

# NETHERLANDS INTERNATIONAL LAW REVIEW

INTERNATIONAL LAW
CONFLICT OF LAWS
COMPARATIVE LAW

1988-VOL.XXXV-ISSUE 1

Now available in paperback.

## Contemporary Problems in International Arbitration

edited by Dr. JULIAN D. M. LEW

1987, 380 pp. ISBN 0-89838-926-7 Paperback Dfl. 125.00/£37.95/US\$59.50 Martinus Nijhoff Publishers

International arbitration has grown in complexity as its importance has increased. Most disputes arising from an international commercial transaction are likely to involve a State or State entity, whether as a party or as the host country the co-operation of whose government is essential to the success of the project. Accordingly principles of public law in general and public international law in particular may be directly relevant to commercial disputes, a fact which is all too often overlooked. There are other fundamental issues of arbitration law and practice which continue to cause difficulty. How far may arbitral proceedings be detached from the legal systems of the country in which they are conducted? What are the limits to the arbitrator's powers and what judicial assistance can he expect to receive in the conduct of the arbitration? When can a State plead sovereign immunity and how are awards against a State or State entity to be enforced?

This work is essential reading for all those who are, or expect to become, engaged in international arbitration, whether as arbitrators or as users of arbitration. It is an essential guide through the complexities of modern international commercial arbitration.

This is a paperback edition of a hardbound book first published by the Centre for Commercial Law Studies.

### Contents

**Part 1** The School of International Arbitration. **Part 2** The Jurisdiction and Authority of Arbitrators. **Part 3** International Arbitration Procedure. **Part 4** International Arbitration Involving States and State-Entity Parties.



# Kluwer academic publishers group

P.O. Box 989 3300 AZ Dordrecht The Netherlands

101 Philip Drive Norwell, MA 02061, U.S.A. Falcon House Queen Square Lancaster, LA1 1RN, U.K.

### NETHERLANDS INTERNATIONAL LAW REVIEW

Recommended citation: NILR

Published three times a year, complemented by the Netherlands Yearbook of International Law, in co-operation with the T.M.C. Asser Instituut, Institute for International and European Law (22, Alexanderstraat, The Hague, phone (0)70-630900), founded in 1965 by eight Dutch universities offering courses in international law. The Institute is responsible for the promotion of education and research in international law, particularly by setting up documentation projects and carrying out research programmes in the fields covered by the departments of the Institute: Private International Law; Public International Law including the Law of International Organisations; Law of the European Communities; and International Commercial Arbitration.

Combined annual subscription to the Netherlands International Law Review and to the Netherlands Yearbook of International Law Dfl. 250.00, postage and handling Dfl. 32.00. Single copies of Yearbook Volume XVIII (1987) Dfl. 135.00. Subscription orders and requests for specimen copies should be sent to Kluwer Academic Publishers Group, Distribution Center, P.O. Box 322, 3300 AH Dordrecht, The Netherlands.

Advertising: full page only; Dfl. 600.00 per page; size 120 mm x 200 mm. Material: originals or camera-ready copy; closing dates: two months prior to month of publication; advertising copy to be sent to Kluwer Academic Publishers Group, Promotion Department, P.O. Box 989, 3300 AZ Dordrecht, The Netherlands.

© T.M.C. Asser Instituut and contributors.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright owners.

### FOR PHOTOCOPYING WITHIN THE USA

The appearance of the code at the bottom of the first page of an article in this journal indicates the copyright owner's consent that copies of the article may be made for personal or internal use, or for the personal or internal use of specific clients. This consent is given on the condition, however, that the copier pays the stated per-copy fee through the Copyright Clearance Center, Inc., P.O. Box 765, Schenectady, New York 12301, USA for copying beyond that permitted by Sections 107 and 108 of the US Copyright Law.

### ISSN 0165-070X

Second-class postage paid at New York, NY.

US Mailing-Agent: Expediters of the Printed Word Ltd., 527 Madison Avenue, Suite 1217, New York, NY 10022

Library of Congress catalogue card number LC 79-65199 PRINTED IN THE NETHERLANDS

The views expressed in any article are those of the individual author and do not necessarily represent the views of the Board of Editors.

### **BOARD OF EDITORS**

### L. Erades, Honorary Editor-in-Chief †

### M. Bos

Professor Emeritus of Public International Law, University of Utrecht, Editor-in-Chief

### J.E.J.Th. Deelen

Professor of Comparative and Private International Law, Catholic University of Brabant, member of the Netherlands Standing Government Committee on Private International Law

### H. Duintjer Tebbens

Principal Administrator, Court of Justice of the European Communities, member of the Netherlands Standing Government Committee on Private International Law

### C. Flinterman

Professor of Constitutional and International Law, University of Limburg, Maastricht

### E.H. Hondius

Professor of Civil Law, University of Utrecht

### P.H. Kooijmans

Professor of Public International Law, University of Leyden

### A.H.A. Soons

Professor of Public International Law, University of Utrecht

### A.M. Stuyt

Professor Emeritus of Public International Law, Catholic University of Nijmegen

### M. Sumampouw

Head of the Private International Law Department, Asser Instituut, The Hague

### J.P. Verheul

Professor of Private International Law, University of Leyden

### C.C.A. Voskuil

Director of the Asser Instituut, The Hague, member of the Netherlands Standing Government Committee on Private International Law

### J.A. Wade

Asser Instituut, The Hague

### P. Morris

Asser Instituut, The Hague, Executive Editor

### CORRESPONDENTS

Professor Dr. J. Erauw University of Ghent, Belgium

Assoc. Professor Dr. U. Göranson University of Uppsala, Sweden

Professor Dr. B. Graefrath

The GDR Academy of Science, Berlin, G.D.R.

Professor M.W. Janis

University of Connecticut, Hartford (Conn.), U.S.A.

His Excellency Professor Sir Robert Y. Jennings O.C.

Judge of the International Court of Justice, The Hague, The Netherlands

### Dr. T. Koopmans

Judge at the Court of Justice of the European Communities, Luxembourg

### J.H.A. van Loon

Hague Conference on Private International Law, The Hague, The Netherlands

Professor B.S. Markesinis LL.B., D.Jur., M.A., Ph.D.

Denning Professor of Comparative Law at the University of London, Great Britain Professor G. Parra-Aranguren University of Caracas, Venezuela

Dr. M.C.W. Pinto

Secretary-General of the Iran-United States Claims Tribunal, The Hague, The Netherlands

Professor Dr. Eibe H. Riedel LL.B.
Johannes Gutenberg University, Mainz,
F.R.G.

Professor Tibor Varady
University of Novi Sad, Yugoslavia

Professor M. Virally

Université de Droit, d'Economie et de Sciences Sociales de Paris, Member of the Iran-United States Claims Tribunal, Paris / The Hague

Professor Emeritus Paul De Visscher University of Louvain, Belgium

Professor Maureen Williams LL.M., PhD., University of Buenos Aires, Argentina

Authors are requested to send three copies of each manuscript to the Secretariat: P.O. Box 30461, 2500 GL The Hague, The Netherlands. Articles should not exceed 35 pages (typed) in length. https://doi.org/10.1017/S0165070X00007427 Published online by Cambridge University Press

# NETHERLANDS INTERNATIONAL LAW REVIEW VOL. XXXV 1988/1

### **CONTENTS**

H.G. SCHERMERS, In Memoriam: Prof. Arnold J.P. Tammes	5
Articles	
E. BLANKENBURG, J.R.A. VERWOERD, The Courts as a Final Resort?: Some Comparisons between the Legal Cultures of the Netherlands and the Federal Republic of Germany	7
J.B. OJWANG, J.A. OTIENO-ODEK, The Judiciary in Sensitive Areas of Public Law: Emerging Approaches to Human Rights Litigation in Kenya	29
D. WEISSBRODT, The United Nations Commission on Human Rights Confirms Conscientious Objection to Military Service as a Human Right	53
Shorter Articles	
S.M. WILLIAMS, R.H. GOODING, Legal Situation of British Property in Argentina: A Report Prepared by the Centre for South Atlantic Studies (Buenos Aires)	73
The EEC Convention on Jurisdiction and Judgments of 27 September 1968, edited by Hans Verheul	80
Postscript to 'The Doctrine of Forum Non Conveniens and the Bhopal Case'	87
Book Reviews	
Abi-Saab, R., Droit humanitaire et conflits internes, origines et évolution de la réglementation internationale; Hess, M., Die Anwendbarkeit des humanitären Völkerrechts, insbesondere in gemischten Konflikten; Piguet, C., La guerre civile en droit international, contribution à l'étude de la responsibilité de l'Etat à raison des dommages éprouvés sur son territoire par des étrangers, du fait du mouvement insurrectionnel (Frits Kalshoven),	89
Annuaire de l'Institut de droit international (Ko Swan Sik)	92
Encyclopedia of Public International Law (Ko Swan Sik)	94
Food and Agriculture Organization of the UN, The Law of the Sea, Essays in Memory of Jean Carroz (Barbara Kwiatkowska)	95
International Organizations and the Law of the Sea — Documentary Year-book (Ko Swan Sik)	100
Hungdah Chiu, ed., Chinese Yearbook of International Law and Affairs (Ko Swan Sik)	101

Kühner, R., Vorbehalte zu multilateralen völkerrechtlichen Vertragen (E.W. Vierdag)	102
McDougal, M., et al., Studies in World Public Order (Frans van Kraay)	103
Recueil des Cours Collected Courses of the Hague Academy of International Law (Ko Swan Sik)	107
Book Notices	
Van Dijk, P., Flinterman, C., Janssen, P.E.L., eds., International Law, Human Rights (R.C.R. Siekmann)	111
Hanning, H., ed., Peacekeeping and Confidence-Building Measures in the Third World (R.C.R. Siekmann)	112
International Court of Justice, Reports of Judgments, Advisory Opinions and Orders (Ko Swan Sik)	112
Szafarz, R., Badanie Ziemi z kosmosu w swietle prawa miedzynarodowego (Barbara Kwiatkowska)	114
Books Received	115