# International & Comparative Law Quarterly

**VOLUME 64** 

PART 1

**JANUARY 2015** 

### **ARTICLES**

Comparative Perspectives on Arbitrary Deprivation of nationality and Refugee Status

Hélène Lambert

Child Abduction: Recent Jurisprudence of the European Court of Human Rights

Paul Beaumont, Katarina Trimmings, Lara Walker and Jayne Holliday

Non-Statutory Executive Powers: Assessing Global Constitutionalism in a

Structural-Institutional Context Margit Cohn

The Changing Dynamics of the Global Intellectual

Property Legal Order: Emergence of a 'Network Agenda'?

Sujitha Subramanian

The Reparative Effect of Truth Seeking in Transitional Justice Merryl Lawry-White

Shorter Articles and Notes and Book Reviews-see back cover



Comparative Law

### International and Comparative Law Quarterly

### EDITORIAL ADVISORY BOARD

GUIDO ALPA
JEAN-BERNARD AUBY
JOOST BLOM
MARISE CREMONA
MARTIN DAVIES
CHRISTOF HEYNS

ERIK JAYME
CAMPBELL MCLACHLAN
DONALD MCRAE
FRANCISCO ORREGO VICUÑA
MUTHUCUMARASWAMY SORNARAJAH
GILLIAN TRIGGS

### British Institute of International and Comparative Law

President: DAME ROSALYN HIGGINS DBE QC

Vice Presidents: The Rt Hon the Lord Collins of Mapesbury, The Right Hon Sir David Edward KCMG PC QC LLD frse and Sir Christopher Greenwood KCMG QC

### DIRECTOR

PROFESSOR ROBERT McCorquodale

### **BOARD OF TRUSTEES**

Chairman of the Board of Trustees: SIR FRANKLIN BERMAN KCMG QC

CLARE ALGAR
THE HON SIR WILLIAM BLAIR
GARY B BORN
SUSAN BRIGHT
LORD JUSTICE STANLEY BURTON
IAN HOBBS FCA
SIR FRANCIS JACOBS KCMG QC
SIR PAUL JENKINS KCB QC
PROFESSOR ROSA LASTRA LLB MA LLM PHD

PAUL LOMAS
LORETTA MALINTOPPI
PROFESSOR DAWN OLIVER QC MA PHD FBA
TIMOTHY OTTY QC
KEITH RUDDOCK
PROFESSOR MALCOLM N SHAW QC
THE HON MR JUSTICE SINGH
PROFESSOR STEPHEN WEATHERILL

### Advisors to the Board of Trustees

THE RT HON DAME MARY ARDEN DBE MARTIN PAISNER CBE

## International and Comparative Law Quarterly

#### 2015

### BOARD OF EDITORS

General Editors

PROFESSOR MALCOLM EVANS OBE, University of Bristol PROFESSOR ROBERT McCorquodale, Director of BIICL

Professor Ian Cram, University of Leeds
Professor James Fawcett, University of Nottingham
Professor Paula Giliker, University of Bristol
Dr Louise Merrett, University of Cambridge
Professor Dominic McGoldrick, University of Nottingham
Professor Christine Gray, University of Cambridge
Professor Joanne Scott, University College London

Publications Editor
Anna Riddell

BOOK REVIEW EDITOR

PROFESSOR IAN CRAM, University of Leeds

#### INSTRUCTIONS FOR CONTRIBUTORS

The ICLQ welcomes the submission of contributions for consideration by the Board of Editors with a view to publication. All manuscripts must be submitted online via the website: http://mc.manuscriptcentral.com/iclq

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

- The submission should be an original, unpublished work not currently under consideration for publication
  elsewhere. Please note that our exclusive submission policy means you cannot submit your work to
  another journal until you have received a decision from us. If you would like to submit to another journal,
  you must withdraw your article from consideration by the ICLQ.
- 2. The ICLQ publishes articles that deal with public international law, private international law, comparative law, human rights law and European Union law. It particularly encourages the submission of innovative and original articles whose theme or content illuminate more than one of these subject areas. Articles which do no more than rehearse familiar and well-known material, or which are concerned only with national law (other than private international law) in a non-comparative way, should not be submitted.
- 3. Long articles should not exceed 12,000 words (16,000 words including footnotes). Pieces of up to 6,000 words will usually be considered for the 'Shorter Articles and Notes' section. The editors will decide on the section to which all contributions, irrespective of length, are best suited should they be accepted for publication. ScholarOne will require you to enter the word count (including footnotes) when submitting your article, and to indicate if you intend it for the 'Shorter Articles and Notes' section.
- Footnotes should be numbered consecutively throughout the article and be in the form normally used by the ICLQ. Please see the Style Guide for further information. Footnoting should not be excessive.
- 5. A short (50–100 words) abstract of the article should be supplied. We reserve the right to edit abstracts for length and style. Please also supply a minimum of five keywords (maximum ten) for your article to enable digital searching.
- Authors should state their present academic or professional affiliation and indicate any professional or personal involvement in the subject matter of the article.
- 7. The ICLQ only accepts submissions online via the ScholarOne platform. To upload your manuscript please go to: http://mc.manuscriptcentral.com/iclq. Detailed instructions for submitting your manuscript online can be found at the submission website by clicking on the 'Instructions and Forms' link in the top right of the screen; and then clicking on the 'Author Submission Instructions' icon on the following page. The Editor will acknowledge receipt of the manuscript, with a reference number, which should be quoted in all correspondence.

For the ICLQ Style Guide, please visit www.journals.cambridge.org/iclq/ifc. In all matters not included in this Guide, the ICLQ follows the OSCOLA citation system for house style; please visit www.law.ox.ac.uk for details.

#### SUBSCRIPTIONS

Subscriptions, orders, and enquiries should be sent to the British Institute of International and Comparative Law, Charles Clore House, 17 Russell Square, London WCIB 5JP, telephone 020 7862 5151. The subscription to the *ICLQ* for 2015 is £273, \$545, air mail postage extra. There may be other subscription rates available; for a complete listing please visit journals.cambridge.org/ICLQ. Back issues of all volumes are now available at the current cover price (casebound extra).

The views expressed in the contributions to this journal are those of their author(s) and do not necessarily reflect the views either of the board of editors of the journal or of the British Institute of International and Comparative Law (BIICL). BIICL is a registered charity and an independent research institute committed to supporting high standards of scholarship in all aspects of international and comparative law.

The ICLQ has been selected for coverage in Thomson Reuters' products and services. The journal will be indexed and abstracted in the Social Sciences Citation Index, the Journals Citation Reports/Social Sciences Edition and Current Contents/Social and Behavioral Sciences

### PERMISSIONS

For all matters concerning rights and permissions please contact Linda Nicol, Cambridge University Press, Shaftesbury Road, Cambridge, CB2 8RU

© 2015

British Institute of International and Comparative Law

Printed in the United Kingdom by Bell and Bain Ltd, Glasgow

This journal issue has been printed on FSC-certified paper and cover board. FSC is an independent, non-governmental, not-for-profit organization established to promote the responsible management of the world's forests. Please see www.fsc.org for information.

### International and Comparative Law Quarterly

Volume 64	January 2015 Pa	art 1
	ARTICLES	
Comparative Perspect	Tives on Arbitrary Deprivation of Nationality  Hélène Lambert	1
Human Rights	CENT JURISPRUDENCE OF THE EUROPEAN COURT OF	
Paul B	eaumont, Katarina Trimmings, Lara Walker and Jayne Holliday	39
	TIVE POWERS: ASSESSING GLOBAL CONSTITUTIONALISM STITUTIONAL CONTEXT  Margit Cohn	65
The Changing Dynamics of the Global Intellectual Property Legal Order: Emergence of a 'Network Agenda'? Sujitha Subramanian		103
THE REPARATIVE EFFEC JUSTICE	t of Truth Seeking in Transitional  Merryl Lawry-White	141
	SHORTER ARTICLES	
	S LEGAL OPINION ON FORCIBLE MEASURES IN E OF CHEMICAL WEAPONS BY THE SYRIAN  Christian Henderson	179
	EEMENTS, THE ITALIAN TORPEDO, AND THE RECAST OF BULATION David Kenny and Rosemary Hennigan	197
Crowd-Sourced Gove	Ernance in a Post-Disaster Context $Shahla\ F\ Ali$	211

### **BOOK REVIEWS**

227

Aoife Nolan, Rory O'connell and Colin Harvey Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights (Benjamin Richardson)

MARC MOORE Corporate Governance in the Shadow of the State	
(Michael Galanis)	228
Grainne de Burca, Claire Kilpatrick and Joanne Scott Critical Legal	
Perspectives on Global Governance: Liber Amicorum David M	
Trubek (Janine Sargoni)	230
Yaël Ronen Transition from Illegal Regimes in International Law	
(Cedric Ryagaert)	231
Andrea Bianchi and Anne Peters Transparency in International Law	
(Elaine Kellman)	233
Books Received	235