

Mr. Hayden continued that the Australian Government did not condone armed struggle. It did, however, understand why opponents of apartheid had turned to it. "We hold the apartheid system itself responsible for the escalation of tension, confrontation and violence in South Africa", Mr. Hayden said.

The Australian Government would be prepared to see the establishment in Australia of information offices of the ANC and SWAPO. Such offices would not be granted a privileged status, nor would their staff be given special standing. However, the Government believed that information activities by such offices were legitimate and accorded with the operation of a free democratic society.

NORTHERN TERRITORIES CRIMINAL CODE

On 17 November 1983, the Prime Minister, Mr. R.J.L. Hawke wrote to the Chief Minister of the Northern Territory, the Hon. P.A.E. Everingham, concerning the Criminal Code, 1983 (N.T.). The Prime Minister indicated that certain aspects of the Code were of concern to the Commonwealth.

1. Intoxication - Reversal of Onus
2. Intoxication - Aggravation of Penalty
3. Abolition of Dock Statement
4. Mandatory Life Sentence
5. Terrorism and Proscribed Organisations.

The Commonwealth had received numerous representations, mainly from or on behalf of the Aboriginal community, a matter of Commonwealth concern under s.51(26) of the Constitution. The Prime Minister indicated that certain of these matters causing concern might, inter alia, involve breaches of Australia's international obligations in the field of human rights, or might be more appropriately dealt with under Commonwealth law - for example acts of terrorism against overseas and interstate aircraft, internationally protected persons and foreign governments.

PUBLICATIONS

EXTRATERRITORIALITY - RECOGNITION OF ANTITRUST JUDGEMENTS

Justice P.N. Nygh concludes that there is little likelihood that a U.S. antitrust judgement would have been enforced in Australia at common law. Thus, at least from a legal viewpoint, the Foreign Antitrust Judgements (Restriction of Enforcement) Act 1979 was probably superfluous. The validity of the latter under the Australian Constitution and under international law is also examined. The author believes that the best conclusion one can reach is that in the absence of an international consensus there is no rule of international law which either prohibits the exercise of extraterritorial jurisdiction in antitrust nor is there any rule which prohibits the refusal of another country to co-operate with such an exercise. In other words the law of the jungle, of action and retaliation, operates until such time as nations can agree. The U K. legislation, the Protection of Trading Interests Act, 1980 provides some remedy where Australian legislation does not - the attachment of the assets of an Australian defendant under a U S. antitrust judgement whether those assets be in the U.S. or a third country. Finally, the author observes that as public cartels such as OPEC escape U.S. antitrust law because of the doctrine of sovereign immunity, even in its restricted form, surely it is not too late to come to some reasonable international arrangements before similar government sponsored cartels arise with respect to other vital energy resources. P.E

Nygh, The Enforcement of United States Anti Trust Judgements in Australia (1980) 16 Gonzaga Law Review 1. [see also Australian Practice, above].

TREATIES AND TRAVAUX PREPARATOIRES

Article 32 of the Vienna Convention on the Law of Treaties allows for recourse to travaux preparatoires to confirm a meaning or where a meaning is ambiguous, obscure or leads to a result which is manifestly absurd or unreasonable. The High Court has confirmed that reliance may be had on article 32: Tasmania v. Commonwealth (Dam Case) (1983) 57 ALJR 450, noted in (1983) 57 ALJ 542.

LAWASIA HUMAN RIGHTS BULLETIN

Lawasia, 170 Phillip Street, Sydney 2000, Australia, Aus \$10.00 p.a.

The July 1983 issue (Volume II No.1) has just been published. The Bulletin is the only publication of its kind covering the ESCAP region, and is published by the Lawasia Human Rights Committee co-chaired by Mr. F.S. Nariman, Senior Advocate of India, and Mr. P.J. Downey, Chief Human Rights Commissioner of New Zealand. The editor and assistant editor are Mr. Justice R.M. Hope and Ms. Patricia Hyndman of Australia. The Bulletin summarises developments, executive legislative and judicial, in lawasia countries, together with special items such as the Lawasia Human Rights Committee activities, refugees, and the United Nations.

DEFAMATION AND INTERNATIONAL LAW

It would seem that there may now also be potential for the Commonwealth to enact its own defamation law, perhaps based on the Bill drafted by the Australian Law Reform Commission, (the ALRC Bill). In addition to the external affairs power, and the corporations power as defined in the Franklin Dam case, there is of course the overseas and interstate trade and commerce power, the power in relation to the electronic media, and also in relation to commonwealth instrumentalities (the ABC and the SBS). However, what has emerged from the Standing Committee of Attorney's General (Press Statement 15 July, 1983, No 94/83) is a proposal for a uniform draft bill (made public on 26 November 1983) which will apparently vary in some important aspects from the ALRC Bill (See comments, Bill of Rights, above). In particular the defence and justification will not be based on truth alone, but truth and public benefit. Subsequently, an alternative justification was released which represents a compromise. Remedies will include a power to direct retractions and corrections and to order publication of a report of the result of a defamation action. Reaction in the media and the profession was, with some exceptions, unfavourable; the widely held view was that similar constraints to free speech as prevail in some states would be extended throughout Australia and the liberty of the media to satisfactorily raise matters of public interest without fear of defamation actions would thereby be restricted. Some would argue that a public official or public figure must prove actual malice in an action based on a defamatory falsehood. (New York Times v. Sullivan 376 US 254 (1964)). This proposition was not accepted previously by the Australian Law Reform Commission and was thus not contained in its Bill. The Attorney has noted reaction to the Bill, and changes are to be discussed in the Standing Committee of Attorneys General.

The existence of eight different jurisdictions in defamation in Australia can lead to extraordinary results. The considerable conflict of laws problems which arise in relation to torts is exacerbated by the Australia wide distribution of the media and the lack of uniformity. In 32 18 CLQ Rev. 452 (1983) Peter Handford examines this question where he indicates that one way of alleviating the difficulties of this situation is to regard defamation as being committed where the reputation is injured and not necessarily in every jurisdiction where it is published - though in the case of national figures

such as Prime Ministers this might not make too much difference, since the injury would still presumably occur in every jurisdiction. He concludes, too, that the real solution will be to enact uniform defamation laws. However, since that article, the decision has been handed down in the Franklin Dam case which could well constitute a green light to the Commonwealth to go ahead unilaterally. That decision of course depends more on political questions than on legal issues.

ILO HAZARD ALERT SYSTEM

An international occupational and health hazard alert system has come into force within the ILO. Mr J.G. Starke notes that it is too early to say whether this innovative set of arrangements will lead to any general rules of international law such as a specific duty on government to notify each other of occupational hazards detected or suspected: (1983) 57 ALJ 538

MASSIVE FLOWS OF CIVILIANS

The commentator, Mr J.G. Starke, discusses the problem of these mass movements of civilians who are not refugees within the meaning of the 1951 Convention on the Status of Refugees which is the subject of a background paper prepared for the International Institute of Humanitarian Law by Mr G.J.L. Coals of the Australian Foreign Service. The problem is of considerable practical importance because of the number of massive flows in recent years in different parts of Africa and Asia (1983) 57 ALJ 366.

STATE SUCCESSION

At (1983) 57 ALJ 480, Mr J.G. Starke comments on the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, 1978. Among the eleven states who voted against the Convention were various Western European states, as well as the US and Canada. Australia abstained. The commentator concludes that it is unlikely the Convention will gain universal acceptance or even that the majority will regard its rules as standards or guidelines.

MARITIME FRAUDS

Because of wide spread maritime frauds, the London based International Maritime Bureau has proposed introduction of a "secure" bill of lading for high risk cargoes using devices such as water marks, security threats, embossed printing, serial numbers and registration. This is because of the frequency with which letters of credit are presented with forged supporting documents to paying banks. The article also discusses other forms of maritime fraud - the amount involved each year is unknown but the figure usually quoted is one billion dollars: 1 ICC Business World 5 (1983).

INTERIM PROTECTION

Interim Protection: A Functional Approach by Jerome B. Elkind. The Hague: Martinus Nijhoff, 1981. Pp.XXIV, 287. Index Dfl 140; U.S.\$59.00.

Interim measures in the Hague Court: An Attempt at a Scrutiny Jerzy Sztucki Deventer: Kluwer, 1983 Pp.xvii, 332 Indices.

From the publication in 1932 of Edward Dumbaulds's authoritative work, Interim Measures of Protection in International Controversies until 1981, there was no book published on this important topic. These two works, different in approach will fill the gap. Dr. Elkind, from the University of Auckland, approaches the problem teleologically; for the author the purpose of Article 38(1)(c) of the ICJ statute is to provide interim relief, therefore there is no need for the court to satisfy itself either as to the certainty nor the high probability of

jurisdiction; on this Dr. Sztucki, Docent in International Law at the University of Lund, Sweden, gives a descriptive outline of the relevant law and jurisprudence. In the section "Comments" in this issue, we refer to an article by the new French judge of the International Court of Justice, M. Guy de Lacharriere, in which the author stresses that it was the view of the Court on the question of jurisdiction for the purposes of interim protection which, among other reasons, caused the French government to withdraw its acceptance of the Court's jurisdiction under the optional clause. Given her important role in the formulation of the Court and the development of its role over the years, this view is indeed significant. Both of these works, in different ways, make important contributions to an understanding of this issue, one which assumed considerable importance in Australia, New Zealand and the Pacific region generally at the time of the Nuclear Tests Case.

PROSPECTS FOR A NEW LAW OF THE SEA

Edited by Professor Ivan Shearer. Martin Place Paper No.2 Sydney, published by The New South Wales Institute of Technology for the International Law Association (Australia Branch), 1983. Pp.iii, 97, Appendix 93. Aus.\$6.00.

In these papers, the Australian Ambassador to UNCLOS, Mr. Keith Brennan discusses the results of UNCLOS; J.P. Reynolds comments on the deep sea mining regime and possible alternatives; D.F. Jackson Q.C. discusses the Australian constitution arrangements relating to the law of the sea; and W.R. Edeson comments on international fishing agreements. The opening address of Mr. Justice R.J. Ellicot is also published, as is the Australian statement when it signed the U.N. Convention. The latter is of significance, because Australia, close ally of the U.S. and as a country with a very long coast line and great mineral wealth, was still prepared to accept the compromises represented by the convention. Those interested in the law of the sea, and natural resources lawyers, will find these papers of considerable interest. The annexed Convention on the Law of the Sea will be a useful reference.

TREATIES AND UNILATERAL DECLARATIONS

Readers might also note the article by Michael J. Glennon, "The Senate Role in Treaty Ratification", 77 AJIL 257 (1983) where he concludes that the statement by the President of the United States the U.S. would refrain from actions which would undercut the Salt Agreement so long as the Soviet Union shows equal restraint may well have created a binding obligation under the unilateral declaration within the meaning of the Nuclear Tests Case [1974] ICJ 253. He argues that the statement of Soviet President Brezhnev delivered by the Foreign Minister to the U.N. General Assembly on 15 June 1982, that "the Soviet Union assumes an obligation not to be the first to use nuclear weapons. This obligation shall become effective immediately, on the moment it is made public from the rostrum of the General Assembly" is also a binding unilateral declaration. In an interview with a Soviet commentator transmitted over the Sydney Channel 9 TV programme in July, the commentator suggested that Australia could rely on this unilateral declaration in the event that Australia terminated the arrangements whereby United States bases are located on Australian territory. In the Nuclear Test Case, it was left open to Australia to return to the court in the event that atmospheric testing was recommenced.

In relation to a nuclear attack in breach of the unilateral declaration, it is doubtful whether there would be the time, and indeed any utility, in approaching the ICJ for indication of interim measures!

BRANDT REPORT - MARK 2

A further report has been made by the Brandt Commission: "Common Crisis North-South: Cooperation for World Recovery", William Collins, 1983, A\$5.95. Three years ago the Independent Commission on International Development issues published its first report "North-South - A Programme for Survival", Three years later, with worsening economic conditions and a lack of global co-operation, this report proposes further solutions to the world's economic problems.

AIR LAW

Professor Dr. I.H. Ph. Diederiks-Verschoor, An Introduction to Air Law. Kluwer, Antwerp Boston London and Frankfurt, 1982 pp.XXII, 185. Index U.S. \$36 Dfe go.

This is a remarkably concise survey of this growing branch of international law. In addition, the author attempts to call attention to new technological developments and legal innovations. Its purpose is to furnish practical guidance and orientation to the student and practitioner who wishes to gain a broad view of the subject. The following topics are discussed: the history and development of Air Law, the Chicago Convention, the liability of the carrier under the Warsaw system, insurance, property rights in aircraft including leasing, assistance and salvage, as well as the relationship between criminal law and aviation. The width of the work can thus be seen. Cases from a number of jurisdictions, especially the United States, are discussed. The work is particularly readable and will be of interest to the student and practitioner in this important field. In her preface, the distinguished author notes the need for the type of book she has written; she stresses that more profound knowledge and understanding can only be acquired from existing standard works and either publications of interest to the reader. The author has succeeded admirably in her aims; this book will no doubt be prescribed for a variety of courses in international air law across the world, and used by lawyers and others who wish to gain an understanding of the subject.

DISARMEMENT

We noted in our last issue that appointment of an Australian Ambassador for Disarmament, Mr. Richard Butler. A report on this important question has been issued by the Independent Commission on Disarmament and Security Issues under the Chairmanship of the former Swedish Prime Minister, Olof Palm, "Common Security: A Programme for Disarmament" Pan, 1982 A\$5.95.

NEW JOURNAL

Documents Juridiques Internationaux, published by the Quebec Society of International Law, is an important new journal. The editors, Professor Francis Rigaldies and Professor Daniel Turp of the University of Montreal present a collection of recently available documents in the French language, parallel to the English language journal, International Legal Materials. Given the historical and continuing importance of the French language in international law, this is a major achievement. The January 1983 issue, Volume 2 No.1, contains the U.N. Convention on the Law of the Sea, UN Security Council Resolutions in relation to the Lebanon, the UN Secretary General's Report, the GATT Ministerial Declaration and the relevant EEC Declaration, the Agreement between Canada and the U.S. on the Evaluation of Defence Systems, the Co-operation Agreement between Quebec and the French community in Belgium, the ICJ judgement - Libya v. Malta; and a novel section is the publication of and certain unilateral declarations, in this issue those by Belgium, Canada and France.

INTERNATIONAL FINANCIAL LAW

Practice

In "What the Chief Executive Needs to Know about Currencies and International Taxation" John Chown argues that exchange rates, interest rates and inflation are not separate problems but ones which are closely related. He believes they are also closely tied up with international taxation. See: Foreign Exchange Risk: A Tax and Financial Analysis, by J.F. Chown. Ayez Longman 1983; J.F. Chown, The Tax Treatment of Foreign Exchange Fluctuations in the United States and the United Kingdom 16 George Washington Journal of International Law and Economics 00(1982)

International Financial Law Review

The U.K. based International Financial Law Review, published monthly, continues to provide numerous informative articles and news in this field. The style of the articles is commendably clear - the journal will figure prominently in the library of practitioners in international finance. The contents pages are published at the end of this issue.

IMF Articles of Agreement

In Australia and Article VIII Section 2(b) of the Articles of Agreement of the International Monetary Fund (1983) 57 ALJ 560, Sir Joseph Gold seeks to explain Australia's failure to incorporate Article VIII Section 2(b) into its domestic law. That article provides that "Exchange Contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member...shall be unenforceable in the territories of any member". Sir Joseph argues that there are two misunderstandings held by some Australian authors - first that the Article would apply to Australian exchange control regulations in Australian courts, and second, that Article VIII s.2(b) would require that Australian courts should refuse to apply Australian exchange control regulations inconsistent with the article

BOOK REVIEWS

SDR's Currencies and Gold International Monetary Fund by Sir Joseph Gold, Washington D.C. 1983 Pp.xiii, 148 Index. Pamphelt Series No.40.

This is the sixth survey of new legal developments in this area of the law. The author continues his extensive publication in the field of international monetary law, noting the increases in both the list of authorised holders of SDR's and in the number of bodies using the SDR as a unit of account, including provision for its use in U.S. Accounting Statement FASB52 and by Lloyd's. For a checklist of treaties using the SDR see 22 ILM 209 (1983). In relation to currencies, the legal consequences which flow from the absence of authorisation and approval by the IMF of multiple currency practice, and the development of the Miliangos doctrine [1975] 2 All ER 801 are noted. In relation to gold, the most important developments have been in airline accident cases concerning the limitation of liability under the Warsaw Convention: Franklin Mint Corporation et al v. Trans World Airlines Inc. 690 F.2d. 303; cf; Deere & Company v. Deutsche Lufthansa Aktiengesellschaft 22 ILM 82 (1983) (see Casenotes, this issue)

The Fund Agreement in the Courts by Sir Joseph Gold. Washington, International Monetary Fund 1982. Pp.xii 499 Appendices. Bibliography. Indices U.S.\$17.50 .

A major theme of the volume by the eminent authority, Sir Joseph Gold, is the judicial interpretation of Article VIII, Section 2(b) of the Articles of the IMF. This provides that exchange contract in breach of the exchange control regulations of a member are not to be enforceable in the territory of other members. One important and controversial question has been whether a narrow meaning should be given to the words "exchange contracts". The House of Lords in United City Mechants (Investments) Ltd v. Royal Bank of Canada [1982] 2 WLR 1039 has adopted the narrow meaning, but is equally prepared to find disguised exchange contracts. Of course not all jurisdictions will adopt the view of the House of Lords.

The final chapter of the text discusses the complex international financial law aspects of the U.S. freeze of Iranian assets as a result of the taking of diplomatic hostages on the notification of the introduction of payments restrictions for security reasons (IMF Executive Board Decision No.144-52/51) This chapter illustrates the continuing attention of the author to current legal development in this area. The book concludes with useful appendices: a note on the history of the drafting of Article VIII, Section 2(b); the difficulties involved in the judicial interpretation of gold units of account in treaties, and other documents now that the Second Amendments to the IMF Articles have put an end to the gold exchange standard; the unenforceability of exchange contracts, the GATT and nonmembers of the IMF: and finally the relationship between Article VIII, Section 2(b), governments private parties and arbitration. The bibliography and five indices are of considerable research utility. This volume, and hopefully, its successors, are an indispensable reference.

Emerging Financial Centres - Legal and Institutional Framework Ed. Robert C. Effros, Washington, IMF, 1982. Pp.XV, 1113. U.S. \$135.00, this book deals with the legal and institutional framework of the financial system of new financial centres. It examines the background and operation of the financial system of each centre, followed by its monetary, central bank and general banking laws. This is followed by selected laws of the main financial institutions and any enacted laws on securities regulation.

- Pinto, M. Argentina's Rights to the Falkland/Malvinas Islands 18 Texas International Law Journal 1 (1983)
- Rousseau, C. Chroniques des faits internationaux 86
Revue Generale de Droit International Public 724
(1982)
- Sanchez, M.A. Self-Determination and the Falkland Islands Dispute 21 Columbia Journal of International Law 557 (1983)

AMERICAN JOURNAL OF INTERNATIONAL LAW

VOL. 77

July 1983

NO. 3

CONTENTS

	PAGE
Towards Relative Normativity in International Law?	<i>Prosper Weil</i> 413
Strengthening the Soft International Law of Exchange Arrangements	<i>Joseph Gold</i> 443
Freedom of the Air and the Convention on the Law of the Sea	<i>Kay Hailbronner</i> 490
Choice of Law under the International Sales Convention: A U.S. Perspective	<i>Isaak I. Dore</i> 521
The Law of the Sea Convention and Third States	<i>Luke T. Lee</i> 541
Editorial Comments	
On the Degradation of the Constitutional Environment of the United Nations	<i>Leo Gross</i> 569
Israel's Air Strike upon the Iraqi Nuclear Reactor	<i>Anthony D'Amato</i> 584
Notes and Comments	
On the Inadequate Reach of Humanitarian and Human Rights Law and the Need for a New Instrument	<i>Theodor Meron</i> 589
Correspondence	606
The Francis Deák Prize	615
Contemporary Practice of the United States Relating to International Law	<i>Marian Nash Leigh</i> 616
Judicial Decisions	<i>Monroe Leigh</i> 624
Current Developments	
The 1982 Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities	<i>Jeanette Hantke</i> 651
Model American Convention on the Prevention and Punishment of Serious Forms of Violence	<i>Richard B. Lillich</i> 662

VOL. 77

April 1983

NO. 2

CONTENTS

	PAGE
The Tunisia-Libya Continental Shelf Case: Geographic Justice or Judicial Compromise?	<i>Mark B. Ederley</i> 219
The Legal Validity of Ultra Vires Decisions of International Organizations	<i>Elmer Gable</i> 239
The Senate Role in Treaty Ratification	<i>Michael J. Glennon</i> 257
Editorial Comments	
An Alternative to the Law of the Sea Convention	<i>Anthony D'Amato</i> 281
Alwyn Freeman (1910-1983)	<i>David Schabas</i> 285
Notes and Comments	
Current Attempts to Revise International Law — A Comparative Analysis	<i>William G. Anderson</i> 286
Correspondence	295
Contemporary Practice of the United States Relating to International Law	<i>Marian Nash Leigh</i> 298
Judicial Decisions	<i>Monroe Leigh</i> 308
Current Developments	
The Thirtieth Session of the International Law Commission	<i>Stephen C. McCaffrey</i> 323
House Approves Proposal Permitting ICI to Advise Domestic Courts	<i>Jack M. Goldklang</i> 338
Proposed Amendment of the Foreign Corrupt Practices Act of 1977	<i>Peter D. Trubhoff</i> 340

PROCEEDINGS OF THE SEVENTY-FIFTH ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW

CHAIRMAN OF THE COMMITTEE PROCEEDINGS
OF THE ANNUAL MEETING
Judith R. Hall
Richard B. Bilder

CONTENTS

Order, Freedom, Justice, Power:
The Challenges for International Law
The Past as Prologue: International Law 1906-1981

CHAIRMAN: Covey T. Oliver 1
REMARKS BY
William W. Bishop, Jr. 1
Richard Falk 8
DISCUSSION 14
REMARKS BY
Covey T. Oliver 17
DISCUSSION 27
Joint Luncheon with the Section on International Law of the American Bar Association: *The Reforming Process and the Future of International Law*
Address by T. O. Elias 27
PROTECTION OF THE GLOBAL HERITAGE
CHAIRMAN: Edith Pennington 32
REMARKS BY
Ian Brownlie 35
Alexander C. K. King 39
Abram Chayes 46
John Lawrence Hegrove 47
DISCUSSION 52
Preserving Order and Security
CHAIRMAN: Monroe Leigh 55
REMARKS BY
Elhu Lauterpacht 56
Hurdy Gros-Dillard 64
Larck W. Blawie 64
John Norton Moore 66
DISCUSSION 69
The Demand for Freedom
CHAIRMAN: Louis Henkin 77
Human Freedom in a World of States: William F. E. Fox 77
REMARKS BY
Tom J. Farer 85
Sai-Kit Discussion: *An Important Discussion of the Demand for Freedom*
Lung-chu Chen 88
REMARKS BY
Thomas Bierstiehl 94
DISCUSSION 97
Lecture by The Harold D. Lasswell Memorial Lecture: *International Law in the Age of Process: Communication*: Address by W. Michael Reisman 101

The Demand for Economic Justice
CHAIRMAN: William D. Rogers 120
REMARKS BY
C. Fred Bergsten 122
Sergio Gonzalez Galvez 132
Herbert Goldson 135
DISCUSSION 138
Theory and Reality in International Law
CHAIRMAN: Oscar Schachter 140
Theory and Reality in International Law: Max Sassen 140
REMARKS BY
Henry J. Steiner 148
The Contemporary Marxist Theory of International Law: Vladislav Pechota 149
REMARKS BY
Anthony A. D'Amato 156
Rosalyn Higgins 156
Promoting Training and Awareness: The Tasks of Education in International Law
CHAIRMAN: Burns H. Weston 159
REMARKS BY
Thomas M. Franck 160
Gemma Yasuda 163
Richard J. Bunnell 176
The Task of Education: Bringing Professional Training and Public Awareness: Donald W. McNemar 173
DISCUSSION 177
Joint Luncheon with the American Branch, International Law Association: *The Compliance Process and the Future of International Law*: Stephen M. Schwelb 179
Reflections on Order, Freedom, Justice, Power: The Challenges for International Law
CHAIRMAN: Richard B. Bilder 186
Order, Freedom, Justice, Power: The Challenges for International Law: Reflections: Leo Gross 186
REMARKS BY
Louis B. Sohn 192
Myres S. McDougal 196
DISCUSSION 201
Annual Dinner
Interdependence: A Radical University - The Need for Law: Address by Elliot L. Richardson 206
Other Annual Meeting Activities 212
The Past 75 Years and the Laws of War
MODERATOR: Richard L. Fruchtman 214
REMARKS BY
Elliot L. Meysowitz 214
Richard A. Falk 220
DISCUSSION 222

Business Meeting 224
Report of the Executive Director 228
Report of the Director of Studies 230
Election of Officers 231
Committee Reports 232
Program of the Society 234
The U.S./Iranian Hostage Settlement
CHAIRMAN: Murray J. Bahman 236
REMARKS BY
Richard B. Owen 236
Andrew F. Lewent, Jr. 237
DISCUSSION 243
The Space Shuttle Era: International and Domestic Legal Aspects
CHAIRMAN: Stephen M. Gorove 249
The Space Shuttle: Technical Capabilities: L. Michael Weeks 249
REMARKS BY
Gerald J. Mossinghoff 256
Stephen Gorove 260
COMPLETARY BY
Oscar Schachter 263
Felix M. Pokus 265
Myres S. McDougal 269
DISCUSSION 270
Philip C. Jessup International Law Moot Court Competition
The American Society of International Law: 75 Years and Beyond
CHAIRMAN: C. Clyde Ferguson, Jr. 279
REMARKS BY
Francis Boyle 279
Charles Katz, Kuching 275
Francis M. Scharif 275
Richard B. Lillich 276
Seymour Rubin 277
Edith Brown Weiss 278
Richard A. Falk 278
DISCUSSION 279
Comments on Professor Falk's Paper
Anthony A. D'Amato 279
Presentation of the Manley O. Hudson Medals 281
Appendices
Association of Student International Law Societies: The Executive Secretary's Report 282
Officers and Committees for the Year 1983-1984 287
Board of Review and Development 289
Amendment to the Regulations of the Society 290
Index 291

COMMON
MARKET
LAW
REVIEW

ISSN 0165-0750
Martinus Nijhoff Publishers
The Hague
The Netherlands

Vol. 20, No. 1, 1983

TABLE OF CONTENTS

Editorial Comments, *De libertate maris communitatis* 7

ARTICLES

Frederik Harhoff, *Greenland's Withdrawal from the European Communities* 13

Gerhard Bebr, *Agreements Concluded by the Community and Their Possible Direct Effect: From International Fruit Company to Kupferberg* 35

Ian S. Forrester, *Legal Professional Privilege: Limitations on the Commission's Powers of Inspection following the AM&S Judgment* 75

Andreas Greifeld, *Requirements of the German Constitution for the Installation of Supranational Authority* 87

Henry Knorpel, *Social Security Cases in the Court of Justice of the European Community, 1981* 97

Ernst Steindorff, *Article 85, para. 3: No Case for Application by National Courts* 125

CASE LAW

A. Court of Justice (No. 135)
Joined Cases 115 and 116/81, *Adoui v. Belgian State and City of Liège* and *Cornuaille v. Belgian State*. Preliminary Rulings of 18 May 1982 requested by the President of the *Tribunal de Première Instance*, Liège (not yet published), with annotation by T.C. Hartley 131

BOOK REVIEWS 147

SURVEY OF LITERATURE 177

Printed in the Netherlands

COMMON
MARKET
LAW
REVIEW

ISSN 0165-0750
Martinus Nijhoff Publishers
The Hague
The Netherlands

Vol. 20, No. 2, 1983

TABLE OF CONTENTS

Editorial Comments, *Capitol Concerns* 199

ARTICLES

Pieter Jan Kuijper, *Airline Fare-Fixing and Competition: An English Lord, Commission Proposals and US Parallels* 203

James Lahore, *Harmonization of Design Laws in the European Communities: The Copyright Dilemma* 233

François Lamoureux, *The Retroactivity of Community Acts in the Case Law of the Court of Justice* 269

Alfred E. Kellermann, *The Netherlands in Face of Its Community Obligations* 297

Michael Brothwood, *The Court of Justice on Article 90 of the EEC Treaty* 335

CASE LAW

A. Court of Justice (Nos. 136 and 137)

Case 15/81 *Gaston Schul, Douane Expéditeur B.V. v. Inspecteur der Invoerrechten en Accijnzen in Roosendaal*, with annotation by F. H. M. Possen 347

Case 124/81 *Commission of the European Communities v. United Kingdom* (UHT milk and cream), with annotation by Richard Wainwright 365

BOOK REVIEWS 377

Printed in the Netherlands

TABLE DES MATIERES

ACTES DES ORGANISATIONS ET CONFERENCES INTERNATIONALES

NATIONS UNIES: ASSEMBLEE GENERALE	
Charte mondiale de la nature	1
Résolution sur le règlement pacifique des différends entre Etats	7
Résolution relative à la crise des îles Falkland (Malvinas)	15
Résolution sur la situation en Afghanistan	17
NATIONS UNIES: CONSEIL DE SECURITE	
Résolutions relatives à la situation au Liban	19
NATIONS UNIES: SECRETAIRE GENERAL	
Rapport sur l'activité de l'Organisation	30
ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE (GATT):	
Déclaration ministérielle	35
COMMUNAUTE ECONOMIQUE EUROPEENNE:	
Déclaration de la Commission des Communautés européennes concernant certains points de la déclaration ministérielle du GATT	51

ACCORDS INTERNATIONAUX

NATIONS UNIES: TROISIEME CONFERENCE SUR LE DROIT DE LA MER:	
Convention sur le droit de la mer	53
CANADA-ETATS-UNIS D'AMERIQUE:	
Accord sur l'essai et l'évaluation de systèmes de défense américains	167
QUEBEC-COMMUNAUTE FRANCAISE DE BELGIQUE:	
Accord de coopération	174

ACTES JURIDICTIONNELS INTERNATIONAUX

COUR INTERNATIONALE DE JUSTICE:	
Affaire du Plateau continental (Jamahiriya arabe libyenne / Malte) Ordonnance du 27 juillet 1982	180

VOLUME 2, NUMERO 1

JANVIER 1983

COUR EUROPEENNE DES DROITS DE L'HOMME:	
Affaire Campbell et Cosans	182
ACTES UNILATERAUX ETATIQUES	
BELGIQUE:	
Droit de la mer: avis du Conseil d'Etat	194
BELGIQUE:	
Loi spéciale de réformes institutionnelles (extraits)	197
CANADA:	
Gouvernement de la République d'Italie c. Boilard et Piperno	202
FRANCE:	
Déclaration unilatérale contre la torture et autres peines ou traitements cruels, inhumains ou dégradants	213

International and Comparative Law Quarterly

Volume 33

January 1984

Part 1

ARTICLES

	PAGE
INTERNATIONAL LEGAL ASPECTS OF SAFEGUARDS AND THE NON-PROLIFERATION OF NUCLEAR WEAPONS <i>D. M. Edwards</i>	1
CREDIT AND SECURITY: ECONOMIC ORDERS AND LEGAL REGIMES <i>David E. Allan</i>	22
A REVIEW OF REGIONAL ECONOMIC INTEGRATION IN AFRICA WITH PARTICULAR REFERENCE TO EQUATORIAL AFRICA <i>M. L. Marasinghe</i>	39
AN EXAMINATION OF THE LEGALITY OF THE USE OF THE FOREIGN INVESTMENT REVIEW ACT BY THE GOVERNMENT OF CANADA TO CONTROL INTRA- AND EXTRATERRITORIAL COMMERCIAL ACTIVITY BY ALIENS <i>J. Bradford Nixon and Jeffrey H. Burns</i>	57
CONSEQUENCES OF ILLEGALITY UNDER THE ISRAELI CONTRACT LAW (GENERAL PART) 1973 <i>Daniel Friedmann</i>	81
CONSUMER PROTECTION IN FRENCH LAW: GENERAL PRINCIPLES AND RECENT DEVELOPMENTS <i>P. Minor</i>	108
UNION PLURALISM AND LABOUR LAW IN FRANCE <i>M. Forde</i>	134
THE PUBLIC FUNDING OF ABORTION SERVICES: COMPARATIVE DEVELOPMENTS IN THE UNITED STATES AND AUSTRALIA <i>K. A. Petersen</i>	158

SHORTER ARTICLES, COMMENTS AND NOTES

The European Commission's Approach to Know-How Licensing: A Critical Commentary <i>S. G. Coronas</i>	181
England Rejects "Delocalised" Contracts and Arbitration <i>F. A. Mann</i>	193
The Proper Law of the Contract and Renvoi: Further Comments on the <i>Amin Rasheed Shipping Case</i> <i>Erwin Spiro</i>	199
Title to Illegally Exported Items of Historic or Artistic Worth <i>Susan M. Nott</i>	203
Third World Quest for a New International Economic Order: An Overview <i>Adeoye Akinsanya and Arthur Davies</i>	208
The Relationship between the State and the Multinational Corporation in the Exploitation of Resources <i>Roland Brown</i>	218
The Australia-United States Agreement on Co-operation in Antitrust Matters <i>P. F. Sutherland</i>	230

The International and Comparative Law Quarterly

Volume 32

Part 4

October 1983

ARTICLES

	PAGE
THE FINANCIAL CONSEQUENCES OF DIVORCE IN SOUTH AFRICA: JUDICIAL DETERMINATION OR PRIVATE ORDERING? <i>June Sinclair</i>	785
INFORMAL JUDICIAL ADMISSIONS OF CRIMINAL ACTIVITY: A COMPARATIVE STUDY OF ENGLAND, CANADA AND THE UNITED STATES <i>Rosemary Pattenden</i>	812
THE LAW OF RAPE AND CRIMINAL LAW ADMINISTRATION WITH SPECIAL REFERENCE TO THE COMMONWEALTH CARIBBEAN <i>P. K. Menon</i>	832
RULES OF RECOGNITION IN THE PRIMARY COURTS OF ZIMBABWE: ON LAWYERS' REASONINGS AND CUSTOMARY LAW <i>Robert B. Seidman</i>	871
FORM AS SUBSTANCE: A COMPARISON OF ANITRUST REGULATION BY CONSENT DECREES IN THE USA, REPORTS OF THE MONOPOLIES AND MERGERS COMMISSION IN THE UK, AND GRANTS OF CLEARANCE BY THE EUROPEAN COMMISSION <i>Allen Boyer</i>	904
A SHARED VALUES APPROACH TO JURISDICTIONAL CONFLICTS IN INTERNATIONAL ECONOMIC LAW <i>Bernhard Grossfeld and C. Paul Rogers</i>	931
LIABILITY OF PRISONERS OF WAR FOR OFFENCES COMMITTED PRIOR TO CAPTURE: THE ASTIZ AFFAIR <i>Michael A. Meyer</i>	948
REGISTRATION OF THE EGYPT-ISRAEL PEACE TREATY: SOME LEGAL ASPECTS <i>Mala Tabory</i>	981

SHORTER ARTICLES, COMMENTS AND NOTES

Predatory Pricing under Article 86 of the Treaty of Rome <i>Daniel J. Ashley</i>	1004
Who Owns the Territorial Waters of Northern Ireland? The McNeill Case: Another View <i>Thomas Towey</i>	1013
Romania and International Law at the United Nations <i>Robert Weiner</i>	1026

BOOK REVIEWS

Lachs, Manfred. <i>The Teacher in International Law</i> (Colin Warbrick)	1035
Soons, Alfred H. A. <i>Marine Scientific Research and the Law of the Sea</i> (A. V. Lowe)	1035
McGovern, Edmond. <i>International Trade Regulation: GATT, the United States and the European Community</i> (S. K. Chatterjee)	1037
Rosenthal, Douglas E., and William M. Knighton. <i>National Laws and International Commerce: The Problem of Extraterritoriality.</i>	
Hermann, A. H. <i>Conflicts of National Laws with International Business Activity: Issues of Extraterritoriality</i> (Valentine Korah)	1038
<i>Encyclopedia of Public International Law</i> . Vols. 3 and 4 (Colin Warbrick)	1039
Constantinesco, Léontin-Jean. <i>Traité de Droit Comparé, Tome III: La Science des Comparés</i> (J. Duncan M. Derrett)	1040
Blanpain, R., and F. Millard (Editors). <i>Comparative Labour Law and Industrial Relations</i> (S. D. Anderman)	1041
Andrews, J. A. (Editor). <i>Human Rights in Criminal Procedure: a comparative study</i> (Colin Warbrick)	1042
Korah, Valentine. <i>Competition Law of Britain and the Common Market</i> , 3rd edn. (Richard Seymour)	1043
Braddell, Roland St. John. <i>The Law of the Straits Settlements. A Commentary</i> (R. H. Hickling)	1043
Feldbrugge, F. J. M., and W. B. Simons (Editors). <i>Perspectives on Soviet Law for the 1980s</i> (Albert Kiralfy)	1045
Von Hippel, Eike. <i>Der Schutz des Schwächeren.</i>	
Honoré, Tony. <i>The Quest for Security: Employees, Tenants, Wives</i> (Norman S. Marsh)	1046

BOOKS RECEIVED

1051



December 1983

Contents

3 Inside
Brazil appoints Cleary as its lawyers; Overworked in Hong Kong; Vinge opens up; Kingman Brewster back in London; Foreign firms to enter Japan soon; Excessive charges; Paul, Weiss starts up in Hong Kong

4 Act of state or act of desperation David R Lindskog
Two recent cases in New York disagree as to the ability of banks to sue defaulting borrowers who cannot pay because of government decrees

9 French banking legislation: evolution not revolution Thierry Brocas
The legislation now being considered is not so extreme as that proposed last year. It will improve and simplify the existing framework

12 The London Stock Exchange in transition Christopher F Stoakes
The UK Government is failing to provide adequate safeguards to match the Stock Exchange's rapid evolution

19 First demand guarantees in Belgian law Phillipe De Smedt
Trends in case law have tried to find a solution to the requirements of absolute security and fair balance between separate interests

22 US antitrust recognition of foreign interests: contradiction and progress Thomas J McGrew
US courts, when examining sovereign compulsion, look at actual compulsion and legal regularity. Changes should be made

25 Indonesian collateral security Victoria Marmorstein
Creditors, both Indonesian and foreign, are more frequently enforcing their Indonesian collateral security in Indonesian courts

30 UK merger policy: a case for reform David M Raybould
Much could be learnt from the United States and Germany on the application of an effective and consistent policy

33 Italian courts' treatment of guarantees Giovanni Lombardo
Bonds and the underlying contracts for which they are security are autonomous, except in specific circumstances

35 United Kingdom
Insolvency: Is a company with a surplus insolvent? **Guarantees:** Creditor's prejudiced conduct does not discharge surety **Litigation:** Poor defence no excuse against summary judgement **Bankruptcy:** Leave to withdraw petition refused **Property:** Hong Kong completion is negligent

38 United States
Secured transactions: Remedies against third parties **Contract law:** When is a commitment letter binding? **Sovereign immunity:** Execution against Chile's national airline **Corporation law:** Greater possibilities of piercing the corporate veil

41 International briefings
Argentina: Foreign debt registration **Brazil:** Changes to leasing legislation **Canada:** Relaxation of limits on foreign banks **Colombia:** The foreign arbitration clause is invalid; Limits on lending and guarantees **Egypt:** Foreign investment **Iran:** Award for future profits **Italy:** Taxation of securities; Amendments to corporation tax; Reform of exchange controls **Malaysia:** Securities legislation **Netherlands:** Stock Exchange rules **New Zealand:** Withholding tax on trade finance **Spain:** Bank promissory notes **Sweden:** Profit sharing fund



Contents

2	Inside US law firm rankings, Venezuelan lawyer opens in New York, Simpson Thacher to advise Philippine creditors, Whitman & Kasson open London office, Coward Chance add two more, Thomas for Samuel Montagu, Space committee for IBA	Werner Kromstein
4	The Unifonds case: protectionism or investor protection? The abortive attempt of a German investment company to enter the US market undermines the SEC's internationalisation stance	Christopher R Brown
8	Underlying relationships in bank participations Michigan National's suit against Citibank focuses attention on the participation agreement and the different forms it can take	Peter J McLaughlin
10	Insider trading in Switzerland after Santa Fe The SEC should use the 'PC' test first and can institute Agreement No. XVI proceedings only if the Treaty is not applicable	Pierre-André Béguin
14	Charges over cash deposits Can a bank take a charge over cash which is deposited with it?	William Blair
17	The pitfalls and alternatives to subordinated loans Alternatives do exist, but few give all parties the purported benefits of subordination	Michael Fitzgerald
20	Do public shareholders get a fair deal in management buyouts? The rules that govern what some say is a takeover should be re-examined. Here are some proposals	Bevis Longstrech
22	The fall and rise of Firestone-Chile Parent company guarantees might have offered better security, but the fire company is still trading under an ownership	Christopher R Brown
24	Techniques for managing Asian problem credits Banks can take action at various stages in a credit to ensure that they are in a strong position should anything go wrong	Victoria F Marmostein
28	International merger policy in Europe A survey of the law in the EEC and some European jurisdictions as it applies to international merger	John Richards
35	Corporate and sovereign restructurings compared At the moment, survival and future borrowings stages there are similarities between the two types of restructurings	Wallace H Johnson
37	United Kingdom No immunity for employer's bank account. Defendants must be given in foreign court. Mareva injunction. No service of writ abroad. Arbitration. Basis on which an award may be appealed	Susan L Kirk
40	United States Act of state defence upheld. Guarantees. Release of guarantors. Anti-trust: Bill supports R&D joint ventures. Banking regulation: Federal branches of foreign banks. Disclosure: SEC amends foreign companies rules. Jurisdiction: Federal securities laws	Graham Roxborough and Jonathan D Sullivan
43	International briefings Argentina: Foreign creditors given bankruptcy rights. Foreign branch legislation. Foreign exchange insurance. Brazil: Legislation of absorption of operating foreign loans. European Community: Exclusive distribution and participation agreements. France: Loan agreement involving Germany. Reversal of insolvency credits. Gibraltar: Oilshore companies attracted. Banking legislation. Iran: Revolution constituted force majeure. Saudi Arabia: Arab banks and records. Venezuela: Legislation to help restructuring	Graham Roxborough and Jonathan D Sullivan

2	Inside Washington DC's hourly rates, English law for Colombia, Cat and mouse with the Costa Ricans, FICORCA struggling, White & Case in Sweden, WHR send Griffin to London, First Chicago manage first P.U.F., S & C move into Australia, First with the Euro-Treasury warrant, Who are Bolivia's legal advisers?	Christopher R Brown
4	Europe's top lawyers and law firms The firms recommended by international bankers and lawyers. Why they choose them and what they expect	Georges S Delenne
9	The ICSID and the banker Instead of using the local courts, the lender may wish to resolve a dispute by arbitration	Robin Tait and Jonathan Wohl
13	The problems of lending to French companies in financial difficulties Banks lending in France are becoming sensitive to the legal problems of extending credit to companies in financial difficulty.	Graham Roxborough and Jonathan D Sullivan
15	Controlling the banker's liability in electronic cash management Precise limits have still to be worked out by the courts. Banks should take steps now to define their contractual and legal positions	Wallace H Johnson
19	Settling East-West business disputes One method is to select arbitration in Stockholm. There are pitfalls and difficulties of which the Western businessman should be aware	John Richards
22	Preventing piracy of computer software Protection is given to computer software in the US courts by the copyright statutes. That has not always been the case	Susan L Kirk
26	Banks, data protection and the right to privacy Banks should be able to comply with most data protection statutes. Those that restrict transborder flow, however, pose extreme problems	Graham Roxborough and Jonathan D Sullivan
29	Survey: How to gain pre-judgement attachment in Europe A survey of the procedures and methods of gaining a pre-judgement attachment against a debtor in ten European countries	Graham Roxborough and Jonathan D Sullivan
40	United States Jurisdiction based upon attachment of deposits. Export finance: Eximbank held subject to suit. Acquisitions: Mitsubishi's move into California. Letters of credit: Standby I.C. enjoined for fraud. Taxation: Canadian tax treaty threatened. Financial merger not tax free	Graham Roxborough and Jonathan D Sullivan
43	International briefings Australia: Warning on banks' capital ratios; Guarantee and principal obligation. Chile: Types of security for loans. Germany: Exploration of others' reputations. Ghana: Encouraging foreign investors. Switzerland: Changes to corporate law proposed. The Marc Rich affair and records held overseas (box): Taiwan: Rules for foreign banks revised	Graham Roxborough and Jonathan D Sullivan



- 4 The leading law firms in sovereign restructuring** Christopher R Brown
Borrowers and lenders are represented by a select group of law firms and lawyers. Who are the members and how are they selected?
-
- 9 Venezuela's restructuring and the 1981 law** Thomas L Hughes
Bills have been passed by Congress which will help the restructuring but a solution is delayed because of the December elections
-
- 12 Saudi Arabia adopts arbitration regulations** Mahir Jalili
Two Articles have been dropped from the 1982 draft. Arbitration under the ICSID remains an alternative
-
- 15 The Eurodollar disaster clause and corporate restructuring** David S Karat
What are the options for the lending group if some banks have the protection of the disaster clause and some do not?
-
- 16 Chile's foreign exchange programme** Jorge Carey
An innovation in Chile's restructuring is the foreign exchange programme, but the funds available are restricted
-
- 18 Subordination of foreign creditors in Argentina** Claudio A Onetto
The local courts have interpreted the bankruptcy law as subordinating foreign creditors. This is not what the drafters intended
-
- 22 Termination provisions of swap agreements** Schuyler K Henderson
When one party defaults in a swap transaction, the other party is left with an unwanted exposure. What are the legal remedies?
-
- 28 Relations between bank loan agreements and IMF stand-by arrangements** Sir Joseph Gold
Provision of banks' loan agreements relating them to IMF stand-by arrangements should be drafted with awareness of IMF law and practice
-
- 35 Book review** Reade H Ryan Jr
United States Law of Sovereign Immunity
-
- 38 United Kingdom**
Banking: When is a bank's customer negligent? **Mergers:** Illingworth Morris Lewis bid cleared **Arbitration:** Security for costs retained; Inclusion of clause by reference; Restraint of foreign proceedings **Trade:** Review of ECGD stamps
-
- 40 United States**
Exchange regulations: Mexican currency claim dismissed **Commercial paper:** When is a bank a holder in due course? **Set-off:** Supreme Court rules in favour of Citibank **Tender offers:** SEC issues final report **Leasing:** Curbs on foreign leases proposed
-
- 43 International briefings**
Brazil: Government guaranteed loan limits increase! **Chile:** Restructuring conditions **Cyprus:** Double tax treaties with East Europe; Otlshare Banking Units open **Germany:** Claims abroad in bankruptcy **Hong Kong:** Tougher controls on deposit taking companies; Police power to examine bank accounts **Is a first charge worth the paper it's written on?** **Iran:** Non syndicated bank claims **Iraq:** Foreign companies new regulations **Korea:** MOF tightens Euromarket controls **Kuwait:** Stock market bill enacted **Switzerland:** Preferential tax status for Zurich

CONTENTS

TREATIES AND AGREEMENTS

Australia-New Zealand: <u>Closer Economic Relations-Trade Agreement</u>	945
Canada-United States: Agreement to Track Air Pollution Across Eastern North America (<u>Acid Rain Research</u>)	1017
Council of Europe: European Convention on the <u>Compensation of Victims of Violent Crimes</u>	1021
Mexico-United States: Agreement to Cooperate in the <u>Solution of Environmental Problems in the Border Area</u>	1025

LEGISLATION AND REGULATIONS

People's Republic of China: Regulations for Implementing the Law on <u>Chinese-Foreign Joint Ventures</u>	1033
Rules for the Implementation of <u>Exchange Control Regulations with regard to Chinese-Foreign Joint Ventures, and Enterprises with Overseas Chinese Capital or Foreign Capital</u>	1049
Saudi Arabia: Regulations concerning <u>Arbitration</u>	1052
Union of Soviet Socialist Republics: Law on the <u>State Boundary of the U.S.S.R.</u>	1055

JUDICIAL AND SIMILAR PROCEEDINGS

United States: <u>Statement of Interest to Set Aside Default Judgement against China Filed in the Jackson v. People's Republic of China Case in the U.S. District Court for the Northern District of Alabama (Eastern Division)</u>	1077
---	------

DOCUMENTS CONCERNING THE KOREAN AIR LINES INCIDENT

United Nations Security Council Consideration (September 1-12, 1983) Letters to the President of the Security Council from the United States, the Republic of Korea, Canada, Japan, and Australia	1109
Excerpts from the Provisional Verbatim Records of the Security Council Meetings	1114
Revised Draft Resolution Vetoed by the U.S.S.R.	1148

VOLUME XXII
NUMBER 5
SEPTEMBER 1983

DOCUMENTS CONCERNING THE KOREAN AIR LINES INCIDENT (cont.)

International Civil Aviation Organization Consideration (September 15-October 1, 1983)	
Council Resolution Directing Investigation of Korean Air Lines Aircraft Destruction and Report on the Status of Adherence and Implementation of the Chicago Convention.	1149
Council Resolution Instructing Air Navigation Com- mission to Undertake a Review of Certain Pro- visions of the Chicago Convention	1152
Chicago Convention Provisions under Review	
Annex 11, Paragraph 2.13	1153
Annex 2, Rules of the Air	1154
Diplomatic Notes to the Union of Soviet Socialist Republics concerning Compensation	
Canadian Note of September 8, 1983	1190
Japanese Note of September 14, 1983	1192
Thai Aide Memoire of September 5, 1983	1193
United States Notes of September 16 and September 12, Including the Note Submitted on Behalf of the Republic of Korea	1194
National Actions Taken in Response to the Destruction of the Korean Air Lines Aircraft	
Canadian Suspension of Aeroflot Rights	1199
Japanese Suspension of Flights between Japan and the Soviet Union and Resolution of the House of Representatives	1201
United States Statements and Orders Concerning Soviet Aircraft and Congressional Joint Resolution	1205
Action Taken by the International Federation of Air Line Pilots	1218
RECENT ACTIONS REGARDING TREATIES TO WHICH THE UNITED STATES IS A PARTY	1221
RECENT ACTIONS REGARDING TREATIES TO WHICH THE UNITED STATES IS NOT A PARTY	1227
NOTICE OF OTHER RECENT DOCUMENTS (not reprinted)	1228

Supreme Court: Decision in First National City Bank v. Banco Para El Comercio Exterior De Cuba (Foreign Sovereign Immunities Act, Nationalizations, Counterclaims)	840
Supreme Court: Decision in Container Corporation of America v. Franchise Tax Board (California's Unitary Business Principle Applied to Foreign Subsidiaries for Corporate Franchise Tax Assessment)	855

LEGISLATION AND REGULATIONS

United States: Department of Commerce, International Trade Administration, Interpretations of Antidumping Regulations	879
Department of the Treasury, Internal Revenue Service, Regulations concerning the Taxation of Foreign Investment in U.S. Real Property	883

OTHER DOCUMENTS

Canada-France-Federal Republic of Germany-Italy-Japan-United Kingdom-United States: Williamsburg Declaration on Economic Recovery	885
Williamsburg Joint Statement on Security Issues	894
Committee on Banking Regulations and Supervisory Practices: Revised Basle Concordat on Principles for the Supervision of Banks' Foreign Establishments	900
Organisation for Economic Co-operation and Development: Council Decision concerning the Minimum Exporting Set of Data in the Assessment of Chemicals	909
Council Communiqué Outlining Strategy for a Sustained Recovery	914
International Energy Agency Governing Board Communiqué concerning Energy Requirements and Security	918
United States: Comptroller of the Currency and Federal Reserve Board Revisions to the Minimum Capital Guidelines	930
RECENT ACTIONS REGARDING TREATIES TO WHICH THE UNITED STATES IS A PARTY	938
RECENT ACTIONS REGARDING TREATIES TO WHICH THE UNITED STATES IS NOT A PARTY	943
NOTICE OF OTHER RECENT DOCUMENTS (not reprinted)	944

CONTENTS

TREATIES AND AGREEMENTS	
Canada-United States: Agreement concerning the Test and Evaluation of United States Defense Systems in Canada	693
Contracting Parties of the Convention on Wetlands of International Importance Especially as Waterfowl Habitat: Protocol to Amend the Convention	698
Denmark-Finland-German Democratic Republic-Federal Republic of Germany-Poland-Sweden-Union of Soviet Socialist Republics: Protocol Amending Convention on Fishing and Conservation of Living Resources in the Baltic Sea and the Belt to Provide for EEC Membership	704
Israel-Lebanon: Agreement on Withdrawal of Troops from Lebanon	708
Sweden-United States: Supplementary Convention on Extradition	736

JUDICIAL AND SIMILAR PROCEEDINGS

Federal Republic of Germany: District Court of Kiel Judgment concerning United States Grand Jury Subpoenas for Bank Records in the Krupp Case	740
International Chamber of Commerce Court of Arbitration: Award in the Arbitration between S.P.P. (Middle East) Limited, Southern Pacific Properties Limited and the Arab Republic of Egypt, the Egyptian General Company for Tourism and Hotels	752
Switzerland: Swiss Supreme Court Opinion concerning Judicial Assistance in the Santa Fe Case	785
United States: Court of Appeals for the District of Columbia Circuit Decision in Collins v. Weinberger (NATO Status of Forces Agreement; Treaty Interpretation)	799
Court of Appeals for the First Circuit Decision in Wald v. Regan (Treasury Regulations Preventing Travel to Cuba; Trading with the Enemy Act)	805
Court of Appeals for the Second Circuit Decision in Associated Container Transportation (Australia) v. United States (Investigatory Powers under the Antitrust Act; Act of State Doctrine)	824
Court of Appeals for the Seventh Circuit Decision in Alberti v. Empresa Nicaraguense De La Carne (Foreign Sovereign Immunities Act; Service of Process; Nationalizations; Counterclaims)	835

VOLUME XXII
NUMBER 4
JULY 1983

Investment/USA

A Monthly Report on Federal and State Legislative and Regulatory Developments
Affecting Foreign Investments in the United States

Vol. 5, No. 11

November 1983

A TASK FORCE SET UP BY THE REAGAN ADMINISTRATION will review the problem of unitary taxation by US states, following the Supreme Court decision not to reconsider its ruling on the *Container Corporation* case. The task force, which will have representatives of federal and state government and business, will look into nine issues connected with unitary taxation, but signs are that it will be well into next year before recommendations are issued 2

REPEAL OF THE 30 PERCENT WITHHOLDING ON FOREIGN INVESTMENT in the United States through Eurobonds is the objective of legislation introduced in the US Congress by the chairman of a House of Representatives subcommittee that has been looking into tax havens. The new bill shares some features with earlier proposals designed to strengthen the US hand in treaty negotiations with the Netherlands Antilles, but would do so with a large net tax gain for the United States, the bill's author claims 7

THE US SUPREME COURT LETS STAND A LOWER COURT RULING that the US Department of the Treasury is not required by the Freedom of Information Act to release data about the portfolio investments in the United States by certain Arab countries 2

THE DEFINITION OF US RESIDENT FOR TAX PURPOSES WOULD BE CHANGED by a bill now in Congress, notes Chicago attorney Julian D. Nihill. If the bill is enacted as it now stands, the effective date will be 1 January, 1984, and it could affect persons who have spent substantial time in the United States during 1982 and 1983 5

AGRICULTURAL LAND: Changes proposed to US foreign land registration regulations 8

DISCLOSURE: SEC to require more disclosure by foreign companies 9

INVESTMENT: US Supreme Court refuses to review Arab investment ruling 2

NEWS BRIEFS: A selection of developments in the United States during October 9

TAKEOVERS: US antitakeover bill getting mixed reviews 8

TAXATION: Unitary tax issue now rests with Administration task force 2

Developments in state unitary taxation 4

Proposed statutory definition of resident 5

Senate bill repeats key FIRPTA provisions 6

New bill introduced to allow tax free Eurobond issues 7

TEXT: Summary of provisions of HR 4029, to repeal US tax withholding on Eurobond interest payments 11

Agricultural Stabilization and Conservation Service Rulemaking 13

ACQUISITIONS & MERGERS: Sainsbury's to purchase \$20.1m stake in Shaw's S-1

Royal enters US market in \$23m acquisition S-2

Bank of Montreal to be largest Canadian bank in US S-2

Digest of recent transactions S-2



BNA International Inc., London
A subsidiary of The Bureau of National Affairs, Inc., Washington, D.C., USA

Investment/USA

A Monthly Report on Federal and State Legislative and Regulatory Developments
Affecting Foreign Investments in the United States

Vol. 5, No. 10

October 1983

A PRESIDENTIAL POLICY STATEMENT ON FOREIGN INVESTMENT STRESSES THE BENEFITS of free international investment flows, and moves away from the previous US policy of neutrality on the issue, as enunciated in the last general statement of policy on the subject, made in 1977 2

THE UNITARY TAX QUESTION CONTINUES TO DRAW THE ATTENTION OF THE REAGAN ADMINISTRATION, as it attempts to resolve the dilemma of whether or not to support Federal legislation limiting states' application of the tax. Mountaineer Container Corporation, the US-owned multinational whose legal challenge to California's unitary tax system brought matters to a head, seeks to have the US Supreme Court reconsider its decision that the tax is constitutional 7

A REVIEW MECHANISM AND MORE RESTRICTIONS ON INCOMING FOREIGN INVESTMENT, would be a substantial deterrent to beneficial investment in the United States, US Treasury Assistant Secretary Marc Leland tells a House of Representatives subcommittee that is considering a bill with these provisions 5

A SUCCESSFUL OUTCOME TO THE NETHERLANDS ANTILLES TAX TREATY APPEARS LESS LIKELY, according to comments at a Congressional hearing on a bill to eliminate US tax withholding on foreign investment 9

ACQUISITIONS: Acquisition of a US corporation Part II 12

BANKING: Fed allows foreign bank expansion 12

INVESTMENT: Statement defines foreign investment aim 2

Officials oppose investment control 5

Thirteen percent increase in foreign investment in 82 6

STATE SURVEY: Louisiana: More funds for training employees for new manufacturing facilities 15

Ohio: Bills would ban alien land ownership 16

Oklahoma: Takeover law struck down 16

South Carolina: State to open foreign offices 16

TAXATION: Administration considers unitary tax 7

Treasury less optimistic on Antilles talks 9

IRS proposes beaver bond regulations 9

Guam continues to resist IFS changes 10

US attorneys trying to develop FIRPTA voluntary withholding arrangements 11

ACQUISITIONS & MERGERS: CU takes steps to halt slide in US market S-1

Mitsubishi agrees on Bancal acquisition S-2

Digest of recent transactions S-2



BNA International Inc., London
A subsidiary of The Bureau of National Affairs, Inc., Washington, D.C., USA

Investment/USA

A Monthly Report on Federal and State Legislative and Regulatory Developments
Affecting Foreign Investments in the United States

Vol. 5, No. 12

December 1983

NEW RULES UNDER THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT OF 1980 are proposed by the U.S. Internal Revenue Service (p. 2 and Special Supplement). The rules include the details of how a company can establish that it is not a real property holding company and how it may elect to be treated as a U.S. company. According to Washington, D.C., attorneys H. David Rosenbloom and David M. Crowe, the new proposals show some accommodation to the concerns of tax practitioners, who criticized the complexity of earlier proposals (p. 2). Meantime, the U.S. Senate is making a fourth attempt to avoid the complexities of the present information reporting system by amending FIRPTA so that purchasers of property would be required to withhold tax when buying U.S. property from foreign investors (p. 8) 2,8

THE STATUS OF PROPOSED LEGISLATION RELATING TO FOREIGN INVESTMENT in the United States is reviewed in a legislative calendar 11

TRADE RECIPROCITY PROPOSALS, WHICH COULD AFFECT SOME FOREIGN INVESTMENT in the United States, are under active consideration in Congress 12

THE TASK FORCE ON UNITARY TAXATION SET UP BY THE REAGAN ADMINISTRATION is scheduled to meet this month in Washington. Some reports indicate that it may be well into 1984 before the group makes its recommendations, but a Florida senator is trying to speed up the process 10

A PROTOCOL TO THE U.S.-CANADIAN TAX TREATY SIGNED EARLIER THIS YEAR would conform the provisions of the treaty (signed in 1980) to the Foreign Investment in Real Property Tax Act, notes Washington, D.C., attorney Richard J. Melnick 9

LEGISLATIVE CALENDAR 11

NEWS BRIEFS: Auto local content bill passed by House of Representatives 14
U.S. makes foreign energy ownership changes 14
A selection of developments in the United States during November 15

RECIPROCITY: Trade reciprocity proposals under active consideration again 12

REGULATORY AGENDA: U.S. Government regulatory agenda published 13

SPECIAL SUPPLEMENT: Full text of proposed new rules under FIRPTA Spec. Supp.

TAXATION: IRS proposes some new FIRPTA rules 2
The new FIRPTA regulations 2
Legislation to change FIRPTA to withholding system considered 8
Protocol to U.S.-Canadian Treaty will conform treaty rules to U.S. FIRPTA 9
New U.S. tax treaties with Australia, New Zealand enter into effect 9
Senator urges unitary tax task force to resolve conflict quickly 10

ACQUISITIONS & MERGERS: Murdoch buys Sun-Times for \$90m S-1
Royal buys Silvey for \$50.7m in latest U.S. acquisition S-1
Kenning spends \$13.6m on three U.S. acquisitions S-2
Digest of recent transactions S-2



BNA International Inc., London

A subsidiary of The Bureau of National Affairs, Inc., Washington, D.C., USA

Investment/USA

A Monthly Report on Federal and State Legislative and Regulatory Developments
Affecting Foreign Investments in the United States

Vol. 6, No. 1

January 1984

THE PROSPECT NOW SEEMS REMOTE THAT AN EARLY SOLUTION to foreign companies' unitary tax problems will be found in the U.S. Supreme Court, following the Court's decision not to review a lower court ruling relating to the Dutch Shell Oil Company's standing in a court action involving two of its U.S. subsidiaries. Meantime, the Administration's unitary tax group seems set against federal restrictions on state use of the worldwide unitary method	2
ATTEMPTS CONTINUE TO REPEAL U.S. WITHHOLDING on interest paid to foreign investors, and there are signs of growing support for a bill that would exempt only Eurobond issues from the withholding. However, the situation has been complicated by a new proposal to amend the act to reduce the rate of withholding from 30 percent to 2.5 percent, instead of eliminating it altogether	4
RECENT DEVELOPMENTS ON THE U.S. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA) include a hearing on the regulations proposed last November, a proposal to amend the Act to ensure that it applies exclusively to passive real estate investment, and brief Senate consideration of a plan to repeal the Act altogether	6,7,8
FOREIGN TRADE ZONES IN THE UNITED STATES , which provide benefits for companies bringing in imports for further processing in the United States, are coming under fire from U.S. labor organizations, which tell the U.S. International Trade Commission that the zones have resulted in a net job loss to the United States	8
FOREIGN TRADE ZONES: Foreign trade zone program criticized	8
NEWS BRIEFS: FTC staff against challenge to GM-Toyota deal	13
Bill to deny some tax benefits in takeovers	13
Royalty trusts seen as posing threat	14
Reciprocity proposal to be considered in Senate	14
Highway construction "Buy American" rules in effect	15
SECURITIES: Swiss proposals seen helping SEC probes	12
Real estate deal exempt from SEC registration	12
STATE SURVEY: State business-related actions growing, study suggests	15
Florida: Special commission to study unitary tax	15
Illinois: Takeover Act repealed	16
New Hampshire: Takeover law held unconstitutional	16
Wisconsin: Promotion of foreign investment planned	16
TAXATION: Supreme Court deals out unitary setback	2
Unitary tax group seeks voluntary solution	2
IRS proposes rules for nonresident alien exemption	3
US withholding repeal move complicated by new proposal to reduce tax rate	4
Guam challenges Treasury in Court	5
Changes in FIRPTA rules supported at hearing	6
Bill would focus FIRPTA on passive real estate investment	7
Goldwater plans to press FIRPTA repeal	8
US JURISDICTION: The Laker and Marc Rich cases: Confrontation over U.S. extraterritoriality	10
ACQUISITIONS & MERGERS: Aitken Hume wins approval of \$32.6m NSR plan	S-1
Mercury and Akroyd plan joint U.S. brokerage venture	S-1
Volvo acquires more shares in Denver oil company	S-2
Finnish sweet company establishing U.S. subsidiary	S-2
Digest of recent transactions	S-3



BNA International Inc., London

A subsidiary of The Bureau of National Affairs, Inc., Washington, D.C., USA



January 1984

2 **Inside**
Earnings decrease in NY; GMs' new model; Trade practice for Wilmer, Cutler; Future for CFTC lawyers; New US man at The Hague

4 **France's growing international law firms** Christopher R Brown
Inspired by the success of foreign law firms, some French avocats are now developing international practices of their own

9 **The deals of 1983** Christopher F Stoakes
The nine deals of 1983 which taxed international lawyers' ingenuity and Chase deKay Wilson and broke new legal ground

16 **US gives the IMF its conditions for future lending** Suzanne M Nora
Congress, after months of deliberation, passed the US increased quota to the IMF — but with many strings attached

20 **The effect and scope of the UK Mareva injunction** Neil Garnham
After a late start, this form of pre-trial order over assets is established and well defined under English law

26 **Data collection v data protection** Orlan Lee
Tolerance for the free flow of information has grown. The Right to Financial Privacy Act may be the only remedy left for sanctions

34 **Lease financing in Saudi Arabia** William Van Orden Gnichtel
The number of lease transactions is increasing. With proper structuring offshore banks can join the market

37 **United Kingdom**
Guarantor's rights in receivership **Arbitration:** Power of arbitrator to make order **Export insurance:** ECGD's liability of post loss recoveries **Jurisdiction:** Conflict does not preclude stay of proceedings **Mareva injunction:** Funds cannot be enjoined in bankruptcy

40 **United States**
Enforcement of foreign money judgements in New York **Bankruptcy:** Fraudulent conveyances **Letters of Credit:** Fraud in the transaction **Taxation:** Challenge to unitary tax denied

43 **International briefings**
Argentina: Joint ventures under business law; Additional clause in loan agreement **Australia:** Venture capital programme **Austria:** New taxes on deposit accounts **Colombia:** Foreign loans to private sector **Germany:** Repayment of bank loan before insolvency; No set off against bank guarantees; Guarantee of exchange contracts **Iran:** Tribunal practice on awards of interest **Panama:** Protecting European investments **Switzerland:** Proposed French Double Taxation Treaty **Venezuela:** Provision of funds at preferential rates; New ship mortgage law **Yugoslavia:** Taxation of foreigners' profits



INTERNATIONAL

Business Lawyer

Journal of the Section on
Business Law of the
International Bar Association

ISSN 03097576

The Section on Business Law of the International Bar Association was established in 1970 to promote an interchange of information and views among members as to laws, practices and procedures affecting business, financial and commercial activities throughout the world. The General Meeting of Section members, and meetings of the 25 Committees, are held during each IBA Biennial Conference and Section Conferences are held during the intervening years. In addition, the Section sponsors seminars on subjects of topical interest and also publishes the proceedings of these which are available at preferential rates to members.

The **International Business Lawyer** is published eleven times a year (monthly except for a combined July/August issue).

Editor Judy Lane

Editorial Assistant Barbara Hodkinson

Editorial office
2 Harewood Place
Hanover Square
London W1R 9HB

Publishers
Section on Business Law of the
International Bar Association in
association with Sweet & Maxwell.

Subscription
Circulation to all members of the
Section on Business Law — also
available to non-members from the
subscription dept of Sweet & Maxwell
Ltd (see below). Annual subscription
£55 to include annual index. Single
copies £6.

Change of address
IBA members — details to the IBA. All
new subscribers from January 1983 —
details to Sweet & Maxwell Ltd,
Subscription Dept, North Way,
Andover, Hants.

Advertisements
All information from Christopher Ling,
Advertising Manager, IBL and Law
Society's Gazette, The Law Society, 113
Chancery Lane, London WC2.
Tel: 01-242-1222.

Printer
Bookmag, Henderson Road, Inverness

©1984 International Bar Association,
Section on Business Law.

Contents

Round Up

Articles

Tax Developments

West Germany
Dr Juergen Killius

5

The Netherlands
Jan W Savelbergh

11

United Kingdom
H W Wiggin

17

United States
Barbara Merle Zak

25

**Exclusive Dealing Agreements in View
of the new EEC Regulations**

Jean Jacques Ferrier

33

Enforced Sale of Sea-going Vessels

Dr Hans-Christian Albrecht and
Wolfgang Deuchler LL.M.

41

Membership News

45

On Notice

47

ABOUT THE INTERNATIONAL LAW ASSOCIATION

The Association for the Reform and Codification of the Law of Nations, as it was originally called, was founded at Brussels at a Conference held in 1873. The name was changed to International Law Association at the 17th Conference of the Association held in Brussels in 1895. The Association consists of Headquarters in London and forty-five national Branches: the membership now exceeds 4,500.

The International Law Association normally holds a Conference every two years. The 58th Conference was in Manila (1978); the 59th Conference was in Belgrade (1980); the 60th Conference was held in Montreal (1982) and the 62nd Conference is to be held in Paris from to September, 1984.

The Australian Branch was founded in 1959 and has approximately 400 members.

Members of the Branch are entitled to attend functions and seminars of the Branch, and international conferences of the Association. Registration fees may be payable. Members are also entitled to receive copies of this publication, the bound proceedings of the international conferences at the time of issue, as well as back copies when available at no extra fee. Copies of other publications, including the Martin Place Papers, are available for purchase by members at reduced prices.

Fees for membership per calendar year are:-

Corporate (including firms)	\$30
Individual	\$20
Students	\$10

Subscriptions to this publication, the Australian International Law News may be taken out separately where membership of the Association would not be appropriate. The subscription for 1984 is \$10, and may be secured by forwarding this amount to the Editors, Australian International Law News, NSWIT Law School, P.O. Box 123, Broadway, 2007.

Membership Proposal Form

INTERNATIONAL LAW ASSOCIATION

Australian Branch

To the Hon. Secretary:
The Hon. Mr. Justice P. Nygh,
Temple Court,
75/85 Elizabeth St.,
SYDNEY. N.S.W. 2000.

I HEREBY APPLY FOR MEMBERSHIP OF THE INTERNATIONAL LAW ASSOCIATION AND ENCLOSE
A CHEQUE IN FAVOUR OF THE ASSOCIATION IN AN AMOUNT OF \$30/\$20/\$10 (delete
whichever amount inapplicable).

NAME:.....
(Please use block letters)

ADDRESS: (to which communications are to be sent)
.....
.....

STUDYING AT: (in the case of Students).....

SIGNATURE AND ADDRESS OF MEMBER PROPOSING:
.....
.....

SIGNATURE AND ADDRESS OF MEMBER SECONDING:
.....
.....

SIGNATURE OF CANDIDATE:.....

DATE:

