

## LAW AND REALITY

# ESSAYS ON NATIONAL AND INTERNATIONAL PROCEDURAL LAW

SPECIAL ISSUE - OCTOBER 1992

MARTINUS NIJHOFF PUBLISHERS

## LAW AND REALITY

# T.M.C. ASSER INSTITUUT THE HAGUE

## LAW AND REALITY

# ESSAYS ON NATIONAL AND INTERNATIONAL PROCEDURAL LAW in Honour of Cornelis Carel Albert Voskuil

edited by

Mathilde Sumampouw

L.A.N.M. Barnhoorn
Judith A. Freedberg-Swartzburg
J.J.M. Tromm
J.A. Wade



# MARTINUS NIJHOFF PUBLISHERS DORDRECHT/BOSTON/LONDON

## T.M.C. Asser Institute — Institute for Private and Public International Law, International Commercial Arbitration and European Law

22 Alexanderstraat, 2514 JM The  $\hat{H}$ ague, The Netherlands — tel. (0)70-3420300 — telex: 34273 asser nl, telefax: (0)70-3420359

Director: C.C.A. Voskuil

The T.M.C. Asser Institute was founded in 1965 by the Dutch universities offering courses in international law to promote education and research in the fields of law 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. The Institute discharges this task by the establishment and management of documentation and research projects, in some instances in co-operation with non-Dutch or international organisations, by the dissemination of information deriving therefrom and by publication of monographs and series. In addition, the Institute participates in the editing of the Yearbook Commercial Arbitration and in the editing and publishing of, *inter alia*, the Netherlands International Law Review and the Netherlands Yearbook of International Law.

The Institute provides the nine university law faculties in the Netherlands with a research assistant's post-graduate course in international and European law, and assistance to Asser College Europe, a partnership venture with eastern and central European countries which offers a framework for the organisation and implementation of research and educational projects.

### ISBN 0-7923-1969-9

Published by Martinus Nijhoff Publishers, P.O.Box 163, 3300 AD Dordrecht, The Netherlands. Kluwer Academic Publishers incorporates the publishing programmes of Martinus Nijhoff Publishers.

#### Distributors

for the United States and Canada: Kluwer Academic Publishers, 101 Philip Drive, Norwell, MA 02061, U.S.A.

for all other countries: Kluwer Academic Publishers Group, P.O.Box 322, 3300 AH Dordrecht, The Netherlands.

## Copyright

### © 1992, T.M.C. Asser Instituut, The Hague

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 prior written permission of the publishers.

## TABLE OF CONTENTS

Foreword	V
List of Abbreviations	X
P.J. VERDAM  Cornelis Carel Albert Voskuil	xv
L.A.N.M. BARNHOORN The Service of Process on a Foreign State	1
A.J. VAN DEN BERG  The Permanent Court of Arbitration at the Peace Palace, The Hague  — A New Role for International Commercial Arbitration?	19
TH.M. DE BOER  Tacit Submission to Jurisdiction: The Scope of Article 18  of the EEC Jurisdiction Convention	27
H. DUINTJER TEBBENS  The English Court of Appeal in Re Harrods: An Unwelcome Interpretation of the Brussels Convention	47
J. ERAUW Something Funny Happened to Foreign Law on Its Way to the Forum	63
J.A. FREEDBERG-SWARTZBURG  Court Assistance in the Appointment of Arbitrators	79
U. GÖRANSON  Actio Pauliana Outside Bankruptcy and the Brussels Convention	89
W. HAAK A Private (International) Law Intermezzo in the Law of Criminal Procedure	105

H.U. JESSURUN D'OLIVEIRA Foreign Law in Summary Proceedings (Kort Geding)	119
F.K. JUENGER Jurisdiction, Choice of Law and the Elusive Goal of Decisional Harmony	137
A.E. KELLERMANN  Legal Impact of Procedural Irregularities in the Decision-Making of the Council of Ministers of the EC	149
D. KOKKINI-IATRIDOU  Judicial Recourse Against the Arbitral Award:  A Comparative Synthesis	157
T. KOOPMANS  Natural Justice Rediviva? The Right to a Fair Hearing in European Law	175
B.H. TER KUILE Judicial Interplay Within the Community	187
P.H. LINDBLOM  The Privatization of Justice: Some Aspects of Recent Developments in American and Swedish Procedural Law	199
G.W. MAAS GEESTERANUS Can Foreign States be Declared Bankrupt? The Case of Zaire	215
ž. MATIĆ The Judge and the Conflict Rule. Reflections on Psychological Aspects of the Approach to the Conflict Rule	227
P. PETERS  The Semantics of Applicable Law Clauses and the Arbitrator	231
K. SAJKO On Jurisdiction Agreements from the Perspective of Pan-European Unification of International Procedural Law	257
P. SANDERS First Lustrum of the New Dutch Arbitration Act	267
H.G. SCHERMERS The International Extension of Procedural Law	279

TABLE OF CONTENTS	IX
K. SIEHR	
Security for Costs: A Valuable Defence or a Burden- some Relic?	291
L. STRIKWERDA	
Interest Analysis: No More than a 'Protest Song'?	301
M. SUMAMPOUW	
The EC Convention on the Recovery of Maintenance:	
Necessity or Excess?	315
J.J.M. TROMM	
Europe's Next Step	337
T. VARADY	
Arbitration Despite the Parties?	351
J.P. VERHEUL and J.A. WADE	
Prejudgment Attachment of Movables in French, Dutch	
and English Law	377
P. VLAS	
The Principle of Fair Trial in International Civil Litigation	391
List of Publications by Cornelis Carel Albert Voskuil	407
List of a dolications by Conficus Caret Attent Aoskuli	40/