PART I

INTERNATIONAL LAW IN GENERAL

II.—Sources

International law in general — Sources — UNESCO deliberations —Convention adopted for the protection of the cultural heritage of peoples — Extent to which they demonstrate consensus in international community for the purposes of determining international public policy—The law of the Federal Republic of Germany

See p. 226 (*Nigerian Objets d'Art Export Case*).

IV.—Relation to Municipal Law

International law in general—Relation to municipal law—Judicial review of municipal legislation — Power of municipal courts to review legislation for compatibility with international law — Whether confined to determining compatibility with treaty provisions — Netherlands Constitution, Article 66 — International officials — Taxation — Whether rule of customary law forbidding taxation of salary received from Permanent Court of Arbitration —The law of the Netherlands

Permanent Court of Arbitration Employee Case

The Netherlands, Court of Appeal of the Hague. 30 *December* 1971

Summary: *The facts:*—X, a Dutch citizen, was employed by the International Bureau of the Permanent Court of Arbitration. The salary which he received from this employment was exempt from local taxation. It was, however, taken into account under Article 40 of the General Act on State Taxes[1] in determining the rates of taxation levied on the remainder of X's

[1] Article 40 provides:

> When part of an income is received from an international organization and that part, by virtue of international legal provisions, is exempt from Dutch income tax levies, the income tax due on the remainder of the income will, except in so far as another method of calculation has been prescribed by those provisions, be the difference between the tax calculated without account being taken of the exemption and the tax which according to the rules made by Our Minister should be ascribed to the exempted part of the income.

income. X contended that Article 40 was contrary to the rules of customary international law concerning the taxation of international officials.

Held:—(1) The Court had no power to hold Article 40 of the General Act on State Taxes invalid or inapplicable on the ground that it contravened customary international law. The power of the courts to review municipal legislation for compatibility with international law under Article 66 of the Netherlands Constitution[2] was limited to the self-executing provisions of treaties and did not extend to determining the compatibility of legislation with unwritten customary rules.

(2) Even if the Court could determine the compatibility of Dutch legislation with customary international law, the Court was not satisfied that there was any violation of customary international law in the present case.

The following is the relevant part of the judgment of the Court:

There has been no evidence submitted of any written rule of international law, in particular of any provision of a treaty or international agreement, to the effect that any person holding a post such as that of the appellant in this country shall be exempt from income tax in this country, in the sense that it is not permissible to impose a tax which is heavier than would normally be the case on that part of his income which is not exempt from taxation. The appellant, however, argues for the existence of an unwritten rule of international law to that effect, which would thus equally bar application of Article 40 of the General Act. This view cannot be accepted. The history of Article 66 of the Constitution dealing with conflicts between international law and Dutch legislation reveals clearly that the Article is expressly designed to clarify the extent to which a Dutch court may review Dutch law for compatibility with international law, and to that end review is restricted to self-executing provisions of treaties.

For this reason alone the appellant's objection must fail.

This would equally be the case if there were wider possibilities of review than that just mentioned. Even assuming, with the appellant, the existence of an unwritten rule of international law, *i.e.*, international customary law, giving an official such as the appellant an exemption from income tax, this does not mean, in the Court's opinion, that the scope or meaning of that rule is established. Rules of international law whereby certain persons employed in the diplomatic service or in international organizations enjoy tax exemptions in the country of residence are not always of the same scope. The exemption may relate to all or only part of the taxes. In the case of

[2] Article 66 provides:

> Legal regulations in force within the Kingdom shall not apply if such application would be incompatible with provisions, binding on anyone, of agreements entered into either before or after the enactment of the regulations.

income tax it may relate to the whole or to part of the income. Frequently exemption does not apply to persons possessing the nationality of the State of residence. Furthermore there are other cases where exemption is expressly granted, but subject to the so-called progressive [taxation] reservation, which means that a regulation such as that of Article 40 of the General Act is expressly permitted.

After the manifestly expert contentions of the appellant's counsel, the Court considered it to be a tenable proposition that, according to the unwritten rules of international law, the appellant could claim exemption from income tax on his income arising from the post mentioned above, although his Dutch nationality still constitutes an uncertain element. Nevertheless the Court is in no way satisfied that a progressive [taxation] reservation can be ruled out . . .

[Reports: English translation extracted with permission from 5 *N.Y.I.L.* (1974) pp. 297-9; *Belasting Berichten, Internationale Zaken, Nederland* No. 54 (in Dutch).]

International law in general—Relation to municipal law—Treaties — Interpretation in municipal courts — European Convention on Human Rights, 1950 — Article 9 — Freedom of religion — Education Act 1944 — Section 30 — Presumption that statute be interpreted in manner consistent with international treaty obligations — Statute enacted before conclusion of treaty — European Commission of Human Rights — Consideration of municipal court's application of municipal law — Whether reviewable — The law of England and of the European Convention on Human Rights, 1950

See p. 399 (*Ahmad* v. *Inner London Education Authority; Ahmad* v. *United Kingdom*).

International law in general—Relation to municipal law—Treaties — Relation to statute — Relevance of unimplemented treaty provision to exercise of discretion by Contracting State—The law of England

See p. 296 (*Rio Tinto Zinc Corporation* v. *Westinghouse Electric Corporation*).

V.—International Comity

International law in general — International Comity — Public policy—Liability for road accident—Foreign judgment establishing civil liability—Whether such judgment should be recognized by municipal courts—Liability based on finding of guilt in criminal proceedings where defendant not given possibility to defend himself — Whether recognition contrary to Dutch public policy —Analogy with default judgments under the Netherlands-Italy Treaty regarding Recognition and Enforcement of Judicial Decisions, 1959—The law of the Netherlands

CAMIN *v.* OUDES

The Netherlands, Supreme Court. 20 *March* 1970

SUMMARY: *The facts:*—In 1960 Oudes was involved in a traffic accident in Italy, in which Camin sustained damage and bodily injury. On 31 March 1962 a *decreto penale* was passed against Oudes in an Italian criminal action in connection with this accident. That judgment became final on 6 May 1962, whilst a judicial notice addressed to Oudes on 4 April 1962, in which he was informed of the *decreto penale* passed against him and was requested to give an address in Italy, only reached him in June 1962. A claim for damages was subsequently made by Camin against Oudes before the District Court of Trento, which held Oudes to have been partly responsible for the accident and ordered him to pay damages. Oudes pleaded that Camin had been completely to blame for the accident but the Court considered that the penal judgment was sufficient evidence of Oudes' civil liability. Camin then attempted to obtain execution of the judgment of the District Court of Trento in the Netherlands pursuant to the Treaty regarding Recognition and Enforcement of Judicial Decisions, 1959, between Italy and the Netherlands. The District Court of Leeuwarden and the Court of Appeal of Leeuwarden held that Oudes had not had sufficient opportunity to defend himself against the penal judgment, and that execution of a civil judgment based thereon was contrary to Dutch public policy. Camin appealed.

Held:—The appeal was dismissed.

The Netherlands-Italy Treaty in question dealt in detail with the recognition and enforcement of judgments in default. Though no judgment in default was at issue in the present case there was an analogous situation since Oudes had had no opportunity adequately to defend himself and enforcement of the Italian civil judgment would therefore have been contrary to Dutch public policy.

The following is the text of the relevant part of the judgment of the Court:

. . . The *decreto penale,* which had been passed without Oudes' knowledge, and which was irrevocable, operated in such a way that in the civil action Oudes had no possibility of successfully disputing that he was to blame for the collision.

It should be noted in this connection that the Treaty offers a certain degree of protection to a defendant who does not appear in the civil action. It appears from Article 3(1) and Article 1(5) of the Treaty that a default judgment can be declared enforceable in the other country only when the summons which led to the default judgment being made was served on the non-appearing defendant in time. Furthermore it is laid down in Article 5(3) that the party requesting enforcement must produce documents from which it can be established that the summons did reach the non-appearing party in time. This regulation is intended to prevent a default judgment being declared enforceable when the summons has not been served on the non-appearing defendant so as to give him time to organize his defence in the foreign civil action.

The present judgment of the District Court of Trento was not passed by default, so that the above regulation does not apply directly, yet the present case involves a comparable situation.

Since the criminal action resulted in a decision on Oudes' guilt against which he could not defend himself because the summons had not been served on him in good time, the result was that in the subsequent civil action this decision led to Oudes being unable to organize his defence with regard to the question of whether or not he was to blame for the collision.

Considering the treaty regulation concerning the summonsing of the non-appearing defendant in good time, the Supreme Court must uphold the Court of Appeal's judgment that the Trento Court's decision—which, so far as Oudes' guilt in the collision was concerned, was made in the above-mentioned manner—conflicts to such a degree with what should be regarded as proper and permissible according to Dutch principles of the administration of justice, that recognizing this decision must be regarded as in conflict with Dutch public policy.

[Reports: English translation extracted with permission from 3 *N.Y.I.L.* (1972) pp. 299-301; *N.J.* 1971 No. 275 (in Dutch).]

International law in general — International comity — Whether a basis for jurisdiction to try persons for offences committed abroad —The law of England

See p. 252 (*Director of Public Prosecutions* v. *Stonehouse*).

PART II

STATES AS INTERNATIONAL PERSONS

A—IN GENERAL

II.—Sovereignty and Independence

i.—In Foreign Relations

States as international persons — In general — Sovereignty and independence — In foreign relations — Conclusion of "East-Treaties" in 1970 between Federal Republic of Germany, Poland and USSR for normalization of relations—Individuals claiming that constitutional rights impaired by treaties — Action for temporary injunction to postpone entry into force pending final court decision —Power of Federal Constitutional Court to override elected political organs—Requirement of compelling reasons in the public interest —The law of the Federal Republic of Germany

See p. 691 (*East-Treaties Constitutionality Case*).

States as international persons — In general — Sovereignty and independence — In foreign relations — Doctrine of act of State —Whether applicable in case of claim of aboriginal title—The law of Canada

See p. 56 (*Calder* et al. v. *Attorney-General of British Columbia*).

ii.—In Matters of Domestic Jurisdiction

States as international persons — In general — Sovereignty and independence — In matters of domestic jurisdiction — Attempt to extend United States grand jury's investigations extraterritorially — Letters rogatory — Whether to be implemented — Whether an infringement of sovereignty — Relevance of policy of the Government—The law of England

See p. 296 (*Rio Tinto Zinc Corporation* v. *Westinghouse Electric Corporation*).

iii.—Conduct of Foreign Relations.
Conclusiveness of statements of the Executive

States as international persons — In general — Sovereignty and independence — Conduct of foreign relations — Conclusiveness of statements of the Executive — Whether interpretation of international conventions exclusively a matter for the Executive — The law of France

See p. 698 (*Males*).

States as international persons — In general — Sovereignty and independence—Conduct of foreign relations—Relations between Federal Republic of Germany and its NATO treaty partners—Issue of alien's passport to persons seeking to avoid military service in State of nationality—Individual interests taking precedence over State interests in exceptional circumstances—Constitutional limitations on conduct of foreign relations by Executive — The law of the Federal Republic of Germany

See p. 606 (*Greek National Military Service Case* (2)).

States as international persons — In general — Sovereignty and independence—Conclusiveness of statements of the Executive—Extraterritorial application of United States anti-trust legislation — Attempt to extend United States grand jury's investigations extraterritorially—Letters rogatory—Whether an infringement of sovereignty—Relevance of policy of the Government—The law of England

See p. 296 (*Rio Tinto Zinc Corporation* v. *Westinghouse Electric Corporation*).

States as international persons — In general — Sovereignty and independence — Conclusiveness of statements of the Executive — Recognition of foreign State—Executive certificate—Consequences of non-recognition — Whether English courts can recognize and give effect to laws of unrecognized State—Turkish Federated State of Cyprus—The law of England

See p. 9 (*Hesperides Hotels Ltd.* v. *Aegean Turkish Holidays Ltd. and Muftizade*).

IV.—Recognition of Acts of Foreign States and Governments

States as international persons—In general—Recognition of acts of foreign States and governments—Expropriation without reasonable compensation—Effect of expropriation on assets situated outside expropriating State—Effect on assets situated within expropriating State—Principle of territoriality—Acts of foreign governments involving violations of international law — Whether municipal courts must deny recognition to such acts — Violations of public policy—The law of the Federal Republic of Germany

See p. 230 (*Sociedad Minera el Teniente SA* v. *Norddeutsche Affinerie AG*).

States as international persons—In general—Recognition of acts of foreign States and governments—German Democratic Republic—Expropriation decree—Lack of compensation—Whether decree should be given any effect in France—Public policy—The law of France

See p. 580 (*Carl Zeiss Heidenheim and Others* v. *VEB Carl Zeiss Jena and Others*).

D—RECOGNITION

I.—Of States

States as international persons — Recognition — Of States — Executive certificate—Consequences of non-recognition—Application of laws of Government of country not recognized by forum —Laws of Turkish Federated State of Cyprus—Whether English courts can recognize and give effect to these laws—Whether new administration in effective control—The law of England

HESPERIDES HOTELS LTD. AND ANOTHER *v.*
AEGEAN TURKISH HOLIDAYS LTD. AND MUFTIZADE

England, Court of Appeal. 23 *May* 1977

(Lord Denning M.R., Roskill and Scarman L.JJ.)

House of Lords. 6 *July* 1978

(Lord Wilberforce, Viscount Dilhorne, Lords Salmon, Fraser of Tullybelton and Keith of Kinkel)

SUMMARY: *The facts:*—The plaintiffs were Greek Cypriots who owned hotels in northern Cyprus when it was occupied by troops from Turkey in 1974. They fled to the unoccupied parts of Cyprus and their hotels were taken over by Turkish Cypriots. The plaintiffs started an action for conspiracy to trespass against an English travel company and an individual, Mr Muftizade, purporting to represent in London the "Turkish Federated State of Cyprus", claiming damages and an injunction restraining the defendants from promoting holidays at the hotels. At first instance, May J. applied for and received a Foreign Office certificate which stated that the United Kingdom Government did not recognize the Turkish Federated State of Cyprus either *de facto* or *de iure*. He granted an interim injunction and refused an application by Mr Muftizade to set aside the writ for want of jurisdiction. Mr Muftizade appealed, asserting that under the law of the Turkish-Cypriot administration the possession and use of the hotels was lawful and so not actionable. He maintained that the English courts therefore lacked jurisdiction to entertain the action.

Held (unanimously):—The appeal was allowed.

Per Lord Denning M.R.: The English courts could receive evidence and recognize the laws or acts in regard to day to day affairs of a body in effective control of a territory, even though it had not been recognized *de iure* or *de facto* by the United Kingdom Government. There was an effective administration in Northern Cyprus under the laws of which the people who occupied the hotels were not trespassers. Since the alleged trespass was not actionable under the law in force in Northern Cyprus, it was not actionable in England.

Per Roskill and Scarman L.JJ.: The plaintiff's action was one for relief against trespass to immovables situated out of England and was therefore not within the jurisdiction of an English court. At a future date, the question might arise as to the extent to which, notwithstanding the absence of recognition, the English courts would have to recognize and give effect to the laws or acts of a body which was in effective control of a particular place.

The plaintiff companies appealed to the House of Lords.

Held (unanimously):—The appeal was allowed in part. The appellants' action, regarding the hotels themselves, concerned land situated abroad and could not therefore be maintained. It was not necessary to examine the question whether the courts had to take notice of the situation in Cyprus and the "laws" passed by the unrecognized Turkish Federated State of Cyprus.

The relevant part of the opinions delivered in the House of Lords appears at p. 30. The following is the text of the judgments delivered in the Court of Appeal: