T. H. Bingham	513
THE INTERNATIONAL REGULATION OF TRANSBOUNDARY	
TRAFFIC IN HAZARDOUS WASTES: THE 1989 BASEL	520
CONVENTION Katharina Kummer	530
COMPETITION LAW AND INTERNATIONAL RELATIONS David P. Fidler	563
THE EUROPEAN CONVENTION FOR THE PREVENTION OF	202
TORTURE: OPERATIONAL PRACTICE	
Malcolm Evans and Rod Morgan	590
maiconn Evans ana Roa Morgan	720

.

vi

LESSONS ON PROVOCATION FROM THE IND	ian Penal Code	
	Stanley M. H. Yeo	615
PARLIAMENTARY SUPREMACY AND A CON	stitutional Grid:	
THE CANADIAN CHARTER OF RIGHTS	H. B. McCullough	751
REPUGNANCY TO ISLAM-WHO DECIDES?	ISLAM AND LEGAL	
Reform in Pakistan	Charles H. Kennedy	769
THE INCLUSION OF SEDENTARY FISHERIES	WITHIN THE	
CONTINENTAL SHELF DOCTRINE	S. V. Scott	788
DISCONTINUANCE IN THE INTERNATIONAL	Court: The	
ENIGMA OF THE NUCLEAR TESTS CASE	ES Iain Scobbie	808

SHORTER ARTICLES, COMMENTS AND NOTES

The Efficacy of the Anti-Pollution Legislation Provisions of the 1982 Law	
of the Sea Convention: A View from South East Asia	
Raphael Perpetuo M. Lotilla	137
Delimitation of Islands Fringed with Reefs: Article 6 of the 1982 Law of the	
Sea Convention Ian Kawaley	152
The Preliminary Draft UNIDROIT Convention on Stolen or Illegally	
Exported Cultural Objects Lyndel V. Proit	160
The Draft Directive of the European Community Regarding the Protection	
of Personal Data Olga Estadella-Yuste	170
The Judicial Committee of the Privy Council-An Inadequate Remedy for	
Death Row Prisoners R. M. B. Antoine	179
Is Access the Right of the Parent or the Right of the Child? A Common-	• • •
wealth View Lystra Kodilinye	190
Recent Boundary Agreements in the Southern North Sea D. H. Anderson	414
The Detention of Vietnamese Asylum Seekers in Hong Kong: re Pham Van	
Ngo and 110 others H. Samuels	422
Africa's Charter on Children's Rights: A Normative Break with Cultural	
Traditionalism Bankole Thomspon	432
A Domestic Muddle: Custody Orders in the United Kingdom	
Denis J. Edwards	444
Child Abuse and the Fact-Finding Process: Problems with Recent Com-	
monwealth Decisions Frank Bates	449
De Facto Relationships and the Law in Papua New Guinea Owen Jessep	460
Jurisdiction based on the Presence of Assets in Germany: A Case Note	
Gerhard Dannemann	632
Where is an Arbitral Award Made? Hiscox v. Outhwaite	052
Fraser P. Davidson	637
Individual Human Rights Complaints Procedures Based on United Nations	057
Treaties and the Need for Reform Markus G. Schmidt	645
A Fresh Impetus for the European Charter D. J. Harris	659
Human Rights in HungaryStephen 1. Pogany	676
Coercive Economic Measures Against Developing Countries	070
Omer Y. Elagab	682
The European Court and the EEA Trevor C. Hartley	841
Some Reflections on the Immunity of Individuals for Official Acts	041
C. A. Whomersley	848
	858
The Recognition of an <i>aval</i> by English Courts Christopher Forsyth	010

Table of Contents

Surrogacy Agreements in French Law	Eva Steiner	866
Assessing the State of Civil Legal Aid in Singapore	H. Y. Yeo	875

INTERNATIONAL COURT OF JUSTICE: RECENT CASES

Applicability of Article VI, Section 22, of the Convention on the Privileges	
and Immunities of the United Nations Maria Aristodemou	695
Case Concerning Elettronica Sicula S.p.A. (ELSI) (United States v. Italy)	
Martin Dixon	701
Case Concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau v.	
Senegal): Provisional Measures, Merits Fiona Beveridge	891
Case Concerning the Land, Island and Maritime Frontier Dispute (El	
	001

Salvador/Honduras): The Nicaraguan Intervention Malcolm Evans 896

CURRENT DEVELOPMENTS: EUROPEAN COMMUNITY LAW AND PUBLIC INTERNATIONAL LAW

European Community

Intellectual Property	Daniel Alexander and	
	James Mellor	200
European Court of Justice and Jurisdiction and	Enforcement of Judgments	
in Civil and Commercial Matters	Paul R. Beaumont	206
Free Movement of Persons: Recognition of Q	ualifications and Working	
Conditions	Julian Lonbay	212
Movement of Capital and the Law Relating to	Companies and Trade in	
Securities	Takis Tridimas	215
Constitutional Aspects	Andrew Bell	710
Free Movement of Persons, Recognition of Q	ualifications, and Working	
Conditions	Julian Lonbay	714
Free Movement of Goods	Stephen Weatherill	719
Competition	Christopher Harding	723
Public International Law		

Recognition of StatesColin Warbrick473The Lockerbie AffairFiona Beveridge907British Implementation of UN Sanctions against IraqHazel Fox and C. Wickremasinghe920

 BOOK REVIEWS
 220, 483, 729, 939

 BOOKS RECEIVED
 241, 508, 745, 965

INDEX FOR VOLUME 41

Contributors of Articles, Shorter Articles, Comments and Notes	969
Subject Index	971
Index of Cases Noted	977
Index of Book Reviews	979

vii

Table of Contents

CONTRIBUTIONS

The I.C.L.Q. welcomes the submission of contributions for consideration by the editors with a view to publication. They should be sent to:

The General Editor International and Comparative Law Quarterly British Institute of International and Comparative Law 17 Russell Square London WC1B 5DR

as should all correspondence, books for review and other communications.

The Board of Editors will only consider material which complies with the following:

- 1. The submission is an original, unpublished work which is not being submitted for publication elsewhere.
- 2. It should not exceed 25 printed I.C.L.Q. pages. State the number of words used.
- 3. The manuscript must be typed, double-spaced, on one side only of a uniform sized paper. It is most important that footnotes be double-spaced.
- 4. Footnotes must be numbered consecutively through the article and typed as a separate section at the end of the manuscript.
- 5. A submission of less than 4,000 words may be considered for the "Shorter Articles, Comments and Notes" section, which may secure earlier publication.

Authors are asked to refer to past issues of the I.C.L.Q. for style. More detailed guidance will be sent on request.

https://doi.org/10.1017/S002058930005421X Published online by Cambridge University Press

https://doi.org/10.1017/S002058930005421X Published online by Cambridge University Press

•

l

• -

-